

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY
Maite Murphy, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-002035
Opinion No. 5589 (S.C. Ct. App. Filed August 15, 2018)

THE STATE, ...PETITIONER

v.

ARCHIE MORE HARDIN,.....RESPONDENT

**APPENDIX
VOLUME 1 OF 2**

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VOLUME ONE OF TWO

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions, First Judicial Circuit
The Honorable Maite Murphy**

**Circuit Court Case No. 2014-GS-38-0088-0093
South Carolina Court of Appeals Case No. 2015-000516**

THE STATE,

RESPONDENT,

V.

ARCHIE MORE HARDIN,

APPELLANT

APPELLATE CASE NO 2015-000516

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT 2 (Cell phone identification photograph); COURT'S EXHIBIT 1 (Bond Court audio); STATE'S EXHIBITS 17, 24 and 47 (Photographs of items seized); STATE'S EXHIBITS 26, 27, 28 and 29 (Photographs of duct tape collected from the scene); STATE'S EXHIBITS 73, 74, 75, 76, 77 and 78 (Duct tape collected from the scene); and SUBPOENAS TO ORANGEBURG COUNTY FOR LIEUTENANT SCHUMPERT'S CELL PHONE

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2014-GS-38-0088-0093

State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Archie More Hardin,)
)
 Defendant.)

February 23, 25, 26 & 27, 2015
Orangeburg, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge and a jury

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

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Doug Mellard, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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3 State's Exhibit No. 2 62

4 State's Exhibit No. 3 87

5 State's Exhibit No. 4 91

6 State's Exhibit No. 5 229

7 COURT'S EXHIBITS:

8 Court's Exhibit No. 1 118

9 Court's Exhibit No. 2 339

10 Court's Exhibit No. 3 339

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12 Court's Exhibit No. 5 590

13 Court's Exhibit No. 6 707

14 STATE'S TRIAL EXHIBITS:

15 State's Exhibit No. 1 540

16 State's Exhibit No. 2 374

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18 State's Exhibit No. 5 553

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22 State's Exhibit No. 11 394

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1 (State's Exhibit were pre-marked for ID prior to the start
2 of this proceeding.)

3 (Court in session February 23, 2015 at 10:58 a.m.)

4 THE COURT: Thank you. You may have a seat. Are
5 the parties ready to proceed?

6 MS. CORNWELL: We are, Your Honor.

7 MR. STEVENS: The Defense is ready, Judge?

8 THE COURT: Yes, sir. I understand that you have
9 motions, counsel?

10 MR. STEVENS: Yes, ma'am. We have several motions
11 before the Court this afternoon. First and foremost we had
12 a motion, Defendant's motion to relieve counsel and appoint
13 new counsel. We've had a chance to speak with Mr. Archie
14 Hardin again today. He's indicated to us that he does not
15 want to do that after all. And if the Court would just like
16 to inquire about the matter just to make sure. It's up to
17 him what he wants to do.

18 THE COURT: All right. Mr. Hardin, please stand?

19 MR. HARDIN: (Complies)

20 (WHEREUPON, Archie Hardin was sworn
21 to tell the truth.)

22 THE COURT: Mr. Hardin, I understand that you had
23 a previous concern whether or not you wanted to proceed with
24 your attorneys; is that correct?

25 MR. HARDIN: Well, I did at once, but I'm fine,

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1 Your Honor.

2 THE COURT: You're fine? You've had plenty of
3 time to talk to your attorneys and you feel comfortable
4 going forward with them?

5 MR. HARDIN: Yes, ma'am.

6 THE COURT: And you've met with them for as often
7 and for as long as you feel is necessary for them to
8 properly represent you?

9 MR. HARDIN: Yes, ma'am.

10 THE COURT: All right, sir. And you're ready to
11 proceed and you're comfortable with their representation?

12 MR. HARDIN: Yes, ma'am.

13 THE COURT: Have you understood all of your talks
14 with your attorney?

15 MR. HARDIN: For the most, yes.

16 THE COURT: Do you need anymore time to talk to
17 them?

18 MR. HARDIN: I don't -- I don't want to, I don't
19 want to hold up these proceedings. So I'd just rather go
20 ahead and go along with it.

21 THE COURT: And you feel comfortable that they're
22 representing you and your best interests; is that correct?

23 MR. HARDIN: Yes, ma'am.

24 THE COURT: All right, sir.

25 Anything further?

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1 MR. STEVENS: Not on that motion, Judge.

2 THE COURT: All right.

3 MR. STEVENS: Next, Judge, we filed two motions
4 for continuance. One pursuant to due process and the
5 fundamental right to prepare and present a full and complete
6 defense, along with other due process concerns including
7 discovery, specifically as it relates to DNA evidence and
8 photo ID of the second assailant. That was our first basis.
9 Our second basis was also pursuant to Langford, State versus
10 Langford. We did have in chambers conversation with that
11 with the Court. The issues were briefed and filed with the
12 Judge before the hearing today. Would you like me to
13 continue to go into the motion itself, Judge, or --

14 THE COURT: Sure. I think if you'd like to put
15 your position on the record, I'll be happy to hear you.

16 MR. STEVENS: Certainly, Judge. As for our first
17 basis, Judge, we did originally have this case. We were
18 notified approximately a month ago for trial. Our
19 understanding at the time was -- some time after that we
20 received supplemental discovery from the State indicating
21 that both latent fingerprints as well as touch DNA was
22 actually taken from various locations from the crime scene
23 and also from a gun, or guns allegedly involved as well as
24 the vehicle allegedly used as the getaway car. So our
25 position at that time was we wanted to see what was involved

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1 when it comes to it. Our understanding was that DNA
2 especially was also being sent to SLED for analysis, and the
3 fingerprints were being compared. I believe the
4 fingerprints were eventually compared by Investigator
5 William Ketcherside. The results came back to us and indeed
6 indicated no match to Mr. Archie Hardin. We similarly were
7 awaiting the results of the DNA testing, with hopefully the
8 same as it would actually go directly materially to our
9 defense, which was third-party guilt. Even if we don't have
10 the actual identity to it, it would still support the
11 defense tremendously if it does come back, indeed, that
12 there are multiple donors of DNA, especially in the getaway
13 vehicle, not matching the Defendant. Our position is that
14 these are material to the Defense. Not only do we have a
15 right to this information, but we need this to properly
16 present it to the jury. Without it, we cannot, and as such
17 it does go in subvert the Defense itself.

18 Additionally, Judge, when it comes to the defense of
19 third-party guilt, my understanding of Holmes versus South
20 Carolina is that the Court cannot deny us when it comes to
21 that defense based upon the strength of the State's case.
22 When it comes to it, from what I understand what the State's
23 argument is, is they claim that the Defendant was in the car
24 and they can place him there based on their evidence alone.
25 And the guns from the location they can actually have then

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1 in his possession. Our position, Judge, is they can't
2 necessarily do that when it comes to the critical moment in
3 that there was indeed a gap in time between the alleged
4 offense and when they actually arrived at the apartment of
5 Mr. Archie Hardin.

6 Accordingly, Judge, when it comes to this, when we look
7 at it, it is indeed materia, and we understand that the
8 State claims that they can still put him in there, but it's
9 still nonetheless, goes to the defense. It is material to
10 what we're trying to prove and trying to show and to what
11 our theory of the defense is. As such, we have to have it
12 in order to actually be able to present a full, fair, and
13 complete defense under his due process rights to do just
14 that.

15 If, indeed, the Court doesn't want to have to have the
16 State send it up to SLED for SLED to go ahead and analyze
17 it, then we would be more than willing to do it ourselves.
18 We'll seek funding for a DNA expert to test it and analyze
19 it properly in full. In fact, we've already sought DNA
20 analysis with the expectation that the State was already
21 sending it up to SLED. We already acquire ex parte funding
22 from the Judge to be able to just check it out ourselves and
23 verify it. I mean, this was the expectations held by all
24 parties up until February 17th, basically last Monday, when
25 we were informed that, not only was the DNA not tested yet,

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1 no results back, but that it wasn't even sent.

2 Accordingly, Judge, for these reasons and for the other
3 reasons stated in our motion, which we did file with the
4 Court -- if the Court would like, we do have extra copies we
5 can submit for exhibits. I wasn't certain if that's what
6 you wanted us to do, Your Honor.

7 THE COURT: If you've filed them with the Court,
8 they're already a court record.

9 MR. STEVENS: Yes, ma'am. Thank you. And based
10 on that for our first reason, obviously. And also what's in
11 our motion. We would respectfully request the Court to
12 continue the case, and, frankly, not to let it just go by
13 the wayside, but at least to give us a regularly scheduled
14 meeting so we can actually make sure that SLED is doing
15 their job and analyzing it, and that everything is moving
16 forward in a timely fashion so that all parties can get this
17 case resolved in a timely fashion.

18 No one's trying to do this for undue delay or any
19 purposes like that whatsoever. But we simply need to have
20 what we requested, which is the DNA as well as photo
21 identification to send on the second assailant. As to the
22 second assailant, the photo ID of that, our understanding is
23 that the State also has other statements allegedly given by
24 the Defendant. Obviously we're going to have a Denno
25 hearing on that if the Court chooses to go forward. And our

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1 position is that photo identification could indeed go toward
2 that as well. We have yet to receive the photo
3 identification of the second assailant. Our basis from that
4 one comes from the fact that at the time they did see Mr.
5 Hardin and speak with him in front of the apartment complex,
6 they were able to take a photograph of him and had it sent
7 down to another lieutenant there in Orangeburg. From what,
8 at least one account and affidavit says from one of the
9 witnesses, he wasn't shown just one photograph by that
10 lieutenant but two. And was allegedly able to identify both
11 photographs as both of the assailants. We need to get a
12 copy of that photograph of who the second assailant, who he
13 actually was. We do have a six-pack photograph lineup.
14 We've got some licenses and stuff like that. We have also
15 sent out our private investigator to try and track some of
16 these folks down. But without any confirmation from the
17 State indicating which person it was, if they did indeed
18 give us that photograph that was identified, we're
19 rudderless. And so we do also specifically request that the
20 be turned over to us as well, Judge. Thank you.

21 THE COURT: Solicitor.

22 MS. CORNWELL: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, ma'am.

25 MS. CORNWELL: The Supreme Court has continuously

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1 upheld denials of motions for continuances where there is no
2 showing that any other evidence on behalf of the Defendant
3 could have been introduced, points have been raised or
4 anything in addition to what has already been given to them
5 with a delay in the trial, with more time to prepare. In
6 fact, State v. McKennedy stated that without any show of any
7 new or exculpatory evidence that would have likely been able
8 to surface if more time was granted, therefore, the
9 continuance was denied, and the Supreme Court upheld that
10 denial basically because no exculpatory evidence would have
11 been found or introduced with more time being granted.

12 Furthermore, Steen v. State stated the Defendant failed
13 to point to any admissible evidence he could have produced
14 that would have been helpful to his case and additional time
15 would have had no impact on that result. State v. Asbury
16 states the denial of continuance is proper where additional
17 evidence sought would have been beneficial but not
18 essential.

19 The State's position in this case is that there was
20 touch DNA taken from the vehicle as well as from the
21 firearms. However, that evidence is not exculpatory to this
22 defendant in any way. As for the vehicle, the State has
23 testimony that we can put into evidence where one of the law
24 enforcement officers that was tracking this Defendant
25 through an iPad application was able to see the Defendant

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1 with the car in question. Later on, when the iPad was
2 discovered at this Defendant's apartment complex, it was
3 discovered that the car, that was allegedly the getaway car
4 in this situation, was parked out front, in front of this
5 Defendant's apartment complex. The Defendant was walking
6 down the stairs at that time, and the officers asked, you
7 know, whose car is this? And the Defendant claimed the car
8 as his. So the touch DNA that was taken from the car is not
9 going to exculpate this Defendant in any way. We can place
10 him in the car. Furthermore, it's my understanding that
11 this car is a rental car.

12 So the argument that, you know, third-party guilt, and
13 there could have been a multitude of different DNA samples
14 found in that car that would exonerate their client, isn't
15 necessarily true. I mean, it's a rental car. There's no
16 telling how much DNA. And the fact that the DNA was not
17 tested does not prohibit the Defendant from arguing any type
18 of third-party guilt or anything or trying to place that.
19 In fact, the fact that it wasn't tested, in the State's
20 opinion, helps them out because they can argue that fact to
21 the jury, as opposed to waiting for it to come back and
22 possibly be linked to the Defendant, which would inculcate
23 him.

24 As for the firearms, the situation is the same. Both
25 firearms were found in the Defendant's apartment. The State

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1 will produce evidence showing that this apartment did belong
2 to the Defendant baaed on electric bills that were found in
3 the apartment with this Defendant's name and address on
4 them. The law enforcement officer will be able to testify
5 that this Defendant was the only person in that apartment at
6 the time the search was executed. And both firearms were
7 found inside this Defendant's apartment, putting him in
8 possession of the firearms. Again, the DNA would not
9 exculpate him.

10 Furthermore, the victims will be able to testify that
11 when the assailants came in to rob the store they were both
12 wearing gloves. So, again, it's unlikely that touch DNA for
13 this specific incidence would even be arguable or
14 admissible, because the victims are going to testify that
15 gloves were being worn at the time that the incident
16 occurred. Therefore, that evidence also will not exculpate
17 this Defendant. There's no prejudice to him for it not
18 being tested by the State and it actually gives the Defense
19 more to argue to a jury based on the fact that it was not
20 tested. So we cannot directly link it to their client and
21 they can still argue the third-party guilt based on the fact
22 that we don't know whose DNA it is.

23 THE COURT: Anything further?

24 MS. CORNWELL: As for the photograph of the second
25 assailant, the investigation into the second subject is

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1 still on-going. It is a pending investigation. The officer
2 who showed the photograph to the victims is here. We do
3 have that photograph that was shown. There is a witness
4 account that states that two photographs were shown and that
5 two subjects were identified. We have met with that witness
6 since then. That is an independent eyewitness. It is not a
7 victim in this case. We determined that his testimony would
8 like be unallowable at this time, which is why we are not
9 intending to call him and we would not be seeking to
10 introduced any of these photographs. After speaking with
11 the officer that has these photographs, it's my
12 understanding that after these photographs were taken, his
13 position is that Lieutenant Cain only sent him -- I'm sorry
14 -- Corporal Cain only sent him one photograph and he was
15 only able to show one photograph to all the victims and to
16 the eyewitness. We have asked for his phone to check that.
17 And he has informed us that shortly after this incident
18 occurred his phone broke. He had to get a new phone and so
19 any evidence that would have been on that phone, any
20 pictures or anything like that, he no longer has. We do
21 have the photograph that Corporal Cain took at the incident
22 location that was sent. We have shown that to the victims
23 as well and they have all confirmed that those are the
24 pictures -- that is the picture that was shown to them.

25 Therefore, we don't have a second picture of the second

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1 assailant that was identified. And as per any other
2 identification of the second assailant, that investigation
3 is still pending and on-going. So I don't believe that that
4 has any bearing on whether or not this Defendant is guilty
5 or not guilty.

6 THE COURT: Any response?

7 MR. STEVENS: Yes, ma'am. Thank you, Judge. Just
8 to be clear, our understanding of the law, State versus
9 Tanner is what provides the trial court for the proper
10 framework to analyze whether it should or should not grant a
11 continuance. Point in fact, the vast majority of case law
12 regarding continuances is not from the perspective of the
13 trial Judge. It's actually from the perspective of the
14 Appellate Court where the standard is entirely different.
15 They defer to the trial Judges judicial discretion in the
16 extreme majority of those cases. And that's where the
17 language the State's relying upon generally comes from.

18 In State versus Tanner, however, it does actually give
19 us the factors to utilize when we determine whether a motion
20 for continuance is proper. This is also in the brief I've
21 provided to the Court. First, obviously, showing whether
22 any evidence on behalf of the Defendant could have been
23 produced. Clearly, our position is, it is. There's the
24 DNA, there's a lot of information that we've already touched
25 on. Second is whether any of the points on our behalf could

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1 actually have been raised had more time been granted for the
2 purposes of the case at trial. Our answer is clearly yes.
3 Without this, we're essentially hamstrung on the strength of
4 asserting a third-party guilt defense. Essentially, in our
5 view, what the State is attempting to do, Judge, is walk one
6 step down the road even further that's already been
7 prohibited by South Carolina versus Holmes from the United
8 States Supreme Court. They're basically trying to say
9 because of the strength of the evidence that we have, you
10 don't need to have any of this other information, but your
11 claim is likely going to go ahead and help establish a
12 third-party guilt defense. So it's not just a Holmes
13 violation. It's actually one step even beyond that from our
14 perspective, Judge, as far as what we're trying to do.

15 As to assumptions, obviously, the State's being
16 entirely speculative when it says yeah, the evidence is
17 going to be inculpatory. On the one hand it says it's going
18 to have his DNA in there. On the other hand it says, it's
19 probably going to have a lot of DNA in there. Our position
20 clearly is that, yes, we do presume that there is going to
21 be multiple DNA samples in that vehicle. We have a right to
22 present that to the jury. And if we're actually not
23 permitted to actually have this tested, then we will be
24 prevented from even saying that to the jury because we won't
25 have the factual basis from which to say it.

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1 Next, Judge, they're saying that, you know, it's a
2 rental car. Our position is, yes, we assume the rental cars
3 are clean. I hope so. I use rental cars. I definitely
4 hope they are cleaned in the instances that I've actually
5 rented cars, I know they were. I've watched them. When
6 people drove or take one in there, they wipe it down, take
7 it out. They are clean. People rent them.

8 And finally, Judge, when it comes to the issue of the
9 phone. We're not just dilatory, sitting on our hands,
10 asking the State to do everything. We have filed subpoenas
11 specifically seeking these phones upon the Sheriff's Office
12 when Lieutenant Schumpert in this matter. When it comes to
13 it, we've had my private investigator speak with authorities
14 involved there. My understanding is that they actually have
15 a box full of their previous phones because even though the
16 State believes that his phone is broken, and that's the
17 excuse for why it's not there, from what we have heard from
18 folks at the Orangeburg County Sheriff's Office is that they
19 actually had a switch from one type of phone to another type
20 of phone for the entire organization. And all those phone
21 were actually collected and put in a box. Honest to
22 goodness, we don't want to know what's all on the phone of
23 the investigator, Judge. I'm sure there's lots of
24 information on there that frankly had nothing to do with
25 this case. We don't want that. The only thing we want is

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1 the photograph that was used, not just of our guy, but also
2 specifically of the second alleged robber, which was
3 identified by one of the witnesses there standing outside by
4 the store. Thank you.

5 THE COURT: Based upon -- I've had the opportunity
6 to review both briefs as well as listen to the arguments of
7 counsel. I'm going to respectfully deny your motion for
8 continuance. The evidence that's sought by the Defense is
9 potentially not exculpatory and I don't think it is
10 exculpatory in nature. If anything, as the State said, it
11 could be inculpatory in nature. Certainly nothing prevented
12 the Defense from acquiring this type of evidence or testing
13 prior to the State. The State's not required to send
14 everything to SLED to be analyzed. That's certainly within
15 their discretion as to how they want to proceed in the
16 prosecution of a case. So your motion will be respectfully
17 denied as outlined in the State's response.

18 MR. STEVENS: Thank you, Judge. Judge, our next
19 motion for continuance, as the Court's also aware of our
20 motion and the State's response, is pursuant to State versus
21 Langford. We move to continue based on the State's use of
22 it's own constitutional authority to essentially control the
23 docket pursuant to Langford. And we specifically sought
24 simply to have a scheduling order and continue to meet until
25 everything can be done properly, Judge. Our motion on this

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1 is not only based upon State versus Langford itself.
2 Obviously, State versus Langford involves Article I, Section
3 8 of the South Carolina Constitution. We also invoke not
4 just the South Carolina Constitution, but also the United
5 States Constitution, specifically Amendment Six, as well as
6 the Fourteenth Amendment, Judge, for due process. My
7 understanding of Langford is that these were not ruled upon
8 by the South Carolina Supreme Court in that case.

9 Specifically, our position is that it is a fundamental
10 affront to due process and/or -- and in fairness, the
11 fundamental fairness in that, in order to actually have one
12 party in full and sole control of the docket as the State is
13 and has exercised under the Constitution in this case. When
14 it comes to whether we're ready, obviously, we've actually
15 expressed our concerns regarding that as it goes to DNA
16 evidence, as it goes to proper establishment of our,
17 actually of our fundamental rights to prepare and present a
18 full and complete defense under the United States
19 Constitution as well as Article I, Section 14 of the South
20 Carolina Constitution, Judge.

21 When it comes to it, obviously, our position is that
22 Langford is still good law. After our own review of case
23 law that's come out after Langford, none of those has
24 rescinded Langford. None of them has overturned Langford.
25 So even on the State Supreme Court side, under the State

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1 Constitution, it's still good law, Judge. The only two
2 cases that I saw that were published, one was from the Court
3 of Appeals. And in those circumstances, Judge, I believe
4 that the issues arose even before the Langford Opinion came
5 out, by the time it actually did come up on appeal to the
6 Court of Appeals.

7 I do understand that there are orders from the Supreme
8 Court, which are not the same as opinions. It's still
9 unconstitutional, both from the State's side. And, again,
10 our argument is not just on the State Constitutional side,
11 but also, and specifically on the Federal Constitution side
12 as well, Judge. I believe South Carolina is the only State
13 in the entire Union which allows the prosecutors to control
14 the docket. It's the only State. It's an anachronism. It
15 doesn't belong. It's an anathema and an affront to justice
16 and fairness and due process. And accordingly, Judge, we do
17 respectfully move to have the case continued pursuant to
18 Langford, pursuant to the State Constitutional grounds we've
19 listed, as well as the Federal Constitutional grounds.

20 When it comes to this, obviously how we would be
21 prejudiced is the fact that forensic evidence in the State's
22 possession and its agents are material and critical to a
23 full and complete preparation and presentation of Mr.
24 Hardin's case and his defense. It's either -- it is yet to
25 be either tested or even turned over to the Defense. This

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1 simple request we place before the Court.

2 When we look at it, what we've already gone over here
3 in prior, we respectfully incorporate those arguments into
4 this one, if the Judge would so allow. And we also, again,
5 rest upon the fact that it's actually going to severely
6 limit our assertion not only of third-party guilty, but also
7 when it comes to our ability to basically gain more
8 information specifically about the other individual
9 allegedly identified and shown a photograph of to one of the
10 eyewitnesses. We've got to have that, Judge. It's
11 essential to our case. It's essential to the preparation of
12 the defense as well as presentation to the jury.
13 Accordingly, Judge, we respectfully move for a continuance
14 and scheduling on all those grounds.

15 THE COURT: Ms. Cornwell?

16 MS. CORNWELL: Thank you, Your Honor. May it
17 please the Court. First of all, I don't believe South
18 Carolina is the only state that allows the solicitor's
19 office or prosecuting office to call the case. I believe
20 North Carolina also allows that. Furthermore, Langford is
21 being held in abeyance right now. It's my understanding of
22 Langford that cases, that the Judges will take the docket
23 with cases over a year old and the Solicitor's Office we'll
24 still have priority in calling the cases with cases less
25 than a year old, or I believe less than a hundred and eighty

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1 days. In this case, this case is not a year old yet. The
2 State is calling it with his due process rights in mind, and
3 his right to a speedy trial. The State is not trying to
4 delay anything. We gave proper notification to Defense
5 counsel over a month ago in January that we would be calling
6 this case to give them ample time to prepare it, to come
7 through and look at our case file and see if there's
8 anything that they needed.

9 As far as, again, the DNA goes, we don't believe that
10 that's exculpatory evidence so we do not believe that's
11 grounds for a continuance. The photograph of the second
12 person, again, we've got testimony that we can present that
13 this Defendant's picture was shown and this Defendant as
14 identified as one of the subjects. The second assailant,
15 that investigation is pending and on-going. However, that
16 second defendant's guilt or innocence has no bearing on this
17 Defendant's guilt or innocence. I believe that the State
18 has ample evidence that we intend on introducing to show
19 beyond a reasonable doubt that this Defendant is one of the
20 two subjects that robbed the T-Mobile in Orangeburg. For
21 those reasons and for the reasons again, the arguments
22 incorporated and Defendant's first motion for continuance,
23 we respectfully request that you deny this motion for
24 continuance.

25 THE COURT: Based upon the case law of this State,

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1 to include Langford, which is held in abeyance pursuant to
2 the Supreme Court Order at this time, that the Court will
3 respectfully deny your motion for continuance. The Court
4 finds that the Defense is not prejudiced by the case being
5 called to trial, that they have had ample notice and time
6 and opportunity to prepare for trial. So your motion is
7 respectfully denied.

8 MR. STEVENS: Thank you, Judge. Just so I can get
9 some clarification, I'm not trying to argue against your
10 ruling. I understand the Rules of Criminal Procedure
11 prevents it. So just for my notes I need to get down some
12 clarity because I understand the Court's ruling is
13 essentially that it's the prosecution in the State that has
14 the discretion to call the case and control the docket and
15 not the Court in this matter.

16 THE COURT: Pursuant to Langford and the
17 Administrative Order that followed, if the case is less than
18 a year old then the State still does have the discretion to
19 call the case. And the Court further finds that despite
20 them having the authority to call the case, at this time the
21 Defense is not prejudiced in any way by having the case
22 called at this time, due to the fact that they have had
23 prior ample notice to properly prepare for trial and there
24 is no prejudice to the Defense.

25 MR. STEVENS: Thank you, Judge.

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1 THE COURT: Any other motions at this time?

2 MR. STEVENS: Yes, Your Honor, we do. At this
3 time, pursuant to Missouri versus Frye, I understand that
4 when I was the attorney for the case before the senior
5 attorney in our office was going to step in and take over, I
6 believe we did have a Missouri versus Frye hearing. If we
7 can just go ahead and confirm that on the record with a
8 pretrial, Missouri versus Frye hearing right now. We've got
9 the plea offer and rejection.

10 THE COURT: All right.

11 MR. STEVENS: Thank you, Judge.

12 MS. CORNWELL: May it please the Court, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. CORNWELL: This Defendant was arrested on May
15 18th. This Defendant was arrested on May 18th, 2014. He
16 was taken into custody on May 16th of 2014. The State,
17 after reviewing all the evidence, issued a plea offer on
18 July 31st of 2014. That offer was -- the Defendant is
19 charged with three counts of kidnaping, one count of armed
20 robbery, one count of assault and battery of a high and
21 aggravated nature, and one count of possession of a weapon
22 during the commission of a violent offense. The State
23 offered to have him plead guilty to the three kidnapings,
24 the armed robbery and the weapons charge with a
25 recommendation of a range of fifteen to twenty years, and we

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1 would dismiss the assault and battery of a high and
2 aggravated nature. That offer was set to expire at the end
3 of the September 8th, 2014 term of General Sessions Court.

4 After sending the offer on September 10th of 2014, we
5 had several motions that were heard before the Court. One
6 was a bond modification motion. The other was the Missouri
7 v. Frye hearing with Mr. Stevens. And I believe that there
8 was another motion to remove counsel at that time. Judge
9 Dickson heard those motions. He denied modifying the bond.
10 He went over the Missouri Frye standards with this Defendant
11 as to whether or not he fully understood what the offer was.
12 Did he understand that, you know, the State was revoking
13 that offer if he did not accept it by the end of the term,
14 which would have been on, I believe, September 12th of 2014.
15 And that if he did not accept that offer by the end of the
16 September 12th, 2014, that that motion and that plea offer
17 would be revoked. He stated on record that he did
18 understand that, that he wished to reject the State's offer
19 at that time.

20 Again, Mr. Stevens was counsel at the time that was
21 placed on the record. And I believe it was Judge Dickson
22 who was the presiding Judge.

23 THE COURT: Counsel?

24 MR. STEVENS: Thank you, Judge. Did you put what
25 the offer was in there?

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1 MS. CORNWELL: I did.

2 MR. STEVENS: If we could just go ahead then.

3 Archie, would you want to let them know whether you want to
4 accept or reject the offer?

5 MR. HARDIN: Reject.

6 THE COURT: Mr. Hardin, do you understand what's
7 going on here regarding this hearing. You previously
8 appeared before Judge Dickson, who apparently went over with
9 you what the State's plea offer was; is that correct?

10 MR. HARDIN: Yes, ma'am.

11 THE COURT: All right, sir. And you understand
12 that it is my understanding that at that time after being
13 questioned by Judge Dickson who went over with you your
14 understanding of what the plea offer was, which was a
15 sentencing range between fifteen and twenty years. Was that
16 your understanding of the plea offer?

17 MR. HARDIN: Yes, ma'am.

18 THE COURT: All right, sir. And at that time,
19 during that hearing, you indicated to Judge Dickson that you
20 wished to reject that offer; is that correct?

21 MR. HARDIN: Yes, ma'am.

22 THE COURT: And that is still your position; is
23 that correct?

24 MR. HARDIN: Right.

25 THE COURT: You understand that once the plea

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1 offer is rejected by you and it is withdrawn by the State,
2 there is no obligation for them to extend that plea offer
3 to you again and that is not being offered to you at this
4 time. And you understand that?

5 MR. HARDIN: Yes, ma'am.

6 THE COURT: Do you have any questions regarding
7 that process and your rejection of the plea offer and that
8 it is no longer valid and no longer out there for you?

9 MR. HARDIN: No, I don't have no questions.

10 THE COURT: Have you got any questions? Do you
11 need to your talk to your attorney or anything about that?

12 MR. HARDIN: No, ma'am.

13 THE COURT: All right, sir. Thank you.

14 MR. STEVENS: Thank you, Judge. Next, Judge, we
15 simply have requested for the confirmation on the record by
16 the State that it's fully complied with Brady, Rule 5.
17 Obviously, we do have dispute over a couple of evidentiary
18 rulings or factors. The Court's pretty much already ruled
19 on those, but regarding that we also respectfully request
20 the Court to get on-the-record confirmation that it has
21 complied with Brady, Rule 5.

22 THE COURT: Solicitor?

23 MS. CORNWELL: Thank you, Your Honor. The State
24 has given, has met it's continuing obligation to discovery.
25 Obviously, discovery is ongoing. When we originally got the

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1 case file, we did serve Rule 5 on June 20th of 2014. That
2 was a case file that was given to us by the Orangeburg
3 County Sheriff's Office. We turned all of that over as soon
4 as we got it.

5 In preparation for this trial, we have met with several
6 witnesses and several of them are officers. More
7 information was given to us at that time, more discoverable
8 information. And as soon as we got that information again,
9 we made copies and gave Defense counsel.

10 Additionally, on Thursday of last week, Defense counsel
11 met with us in our office and at that time they were given
12 the opportunity -- at any time they've been given the
13 opportunity to come and look through our file and make sure
14 that they have everything.

15 It's the State's position that we have disclosed all
16 information that we have in our file and in our hands as of
17 today's date.

18 THE COURT: All right. Anything further?

19 MR. STEVENS: Thank you, Judge. We're about half-
20 way there. Thank you for bearing with us.

21 Next, Judge, simply we just have a motion to sequester
22 the witnesses to be called in the case pursuant to Rule 615
23 of the Rules of Evidence. There's going to be a lot of
24 information going out there. Basically, we want to avoid
25 any cross contamination of testimony.

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1 I also understand that it's not just one person who was
2 robbed there at the T-mobile. It's three. I understand the
3 victims under Article I, Section 24, the victims themselves
4 have a right to actually be present during the hearing or
5 during the trial itself as well. However, at least for
6 purposes of the Neil versus Biggers hearing, which I believe
7 we're going to have to have this afternoon as well, in the
8 interest of complete coverage and protection of my client's
9 rights, for that hearing, we would respectfully request that
10 the other witnesses, or the other victims be held outside as
11 well. And then after their testimony, obviously, they can
12 stay. But we simply request that all future witnesses be
13 sequestered in this case.

14 THE COURT: Any objection to that?

15 MS. CORNWELL: No, the State doesn't object to
16 sequestering witnesses with the exception of the victims. I
17 believe the victims, their rights allow them to be present
18 during each and every aspect of the trial, as well. They're
19 going to be allowed in the courtroom for the duration of the
20 trial. And I believe that these pretrial hearings are also
21 part of that trial and part of the Bill of Rights. I don't
22 have any exception to other officers and everything else
23 being sequestered, but I believe that my victims and the
24 case agent, which would be Sergeant Stokes in this matter,
25 should be allowed in the courtroom for the duration of the

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1 trial and any pretrial motions.

2 THE COURT: Defense counsel, do you have anything,
3 any case law that excludes victims during the pretrial
4 hearings? Under the Victims' Rights Act, I know technically
5 they are allowed to be present at all stages of the
6 proceedings.

7 MR. STEVENS: Yes, ma'am. It's my understanding
8 that it's not really a litigated issue, Judge.

9 THE COURT: There might not be a hearing if it was
10 not a litigated issue?

11 MR. STEVENS: Yes, ma'am. However, that said, our
12 position is that there are due process rights or fundamental
13 Constitutional Rights under the United States Constitution
14 would trump Article I, Section 24, to at least make sure
15 that especially his Sixth Amendment Right to a fair trial,
16 as well as Article 1, Section 14, of the South Carolina
17 Constitution, as well, as even obviously the Fourteenth
18 Amendment. In other words, his rights to a fair trial,
19 especially since they're ensconced in the United States
20 Constitution, necessarily trump whatever is there for other
21 folks under lesser laws. I'm not saying that South Carolina
22 is a lesser place whatsoever. I'm saying that the supremacy
23 clause in the United States Constitution doesn't -- We don't
24 want them -- I'm not asking, I should say, for them to be
25 sequestered throughout the entire trial at all. We're

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1 simply asking for the Neil versus Biggers hearing, which
2 necessarily turns on their testimony and what they
3 individually saw or heard and regarding identification, out
4 of court identification, and whether they're going to be
5 able to have in court identification of it as well, when it
6 comes to any and all of that. That, in particular, is very
7 sensitive and frankly could have cross-examination involved
8 in it. And it's only for that specific reason why we do
9 request them to actually step outside and actually have them
10 one at a time on the witness stand in the Neil versus
11 Biggers hearing, Judge. Not after that. Obviously after
12 it's done they can come on in, especially for the remainder
13 of the hearings, during the trial, certainly that's all
14 right. But in order to make sure that Mr. Hardin's rights
15 are protected under due process and especially for something
16 as very critical to the defense as identification in this
17 case, we do believe it's actually warranted and merited at
18 least for the limited purposes of the Neil versus Biggers
19 hearing that they not be in the courtroom, Judge.

20 THE COURT: Anything further from the State?

21 MS. CORNWELL: The State's position that the
22 Victims' Rights Bill states that they're allowed to be in
23 Court for each and every aspect of the trial. And I don't
24 think the Defendant's due process rights will be violated by
25 allowing that. Furthermore, the Defendant will be allowed

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1 to cross-examine the witnesses, including the victims, and
2 any discrepancies that they may have at that time.

3 THE COURT: And certainly, I think that the
4 victims' rights are to be protected as well, just like the
5 Defendant's rights are to be protected. And the Victims'
6 Right Act does provide for them to be present and have the
7 right to be present. Obviously, you will have the right to
8 cross-examine each of the victims in this matter as well as
9 they will be under oath. And, obviously, you will have an
10 opportunity to review any prior statements that they may
11 have made or identification. So you'll have the full
12 opportunity to fully explore those issues to check for any
13 inconsistencies, so I respectfully deny your motion.

14 MR. STEVENS: Thank you, Judge.

15 Next, Judge, I believe we have a motion to suppress the
16 evidence of the search. The Court's indulgence.

17 At this time, Judge, the Defense does move to suppress
18 evidence from the search of Archie Hardin's residence where,
19 first of all, no warrant was obtained to actually search it.
20 Two, although they actually did obtain an initial consent to
21 search, their search did not reveal results. Additionally,
22 he was actually in the presence of quite a few law
23 enforcement agents holding their arms. And, three, the
24 officers didn't discover anything inside at the time. It's
25 when they left the apartment and came out to the outside and

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1 discovered an iPad out in some tall weeds, out by a
2 dumpster. And shortly after that, they did effectuate the
3 re-entry into the home. Mr. Hardin has indicated to us that
4 -- and obviously we'll have a hearing here and if we go
5 forward with defendant witnesses, which we're prepared to
6 do, Judge. Our position is that they did actually get more
7 stuff out of his house. They kind of modified the consent
8 form and tried to have him sign it and he refused to sign.
9 Essentially, it's effectuating no consent to what they are
10 actually doing, what they're actually pursuing. When it
11 comes to that, Judge, because it is tantamount to a
12 revocation of his consent, the search itself devolves back
13 down to the level of a warrantless search, which is, per se,
14 unconstitutional. Accordingly, Judge, our motion is going
15 to be, obviously why we have to have testimony on that, that
16 all the evidence seized from his home is suppressed.

17 THE COURT: Do you care to be heard on that before
18 we start the testimony?

19 MS. CORNWELL: Your Honor, there is one issue I'd
20 like to bring to the Court's attention. One of the
21 witnesses that we would call is Investigator Darius Wade.
22 He is the person that actually gave the Defendant the
23 consent to search form and had him sign it and fill it out.
24 He is -- he called us this morning. He's got the flu. He's
25 been throwing up about every fifteen minutes he said. I

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1 told him for purposes of this hearing that he did not need
2 to be present. However, Corporal Cain who was present at
3 the time that -- he was with Investigator Wade the entire
4 time. So he witnessed the voluntary consent to search be
5 signed by this Defendant. And he also witnessed
6 Investigator Wade go over everything.

7 So it's the State's position for purposes of this
8 hearing that we should be able to get everything in through
9 Corporal Cain. However, if this Court would like to hear
10 directly from Investigator Wade, obviously that would have
11 to wait until hopefully in the morning when he's feeling a
12 little bit better.

13 But, again, I think that we can put up enough evidence
14 or testimony as Corporal Cain witnessed everything as it
15 occurred. He can testify as to what he saw, what he heard
16 and what he saw the Defendant do. I think that should
17 suffice. However, if the Court needs more testimony, we can
18 take that matter up tomorrow.

19 THE COURT: All right. You may call your first
20 witness then.

21 MS. CORNWELL: Thank you, Your Honor.

22 THE COURT: Okay.

23 MS. CORNWELL: For purposes of kind of
24 consolidating everything, I believe the Defense is also
25 going to have a Biggers Motion and a Denno Motion.

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1 South Carolina.

2 Q And were you working in that capacity on May 16th of
3 2014?

4 A Yes, ma'am.

5 Q And in that capacity, did you assist in the
6 investigation of an armed robbery that occurred at T-Mobile
7 off of St. Matthews Road?

8 A Yes, ma'am.

9 Q What county is that in?

10 A Orangeburg County.

11 Q And can you tell the Court how you became involved in
12 this case?

13 A I was on my way from Rock Hill. We went to Rock Hill
14 that morning at 5:30 a.m. and on my way back near exit --
15 near Bluff Road/Shop Road Exit, I overheard Sergeant Stokes
16 on the radio advising Orangeburg that the vehicle, the iPad
17 was now near Ft. Jackson Boulevard. I then made a phone
18 call to Sergeant Stokes and Lieutenant Schumpert to find out
19 what was going on and ask them could I assist because I was
20 on 77 at the time.

21 THE COURT: Okay. Corporal, can you just slow it
22 down just a little bit.

23 CORPORAL CAIN: Okay.

24 BY MS. CORNWELL:

25 Q And you had mentioned an iPad. Were you given details

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1 of the armed robbery that had occurred in Orangeburg when
2 you called in?

3 A I was advised that two males, armed males, robbed the
4 T-Mobile Store and they were driving a gray in color, four-
5 door Toyota sedan.

6 Q Okay. And are you familiar with the Locate My iPad
7 Application?

8 A A little bit, yes, ma'am. Yes.

9 Q Okay. What is your understanding as to how that
10 application works?

11 A The Find My iPad App is where you put your username and
12 your password into the Find My iPad App and it shows you
13 like on Google Earth or Mapquest where the iPad is at.

14 MR. STEVENS: Judge, at this time, honest to
15 goodness, I hate to say it, but I don't think he's qualified
16 to testify about how a software application is fully
17 working. He's not qualified under 702 as an expert to any
18 of this stuff. He's not qualified to know how the
19 satellites operate. He's not qualified to say how the cell
20 towers operate, what the accuracy rate is for the, any of
21 that. The only thing he can testify to as a lay witness is
22 specifically what he saw.

23 THE COURT: He can testify regarding his limited
24 knowledge. He can't give an opinion as to the accuracy or
25 the reliability of it. However, if he has limited knowledge

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1 of what it is, what an App is, I think certainly he's
2 entitled to testify to that.

3 MR. STEVENS: Well, one of our primary concerns,
4 Judge, regarding this is -- our position is the State's very
5 likely to say well did you, you know, hear the App was at
6 this location. And our understanding, especially when it
7 comes to anything that's pinged by cell towers, is you can't
8 give an exact location with that accuracy, that kind of
9 accuracy. Specifically, not without any expert testimony
10 regarding that tower.

11 THE COURT: I think that's certainly something you
12 can cross-examine him on. I don't think he -- he's not
13 going to be allowed to give an opinion as to the accuracy of
14 it, just his observations of what he saw take place, he saw
15 himself.

16 MR. STEVENS: Yes, ma'am. Our concern though is
17 this. His testimony is that someone else told him the iPad
18 was specifically at location X. That, in itself,
19 incorporates the error.

20 THE COURT: I understand.

21 MR. STEVENS: It incorporates that this is there
22 and there's no way for us to cure that.

23 THE COURT: Let's listen to the testimony and then
24 I'll issue a ruling.

25 MR. STEVENS: Thank you, Judge.

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1 THE COURT: You may proceed, solicitor.

2 MS. CORNWELL: Thank Your Honor.

3 BY MS. CORNWELL:

4 Q Corporal Cain, I apologize. Before you were
5 interrupted, I believe you said that there was a Google Map
6 or some sort of map and there was a dot that showed where it
7 was?

8 A Yes, ma'am.

9 Q Okay. And to your understanding and to your knowledge,
10 is that a realtime map?

11 A Yes, to my knowledge.

12 MR. STEVENS: Again, Judge, there's no way he
13 could know that not without specialized training. When it
14 comes to is that a realtime map? How does anyone know
15 unless they're actually qualified properly?

16 THE COURT: He's not giving an opinion as to the
17 accuracy of the app. She's just asking him what type of app
18 is it. We're going to allow the testimony at this time to
19 be proffered and then I will rule on its admissibility at
20 trial.

21 MR. STEVENS: Thank you, Judge.

22 BY MS. CORNWELL:

23 Q All right. And once you had the information regarding
24 the iPad, the subjects description, and the description of
25 the vehicle, what happened?

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1 A When I was on 77?

2 Q Yes?

3 A When I was on 77, I was informed that the iPad was at
4 one point was near Ft. Jackson Boulevard. And when I turned
5 around, I was informed that the iPad had moved and it was in
6 the Forest Acres area, near Forest Drive and Trenholm Road.
7 I then went to that direction. And when I got to Forest
8 Drive and Trenholm Road, I was then advised by Lieutenant
9 Schumpert that the phone was heading on Beltline Boulevard
10 towards Edison --

11 MR. STEVENS: Judge, at this time, just so we're
12 clear --

13 THE COURT: Mr. Stevens, I understand your
14 objection. It's the same objection unless you have
15 something different. The testimony is being proffered at
16 this time.

17 MR. STEVENS: I understand.

18 THE COURT: It's not being given to the jury. Do
19 you have something different?

20 MR. STEVENS: Well, it's also hearsay when it
21 comes to Schumpert telling him where something is that he
22 couldn't witness himself. Number two, this is entirely
23 beyond the scope of what we're looking for, which is to
24 suppress evidence of the search itself. My understanding is
25 he was here to testify whether or not the consent form was

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1 signed and what they did at that location. The Jackson
2 versus Denno hearing and the Neil versus Biggers hearing.
3 This has nothing to do with that. So it's beyond the scope
4 of the hearings themselves.

5 THE COURT: Where are you going with this
6 Solicitor?

7 MS. CORNWELL: Your Honor, the State's just laying
8 a foundation as to how they were to arrive at the apartment
9 complex that was searched. We're laying a foundation as to
10 the evidence that was seized from that. There was a consent
11 to search but we're also laying a foundation as to whether
12 or not search warrants would have been issued as inevitable
13 discovery.

14 THE COURT: I'll allow it at this time.

15 MS. CORNWELL: Thank you, Your Honor.

16 BY MS. CORNWELL:

17 Q And Corporal Cain, again, I apologize. You were
18 interrupted. You were explaining the coordinates that you
19 went to?

20 A Yes, I went en route to West Beltline Boulevard. He
21 said the phone was heading toward the City of Columbia,
22 towards Edison Street. When I got to Edison Street and West
23 Beltline, there's a store across the road. I parked in that
24 parking lot and they were telling me the iPad was right
25 there. And I was looking for the vehicle. At that time, I

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1 did not see it. A few minutes later, I was advised by
2 Lieutenant Schumpert that the iPad vehicle was now heading
3 down Beltline Boulevard towards 277 and it was near a motel
4 named the Budget Inn on Sunset Boulevard. I then proceeded
5 that way. Once I crossed under the overpass for 277, the
6 hotel was sitting to your right. As I was driving real
7 slow, I saw a vehicle parked at the front door of the hotel,
8 a four-door Toyota vehicle, grayish in color. And I was
9 driving real slow. And as I got up to the roadway in front
10 of the hotel, that you can drive by the hotel, I saw an
11 individual with a blue shirt on come outside of the hotel
12 lobby door and get inside the vehicle.

13 Q Okay. And at that point, did you try to make contact
14 with any other jurisdictions in your area for assistance?

15 A I made contact with Investigator Wade when I first got
16 the initial call information on 77.

17 Q And did you know Investigator Wade prior to this
18 incident?

19 A Yes.

20 Q How did you know him?

21 A I met Investigator Wade in 2010 on the Marshall's Task
22 Force.

23 Q And after you saw the subject with the blue shirt get
24 into the car, what happened next?

25 A I then proceeded slowly up Sunset Boulevard towards Two

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1 Notch Road. I then made a u-turn and came back towards 277,
2 putting the hotel to my left. I came to almost a stop in
3 the road. I turned my hazard lights and my rear blue lights
4 in my patrol vehicle, and I watched the car make a right
5 turn on the side of the hotel building, if you're facing the
6 building. And then I saw two individuals a few minutes
7 later peeking their heads around the corner at me. And at
8 that time, I went up and made another u-turn and went to a
9 parking lot and met Investigator Wade.

10 Q Okay. And after you met Investigator Wade, what
11 happened?

12 A I advised him that I saw the vehicle and a possible
13 suspect at the hotel. And while I was briefing him on the
14 case from Orangeburg County, I was advised by Lieutenant
15 Schumpert that the iPad had moved again.

16 Q Okay. And what did you do after that?

17 A We then proceeded to Colonial Drive, passing the hotel.
18 I, myself, drove through the hotel parking lot to look for
19 the vehicle from where I saw that car parked at around the
20 building. And when I got there, I noticed there was a
21 stairwell there, so they couldn't have went around the
22 building. And then I backed out and went around, I forgot
23 the name of the road, towards Colonial Drive and met
24 Investigator Wade over there.

25 Q And once you met Investigator Wade over there, did

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1 y'all do anything? Were you able to -- what were y'all
2 going to do that that point?

3 A We were searching the area. Other officers were
4 searching the area also, from the City of Columbia and the
5 Richland County Sheriff's Office for that vehicle.

6 Q Okay. At some point were y'all able to locate the
7 suspects or suspect?

8 A Well, while we were near Colonial Drive, Lieutenant
9 Schumpert made contact with me again advising me that now
10 the vehicle was on Bentley Drive at an apartment complex.

11 Q Okay. And after receiving that information, did you
12 get any other information from Lieutenant Schumpert?

13 A Yes. In route there and once we got on Bentley Drive,
14 we were at an apartment complex. And he was telling me
15 that the iPad was at apartment -- I forgot the number he
16 said at that time. And we were riding around the apartment
17 complex. And I was, like, I can't find it right now. I
18 said send me the username and the password, so we can get a
19 better visual on Investigator Wade's iPad.

20 Q Okay. And was he able to do that?

21 A Yes.

22 Q And once you were able to log-in, could you see the
23 iPad's, location?

24 A Yes. It was putting us across the road in another
25 apartment complex from where we were at.

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1 Q Okay. And did you go to that apartment complex?

2 A Yes, ma'am.

3 Q And what did you see when you went over there?

4 A When we rode into the parking lot, we saw the vehicle
5 parked in front of an apartment building with the door open.

6 Q And were you able to make contact with the person who
7 was in possession of that car?

8 A Yes.

9 Q How were you able to do that?

10 A Once we approached the vehicle and saw that door was
11 open and no one was in the car, there was a gentleman coming
12 down the staircase.

13 Q And do you see that gentleman in the courtroom today?

14 A Yes, ma'am.

15 Q And where is he?

16 A Right there.

17 Q Okay. Can you describe what he's wearing on?

18 A With the orange suit on, jumpsuit.

19 MS. CORNWELL: Your Honor, let the record reflect
20 that the officer just pointed out the Defendant as the
21 person he saw coming down the steps.

22 THE COURT: All right.

23 BY MS. CORNWELL:

24 Q Once he came down the steps, did officers speak to him?

25 A Yes.

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1 Q And what was that conversation?

2 A Investigator Wade asked him did the car belong to him
3 and asked him --

4 MR. STEVENS: Again, this is entirely hearsay. My
5 understanding he's here to testify regarding, you know, what
6 he saw. However, I don't really think he can testify to
7 what people said.

8 MS. CORNWELL: Your Honor, I believe he can
9 testify as to what he heard. I mean, he was present when
10 that conversation took place.

11 MR. STEVENS: Our objection would be under 801 and
12 802. And I don't see an exception to 803.

13 MS. CORNWELL: Furthermore, it's not going to the
14 truth of the matter asserted.

15 THE COURT: What's it going towards?

16 MS. CORNWELL: It's going towards the possession
17 of the vehicle.

18 THE COURT: I'll allow it at this time.

19 MR. STEVENS: Thank you, Your Honor.

20 BY MS. CORNWELL:

21 Q I believe you said that you were standing there when
22 Officer Wade asked the Defendant about the car?

23 A Yes, ma'am.

24 Q And what did the Defendant say?

25 A The Defendant said the car belonged to him.

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1 Q And did he make any other statements as to why he was
2 at the apartment complex?

3 A He advised that he was there visiting friends that
4 stayed on the top floor, rear, right apartment.

5 Q And were you able to confirm whether or not that
6 statement was true?

7 A It was not true.

8 Q Okay. What was not true about that statement?

9 A He wasn't there visiting friends. He resided at that
10 apartment complex.

11 Q Okay. And while you were outside speaking to the
12 Defendant, did he make any additional statements to you?

13 A Yes, he did?

14 Q And what was that?

15 A He advised me that he saw me at Edison and Beltline
16 Boulevard because he and the other individual in the car, a
17 man named Black, thought that I was Black's probation
18 officer.

19 MR. STEVENS: Judge, I'm sorry. This is the first
20 time we've ever heard this at all. Clearly, the State was
21 aware of this and didn't give us any notice about another
22 statement purportedly made by our client. We've got a
23 problem with that. And specifically, we seek suppression
24 under Rule 5.

25 THE COURT: Let's listen to the testimony first,

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1 Mr. Stevens, and then I'll allow you to cross-examine him
2 and make a proper motion.

3 MR. STEVENS: Thank you, Judge.

4 BY MS. CORNWELL:

5 Q Go ahead.

6 A He advised me that the guy in the car with him by the
7 name of Black thought that I was his probation officer when
8 they saw me at Edison and West Beltline Boulevard when I was
9 at the gas station.

10 Q And did that match up with the time you were in the
11 area tracking the iPad?

12 A Yes, ma'am.

13 Q Once you were able to determine whose apartment it was,
14 what did you do?

15 A Investigator Wade was talking to the individual and he
16 advised -- he asked him would he sign a consent form to
17 search his residence once he found out it belonged to him,
18 that apartment.

19 Q And were you present during that conversation?

20 A Yes, ma'am.

21 Q And were you able to see the voluntary consent to
22 search form that Investigator Wade presented to the
23 Defendant?

24 A Yes, ma'am.

25 MS. CORNWELL: May I approach, Your Honor?

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1 THE COURT: You may.

2 MS. CORNWELL: State's Exhibit 1, please?

3 (State's Exhibit No. 1, consent to
4 search form, was marked and entered.)

5 COURT REPORTER: State's 1, Judge.

6 THE COURT: Thank you.

7 BY MS. CORNWELL:

8 Q And Corporal Cain I'm going to show you what's been
9 marked as State's Exhibit 1. Do you recognize that
10 document?

11 A Yes, ma'am.

12 Q What is that?

13 A It's a voluntary consent to search form.

14 Q And is that the search form that you saw Investigator
15 Wade explain to the Defendant?

16 A Yes, ma'am.

17 Q And is that also the form that -- I'm sorry. Were
18 there any signatures on that consent to search?

19 A Darius Wade's, Investigator Wade's. And the other one,
20 I can't make out the signature.

21 Q Okay. Any other signatures?

22 A Yes, ma'am, one more witness signature. Like badge
23 number 22317.

24 Q Okay. Did the Defendant sign that document?

25 A Yes, ma'am.

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1 Q Were you present when he signed that document?

2 A Yes, ma'am.

3 Q And, Corporal Cain, if you don't mind just reading out
4 what that form states?

5 A A voluntary consent to search form. Date 5/16/2014.
6 Time, 14:00 hours, [REDACTED] Bentley Court, Columbia, South
7 Carolina, 29210. I, Hardin, Archie, do hereby consent to
8 search of my premise and/or automobile without a search
9 warrant by Officers of the Columbia Police Department,
10 Columbia, South Carolina. These officers are authorized by
11 me to take from the premises and/or automobile letters,
12 papers, materials or other property which they desire.
13 Description of property to be searched is described as
14 follows: Black male, 5'10" 190 to 200 pounds, walks with a
15 limp. Any stolen property, iPad, any firearms, handgun. I
16 am aware that any evidence obtained as a result of a search
17 can be used against me in a court of law. By signature
18 below, I understand that -- excuse me. By signature below,
19 I understand at any time I can withdraw the consent. This
20 written permission is being given by me to the above
21 officers voluntarily and without threats or promise of any
22 kind.

23 Q And that's signed by the Defendant?

24 A Yes, ma'am.

25 Q And when you first went into the apartment, were you

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1 looking for anything in specific?

2 A The iPad.

3 Q Okay. And once you entered the apartment, what did
4 y'all do?

5 A Investigator Wade and officers from the city entered
6 the apartment. I, myself, was outside the door with Mr.
7 Hardin.

8 Q And Mr. Hardin was outside the door, present at the
9 apartment when the --

10 A Yes.

11 Q And how did officers attempt to locate the iPad?

12 MR. STEVENS: I'm sorry. There's no way if he was
13 located outside of an apartment that's two stories up,
14 there's no way he could know.

15 THE COURT: You're saying --

16 MR. STEVENS: Yes, ma'am. This witness just said
17 that he was not upstairs in the apartment when the search
18 was being conducted. He was actually downstairs, outside
19 with the Defendant, if I understand what his testimony was.
20 And accordingly, I don't think he's -- he's not competent to
21 testify what occurred inside when it comes to the
22 investigation, Investigator Wade and the other officer from
23 the Columbia Police Department.

24 THE COURT: He can testify regarding to what he
25 did or what he personally saw.

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1 MR. STEVENS: Yes, ma'am. Thank you.

2 BY MS. CORNWELL:

3 Q And Corporal Cain just to clarify, when you said you
4 were standing outside of the apartment, was that standing
5 right outside of the apartment door in the upstairs area or
6 were you downstairs in the parking lot?

7 A At the front door of his -- residence. At the front
8 door on the landing.

9 Q Okay. So could you see and hear what the other
10 officers were doing inside of the apartment?

11 A Yes, ma'am.

12 Q Okay. And what did you see and hear the other officers
13 do in an attempt to locate the iPad?

14 A When they went into the apartment the first time in the
15 beginning, they did a protective sweep to make sure no other
16 individuals were inside the residence. Then Investigator
17 Wade made the iPad play music. And he walked through the
18 apartment and we did not hear it playing music. So he said,
19 it must not be in here. So Investigator Wade and myself
20 left Mr. Hardin upstairs with the other officers, went down
21 behind the building, walking the area. We went to our right
22 of the building -- behind me, all the way to the trash
23 dumpsters and we could hear something playing music. As we
24 approached closer, I noticed a plastic bag where the music
25 was coming from.

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1 Q And were y'all able to see what was in that plastic
2 bag?

3 A Yes.

4 Q What was that?

5 A It was an iPad.

6 Q And after you located the iPad, what happened next?

7 A I then made -- after the iPad was located, Investigator
8 Wade, he made contact with their crime scene unit with the
9 City of Columbia.

10 Q Okay. At any time did you observe officers go back
11 into the residence to a second search?

12 A Yes.

13 Q Okay. And to your knowledge, did they discover any
14 additional evidence inside the apartment?

15 A Yes, some phones.

16 Q Okay. And I believe you said that Investigator Wade
17 called their crime scene out to photograph the evidence?

18 A Yes, ma'am.

19 Q And did you see crime scene come out and photograph
20 that evidence?

21 A Yes.

22 Q Who collected that evidence?

23 A Investigator -- I forgot the last name. It was the
24 City of Columbia who collected the evidence.

25 Q Okay. Did anybody from Orangeburg County Sheriff's

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1 Office come and collect evidence?

2 A Yes.

3 Q Okay. Who was that?

4 A Investigator Moore.

5 Q Okay. And after Investigator Moore came and collected
6 the evidence, prior to that, did you do anything with the
7 Defendant?

8 A Yes.

9 Q What did you do with the Defendant?

10 A Before the Defendant was arrested, I took a photo of
11 him with my county phone and sent that photo to Lieutenant
12 Schumpert, who then called me back and advised me that the
13 subject had been identified by the victims?

14 Q Okay.

15 MS. CORNWELL: If I could have this marked as
16 State's Exhibit 2?

17 (State's Exhibit No. 2, photo, was
18 marked and entered.)

19 COURT REPORTER: State's 2, Judge.

20 THE COURT: Thank you.

21 BY MS. CORNWELL:

22 Q Corporal Cain, I'm going to show you what's been marked
23 as State's Exhibit 2. Do you recognize that picture?

24 A Yes, ma'am.

25 Q And what is that?

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1 A A photo of Mr. Hardin.

2 Q And who took that photo?

3 A I did.

4 Q And is that the photo that you said you sent to
5 Lieutenant Schumpert?

6 A Yes, ma'am.

7 Q Okay. And once Lieutenant Schumpert contacted you and
8 stated that an identification had been made, were you given
9 any more directions?

10 A I was advised to take Mr. Hardin into custody.

11 Q When you took the Defendant into custody, did you read
12 him his rights?

13 A Yes, ma'am.

14 Q And do you do that from memory or do you read them from
15 a card?

16 A A card.

17 Q Do you have that card with you today?

18 A Yes, ma'am.

19 Q Okay. Can you read into the record what that card says?

20 A Suspect's rights, Miranda warning. You have the right
21 to remain silent. Anything you say can and will be against
22 you in a court of law. You have the right to talk to an
23 attorney and have him or her present with you while you are
24 being questioned. If you cannot afford to hire an attorney,
25 one will be appointed to represent you before any

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1 questioning, if you wish. You can decide at any time to
2 exercise these rights and not answer any questions or make
3 any statements. Do you understand each of these rights I've
4 explained to you. Having these rights in mind, do you wish
5 to talk to us now?

6 Q And did the Defendant understand the rights as you gave
7 them to him?

8 A Yes.

9 Q All right. And I'm going to jump back a little bit just
10 for a second, on identification. When you took the
11 photograph and sent it to Lieutenant Schumpert, was that
12 before or after you had located the iPad?

13 A That was before.

14 Q Before you located the iPad?

15 A Yeah.

16 Q And did the Defendant make any statements to you while
17 you were driving back to Orangeburg?

18 A Just about the Black subject. He thought I was the
19 probation officer from Richland County Sheriff's Office.

20 Q Okay. And after you took the Defendant to Orangeburg
21 County, did you have any further involvement in this case?

22 A No, ma'am.

23 MS. CORNWELL: Court's indulgence?

24 Q Thank you, Corporal Cain. Please answer any questions
25 Defense counsel may have.

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1 THE COURT: Cross-examination.

2 LEONARD CAIN - CROSS EXAMINATION

3 BY MR. STEVENS:

4 Q How you doing today, Investigator?

5 A How are you, sir?

6 Q I'm sorry. Corporal Cain or Investigator Cain?

7 A Corporal Cain.

8 Q Corporal Cain. Sorry about that. My name is Breen
9 Stevens. I represent the Defendant in this matter, Mr.
10 Archie Hardin. I'm just going to touch on some of the
11 information we covered. I know we've got a couple of issues
12 here. We've got a search issue. We've got identification
13 issue. We've got statements. Lots of stuff going on here.
14 So bear with me, okay?

15 A Okay.

16 Q First of all, you indicated that you were basically
17 following directions of other people indicating there was an
18 iPad; correct?

19 A Yes.

20 Q Okay. And this iPad was purportedly stolen; right?

21 A Yes.

22 Q Okay. And just so we're clear, you don't have any
23 degrees in like cell tower engineering?

24 A No, sir.

25 Q Okay. And you don't have, you know, any engineering

1 degrees like that at all; right?

2 A No, sir.

3 Q Okay. And so you would not be an expert witness when it
4 comes to the accuracy of identifying something through cell
5 tower technology; correct?

6 A Through the iPad?

7 Q Through cell tower technology?

8 A A little from tracking phones.

9 Q Okay. So you are an expert in cell --

10 A No, I'm not an expert.

11 Q Okay. I'm just making sure we're clear. The same thing
12 when it comes to satellite technology; right? I mean, you
13 don't have any degree in engineering when it comes to
14 satellite technology; correct?

15 A No, sir.

16 Q Okay. And to be sure, when you were actually being told
17 where to go, that wasn't you really reading an instrument to
18 tell you where anything was; correct?

19 A No, sir.

20 Q Okay. So that wasn't anything that you directly
21 observed yourself from an instrument; right?

22 A Not in the beginning.

23 Q Right. So basically Lieutenant Schumpert was telling
24 you where to go; correct?

25 A Right.

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1 Q Okay. So that wasn't you reading a device while you
2 were in the car before you got to the apartments; right?

3 A When I was on Bentley Court, at the apartment complex
4 across the road from where we found Mr. Hardin at --

5 Q We'll get to that. We're not there. All right.

6 A Okay.

7 Q Way before you even get to the apartments --

8 A Uh-huh (affirmative).

9 Q -- right, you didn't have a device reading where the
10 iPad was allegedly located; right?

11 A No, sir.

12 Q And it's your understanding that it was through cell
13 phone technology, a location using cell phone towers on how
14 they were trying to track that device; correct?

15 A Yes.

16 Q Okay. And you didn't even have any device to track that
17 at that time; right? You weren't logged-in. You weren't
18 trying to track anything like that?

19 A I was not logged in, correct, sir.

20 Q Okay. Everything you were getting was basically being
21 told to you by other people; right?

22 A Yes.

23 Q Okay. And, frankly, you don't even know if Lieutenant
24 Schumpert had that device in his own hand or if someone's
25 telling him; right?

1 A Right.

2 Q Okay. Just from your perspective. I don't want you to
3 speculate now?

4 A Okay.

5 Q Okay. Now, you said also you're part of the Marshall's
6 Task Force; is that right?

7 A Yes, sir.

8 Q Can you explain to us what the Marshall's Task Force is?

9 A The Marshall's Task Force is a unit, it's in every state
10 throughout the United States. We do fugitive investigations
11 of the whereabouts of wanted individuals, violent
12 individuals. We work warrants on a everyday basis throughout
13 the State.

14 Q Okay.

15 A Orangeburg County and all other areas.

16 Q Okay. So from what you told us before, you eventually
17 met with investigator Wade; correct?

18 A Uh-huh (affirmative).

19 Q And you searched different areas where you expected the
20 alleged robbers to be; right?

21 A Uh-huh (affirmative).

22 Q Okay.

23 THE COURT: Corporal Cain, if you could answer yes
24 or no for the record.

25 CORPORAL Cain: I'm sorry.

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1 THE COURT: That's okay.

2 MR. STEVENS: Thank you, Judge.

3 BY MR. STEVENS:

4 Q Okay. Eventually, you arrived at the Bentley Court
5 Apartments; correct?

6 A Yes, sir.

7 Q Okay. And when you arrived there you saw a car there
8 with the door open; right?

9 A Yes, sir.

10 Q Okay. And that was the gray Toyota; right?

11 A Yes, sir.

12 Q Okay. And you approached the car?

13 A Investigator Wade and the city officers approached the
14 car and I was right with them, behind them.

15 Q I understand. Okay.

16 A Because it was their jurisdiction.

17 Q From your memory, approximately how many officers were
18 present? You said Wade plus Columbia Police Officers.

19 A At the time we made contact with the subject, it was
20 myself, Investigator Wade and two other officers from the
21 City of Columbia.

22 Q Okay. So roughly four total; right?

23 A Yes.

24 Q To your memory?

25 A Yes, sir.

1 Q Okay. And did you have your guns drawn when you
2 actually saw the car like that?

3 A Excuse me?

4 Q Did you have your guns drawn at all?

5 A No, sir.

6 Q Okay. So you just walked on up and you saw a person
7 coming down the stairs?

8 A Yes, sir.

9 Q Okay. And everyone approached the vehicle, officers
10 approached the vehicle itself?

11 A Yes.

12 Q Okay. And you said that Mr. Hardin essentially gave a
13 statement to you; right?

14 A Yes.

15 Q Okay. You're claiming that --

16 MR. STEVENS: And, again, Judge, this the first
17 time we've heard this. Please bear with us.

18 BY MR. STEVENS:

19 Q You're claiming that he saw you at Edison and West
20 Beltline?

21 A Yes, sir.

22 Q Okay. And that he said he was with a guy named Black?

23 A Yes.

24 Q And that Black thought it was his probation agent?

25 A Yes, sir.

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1 Q Did you ever find out any more information about this
2 individual named Black?

3 A I made contact with Black through Investigator Green
4 with Richland County Sheriff's Office who is liaison for
5 probation and parole, them two agencies. And she gave me
6 some names of individuals by the name of Black that are on
7 probation.

8 Q Okay. Did you provide these names to anybody at the
9 Solicitor's office?

10 A No.

11 Q Would you be able to provide these names to us today?

12 A I gave them to Sergeant Stokes at the Sheriff's Office.

13 Q So they are aware at the Orangeburg County Sheriff's
14 Office?

15 A Yes.

16 Q Okay. Do you remember approximately how many names or
17 potential folks with the name Black were given?

18 A It was three or four.

19 Q Okay. And you didn't get these names until later on;
20 correct?

21 A Yes.

22 Q Okay. About how many days after?

23 A I heard from her that Saturday or that Monday I made
24 contact with her. I also made contact with her that Friday,
25 also the day of the incident.

1 Q Okay. So this is just shortly after you found this?

2 A Yes.

3 Q And did you turn those names over to Sergeant Stokes
4 shortly after that, as well?

5 A Not that day because she was not in the office in order
6 to get on her computer..

7 Q I got you. But was it a month or year or how long you
8 talking about?

9 A No. Like Monday.

10 Q Oh, it was real quick. Less than a week?

11 A Yeah.

12 Q Okay. Okay. Let's talk about the voluntary consent
13 form. Now, you said it was Investigator Wade and you who
14 spoke to him about the voluntary consent form?

15 A Investigator Wade was explaining to him the consent
16 form. And I was standing next to him.

17 Q Okay. I understand. And where were the other Columbia
18 Police Department Officers at that time?

19 A They were outside, near the vehicle also. We were right
20 near the vehicle.

21 Q Okay. So everybody's right there?

22 A Yes, sir.

23 Q I got you. And with all four officers present was
24 anybody armed?

25 A Yes. We were armed, yes.

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1 Q Okay. So everybody's armed; right?

2 A Yes.

3 Q I got you. And were any of the vehicles, you know,
4 marked vehicles?

5 A No.

6 Q None of the Columbia Police Department vehicles were
7 marked?

8 A Not upon arrival, no, sir.

9 Q Okay. I understand. But it was pretty clear to anybody
10 when you guys exited, you exited those vehicles?

11 A Yeah. They had lights on, yes.

12 Q Okay. About how many vehicles were there total?

13 A Investigator Wade's vehicle. There was a Avalanche
14 truck, and another four-door vehicle. Because I parked my
15 vehicle at the apartment complex across the road and got into
16 Investigator Wade's vehicle when I received the information
17 from Lieutenant Schumpert, user id and password.

18 Q Okay. So roughly three present at that time?

19 A Yes.

20 Q Okay. Okay. No dogs or anything like that; right?

21 A No dogs.

22 Q No SWAT?

23 A No SWAT, no.

24 Q Okay. So everybody was there. And that's when -- at
25 that time, with everybody present all four officers, that's

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1 when the voluntary consent form was explained to him;
2 correct?

3 A Yes.

4 Q Okay. And at that time it was actually filled out,
5 right? And signed? If you look --

6 MR. STEVENS: May I approach, Judge?

7 THE COURT: You may.

8 BY MR. STEVENS:

9 Q This is State's Exhibit one. If you look with me
10 Corporal Cain? Go ahead, you got to cough?

11 A Sorry.

12 Q That's all right. Just cough that way. I believe
13 there's a lot of bad coughs and such is going around. You'd
14 agree that at least when it comes to what looks like the pen
15 utilized in this, there's one that's actually thinly written;
16 correct?

17 A Uh-huh (affirmative).

18 Q Okay. And then this over here, it looks like it's a
19 different pen. It's much more thick; would you agree?

20 A I agree.

21 Q Okay. Thank you. Now, according to what you're saying
22 after this consent was signed with four officers present, and
23 everybody went upstairs; correct?

24 A Yes, sir.

25 Q And you, according to your testimony were standing with

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1 Mr. Hardin right there at the front door; correct?

2 A Yes, sir.

3 Q Okay.

4 A Because we used his key to go inside the house. They
5 did.

6 Q Was he free to go at that time?

7 A Was he free to go?

8 Q Yeah. Could he just walk away and say, hey, you guys
9 have a great day. I'm out of here?

10 A No, sir.

11 Q Okay. Was he free to go at the time that you guys, all
12 four police officers were around him, when he signed the
13 consent to -- the form? Was he free to go at that time?
14 Would you have just let him walk away?

15 A No, sir.

16 Q Okay. And so everybody's up there. You said
17 Investigator Wade and Columbia Police Department were inside;
18 correct?

19 A Yes.

20 Q Was it both the officers from Columbia PD or just one?

21 A Both of their officers.

22 Q So three officers total are inside this apartment?

23 A They did a protective sweep of the residence.

24 Q So they did perform a protective sweep?

25 A Yes. First.

1 Q Excellent. And by time you guys had a means to play the
2 iPad in question; correct?

3 A Yes.

4 Q Okay. And an attempt was made to have that iPad play
5 music; correct?

6 A Yes, sir.

7 Q Okay. And even after that protective sweep, there are
8 three officers inside and one outside, right there by the
9 door, while the other three are inside going through the
10 whole apartment, and nobody heard anything; right?

11 A No, sir. We did not hear any music playing.

12 Q Okay. At that time everybody walked on out; correct?

13 A No. Mr. Hardin and the officers from the City of
14 Columbia were inside the apartment. Myself and Investigator
15 Wade came out of the apartment door, went down the stairs and
16 went to the rear of the building.

17 Q Okay. So it was you -- just to clarify. It was you and
18 Wade who went outside?

19 A Right.

20 Q I'm sorry. Bear with me while I take some notes here.
21 All right. So Mr. Hardin was inside the residence then?

22 A Yes.

23 Q Okay.

24 A He was inside the residence during the search.

25 Q During the search, okay. And was he taken from the

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1 apartment down, back down outdoors by the car?

2 A At the end of the search, yes. And the door was locked
3 when we left the apartment.

4 Q Okay. So after the initial search, protective sweep,
5 you look for the iPad, you find nothing. You and Wade go
6 down outside; correct?

7 A We went to the front door to go inside the apartment.

8 Q Uh-huh (affirmative)?

9 A We used Mr. Hardin's key to open the door. Investigator
10 Wade and the other officers went inside to do a protective
11 sweep.

12 Q Right.

13 A And once they found there was no one inside the
14 apartment, that is when Investigator Wade made his iPad -- he
15 put the username and password in to Find My App, application
16 so it would play music so we could find it inside the
17 apartment. Once we found that we couldn't hear it, he said,
18 it must be outside. So we then went downstairs, leaving Mr.
19 Hardin and the officers from CPD inside the apartment. Went
20 downstairs to the rear of the building, searching for the
21 iPad. We walked to the right of the rear of the building.
22 We came to the trash dumpsters and we started hearing music
23 and we just got, just followed the sound of the music. And
24 then we found that plastic bag laying on the ground playing
25 music.

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1 Q Okay. And so at what point did they come back
2 downstairs? I mean, was Mr. Archie Hardin just left in
3 there the whole time?

4 A He was in there with the officers from the City of
5 Columbia.

6 Q Okay. What time did you see them come down. That's
7 what we're getting at?

8 A He came out and entered the -- once they were finished
9 searching the apartment, the door was locked, myself, Mr.
10 Hardin, Investigator Wade, the crime scene officer from the
11 City of Columbia and the other two officers all came
12 downstairs.

13 Q Okay.

14 A At that time we were waiting for the tow truck to come
15 from Orangeburg to get the vehicle.

16 Q Okay. So the entire time his apartment was actually
17 physically searched even by, like, say, forensics and
18 everybody, Mr. Hardin was present --

19 A Yes.

20 Q -- according to your testimony, inside the apartment
21 while they searched it?

22 A Yes. He was inside the apartment.

23 Q Okay. I want you to take another look one more time at
24 State's Exhibit 1. Again, whose initials are right next to
25 that boldened print?

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1 A D.S. Wade, Darius Wade.

2 Q Okay. So do you recognize his handwriting?

3 A Yes.

4 Q You recognize his initials?

5 A The initials, yes.

6 Q Okay. And according to what's on there, please tell the
7 Court what that says?

8 A Wait, the whole thing on this or what?

9 Q No, no. Well, let's do this. Let's put the part that's
10 actually in very thin writing that's on all the rest of the
11 document here?

12 A Black male.

13 Q Right?

14 A 5'10" 190-200, walks with limp. Any stolen property
15 iPad, in parenthesis.

16 Q Okay. Now, tell the Court what is actually in thicker
17 writing afterwards?

18 A Any firearms, handgun, D.S. Wade.

19 Q Okay. Thank you, sir. Are you aware of when that
20 second part was added?

21 A No, sir.

22 Q Okay. But it wasn't on there in the initial consent
23 form; right?

24 A (Witness pauses).

25 Q With the initial thin handwriting?

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1 A He was writing on the back of a vehicle top.

2 Q But you don't recall when Detective Wade -- oh, I'm
3 sorry -- when Investigator Wade added that second part? You
4 just don't know that?

5 A I'm not sure.

6 Q I don't want you to speculate?

7 A I'm not sure.

8 Q Okay. But you'd agree it is different pen and writing?

9 A Yes.

10 Q Okay.

11 MR. STEVENS: Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. STEVENS: No further questions at this time.

14 Q Thank you, Corporal Cain.

15 THE COURT: Any further redirect of this witness?

16 MS. CORNWELL: No, Your Honor.

17 THE COURT: You may step down, Corporal. Thank
18 you.

19 CORPORAL CAIN: Thank you.

20 THE COURT: You may call your next witness.

21 MS. CORNWELL: Thank you, Your Honor. The State
22 would call Sergeant John Stokes.

23 (WHEREUPON, John Stokes was sworn to
24 tell the truth.)

25 THE CLERK: You may have a seat. Please state your

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1 name, for the record.

2 SERGEANT STOKES: Sergeant John C. Stokes.

3 THE COURT: Your witness.

4 MS. CORNWELL: Thank you, Your Honor.

5 JOHN STOKES - DIRECT EXAMINATION

6 BY MS. CORNWELL:

7 Q Sergeant Stokes, can you spell your name for the record?

8 A It's J-O-H-N, middle initial C., S-T-O-K-E-S.

9 Q Sergeant Stokes, where are you employed?

10 A Orangeburg County Sheriff's Office Criminal
11 Investigation Division.

12 Q Okay. How long have you been employed by the Orangeburg
13 County Sheriff's Office?

14 A Approximately twelve years. It'll be thirteen years
15 this year.

16 Q And what's your position with the Orangeburg County
17 Sheriff's Office?

18 A Well, I'm a Sergeant within the criminal investigation
19 division.

20 Q And were you working in that capacity on May 16th of
21 2014?

22 A I was.

23 Q And in that capacity did you assist in the investigation
24 of an armed robbery that occurred at T-Mobile on St. Matthews
25 Road?

1 A I did.

2 Q And what county is that in?

3 A The County of Orangeburg.

4 Q What was your role in that investigation?

5 A Lead investigator.

6 Q And what does being lead investigator entail?

7 A Well, lead investigator is basically an administrative
8 role. You designate the other officers things to do. And,
9 also, you control the crime scene and also any paperwork
10 that's necessary, arrest or either search warrants.

11 Q Okay. And as lead investigator, do you personally
12 collect any evidence?

13 A No, I don't. We leave that up to the forensics unit.
14 They are specially trained to collect all evidence so we
15 normally do not let anybody else touch any evidence.

16 Q Okay. And as lead investigator are you tasked with
17 interviewing each and every victim on the scene?

18 A No, normally, I don't. Once I'm on the scene, I survey
19 what's there. And once I come to the determination, I'll let
20 other officers within the department, they can go out and
21 make contact with other witnesses and victims in the case to
22 find out the details of the events that occurred.

23 Q Okay. And what did you do on this particular day when
24 you arrived on scene at T-Mobile?

25 A Once I arrived on the scene, I made contact with the

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1 officers from the Orangeburg County Sheriff's Office that
2 were presently there and also the three victims.

3 Q Okay. And in speaking to the victims, were you able to
4 obtain any information that was able to immediately assist
5 you in your investigation of this crime?

6 A Oh, yes. I was there to make contact with one of the
7 victims, which is Mr. Thomas Sims, Jr. He advised me that
8 his personal iPad was stolen during the robbery that took
9 place and he had the Find My iPad App.

10 Q Okay. And are you familiar with the Find My iPad App?

11 A I am.

12 Q What is your understanding as to how that application
13 works?

14 A The application work -- once it's downloaded or deployed
15 it uses GPS, cell towers, the wireless internet to either
16 track either a stolen or lost iPad or iPhone.

17 Q Okay. And to your knowledge, how are they able to track
18 that?

19 A Well, if somebody has the locate my iPad app, they use a
20 app-wide ID or either a password. And once they log-on to
21 the actual account, a map appears and a blue dot is on that
22 actual map that locates that, that says where that lost or
23 stole iPad or --

24 MR. STEVENS: Judge, we simply raise our prior
25 motions and we add 702 regarding Corporal Cain's testimony.

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1 He's not really qualified at all to state precisely where
2 something is. He doesn't have the qualifications for that,
3 especially pertaining to identification of where something
4 is, cell tower technology or anything like that.

5 THE COURT: Yes, sir, Your Objection is note.

6 MR. STEVENS: Thank you, Judge.

7 BY MS. CORNWELL:

8 Q And to your knowledge, is that a realtime app?

9 A Yes, it is. The dot on the map actually moves once that
10 stolen or last iPad/iPhone moves.

11 Q And once you discovered this application was on Mr.
12 Sims' iPad, what did you do?

13 A Once I discovered that he had that actual application, I
14 advised him to activate it.

15 Q Okay. And was he able to activate the account?

16 A He was.

17 Q How did he activate that account?

18 A He activated it using his father's iPhone.

19 Q Okay. And once he activated the account, were you able
20 to see where you thought the iPad was at that time?

21 A Yes.

22 Q Okay. Once you discovered that you were able to track
23 that iPad, what did you do?

24 A Once we discovered that we were able to track it, made
25 contact with or attempted to make radio or phone contact with

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1 -- oh, say the question again now?

2 Q Once you discovered the iPad, had the iPad location and
3 you were able to track it, what did you do?

4 A Once we were able to determine that it could be used, we
5 made contact with officers from Columbia PD and also Richland
6 County Sheriff's Office. But during that time, Corporal Cain
7 heard the transmission on the radio and he advised that he
8 was on the way from Rock Hill and he'd be able to assist.

9 Q Okay. And why were you trying to get assistance from
10 City of Columbia at that time?

11 A Because it was in their jurisdiction.

12 Q And when you say "it," are you referring to --

13 A The iPad was in their jurisdiction.

14 Q Okay. What did you do once Corporal Cain made contact?

15 A Once Corporal Cain made contact, we -- well, again, we
16 contacted Officers from Richland County and also Columbia.
17 Once Corporal Cain made contact, we gave him the actual log-
18 on information for the iPad so he'd be able to actually
19 pinpoint exactly where it was at that time.

20 Q Okay. And to your knowledge, did Corporal Cain and the
21 other officers locate the iPad?

22 A Yes.

23 Q Where did they locate the iPad?

24 A Behind the Defendant's apartment complex.

25 Q Okay. And to your knowledge, was the Defendant present

1 when the iPad was located?

2 A Yes.

3 Q And to your knowledge did the officers discover any
4 additional evidence at that location?

5 A Once they got a consent to search form signed, they
6 discovered several iPhones also some iPads located inside the
7 Defendant's apartment complex, also two handguns.

8 Q Okay. And upon receiving this information, what did you
9 do?

10 A Once I received that information that the items were
11 recovered inside of the Defendant's apartment complex, I made
12 contact with Sergeant Moore and also Investigator Elizabeth
13 Schumpert and advised them to go to Columbia to collect those
14 items. And also during that time, Corporal Cain was
15 instructed to take a photo of the Defendant and send it back
16 to Lieutenant Schumpert. And that photo was show and the
17 victims in this case positively identified him.

18 Q And after the victims positively identified the
19 Defendant, the apartment was searched, items were found, what
20 did you have Corporal Cain do?

21 A At that time, Corporal Cain detained Mr. Hardin and he
22 transported him back to the Sheriff's Office here in
23 Orangeburg.

24 Q Okay. And once Corporal Cain brought the Defendant back
25 to Orangeburg, did you meet with the Defendant?

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1 A I did.

2 Q Before speaking to him did you read him his Miranda
3 Rights?

4 A I did.

5 MS. CORNWELL: Hilda, if I could have this marked
6 as State's 3?

7 (State's Exhibit No. 3, Waiver of
8 Miranda Rights form, was marked and entered.)

9 COURT REPORTER: State's 3, Judge. Waiver of
10 Miranda Rights.

11 THE COURT: Thank you.

12 BY MS. CORNWELL:

13 Q Sergeant Stokes, I'm going to show you what's been
14 marked as State's Exhibit 3. Do you recognize that document?

15 A Yes, I do.

16 Q And what is that?

17 A It's a waiver of rights form.

18 Q And did you go over that form with the Defendant --

19 A I did.

20 Q -- prior to speaking to him?

21 A I did.

22 Q All right. And did he understand those rights as you
23 gave them to him?

24 A He did.

25 Q How do you know he understood those rights?

1 A He initialed beside all five of them and he signed where
2 it says I understand my rights.

3 Q Can you read into the record what that document states?

4 A It says these are your rights please read them
5 carefully. Before we ask you any questions you must
6 understand your rights. Please initial beside each sentence.
7 You have the right to remain silent. Anything you say can be
8 used against you in Court. You have the right to talk to a
9 lawyer for advice before we ask you any questions and to have
10 him or her with you during questioning. If you cannot afford
11 a lawyer, one will appointed for you before questioning if
12 you wish. If you decide to stop answering questions -- to
13 answer question without a lawyer present, you still have the
14 right to stop answering at any time. You also have the right
15 to stop answering at anytime until you talk to a lawyer.

16 Q And you said that he initialed beside each and every one
17 of those paragraphs?

18 A Yes, ma'am.

19 Q Did the Defendant sign that statement?

20 A He did.

21 Q He signed his rights?

22 A He did.

23 Q Below the rights, is there any additional information
24 written on that document?

25 A Waiver of rights.

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1 Q And can you read that for the Court?

2 A It says I read this statement of my rights and I
3 understand what my rights are. I am willing to make a
4 statement and answer questions. I do not want a lawyer at
5 this time. I understand and know what I am doing. No
6 promises or threats have been made to me. No pressure or
7 coercion of any kind has been used against me.

8 Q And did the Defendant sign the waiver of rights?

9 A No.

10 Q Why didn't he sign the waiver of rights?

11 A Well, he stated that we already had him and he was not
12 going to incriminate himself.

13 Q Okay. Other than that statement did the Defendant make
14 any other statements to you regarding the incident?

15 A Well, at the bond hearing, which was held that Sunday,
16 which was the 18th --

17 Q Well, let me tell you, let's go back a little bit more.
18 When you meeting with him the first day at CID, you had said
19 that he said he wasn't giving a written statement because he
20 didn't want to incriminate himself?

21 A Yes.

22 Q Did he give you any statements regarding the incident
23 that occurred?

24 A Okay. Yes, ma'am. Initially, he stated that he was
25 forced to take part in this crime. Then he went back to

1 saying that he didn't have anything to do with it.

2 Q Okay. And in your experience as a law enforcement
3 officer, does it raise concerns to you when Defendant's
4 change their statements?

5 A Yes.

6 Q Okay. After speaking to the Defendant that first day,
7 did you have any other occasions to meet with him?

8 A At his bond hearing.

9 Q And did he make any statements during his bond hearing?

10 A At his bond hearing the mother of one of the victims in
11 this case, Ms. Kirstie Berry was talking. And the Defendant
12 said, I'm guilty. I don't want to hear no more of this.

13 Q Okay. After the bond hearing did you have another
14 occasion to meet with the Defendant?

15 A No.

16 Q Let me go back a little bit. When the Defendant was at
17 his apartment in Columbia, to your understanding, were there
18 any other people located in the apartment?

19 A No.

20 Q And to your knowledge, where were all the stolen items
21 from T-Mobile located?

22 A In the Defendant's apartment.

23 Q Okay. And where were the guns located?

24 A In the Defendant's apartment.

25 Q And I know that you stated after the bond hearing you

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1 didn't meet with the Defendant anymore. Did you ever try to
2 get any information from the Defendant as to any other
3 suspects in this case?

4 A The identity of the co-defendant.

5 Q Okay. And were you able to get any information from the
6 Defendant regarding that?

7 A No.

8 Q Also during the course of your investigation were you
9 able to get items --

10 MS. CORNWELL: Let me get this marked as State's 4.
11 (State's Exhibit No. 4, power bill,
12 was marked and entered.)

13 COURT REPORTER: Is that a power bill?

14 MS. CORNWELL: It is.

15 COURT REPORTER: State's 4 is the power bill.

16 BY MS. CORNWELL:

17 Q Let me show you what's been marked as State's Exhibit 4.
18 Do you recognize this document?

19 A Yes.

20 Q What is that?

21 A It's a SCE&G power bill.

22 Q And whose power bill is that?

23 A Archie M. Hardin.

24 Q And what is the address on that power bill?

25 A [REDACTED] Bentley Court, Columbia, South Carolina 29210.

1 Q And to your knowledge, is that the residence that was
2 searched in Columbia?

3 A Correct.

4 Q And did you obtain this information through the course
5 of your investigation?

6 A Yes, I did.

7 Q During the course of the investigation, I believe you
8 said that Corporal Cain sent a picture?

9 A Yes.

10 Q Let me show you what's been marked as State's Exhibit 2.
11 Do you recognize that?

12 A Yes, I do.

13 Q And what is that?

14 A The photo Corporal Cain sent Lieutenant Schumpert.

15 Q Okay. And was that photograph shown to anybody?

16 A The three victims in the case.

17 Q Okay. And to your knowledge were the victims able to
18 positively identify --

19 A Yes, they were.

20 Q -- the person in that photograph?

21 A Yes, they were.

22 Q And what did they identify the person in the photograph
23 as?

24 A As the Defendant that robbed the T-Mobile.

25 Q I believe that's all the questions I have. Please

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1 answer any questions Defense counsel may have for you?

2 A Okay.

3 THE COURT: Cross-Examination

4 MR. STEVENS: The Court's indulgence, Judge.

5 JOHN STOKES - CROSS-EXAMINATION

6 BY MR. STEVENS:

7 Q Okay. How you doing Sergeant Stokes?

8 A Pretty good. How you doing?

9 Q Doing well. Good to see you again?

10 A Uh-huh (affirmative).

11 Q This isn't the first time we've met; is it?

12 A It's not.

13 Q No. Still good to see you nonetheless?

14 A Yes.

15 Q All right. I've just a few questions I need to go over
16 here regarding -- involving this case and the various motions
17 that are before the Court.

18 A Okay.

19 Q Just going back touching base with what the State said.
20 Basically, on May 16th, 2014, you were sent to T-Mobile in
21 reference to the robbery; right?

22 A Correct.

23 Q And after you got to the store you actually spoke with
24 the employees regarding their versions of events; correct?

25 A Correct.

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1 Q And he doesn't have to answer any questions if he
2 doesn't want to; right?

3 A Correct.

4 Q Okay. You went over these rights with Archie?

5 A Correct.

6 Q Okay. And there's a part on there that says I
7 understand my rights; correct?

8 A It is.

9 Q Okay. There's also a part though, there's also a
10 section labeled waiver of rights; is there not?

11 A That's correct.

12 Q Okay. Have you got that form?

13 A Uh-huh (affirmative).

14 Q Okay. In looking at that exhibit, it says that quote, I
15 am willing to make a statement and answer questions. I do
16 not want a lawyer at this time. I understand and know what I
17 am doing. No promises or threats have been made to me,
18 etcetera; correct?

19 A Correct.

20 Q Okay. Did Archie Hardin ever sign that section?

21 A No. He refused to sign it.

22 Q So even though he acknowledged he knew what his rights
23 were --

24 A Yes, sir.

25 Q -- he never signed them away; right?

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1 A Correct.

2 Q In fact, what do the words on that signature block
3 indicate that Archie Hardin wrote?

4 A Refuse to sign. I wrote that.

5 Q Oh, you wrote it?

6 A Yeah, I wrote that.

7 Q Okay. So Archie Hardin refuse to sign away his rights?

8 A Correct. He refused to sign the waiver of rights.

9 Q Well, what does that block say?

10 A Waiver of rights and signature.

11 Q Okay. And let's walk through that. The block that he
12 refused to sign specifically says -- can you read that for
13 the Court one more time, please?

14 A I read this statement of my rights and I understand what
15 my rights are. I'm willing to make a statement and answer
16 questions. I do not want a lawyer at this time. I
17 understand and know what I'm doing. No promises or threats
18 have been made to me or no pressure or coercion of any kind
19 has been used against me.

20 Q Okay. And he refused to sign that waiver; correct?

21 A Correct.

22 Q You went ahead and asked him questions anyway; right?

23 A I didn't ask him anything else after that.

24 Q You didn't ask any questions at all?

25 A After that --

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1 Q You just stopped and just said, okay, we're not going to
2 speak about. You walked on out the door?

3 A Well, he refused to sign, yes. Yes.

4 Q Okay. So you didn't have any conversation with Archie
5 Hardin? That means that you're saying that the statements
6 that allegedly were spoken about between you and him occurred
7 before that signed, before that waiver of rights form was
8 actually drafted and refused to sign; right?

9 A No, when he refused to sign that's when he said, you
10 already got me. I'm not going to make any statements to
11 incriminate myself.

12 Q Okay.

13 A That's when he said that.

14 Q Okay. So you didn't say anything else after that?

15 A No. I didn't talk to him about anything else after
16 that.

17 Q Okay. So he didn't say anything about being coerced.

18 A About being what?

19 Q Coerced?

20 A No.

21 Q Okay. He didn't say anything about being forced to do
22 something?

23 A No.

24 MR. STEVENS: The Court's indulgence.

25 BY MR. STEVENS:

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1 Q Okay. By the way, just for posterity, the interview
2 itself, it didn't take place out on the street; right?

3 A No, it didn't.

4 Q It took place at your area, at the Chestnut Street
5 location; correct?

6 A Yes, CID Office.

7 Q And CID stands for?

8 A Central Investigative Division.

9 Q Central Investigative Division, okay. And that's where
10 all the investigators are located; right?

11 A Yes, sir.

12 Q Okay. The office itself has got numerous rooms; right?

13 A It does.

14 Q Okay. And y'all have some interview rooms or
15 interrogation rooms that y'all sometimes use to interrogate
16 or interview people; right?

17 A Yes, sir.

18 Q Okay. And, upon occasion, you guys actually video some
19 of the interviews you've done with people; right?

20 A That's correct.

21 Q Okay. So you do have that equipment; right?

22 A We do.

23 Q But we don't have any video of Archie Hardin being
24 questioned in this case; do we?

25 A That's correct.

1 Q Okay. No videotape?

2 A That's correct.

3 Q No audiotape?

4 A That's correct.

5 Q No cellphone recordings?

6 A That's correct.

7 Q None of those little handheld recorders like the court
8 reporter has up there on the Judge's Bench?

9 A That's correct.

10 Q Nothing?

11 A No, that's correct.

12 Q So basically, y'all didn't bother to record the
13 interview with Archie Hardin at all?

14 A That's correct.

15 Q Okay. Now, I've got to ask why not? I mean, people
16 record everything nowadays; right?

17 A No, not all the time, but a case-by-case basis. And I
18 just didn't record it that time.

19 Q So you didn't think that something as important as an
20 interview with a suspect with multiple Class A Felonies being
21 charged against him, wasn't important enough to record?

22 A Well, it would be important. But also with the iPad
23 being found behind the Defendant's resident. The stolen
24 merchandise being found inside the Defendant's residence and
25 also the Defendant taking ownership of the car that was used

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1 inside the crime, not at that time.

2 Q Just to be clear, you didn't witness any of that; did
3 you?

4 A No, I didn't.

5 Q Okay. So all of this isn't first-hand knowledge; is it?

6 A It's first hand. I was the lead investigator, yes.

7 Q So it's first hand? You first-hand specifically
8 witnessed it yourself?

9 A I didn't witnesses it, but I have knowledge of it.

10 Q Okay. So it's not first-hand knowledge it's from other
11 people; correct?

12 A That's correct.

13 Q Okay.

14 A That's correct.

15 Q Now, you'd agree that recording an interview of a crime
16 is a crime-fighting -- or recording an interview is a crime-
17 fighting tool like DNA or fingerprints; right?

18 A Yeah. It's prevalent.

19 Q Okay. Is there any policy against recording an
20 interview?

21 A It's not. It's officer's discretion.

22 Q So you could have recorded it. You just chose not to?

23 A Correct.

24 Q Now, let's talk about that bond hearing?

25 A Okay.

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1 Q Okay?

2 A Uh-huh (affirmative).

3 Q The bond hearing didn't occur the day right after that;
4 right?

5 A No, sir.

6 Q But it did occur on the 18th; correct?

7 A It did. Yes, sir.

8 Q Now, you said that, in your written report --

9 A Uh-huh (affirmative).

10 Q -- that you went to the bond hearing for the subject and
11 in open court he made a statement that he was guilty and that
12 he didn't want to hear anything else from the victims' case?

13 A That's correct.

14 Q Okay. But you'd also agree that Archie Hardin said at
15 the beginning and end of the bond hearing that he was, in
16 fact, not guilty?

17 A I have no recollection of that.

18 Q You have no recollection of that whatsoever?

19 A No.

20 Q You were present at the bond hearing?

21 A I was.

22 Q And that was in open court; correct?

23 A It is.

24 Q And you're aware that that's actually recorded with an
25 audio device; that's correct?

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1 A Correct.

2 Q And you're aware that that was May 18, 2014; correct?

3 A Yes, that's correct.

4 Q Okay. And you didn't put anything Archie Hardin said
5 beforehand or after hand in your report, did you?

6 A The only thing I put in it was what I heard. And I
7 heard him say that he was guilty and that he didn't want to
8 hear anything else.

9 Q Okay. So you didn't hear the part where Archie Hardin
10 was actually cut off by the Judge before he could finish
11 saying anything like that?

12 A I didn't. I'm not going to testify to that. I can't
13 remember that.

14 Q Would it help refresh your recollection if you actually
15 heard?

16 A That's fine. I mean, I'm not going to affirm to nothing
17 or swear to that --

18 Q So it would help refresh your recollection if you heard
19 it again?

20 A It could.

21 Q Is that a yes or a no?

22 A Yes.

23 Q Okay.

24 MR. STEVENS: Judge, at this time, I believe we
25 need to approach.

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1 THE COURT: Okay.

2 MR. STEVENS: Thank you, Judge.

3 (Off the record bench conference with counsel and the Court.)

4 MR. STEVENS: Judge, I'm not certain if they have a
5 recording of what occurs at the bench in our bench
6 conversation. But just to recount, our office finally came
7 into possession of an audio copy officially from the
8 preliminary hearing in court, which is the same court in
9 Orangeburg County that does bond hearings. We actually have
10 that. On a letter to which we sent them, they provided it
11 back to us. It's on a disk in electronic format regarding
12 the actual bond hearing of Archie Hardin that took place on
13 May 18th, 2014. Frankly, we didn't even expect to have to
14 use this. We just wanted to have it there in case we needed
15 it for impeachment purposes. It's become clear that we need
16 to. Just to, at the bare minimum, refresh Sergeant Stokes
17 recollection of what actually occurred there at the hearing.
18 We'll go ahead and allow the State to go ahead and listen to
19 it themselves. If they want a copy of it themselves, there's
20 no problem whatsoever. I really don't think it's going to
21 give too much enlightenment about a lot of things, other than
22 the clarity of what actually occurred there at the bond
23 hearing, which is what we're having here for our hearing.
24 It's also my understanding that the Court was amenable to
25 that. And to allow the State more time essentially to hear

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1 the information, we would break and reconvene tomorrow
2 morning after the jury's brought in.

3 THE COURT: That's the Court's position. It's
4 about ten until five right now. And it's my understanding
5 that the -- that's according to my clock. It's my
6 understanding that the recording is approximately ten minutes
7 long. I want to ensure everybody in the courtroom has ample
8 opportunity to listen to it and have, be ready to proceed in
9 the morning. My understanding is the jury comes in at 9:30
10 in the morning and we will do this preceding the jury
11 selection, let the jury go until we can reconvene to continue
12 with the pretrial motions and then start the trial.

13 MR. STEVENS: Excellent. And if we may, Judge, I'd
14 just ask for instruction for him not to speak about anything
15 regarding his testimony.

16 THE COURT: Sure. And you understand the Court's
17 rulings regarding you can't talk about your testimony with
18 anybody at this time because you're still under oath and
19 under cross-examination. So if you would, please not discuss
20 this matter with anyone.

21 SERGEANT STOKES: Yes, ma'am.

22 THE COURT: Thank you, sir.

23 MR. STEVENS: Thank you, Judge.

24 THE COURT: Anything further at this time before we
25 break until in the morning?

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1 MS. CORNWELL: Nothing from the State, Your Honor.

2 THE COURT: We'll be in recess until 9:30.

3 (Court in recess February 23, 2014,

4 at 4:53 p.m.)

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(Jury panel in at 9:30 a.m.)

(Jury panel out at 9:30 a.m.)

THE COURT: All right. Are the parties ready to proceed?

THE COURT: All right. Sergeant Stokes, you are
under oath and you may proceed with your cross-
examination.

THE COURT: Right.

JOHN C. STOKES - CROSS-EXAMINATION CONTINUED

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1 Q All righty. How you doing Sergeant Stokes?

2 A I'm doing pretty good.

3 Q All right. Good to see you again today?

4 A Thank you.

5 Q Even though we had the day off in between with the
6 inclement weather?

7 A Yes, sir.

8 Q All right. When last we had a chance to speak, I
9 believe we were discussing your recollection of what occurred
10 at the bond court hearing; correct?

11 A Correct.

12 Q And that hearing was on May 18th, 2014?

13 A Correct.

14 Q In front of Judge West?

15 A Yes, sir.

16 Q And what we have here is an audio of that hearing, okay?
17 It won't take long. What I'd like you to do is just listen
18 to it, okay?

19 | A | Okay.

20 (Audio recording of May 18, 2014

21 bond hearing of Defendant was published for the witness.)

22 BY MR. STEVENS:

23 Q Okay. Now, just briefly, you'd agree that that's the
24 voice of Judge West; correct?

25 MS. CORNWELL: Objection, Your Honor. He's going to

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1 refresh his recollection, so I think he needs to play the
2 tape in full to refresh his recollections and any questions
3 he has to ask he can ask those after he has refreshed his
4 recollection.

5 THE COURT: That would be the proper way to do it.

6 MR. STEVENS: We can certainly do it that way,
7 Judge.

8 (Audio recording of May 18, 2014
9 bond hearing of Defendant was published for the witness.)

10 MR. STEVENS: Judge, that's about it. When it
11 comes to it -- I believe after this they're simply just
12 talking about aspects of what's actually in the bond form.

13 THE COURT: All right. You can go ahead and turn
14 it off. Any objection to that?

15 MS. CORNWELL: No objection, Your Honor.

16 MR. STEVENS: Thank you.

17 BY MR. STEVENS:

18 Q Okay. Sergeant Stokes, thanks for bearing with us and
19 listening to it. I appreciate it?

20 A Okay.

21 Q Now, just to recap, you would agree that more was
22 actually said at that bond hearing by Mr. Hardin than what
23 was in your report; correct?

24 A That's correct. But that last part, I didn't hear that.

25 Q Okay. Well, let's walk through this?

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1 A Okay.

2 Q You heard earlier on, like around two and a half to
3 three minutes he was confronted with the arrest warrants by a
4 Judge; right?

5 A Correct.

6 Q You'd agree that there were a lot of folks there too;
7 right?

8 A Correct.

9 Q You were there?

10 A Correct.

11 Q Victims' advocate was there?

12 A Correct?

13 Q Right? We know that the three victims were there?

14 Well, I'm sorry, two out of the three victims was there?

15 A Two out of three.

16 Q And one of the victims actually had an attorney present;
17 right?

18 A That's his father.

19 Q Exactly. Yeah, that attorney is his father. And the
20 other one also had her mother there; right? Ms. Berry had
21 her mother -- and her mother is a corrections officer or law
22 enforcement officer?

23 A I believe she's a dispatcher.

24 Q A dispatcher. Thank you. And so everybody's there and
25 the Judge confronted him with the arrest warrants; right?

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1 A Correct.

2 Q Okay. And say about four and a half minutes in the
3 Judge told the Defendant he could apply for the public
4 defender; right?

5 A Correct.

6 Q If he qualifies though, right?

7 A Correct.

8 Q And he also informed the Defendant that it's going to
9 cost about forty dollars just to apply?

10 A Correct.

11 Q Okay. And that's just for the application fees. That's
12 not saying here's your attorney; right?

13 A Correct.

14 Q Okay. And the Judge also gets into questions like, you
15 know, where he lives?

16 A Uh-huh (affirmative).

17 Q Right? How long he lived there; right?

18 A That's correct.

19 Q Okay. And a little after that, say, shortly after five
20 minutes Mr. Archie Hardin try to say something; right?

21 A That's correct.

22 Q Okay. And the Judge immediately said, in a minute?

23 A Okay.

24 Q So did he cut him off?

25 A Yes, sir.

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1 Q Okay. And then a little after that, for roughly about a
2 minute, he basically -- the Judge questioned the Defendant
3 about his prior convictions; correct?

4 A Yes, sir.

5 Q And his attorney wasn't present; right?

6 A Correct.

7 Q Okay. And Mr. Hardin tried to speak again shortly after
8 that, didn't he? About six minutes and fifteen seconds
9 after?

10 A I don't know the exact time, but that's correct.

11 Q Okay. And the Judge again cut him off. Essentially
12 saying hold it. Hold on a minute?

13 A Yeah.

14 Q Okay. I got you. And then again, after that, the Judge
15 went ahead and asked law enforcement about his rap sheet;
16 right?

17 A Yes.

18 Q Okay. And law enforcement did have the rap sheet
19 correct?

20 A. Yes, sir.

21 Q And then right around, not quite seven minutes, about
22 six minutes forty-nine seconds, the Judge asked Mr. Hardin if
23 he had anything else to say; right?

24 A. Yeah.

25 Q Okay. And Mr. Hardin did say something; right?

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1 A He did.

2 Q Okay. Now, that your memory is refreshed, your
3 recollection is refreshed, you'd agree that Mr. Hardin first
4 kind of went into the aspects about his finances; right?

5 A Correct.

6 Q Couldn't even afford a bond even if one was set; right?

7 A Correct.

8 Q Okay. So clearly he's indigent; right? From that
9 perspective.

10 A I'm not going to make that speculation.

11 Q Okay. But he also turned around and did say something
12 like to the effect of he just wanted to focus on the charges?

13 A Yeah.

14 Q And prove his innocence?

15 A He said it.

16 Q Okay. So you'd agree that's a little bit more than what
17 we discussed a couple of days ago; right?

18 A Yes, sir, I just heard it on the audio; correct.

19 Q Now that your recollection's refreshed. No one's
20 calling anybody a liar here.

21 A I understand that.

22 Q We're just saying that now your recollection is
23 refreshed; right?

24 A Yes, sir. Yes, sir.

25 Q And a little after ten minutes in there, roughly around

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1 ten minutes ten seconds, you'd agree that Mr. Hardin did try
2 and say something to the Court again; right?

3 A Correct.

4 Q Okay. And this is about what you were talking about in
5 your report; correct?

6 A Correct.

7 Q Okay. And you'd admit that he said something, not just
8 I'm guilty. He said more than that; right?

9 A At that time he said I'm guilty.

10 Q But he did say more to his sentence; did he not?

11 A I can't really recollect exactly what he said, but I
12 know he said I'm guilty.

13 Q Because you don't recall him saying, Your Honor, I'm
14 guilty, but there's -- and then he's cut off by the Judge.
15 He goes, man. You don't remember hearing that?

16 A I heard that, but I'm not going to --

17 Q Okay. Well, I understand but you did hear that; right?

18 A Yeah. I heard it. I did hear it.

19 Q Okay. And the Judge just pretty much cut him off a
20 couple of times; right? He was tampering him down while
21 somebody else speaks?

22 A That's correct.

23 Q So you agree Mr. Hardin did have more to say?

24 A I guess so, but --

25 Q Okay.

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1 A I don't know what he had to say. I don't know.

2 Q Right. That's just it. You don't know what else he had
3 to say?

4 A Exactly.

5 Q But he did apparently have something else to say until
6 he was cut off by the Judge; right?

7 A Yes. I can only speak about what I heard him say.

8 Q Okay. And then a little later on about eleven sixteen
9 number, the Judge again spoke to the Defendant; right? And
10 he asked him if he had anything else; right?

11 A It appeared so, yes, sir.

12 Q All right. And around eleven twenty-two Mr. Hardin
13 began to speak again; right?

14 A It appears so, yes.

15 Q Okay. And that's when he's talking about, you know, I
16 hope you understand how these people feel but they're
17 speaking on me like I'm already guilty?

18 A Correct.

19 Q Right? And, again, the Judge cut him off; right?

20 A Yes.

21 Q Okay. And the Judge said something to the effect that
22 he's not getting into all of that. You've already admitted
23 to it freely in open court and you know you've got to suffer
24 the consequences; correct?

25 A Correct. Correct.

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1 Q Okay. That's what Judge West said?

2 A Yes, that's Judge West's voice.

3 Q To Archie Hardin; right?

4 A He said it.

5 Q And then later on there's a part where you didn't quite
6 hear?

7 A Right.

8 Q Around twelve minutes twelve seconds.

9 A Correct.

10 Q Do you want to hear that again just to try it and see if
11 you can listen to it?

12 A Yes.

13 Q All right. We'll get right back that too. But right
14 toward the very end at about twelve minutes thirty-three
15 seconds --

16 A Yes.

17 Q -- you did hear him say, they got the wrong man.

18 A I heard it on the audio.

19 Q Right. On the audio. Okay. So you didn't hear that in
20 open court when he was there saying it?

21 A Because at that point Judge West had already set bond.

22 Q You were still filling out the paperwork though, right?

23 A I'm not filling out any paperwork.

24 Q Oh, but the Judge was?

25 A Apparently. He said, he -- he already had denied bond.

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1 So at that time, I mean, I'm not totally sure, but it seems
2 like the Defendant may have moved closer to the bench. I
3 don't know. I didn't hear that. I mean, he said it low. My
4 focus was on the victims on that day.

5 Q Okay. So your focus was on the victims?

6 A Yeah.

7 Q I got you. But you'd agree it is on the tape?

8 A It is on the audio, yes, it is.

9 Q And so you don't recall even hearing at two twelve where
10 Mr. Hardin said --

11 A I heard it on -- I'm not exactly --

12 Q -- I'm already found guilty. This is crazy man?

13 A I heard it on the audio.

14 Q Okay. So you heard that on the audio too?

15 A Yeah. But I didn't hear everything he said. It was
16 muffled.

17 Q I got you. Okay. I understand.

18 A Yes.

19 Q Okay.

20 MR. STEVENS: Judge, at this time, strictly for a
21 Court's Exhibit for purposes of this hearing. We would offer
22 in the audio to the Court's record, toward the Court's
23 Exhibit only.

24 THE COURT: That's fine.

25 MR. STEVENS: Thank you, Judge. Court's

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1 indulgence, while I eject this. I don't want have anything
2 to get lost.

3 (Court's Exhibit No. 1, Bond Court
4 audio, was marked.)

5 COURT REPORTER: Court's 1 is the audio CD, Judge.

6 THE COURT: Thank you.

7 BY MR. STEVENS:

8 Q Okay. Let's get back to some other items we kind of --
9 you touched on in direct a couple days ago if we can?

10 A Okay.

11 Q Okay. According to prior statement you were aware that
12 a photograph was taken of the accused, Archie Hardin, in
13 Columbia; correct?

14 A Correct.

15 Q And that was taken by an officer up there; right?

16 A Correct.

17 Q Was that Corporal Cain?

18 A Yes, sir.

19 Q Okay. And Corporal Cain sent that back down to
20 Orangeburg; correct?

21 A Correct.

22 Q Okay. How was this sent down?

23 A By phone.

24 Q By phone?

25 A Yeah.

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1 Q Okay. So was it an email attachment or was it a text
2 message attachment?

3 A I don't know exactly how it --

4 Q Okay. So it wasn't sent to your phone?

5 A No.

6 Q Whose phone was it sent to?

7 A Lieutenant Schumpert's.

8 Q Okay. In looking at this, I believe it's Exhibit 2 that
9 the State's entered for purposes of this hearing, you'd agree
10 that's Archie Harding there; right?

11 A Correct.

12 Q Okay. And you'd agree that that's an officer in uniform
13 standing behind him; correct?

14 A Correct.

15 Q Okay. You see the badge on there as well?

16 A Yes, sir.

17 Q Okay, just being sure. Now, this was sent to a smart
18 phone?

19 A I can't get into exactly what type phone it is, what it
20 was.

21 Q But it was capable of receiving messages with pictures;
22 correct?

23 A Correct.

24 Q Okay. And so it had a big enough screen where people
25 could see pictures on it?

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1 A I imagine so, yes, sir.

2 Q Okay. Now, you said all three of the victims were
3 actually shown this picture?

4 A Yes, sir.

5 Q And they were shown the picture while it's on the phone;
6 right?

7 A Correct.

8 Q Okay. So no one printed it off?

9 A No, sir.

10 Q No one put it in a six-pack photographic lineup?

11 A No, sir.

12 Q No one even bothered to try and get other pictures to
13 see if they could be pick out of the six-pack photographic
14 lineup?

15 A No.

16 Q Okay. No one had an actual lineup of people like we
17 used to do?

18 A No, sir.

19 Q No. So it wasn't just one person standing there
20 physically with five other people asked to turn the right
21 while victims observed?

22 A No.

23 Q No?

24 A No.

25 Q Okay. But it wasn't you who showed him this picture was

State v Hardin pretrial Stokes - cont Cross 2/25/15 121

1 it?

2 A No, sir.

3 Q Who was it?

4 A Lieutenant Schumpert.

5 Q It was Lieutenant Schumpert showed them. Do you recall
6 what Lieutenant Schumpert said to them?

7 A I wasn't there.

8 Q You weren't there?

9 A I was on the scene but I wasn't present when he showed
10 the picture.

11 Q Okay. Do you recall where it was at the scene that they
12 saw the pictures?

13 A It had to be in the parking lot of the T-Mobile.

14 Q The parking lot. So everybody was there in the parking
15 lot at the T-Mobile?

16 A Everybody like?

17 Q Lieutenant Schumpert and the victims?

18 A Yes.

19 Q Okay. And he showed the victims the picture in the
20 parking lot?

21 A I can't -- I'm not going to certainly say that he did
22 it, but --

23 Q To your knowledge?

24 A To my knowledge, yes.

25 Q Okay. And are you aware of any other additional

State v Hardin pretrial Stokes - cont Cross 2/25/15 122

1 photographs shown the victims by Lieutenant Schumpert?

2 A I'm only aware of the one that was sent by Corporal
3 Cain.

4 Q Okay. So you're unaware of an additional photograph
5 shown to Mr. Samuel Walters?

6 A I'm unaware of that.

7 Q You are aware that Samuel Walters -- as part of your
8 investigation, you are aware that Mr. Samuel Walters was
9 reportedly an eyewitness standing nearby at the time; right?

10 A Correct.

11 Q And you are aware that he was approached by Lieutenant
12 Schumpert in this investigation of which you are the lead
13 investigator; correct?

14 A Correct.

15 Q But you're not aware that Lieutenant Schumpert showed
16 him two photographs?

17 A I'm not aware that, I'm not aware that he did.

18 Q So you're not aware of the statement and affidavit by
19 Mr. Walters to that effect?

20 A I'm aware of that.

21 Q Okay. So you are aware of that?

22 A I wrote it.

23 Q So you wrote it?

24 A In his words, Yes.

25 Q Okay. So you're the one who spoke to Mr. Walters?

State v Hardin pretrial Stokes - cont Cross 2/25/15 123

1 A I took a statement from Mr. Walters. I didn't speak to
2 him.

3 Q Okay. Were you present when Mr. Walters was shown the
4 photographs?

5 A No, I wasn't.

6 Q Just so I have this straight?

7 A Uh-huh (affirmative).

8 Q You spoke to Mr. Walters?

9 A I didn't speak with him I just wrote the statement for
10 him.

11 Q You didn't say anything to him when you took his
12 statement?

13 A Asked him what he saw -- well, writing the statement.

14 Q So you did speak to him?

15 A I spoke to him, yes, affirmative. Yes.

16 Q Okay. And you wrote the statement for him?

17 A Correct.

18 MR. STEVENS: Court's indulgence. May I approach,
19 Your Honor.

20 THE COURT: You may.

21 BY MR. STEVENS:

22 Q Would it help refresh your recollection if you actually
23 saw the item that it is that you filled out?

24 A I can, I can remember.

25 Q Okay. Now, you'd agree that it was on that date;

State v Hardin pretrial Stokes - cont Cross 2/25/15 124

1 correct?

2 A Probably.

3 Q The date of the incident?

4 A Yes.

5 Q May 16, 2014?

6 A Yes.

7 Q And you'd agree that it's 2:39 p.m. on that affidavit
8 form; correct?

9 A Correct.

10 Q And you'd agree that it's right there at 1634 St.
11 Matthews Road in Orangeburg?

12 A Correct.

13 Q And you'd agree that the victim's name is Samuel B.
14 Walters; correct?

15 A Correct.

16 Q All right. In the first part it indicates what you're
17 saying; right?

18 A Correct.

19 Q That you were filling this out on his behalf?

20 A Correct.

21 Q Okay. And the second paragraph is what's troubling?

22 A Yes, sir.

23 Q The second paragraph indicates he had two photographs
24 shown to him; correct?

25 A That's what it says, yes.

State v Hardin pretrial Stokes - cont Cross 2/25/15 125

1 Q And that he identified not one but two people from those
2 two photographs; right?

3 A That's what it says.

4 Q And yet you're still unaware whether he was shown two
5 photographs?

6 A I wrote what he said, what he told me.

7 Q So out of his mouth to your hand and you still don't
8 recall whether he was shown two photographs?

9 A I wasn't there for him to be shown two photographs. I
10 just wrote exactly what he told me.

11 Q But now that you've had your memory refreshed, you are
12 quite aware that someone probably did show him those two
13 pictures; correct?

14 A Possibly.

15 Q Especially since in the course of your investigation;
16 right?

17 A Possibly.

18 Q You are the lead investigator?

19 A I am.

20 Q Are you aware when other investigators turn around and
21 show people photographs for identification?

22 A I am.

23 Q Especially eyewitnesses to multiple Class A Felonies?

24 A I am.

25 Q So you were aware of this?

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1 A I was aware that Mr. Walters told me he was shown two
2 photos.

3 THE COURT: Mr. Stevens, let's move on. You've
4 asked the same question multiple times.

5 MR. STEVENS: The Court's indulgence.

6 BY MR. STEVENS:

7 Q And you prepared a report regarding all this
8 information; correct?

9 A Yes.

10 Q Well, with the exception of Mr. Samuel's [sic] statement
11 that you wrote?

12 A Yes, sir.

13 Q That's not in your report; right?

14 A No, sir.

15 Q Okay. And in your report you indicate that the
16 photograph taken from Columbia was shown to all the victims;
17 right?

18 A Correct.

19 Q And according to your report, all the victims identified
20 Archie Hardin as being the first subject?

21 A Yes.

22 Q Okay. Even Jarron Weaver?

23 A Yes.

24 Q And did you have a chance to ever look at his affidavit?

25 A His affidavit?

State v Hardin pretrial Stokes - cont Cross 2/25/15 127

1 Q His witness affidavit?

2 A I can't recollect off-the-top-of-my-head I have, but --

3 Q Okay. Let's back up and talk about information
4 Lieutenant Cain sent you, okay?

5 A Corporal Cain?

6 Q Corporal Cain, excuse me.

7 A Okay.

8 Q So Corporal Cain is the one who sent you the photograph;
9 right?

10 A He didn't send me a photograph.

11 Q Oh, I'm sorry. Schumpert the photograph?

12 A Yes.

13 Q Okay. And as lead investigator you're also aware that
14 you were looking for another person; correct?

15 A Correct.

16 Q And Corporal Cain sent information regarding another
17 subject; is that correct?

18 A Correct.

19 Q And that was sent the following Monday; correct?

20 A I don't know the exact date.

21 Q Okay. But he did send you information about the other
22 subject; correct? Or potential leads?

23 A A couple, possibly. Possibly.

24 Q And those were essentially for people named Black that
25 might be on parole in Richland County; correct?

State v Hardin pretrial Stokes - cont Cross 2/25/15 128

1 A Correct.

2 Q Or probation in Richland County; correct?

3 A Correct.

4 Q Okay. Yet no one was found through your investigation
5 by the name of Black; correct?

6 A It's still currently under investigation.

7 Q So that's a no, no one's been found yet?

8 A That's it.

9 Q As of today?

10 A It's still currently under investigation.

11 Q And did you investigate each and every single one of
12 those potential leads?

13 A One, in particular, I believe. I'm not sure.

14 Q Why?

15 A It's still -- it's currently still under investigation,
16 though.

17 Q Okay. So one out of the three or four you investigated.
18 You didn't investigate the rest of them?

19 A It's still under investigation.

20 Q Okay. And just to be clear, it's been almost a year
21 since this occurred; correct?

22 A Almost.

23 Q I mean it was May 16th then, right?

24 A Correct.

25 Q And today is February 25th; correct?

State v Hardin pretrial Stokes - cont Cross 2/25/15 129

1 A Correct.

2 Q Of 2015?

3 A Correct.

4 Q Okay.

5 MR. STEVENS: Court's indulgence.

6 THE COURT: While you do that, Mr. Stevens, let me
7 ask clerk, Madam Clerk, do we have any more jurors that have
8 appeared?

9 THE CLERK: We have a total of forty-six.

10 THE COURT: Forty-six.

11 THE CLERK: There's one more on the way, so it will
12 be forty-seven.

13 THE COURT: One more on the way, okay. Will you
14 just let me know when that last one gets on the way and then
15 we'll start -- when that last one arrives and then we'll
16 start then. Thank you.

17 JOHN STOKES - CROSS-EXAMINATION CONTINUED

18 BY MR. STEVENS:

19 Q You actually did put a six-pack photograph together
20 later on; didn't you?

21 A Correct.

22 Q Except that wasn't Archie Hardin in it; right?

23 A Correct.

24 Q Okay. You actually had pictures of different
25 individuals?

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1 A Correct.

2 Q Okay. So you do know how to actually make a six-pack
3 photographic lineup; right?

4 A Yes, I do.

5 Q Okay. And you chose to do it then but not when Archie
6 Hardin was actually --

7 A Correct.

8 Q -- where the photos of Archie were being shown; right?

9 A Correct.

10 Q Okay. You'd agree that it's better and less suggestive
11 to do it that way?

12 A It was the officer's discretion at that time.

13 Q Okay. So it's an officer's discretion whether to
14 actually show someone an individual photograph with another
15 police officer standing behind compared to a six-pack
16 photographic lineup?

17 A That's a couple days later. This was freshly committed
18 when --

19 Q The point is you're saying it's an officer's discretion
20 to do that?

21 A Yeah.

22 Q Okay. You agree that one is more suggestive than the
23 other?

24 A I'm not going to.

25 Q Okay. Did they teach you how to do six-photographic

State v Hardin pretrial Stokes - cont Cross 2/25/15 131

1 lineups at the academy?

2 A No.

3 Q They didn't teach you how to do any identification?

4 A We were told about how photo lineups, but there's
5 different ways you can do them. You can do them out of a
6 jail system log. You can do them from SLED.

7 Q So you do have lots of ways that you've been taught on
8 how to do these?

9 A Correct.

10 Q Okay. And you specifically chose to go alone with that
11 one --

12 A On that day.

13 Q -- on that day, shown to all three right there in the
14 parking lot.

15 A Based on the totality of the circumstances, yes.

16 Q But then that was shown by Schumpert to the witnesses.

17 MS. CORNWELL: Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. CORNWELL: He's already asked and answered with
20 no, there's no six-card lineup. It was only one photograph.
21 And I don't why they're asking the same question over and
22 over again.

23 THE COURT: Well, let's move on unless you have a
24 specific point.

25 MR. STEVENS: Yes, ma'am. Thank you, Judge.

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1 BY MR. STEVENS:

2 Q You'd agree that in the six-pack photographic lineup was
3 not Archie Hardin in it; right?

4 A Can I see it.

5 Q If it would help refresh your recollection, absolutely.

6 A Correct.

7 Q Okay. And this was shown to Mr. Thomas Sims, Jr.?

8 A Correct.

9 Q And he actually identified somebody; did he not?

10 A Correct.

11 Q Number five, right?

12 A Can I see it?

13 Q Certainly?

14 A Correct.

15 Q Now, you'd agree that during your investigation it was
16 Mr. Sims who said that -- well, several people said it. One
17 person didn't have anything to cover their face; right?

18 A Correct.

19 Q Does this look like Archie Hardin?

20 A Which one?

21 Q The one that's circled?

22 A No.

23 Q Okay. Let's also talk about this cell phone and the
24 Track My iPad App that you spoke about on direct examination?

25 A Uh-huh (affirmative).

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1 Q You indicated --

2 A You said a cell phone or an iPad? You said a cell phone
3 or iPad?

4 Q Well, from what --

5 A I spoke on a cell phone.

6 Q No, no. We're talking about when the iPad application
7 was actually activated.

8 A Okay. Okay.

9 Q You indicated to the Court that it was activated by
10 someone's phone?

11 A Yes, sir. Yes, yes, yes, yes.

12 Q That wasn't Thomas Sims, Jr.'s. phone?

13 A It was his father's phone.

14 Q His father's phone?

15 A Yes.

16 Q Okay. Did his father just do everything himself on his
17 phone?

18 A I'm not sure.

19 Q But you were there; right?

20 A I was there, near. Yes, sir.

21 Q So you're not certain whether he took it out and said,
22 sure, use my phone?

23 A I don't know how Thomas Sims, Jr. got possession of his
24 father's phone. But I just know the application was loaded
25 on Mr. Sims', the daddy's phone.

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1 Q Okay.

2 A Correct.

3 Q And just to be clear, though, it was Mr. Sims, Jr. who
4 was initially using that phone; correct?

5 A At the time. He was that put the Find My iPad App and
6 activated it on his father's phone.

7 Q Okay. So it's not his father that downloaded the
8 application on the phone, right?

9 A I'm not certain. I'm really not certain.

10 Q Okay. But it was Mr. Sims, Jr. who actually was working
11 on the phone?

12 A I'm not certain.

13 Q Well, were you there?

14 A I was in the area. I was in the vicinity of what was
15 going on. I actually wasn't, actually following the
16 application, if you see what I'm saying.

17 Q So how familiar are you with the phone, the My iPad
18 application used?

19 A I'm marginally familiar with it.

20 Q Marginally?

21 A Yeah.

22 Q Do you have an iPhone?

23 A No.

24 Q No. Do you have an iPad?

25 A Yes.

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1 Q Okay. Do you have it downloaded onto your iPad?

2 A No.

3 Q No. And you don't have any experience or education in
4 cell tower engineering?

5 A No, I don't have any of that.

6 Q Okay. But eventually you'd agreed that it was Thomas
7 Sims, Jr. using the phone to purportedly track the iPad;
8 correct?

9 A After the tracking started, I believe his father was
10 doing most of the tracking on the phone. Because they had at
11 that time, Mr. Sims, Jr. was writing statements and things
12 like that.

13 Q Okay.

14 A And also talking to me some about that.

15 Q Okay. So it was Mr. Sims, Sr. holding the phone and
16 saying where it was?

17 A I believe it was, yes, sir.

18 Q Okay.

19 A Yes, sir.

20 Q And eventually someone told Corporal Leonard Cain about
21 that; correct?

22 A Yes.

23 Q Was that on the phone or the radio?

24 A I believe it was on the phone.

25 Q Okay. And that wasn't Mr. Sims, Sr., was it?

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1 A No, it wouldn't have been.

2 MS. CORNWELL: Your Honor, at this time. I'm going
3 to object based on our conversation in chambers. I think the
4 purposes of these pretrial hearings, we've already
5 established the iPad app, the tracking and the pinging. For
6 the purpose of Denno, Biggers and the suppression issue, I
7 don't believe that going down that road with this witness is
8 necessary at this point or relevant.

9 MR. STEVENS: Judge, the State opened the door.

10 THE COURT: Mr. Stevens.

11 MR. STEVENS: The State opened the door on this
12 totally and completely yesterday. We have a right to get
13 into it now.

14 THE COURT: I understand that you want to get into
15 it now. However, what's the purpose for the pretrial
16 hearings. This is not in front of the jury. It's not cross-
17 examination for the jury.

18 MR. STEVENS: I understand that, Judge.

19 THE COURT: What is the specific purpose for the
20 pretrial hearing?

21 MR. STEVENS: I'm not one to have to make the
22 State's arguments from the day before, but from what they
23 were saying, they wanted it to actually utilize, to have
24 foundation, to actually say they tracked everything, to say
25 whether it was accurate in order to try and establish a

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1 foundation for the search. That's what they went into and
2 that's what this Court allowed them to go into which, we're
3 allowed to rely upon the Court's ruling --

4 THE COURT: Go ahead.

5 MR. STEVENS: -- we're allowed to go into that.

6 THE COURT: Go ahead. Go ahead.

7 MR. STEVENS: Thank you, Judge.

8 THE COURT: Do we have the other juror?

9 THE CLERK: (Shakes head negatively)

10 THE COURT: No. Okay.

11 BY MR. STEVENS:

12 Q Okay. So just to recap it is Mr. Sims, Sr. who had the
13 phone?

14 A Yes.

15 Q And he was reading the phone?

16 A Yes.

17 Q And he would call out loud what he saw?

18 A He was standing -- if I'm not mistaken, he was standing
19 in the area close to Lieutenant Schumpert. He was actually
20 in the locations.

21 Q Oh, okay.

22 A Yes.

23 Q So then Lieutenant Schumpert heard him and would
24 actually --

25 A Yes.

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1 Q Okay.

2 A Yes.

3 Q Now, again, you said you're not qualified in cell tower
4 engineering or mapping or anything like that; right?

5 A No, sir.

6 Q Now, when it comes to realtime mapping, do you really,
7 truly understand what that means in the technical sense?

8 A Well, from my understanding realtime mapping means if
9 you have or you're tracking a specific item and it move, you
10 dot or whatever your indicator is on whatever you're tracking
11 on, computer, whatever, it actually moves with that item.

12 Q Okay.

13 A Yeah.

14 Q And like you just said you didn't personally witness
15 this occur?

16 A Correct.

17 Q All right. So you don't even know if that was actually
18 happening?

19 A Well, what I do know, whatever they were tracking was
20 found behind the Defendant's house, along with the
21 merchandise that was taken from T-Mobile.

22 Q Let's talk about that real quick.

23 A Yeah.

24 Q How far away from his house was it; do you know?

25 A I don't know the exact location, how many feet.

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1 Q Because you weren't there; right?

2 A Correct.

3 Q All right. But you'd agree it was not found right next
4 to his door; right, the iPad?

5 A From what I've been told behind the apartment complex.

6 Q And his apartment's on the second floor; correct?

7 A From what I've been told, yes.

8 Q And the dumpster is not touching the wall of that
9 apartment complex; is it?

10 A I'm not sure.

11 Q Oh, you're not sure?

12 A No, sir.

13 Q Okay. So you didn't see the photographic evidence of
14 it?

15 A I saw the evidence, but I still can't show whether -- I
16 don't know where his apartment was.

17 Q And so you really don't know if there's a lag in what
18 was being shown on that phone either, do you? And what was
19 really happening with the iPad?

20 A Personally, I can't tell you that.

21 Q Right. And I don't want you to speculate when it comes
22 to it.

23 A No.

24 Q I'm just trying to just make sure. You don't know at
25 all?

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1 A No, sir, I don't.

2 Q Okay. And you don't know the accuracy, whether it's
3 within a hundred feet, a hundred yards or anything like that
4 when it comes to the technicalities of cell tower technology?

5 A I can't tell you the feet but from where it was found,
6 it was pretty accurate that it was behind the apartment
7 complex.

8 Q But you'd agreed they didn't find it on the pad. They
9 had to make it play music to find it; right?

10 A Yes, sir.

11 Q Okay.

12 A From where they were looking for it at that time, yes,
13 sir.

14 MR. STEVENS: Court's indulgence.

15 Q Thank you, Sergeant Stokes.

16 MR. STEVENS: No further questions.

17 THE COURT: Thank you. Any redirect?

18 MS. CORNWELL: Very briefly, Your Honor.

19 JOHN STOKES - REDIRECT EXAMINATION

20 BY MS. CORNWELL:

21 Q Sergeant Stokes, you were shown this six-card photo
22 lineup that was shown to Thomas Sims?

23 A Yes, ma'am.

24 Q And the date on that is what?

25 A May the 21st.

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1 Q And that's after you had arrested Mr. Hardin and had his
2 bond hearing and all of that; correct?

3 A Yes, ma'am.

4 Q When you showed Thomas Sims this six-card photo lineup,
5 what information were you trying to ascertain at that time?

6 A The co-defendant.

7 Q The co-defendant?

8 A Yes.

9 Q Were you trying to get him to pick out this Defendant in
10 this photo lineup?

11 A I wasn't.

12 MS. CORNWELL: Nothing further, Your Honor.

13 THE COURT: You may step down, sir. Thank you.

14 Madam Clerk, I want to check and make sure we have that
15 last juror. I hate to keep the whole jury panel waiting.
16 I'd rather go ahead and -- the last juror's here?

17 THE CLERK: Yes.

18 THE COURT: All right. We'll take a brief recess.
19 We'll then proceed with the roll call process and then select
20 the jury.

21 MR. STEVENS: Yes, ma'am. Thank you, Judge.

22 MS. CORNWELL: Thank you, Your Honor.

23 (Court in recess at 11:20 a.m.)

24 (Court in session at 11:25 a.m.)

25 (Jury panel in at 11:25 a.m.)

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1 If so, please stand?

2 All right, sir. If you'd come forward.

3 Yes, sir. Your number again, please?

4 JUROR NO. 130: 130.

5 THE COURT: Mr. Miller?

6 JUROR NO. 130: Yes, ma'am.

7 THE COURT: And who's your aunt?

8 JUROR NO. 130: (Inaudible.)

9 THE COURT: All right. And what is her capacity?

10 JUROR NO. 130: What is what?

11 THE COURT: What is her capacity there at the
12 Solicitor's Office. Do you know what she does?

13 JUROR NO. 130: I'm not really sure.

14 THE COURT: You're not sure.

15 JUROR NO. 130: I just know she works in the -- I
16 just know she works in the Solicitor's Office.

17 THE COURT: Okay. And having that knowledge that
18 she works in the Solicitor's Office, can you set that aside
19 and listen to the evidence as it comes from the witness stand
20 and be fair and impartial to both the State and to the
21 Defense?

22 JUROR NO. 130: Yes.

23 THE COURT: Can you be fair to both sides?

24 JUROR NO. 130: I think I can.

25 THE COURT: Okay. Listen to the evidence and be

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1 fair to both sides, both the State and the Defense?

2 JUROR NO. 130: Yes, ma'am.

3 THE COURT: And follow the law as I give it to you.
4 All right, sir. Was that -- you need to answer orally?

5 JUROR NO. 130: Yes, ma'am.

6 THE COURT: Okay. Thank you.

7 MR. STEVENS: Judge, if I may, just real quick on
8 Mr. Miller --

9 THE COURT: Hold on one second.

10 MR. STEVENS: I mean, clearly he's hesitating on
11 the answers regarding whether he's going to be fair and
12 impartial to both sides. So I respectfully request that he
13 be stricken for cause.

14 THE COURT: I disagree with you. I'll allow you to
15 put that on the record. He fairly clearly said, yes, ma'am,
16 he could be fair and impartial. And that's from his demeanor
17 and his affect. I thought that he was being credible.

18 MR. STEVENS: Thank you, Judge.

19 THE COURT: Yes, ma'am?

20 JUROR NO. 164: Sheila Stroman.

21 THE COURT: Your name?

22 JUROR NO. 164: Sheila Stroman.

23 THE COURT: Yes, ma'am.

24 JUROR NO. 164: I know (inaudible).

25 THE COURT: Anything about that relationship -- can

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1 you set that aside and listen to the evidence as it comes to,
2 you and can you be fair and impartial to boh the State and to
3 the Defense? And can you follow the law as I give it to you?

4 JUROR NO. 164: Yes, ma'am.

5 THE COURT: Thank you.

6 Yes, sir.

7 JUROR NO. 117: Juror number 117. I work for
8 Dorchester County. I know a lot of these people.

9 THE COURT: Next question do you also know people
10 from for the Public Defendant's Officer's office, so for both
11 sides.

12 JUROR NO. 117: Yes.

13 THE COURT: Having that involvement with the State,
14 can you set that aside and listen to the evidence as it comes
15 from the witness stand and be fair and impartial to both the
16 State and to the Defense?

17 JUROR NO. 117: Yes, ma'am. I didn't know if that
18 was a conflict of interest. That's the only reason I came
19 up.

20 THE COURT: And I appreciate that. And can you
21 follow the law as I give it to you.

22 JUROR NO. 117: Yes, ma'am.

23 THE COURT: I mean, really, your employment, it's
24 an administrative function. It's not as if you personally
25 are an agent --

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1 JUROR NO. 117: Right. Yes, ma'am.

2 THE COURT: -- employment, you do it for both the
3 State and the Defense. All right. Thank you.

4 Yes, sir.

5 JUROR NO. 184: 184.

6 THE COURT: Good. How are you? Your number for
7 the record?

8 JUROR NO. 184: 184.

9 THE COURT: Yes, sir, Mr. White.

10 JUROR NO. 184: (Inaudible.)

11 THE COURT: Pardon?

12 JUROR NO. 184: (Inaudible.)

13 THE COURT: Well, I appreciate that. The fact that
14 you know some of these folks, can you set that aside and be
15 fair and impartial to both the State and to the Defense?

16 JUROR NO. 184: Yes, ma'am.

17 THE COURT: And will you follow the law as I give
18 it to you?

19 JUROR NO. 184: Yes, ma'am.

20 THE COURT: Okay. Thank you.

21 JUROR NO. 184: Uh-huh (affirmative).

22 THE COURT: Yes, ma'am, your number, please?

23 JUROR NO. 91: Jessica Holland, it's 91.

24 THE COURT: Ms. Holland. Oh, okay.

25 JUROR NO. 91: (Inaudible.)

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1 THE COURT: Okay. Sure. The school that your
2 children attend?

3 JUROR NO. 91: (Inaudible.)

4 THE COURT: And the fact that you know the
5 Solicitor's wife --

6 JUROR NO. 91: (Inaudible.)

7 THE COURT: Okay. You said you know who?

8 JUROR NO. 91: Walter Turner.

9 THE COURT: Who?.

10 JUROR NO. 91: Walter Turner.

11 THE COURT: Oh, Walter Turner.

12 JUROR NO. 91: Yes.

13 THE COURT: Uh-huh (affirmative). He's the
14 investigator. The fact that you know them, can you set that
15 aside and listen to the evidence?

16 JUROR NO. 91: Yeah.

17 THE COURT: Will you be fair and impartial to both
18 the State and to the Defense?

19 JUROR NO. 91: Yes.

20 THE COURT: And will you follow the law as I give
21 it to you?

22 JUROR NO. 91: Yes.

23 THE COURT: Okay. Thank you.

24 Yes, ma'am, your number, please?

25 JUROR NO. 181: 181.

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1 THE COURT: 181. Ms. Whalen?

2 JUROR NO. 181: Yes, ma'am.

3 THE COURT: Who do you know?

4 JUROR NO. 181: (Inaudible.)

5 THE COURT: Okay. Can you set that aside and listen
6 to the evidence as it comes in and be fair and impartial to
7 both the State and the Defendant?

8 JUROR NO. 181: Uh-huh. (Affirmative.)

9 THE COURT: And will you follow the law as I give it
10 to you?

11 JUROR NO. 181: Yes.

12 THE COURT: Ladies and gentlemen, we'll take a
13 recess real quick. A brief recess. We're just waiting for a
14 juror that had to step out for just one second and we don't
15 want to proceed without him or her so we'll just take one
16 brief recess and wait until they get back.

17 (Court in recess at 12:31 p.m.)

18 (Court in session at 12:40 p.m.)

19 THE CLERK: We're ready, Your Honor.

20 THE COURT: All right. Thank you.

21 Now, counsel for the Defense, if you would please stand
22 and introduced yourself, along with the members of your
23 office and your support staff?

24 MR. STEVENS: Yes, ma'am. Thank you, Judge. I
25 would say good morning, but good afternoon. My name is Breen

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1 Stevens, I'm an Assistant Public Defender here in Orangeburg
2 County, together with my Co-counsel, Doug Mellard, we both
3 represent the accused in this matter, Mr. Archie Hardin.
4 With us in the Orangeburg County Public Defender's Office is
5 Ms. Peggy Hines. We also have Mark Wise, who is an attorney
6 in our office, as well as Cole Fitchett and Minh Lee.
7 Regarding our support staff, we don't have much. We do have
8 three. We're very proud of them. We have Deborah Martin.
9 We also have Lauren Kyzer, and we have Ms. Lynn Eastman.
10 That's about all we have in just support staff. That's who
11 we are. That's who we represent. And I believe that's all
12 we have -- as the Court would like us to present.

13 THE COURT: All right. Thank you, Mr. Stevens.

14 Any of the jury panel related by blood or marriage or
15 close personal relationship with any of those folks just
16 previously listed, or has any member of the jury panel ever
17 been represented by any of the attorneys that have been
18 previously involved in this case or listed or their law
19 firms? If so, please stand?

20 I find that there is no one standing.

21 Is there any member of the jury panel related by blood
22 or marriage or have a close personal or social relationship
23 with Mr. Archie Hardin? If so, please stand?

24 I find that there is no one standing.

25 Ladies and gentlemen, the following is a list of

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1 possible witnesses in this case. I will ask you after I read
2 the possible witnesses if there's anyone related by blood or
3 marriage to any of the people that I will list. Or if you
4 have a close personal or social relationship with any of the
5 following people? If any of the people are in the courtroom,
6 if you would please stand so that the jury can see you, just
7 in case they recognize you. The people are: Thomas Sims,
8 Jr.; Kirstie Berry; Jarron Weaver; Lieutenant Antonio
9 Turkvant; Sergeant John Stokes.

10 Sir, you know one of the witnesses?

11 UNIDENTIFIED MEMBER JURY PANEL: Yes.

12 THE COURT: All right. I'm going to read all of
13 the witnesses and then give you an opportunity to come up,
14 okay?

15 UNIDENTIFIED MEMBER JURY PANEL: Oh, okay.

16 THE COURT: No, you're fine. Thank you.

17 Corporal Leonard Cain; Investigator Darius Wade;
18 Investigator Thomas Collins; Investigator Sam Norton;
19 Lieutenant James Schumpert; Investigator William Ketcherside;
20 Sergeant Rashad Moore; Investigator Tammy Moore; Samuel
21 Walters; Destiny Brown; Hyrett Hamilton; Paige Addison;
22 Thomas Sims, Sr.; Kimberly Pugh; Steve Reynolds.

23 Any member of the jury panel related by blood or
24 marriage or a friend or acquaintance of any of the potential
25 witnesses that I have just listed? If so, please stand?

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1 (Jury panel members stand.)

2 THE COURT: Yes, sir, your juror number?

3 JUROR NO. 44: 44.

4 THE COURT: 44. Mr. Coulter? Yes, sir, who do you
5 know?

6 JUROR NO. 44: (Inaudible.)

7 THE COURT: Okay. Anything about your relationship;
8 do you know anything whatsoever?

9 JUROR NO. 44: (Inaudible.)

10 THE COURT: Since you have some knowledge about this
11 case, I'm going to go ahead and excuse you. You're No. 44,
12 right?

13 JUROR NO. 44: Right.

14 THE COURT: All right. Thank you, Mr. Coulter.

15 Yes, sir, Your name?

16 JUROR NO. 77: 77.

17 THE COURT: Yes, sir, Mr. Glass. Who do you know?

18 JUROR NO. 77: Kirstie.

19 THE COURT: Kirstie. How do you know her?

20 JUROR NO. 77: Friends.

21 THE COURT: Do you visit in each others homes, are
22 you close friends?

23 JUROR NO. 77: I know her, I know what happened.

24 THE COURT: You know her because she was a victim of
25 a crime?

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1 JUROR NO. 77: Yeah.

2 THE COURT: Having that knowledge can you set that
3 aside and listen to the evidence or is your relationship
4 pretty close?

5 JUROR NO. 77: Yeah.

6 THE COURT: You have some knowledge of what
7 happened, I'm going to excuse you.

8 JUROR NO. 77: Thank you.

9 THE COURT: Yes.

10 JUROR NO. 94: 94.

11 THE COURT: No. 94?

12 JUROR NO. 94: Yes.

13 THE COURT: Mr. Hughes?

14 JUROR NO. 94: Yes, ma'am. I know Kirstie --

15 THE COURT: So you're friends with her and you know
16 about this case?

17 JUROR NO. 94: Yes, ma'am.

18 THE COURT: I'm going to excuse you from this case.

19 JUROR NO. 94: Yes, ma'am. Thank you.

20 THE COURT: Is there any member of the jury panel
21 who's employed by a civilian or military law enforcement
22 agency, Attorney General's Office or any other law
23 enforcement agency? If so, please, stand?

24 I find that there is no one standing.

25 Has any member of the jury panel or close personal or

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1 family relationship or a close friend ever been the victim of
2 a robbery, kidnaping, assault and battery or any other
3 violent crime? If so, please stand?

4 I find that there is no one standing.

5 JUROR NO. 46: (Inaudible.)

6 THE COURT: Anything about that previous experience,
7 can you set that aside and listen to the evidence in this
8 case?

9 JUROR NO. 46: No.

10 THE COURT: I'll transfer you to a civil term of
11 court. Okay.

12 When's the next civil term of court?

13 THE CLERK: May 4.

14 THE COURT: May 4.

15 Is there any member of the jury panel or member of your
16 immediate family or close friends opposed to private citizens
17 owning or possessing firearms including handguns, shotguns,
18 assault rifles or any other weapons? If so, please stand?

19 I find that there is no one standing.

20 Has any member of the jury panel ever received
21 assistance from the Victims' Advocacy Program? If so, please
22 stand?

23 I find that there is no one standing.

24 Any member of the jury panel ever sat on a jury before?
25 If so, please stand?

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1 (Jury panel members stand.)

2 THE COURT: Your juror number?

3 JUROR NO. 170: Debra Tilly.

4 THE COURT: Ms. Tilly?

5 JUROR NO. 170: Yes.

6 THE COURT: When did you serve?

7 JUROR NO. 170: (Inaudible.)

8 THE COURT: So it's been a while?

9 JUROR NO. 170: Yes. (Inaudible)

10 THE COURT: As to that previous experience, can you
11 set that aside and listen to the evidence in this case?

12 JUROR NO. 170: Yes.

13 THE COURT: And be fair to both the State and the
14 Defendant?

15 JUROR NO. 170: Yes.

16 THE COURT: And will you follow the law as I give it
17 to you?

18 JUROR NO. 170: Yes.

19 THE COURT: Okay.

20 Yes, ma'am.

21 JUROR NO. 168: 168, Castina Swett.

22 THE COURT: Ms. Swett, how are you.

23 JUROR NO. 168: (Inaudible).

24 THE COURT: Anything about that previous experience,
25 can you set that aside and listen to the evidence in this

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1 case as it comes from the witness stand?

2 JUROR NO. 168: Yes, ma'am.

3 THE COURT: And can you remain fair and impartial to
4 both the State and to the Defense?

5 JUROR NO. 168: Uh-huh. (Affirmative.)

6 THE COURT: And follow the law as I give it to you?

7 JUROR NO. 168: Uh-huh. (Affirmative.)

8 THE COURT: If you'll remain with us.

9 Yes, ma'am, your number, please?

10 JUROR NO. 140: No. 140.

11 THE COURT: Ms. Perry?

12 JUROR NO. 140: Yes.

13 THE COURT: Yes, ma'am.

14 JUROR NO. 140: (Inaudible.) -- Simple assault and
15 purse snatching.

16 THE COURT: When was that?

17 JUROR NO. 140: That was in 1995.

18 THE COURT: A good while back?

19 JUROR NO. 140: Yes.

20 THE COURT: Anything about that experience, that you
21 can set that aside and listen to the evidence in this case
22 and follow the law as I give it to you and remain fair and
23 impartial to both the State and to the Defense?

24 JUROR NO. 140: Yes.

25 THE COURT: Thank you, ma'am.

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1 Yes, ma'am, can I have your juror number?

2 JUROR NO. 143. 143.

3 THE COURT: 143. Ms. Profit?

4 JUROR NO. 143: Yes.

5 THE COURT: Yes, ma'am.

6 JUROR NO. 143: (Inaudible.)

7 THE COURT: Okay. It's been a while, the '80s, 90s
8 since you served on that jury? Can you set that experience
9 aside and listen to the evidence in this case from the
10 witnesses stand and be fair and impartial to both the State
11 and the Defense?

12 JUROR NO. 143: Yes, ma'am.

13 THE COURT: And follow the law as I give it to you?

14 JUROR NO. 143: Yes, ma'am.

15 THE COURT: All right. Thank you.

16 Good afternoon, sir. Your number?

17 JUROR NO. 138: 138.

18 THE COURT: 138?

19 JUROR NO. 138: Yes.

20 THE COURT: Mr. Oliver (inaudible).

21 JUROR NO. 138: Police officer, (inaudible).

22 THE COURT: It's been a long time, you don't
23 remember all the facts now. Having had that experience, can
24 you listen to the evidence in this case?

25 JUROR NO. 138: Yes, ma'am.

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1 THE COURT: And can you be fair and impartial to
2 both the State and the Defense?

3 JUROR NO. 138: Yes.

4 THE COURT: And can you follow the law as I give it
5 to you?

6 JUROR NO, 138: Yes.

7 THE COURT: Thank you, sir.

8 Yes, sir?

9 JUROR NO. 196: Worley, No. 196.

10 THE COURT: Mr. Worley, No. 196.

11 JUROR NO. 196: I just wanted to let you know I
12 served in City Court with Judge (inaudible).

13 THE COURT: Okay. Can you set that experience aside
14 and listen to the evidence in this case and be fair and
15 impartial to the State and to the Defense?

16 JUROR NO. 196: Yes.

17 THE COURT: And follow the law as I give it to you?

18 JUROR NO. 196: Yes.

19 THE COURT: Thank you.

20 Mr. White.

21 JUROR NO. 184: I was picked on a jury (inaudible).

22 THE COURT: Okay. Anything about that previous
23 experience, can you set that aside and listen to the evidence
24 in this case as it comes from the witness stand.

25 JUROR NO. 184: Sure.

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1 THE COURT: Can you be fair and impartial to both
2 the State and the Defense?

3 JUROR NO. 184: Yes.

4 THE COURT: And follow the law as I give it to you?

5 JUROR NO. 184: Yes, ma'am.

6 THE COURT: All right, sir. Thank you.

7 Yes, ma'am.

8 JUROR NO. 91: Jessica Holland.

9 THE COURT: Ms. Holland, No. 91.

10 JUROR NO. 91: I served in the city court.

11 THE COURT: Transfer court. Okay. Thank you. Can
12 you set that experience aside and listen to the evidence in
13 this case that comes from the witness stand?

14 JUROR NO. 91: Yes.

15 THE COURT: And follow the law as I give it to you?

16 JUROR NO. 91: Yes.

17 THE COURT: Will you be fair and impartial to both
18 the State and the Defense?

19 JUROR No. 91: Yes.

20 THE COURT: Okay. Thank you.

21 Good morning. Your number?

22 JUROR NO. 155: 155.

23 THE COURT: No. 155, Ms. Shuler?

24 JUROR NO. 155: Uh-huh. (Affirmative.)

25 I served on a jury (inaudible).

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1 THE COURT: Anything about that experience, can you
2 set that aside and listen to the evidence from this case as
3 it comes from the witness stand?

4 JUROR NO. 155: Uh-huh. (Affirmative.)

5 THE COURT: And be fair and impartial to both the
6 State and the Defense?

7 JUROR NO. 155: Yes.

8 THE COURT: And follow the law as I give it to you?

9 JUROR NO. 155: Yes.

10 THE COURT: Thank you.

11 Good morning.

12 JUROR NO. 12: Barry Bates, No. 12.

13 THE COURT: Mr. Bates, okay.

14 JUROR NO. 12: I served in magistrate's court
15 before.

16 THE COURT: Okay, anything about that experience
17 that you can set aside and listen to the evidence in this
18 case as it comes from the witness stand?

19 JUROR NO. 12: Yes.

20 THE COURT: And can you be fair and impartial to
21 both the State and the Defense?

22 JUROR NO. 12: I can.

23 THE COURT: And follow the laws as I give it to you?

24 JUROR NO. 155: Sure.

25 THE COURT: Thank you.

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1 Yes, ma'am.

2 JUROR NO. 133: I don't remember the number. I'm
3 Sarah Monroe.

4 THE COURT: Ms. Monroe?

5 JUROR NO. 133: Uh-huh. (Affirmative.)

6 THE COURT: Juror No. 133. What court did you
7 serve?

8 JUROR NO. 133: I think it was civil. It's been so
9 long ago, I don't remember, 15 years I guess.

10 THE COURT: Anything about your previous experience
11 that you can set aside and list to the evidence in this case
12 as it comes from the witness stand?

13 JUROR NO. 133: Yes, ma'am.

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

16 JUROR NO. 133: Yes, ma'am.

17 THE COURT: And can you follow the law as I give it
18 to you?

19 JUROR NO. 133: Yes, ma'am.

20 THE COURT: Thank you, ma'am.

21 Good morning. Mr. Burner, right?

22 THE COURT: All right. Mr. Burner what type of case
23 did you serve on?

24 JUROR NO. 25: These young ladies that sit up over
25 here?

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1 THE COURT: Yes, sir.

2 JUROR NO. 25: I'm cousins -- I really don't know
3 them.

4 THE COURT: Over here?

5 JUROR NO. 25: Over here. They're witnesses.

6 THE COURT: You don't know them well?

7 JUROR NO. 25: No.

8 THE COURT: You don't go to each others home or
9 anything?

10 JUROR NO. 25: No.

11 THE COURT: You don't call each other and have
12 dinner and those types of things?

13 JUROR NO. 25: No.

14 THE COURT: Have you talked at all about this case
15 before?

16 JUROR NO. 25: No, ma'am.

17 THE COURT: So you think --

18 MR. STEVENS: Judge, just to -- which person was his
19 first cousin?

20 THE COURT: Two of the witnesses that stood up.

21 MR. STEVENS: Okay.

22 COURT REPORTER: Number, Judge, again?

23 THE COURT: No. 25.

24 COURT REPORTER: Thank you.

25 THE COURT: Is there any member of the jury panel

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1 who has formed or expressed an opinion on any issue or matter
2 involving this case? If so, please stand?

3 I find that there's no one standing.

4 Is there any member of the jury panel aware of any bias
5 or prejudice towards either the State or towards the Defense
6 in this case? If so, please stand?

7 I find that there is no one standing.

8 Is there any member of the jury panel that was a member
9 of the Grand Jury which issued the indictments in this case?
10 If so, please stand?

11 I find that there is no one standing.

12 Is there any member of the jury panel who is a member of
13 or contributor to any group which has it's primary concern as
14 the promotion of law enforcement or victims' rights? These
15 groups would include but are certainly not limited to MADD,
16 SADD or Citizens Against Violent Crime. If so, please stand?

17 I find that there is no one standing.

18 Does any member of the jury panel know of any reason
19 whatsoever why he or she should not serve as a juror in this
20 case, with a particular emphasis being placed on your ability
21 to be fair and impartial to both the State and to the
22 Defense? If so, please stand?

23 I find that there is no one standing.

24 Ladies and gentlemen, that will conclude the list of
25 questions before we actually begin the selection of this

1 jury.

2 Madam Clerk, do you need a few minutes to pull the
3 numbers?

4 THE CLERK: Yes, ma'am.

5 THE COURT: Ladies and gentlemen, this will give us
6 a good opportunity to break a brief restroom recess before we
7 being the selection of the jury. If you would be back in the
8 jury room in ten minutes -- well, we'll do fifteen minutes
9 since there's many of you, and you can have sufficient time
10 to use the restroom and what not. So if you'd be back in the
11 jury room right at 1:00 we'll do the jury selection. Thank
12 you.

13 (Jury panel out at 12:54 p.m.)

14 (Court in recess at 12:54 p.m.)

15 (Court in session at 1:06 p.m.)

16 (Jury panel in at 1:06 p.m.)

17 THE COURT: As we begin jury selection in this case,
18 if you name is called come forward. If you are stricken from
19 serving on the jury by the State or by the Defendant
20 regardless of what they choose. There's many reasons why
21 attorneys do that. Also, if your name is called to come
22 forward, please bring all of your personal belongings with
23 you because as you come, if you are seated on the jury, we'll
24 go ahead and seat you in the jury box.

25 Madam Clerk, are you ready to proceed?

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1 THE CLERK: Yes.

2 Juror No. 102, Rosebud Johnson.

3 What says the State?

4 MS. CORNWELL: Please seat Ms. Johnson.

5 THE CLERK: What says the Defense?

6 MR. STEVENS: Please seat Ms. Johnson.

7 THE CLERK: You may have a seat in the jury box.

8 Juror No. 143, Shelby Profit.

9 What says the State?

10 MS. CORNWELL: Please seat Ms. Profit.

11 THE CLERK: What says the Defense?

12 MR. STEVENS: Please seat Ms. Profit.

13 THE CLERK: You may have a seat in the jury box.

14 Juror No. 65, Henry C. Felder.

15 What says the State?

16 MS. CORNWELL: Please seat Mr. Felder.

17 THE CLERK: What says the Defense?

18 MR. STEVENS: Please seat Mr. Felder.

19 THE CLERK: You may have a seat in the jury box.

20 Juror No. 133, Sarah Monroe.

21 What says the State?

22 MS. CORNWELL: Please seat Ms. Monroe.

23 THE CLERK: What says the Defense?

24 MR. STEVENS: Please seat Ms. Monroe.

25 THE CLERK: You may have a seat in the jury box.

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1 Juror No. 18, David Blanchard

2 What says the State?

3 MS. CORNWELL: Please seat Mr. Blanchard.

4 THE CLERK: What says the Defense?

5 MR. STEVENS: Please seat Mr. Blanchard.

6 THE CLERK: You may have a seat in the jury box.

7 Juror No. 140, Retha Perry.

8 What says the State?

9 MS. CORNWELL: Please seat Ms. Perry.

10 THE CLERK: What says the Defense?

11 MR. STEVENS: Please strike Ms. Perry.

12 THE CLERK: You may return to your seat.

13 Juror No. 1, Melvina Ackwood.

14 What says the State?

15 MS. CORNWELL: Please seat Ms. Ackwood.

16 THE CLERK: What says the Defense?

17 MR. STEVENS: Please seat Ms. Ackwood.

18 THE CLERK: You may have a seat in the jury box.

19 Juror No. 55, Donna Diamond.

20 What says the State?

21 MS. CORNWELL: Please seat Ms. Diamond.

22 THE CLERK: What says the Defense?

23 MR. STEVENS: Please seat Ms. Diamond.

24 THE CLERK: You may have a seat in the jury box.

25 Juror No. 71, James Furtick, Jr.

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1 What says the State?

2 MS. CORNWELL: Please seat Mr. Furtick.

3 THE CLERK: What says the Defense?

4 MR. STEVENS: Please excuse Mr. Furtick.

5 THE CLERK: You may return to your seat.

6 Juror No. 63, Gail Epps.

7 What says the State?

8 MS. CORNWELL: Please seat Ms. Epps.

9 THE CLERK: What says the Defense?

10 MR. STEVENS: Please excuse Ms. Epps.

11 THE CLERK: You may return to your seat.

12 Juror No. 128, Devoni Middleton.

13 What says the State?

14 MS. CORNWELL: Please seat Ms. Middleton.

15 THE CLERK: What says the Defense?

16 MR. STEVENS: Court's indulgence. Please seat the
17 juror.

18 THE CLERK: Juror No. 58, David Dial.

19 What says the State?

20 MS. CORNWELL: Please seat Mr. Dial.

21 THE CLERK: What says the Defense?

22 MR. STEVENS: Please seat the juror.

23 THE CLERK: You may have a seat in the jury box,

24 sir.

25 Juror No. 164, Sheila Stroman.

1 What says the State?

2 MS. CORNWELL: Please seat Ms. Stroman.

3 THE CLERK: What says the Defense?

4 MR. STEVENS: Please excuse Ms. Stroman.

5 THE CLERK: You may return to your seat, ma'am.

6 Juror No. 66, Ryan Felder.

7 What says the State?

8 MS. CORNWELL: Please excuse Mr. Felder.

9 THE CLERK: You may return to your seat, sir.

10 Juror No. 155, Cynthia Shuler.

11 What says the State?

12 MS. CORNWELL: Please seat Ms. Shuler.

13 THE CLERK: What says the Defense?

14 MR. STEVENS: Court's indulgence. Please excuse
15 Ms. Shuler.

16 THE CLERK: You may return to your seat.

17 Juror No. 196, Christopher Worley.

18 What says the State?

19 MS. CORNWELL: Please seat Mr. Worley.

20 THE CLERK: What says the Defense?

21 MR. STEVENS: Please seat Mr. Worley.

22 THE CLERK: Please have a seat in the jury box.

23 Juror No. 48, Lloyd Dantzler.

24 What says the State?

25 MS. CORNWELL: Please seat Mr. Dantzler.

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1 THE CLERK: What says the Defense?

2 MR. STEVENS: Please seat Mr. Dantzler.

3 THE CLERK: Juror No. 120, Calicha Mack.

4 What says the State?

5 MS. CORNWELL: Please seat Ms. Mack.

6 THE CLERK: What says the Defense?

7 MR. STEVENS: Please seat Ms. Mack.)

8 THE CLERK: You can a seat in the jury box.

9 Now, for the alternates.

10 Juror No. 56, Richard Driggers.

11 What says the State?

12 MS. CORNWELL: Please seat Mr. Driggers.

13 THE CLERK: What says the Defense?

14 MR. STEVENS: Please seat Mr. Driggers.

15 THE CLERK: You may have a seat in the jury box.

16 Juror No. 168, Castina Swett.

17 What says the State?

18 MS. CORNWELL: Please seat Ms. Swett.

19 THE CLERK: What says the Defense?

20 MR. STEVENS: Yes, ma'am. Please seat Ms. Swett.

21 THE COURT: Any exceptions or objections for the
22 selection of this jury for either the State or the Defense?

23 MS. CORNWELL: None from the State, Your Honor.

24 MR. STEVENS: None from the Defense, Judge.

25 THE COURT: Ladies and gentlemen of the jury panel

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1 that was not selected on this case --

2 Solicitor, it's my understanding this is the only jury
3 trial case this week; is that correct?

4 MS. CORNWELL: It is, Your Honor.

5 THE COURT: Okay. Ladies and gentlemen of the jury
6 panel that was not selected for service on this particular
7 case, you've actually satisfied the requirements of your jury
8 service for this week so you are free to go. If you need an
9 excuse for work, you can get that downstairs at the clerk's
10 office.

11 (Remaining jury panel out at 1:15
12 p.m.)

13 THE COURT: Ladies and gentlemen of the jury that
14 was selected, I know you've had a long morning and it's a
15 good opportunity for us to take our lunch break and have a
16 little bit of a recess. It's 1:15. We have some other
17 matters that we must take care of before we begin the actual
18 trial of this case. So I will ask you to come back and
19 report to your jury room at 3:45 and we will begin with the
20 opening statements of the case. Our bailiff here is going to
21 show the jury room and where to report to get your stickers.
22 Also, please be very mindful not to talk to anyone about the
23 case or allow anyone to talk about the case with you. If you
24 see anybody involved with the case at lunch or throughout the
25 courthouse or anything and they don't speak to you, they're

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1 not being rude. They're following the Court's instruction
2 that you're not to speak to anyone about the case. Also,
3 please don't do any independent research or anything of that
4 nature regarding the case. You need to hear the evidence as
5 it comes from the witness stand once we actually start the
6 trial of this case. But you are now excused until 3:45.

7 (Jury out at 1:20 p.m.)

8 THE COURT: This is a good time to take our lunch
9 recess. Before we do that, anything further at this point?

10 MS. CORNWELL: Nothing from the State, Your Honor.

11 MR. STEVENS: Nothing from the Defense, Judge.

12 THE COURT: Will an hour give everyone sufficient
13 time?

14 MS. CORNWELL: Yes, Your Honor.

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: Then we'll start right back up at 2:15.

17 MS. CORNWELL: Thank you, Your Honor.

18 MR. STEVENS: Thank you, Judge.

19 (Court in recess for lunch at 1:20
20 p.m.)

21 (Court in session after lunch at
22 2:30 p.m.)

23 THE COURT: Is the State ready?

24 MS. CORNWELL: Yes, Your Honor.

25 THE COURT: Call your next witness.

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1 MS. CORNWELL: The State would call Thomas Sims Jr.
2 to the stand?

3 (WHEREUPON, Thomas Sims, Jr., was
4 sworn to tell the truth.)

5 THE CLERK: Thank you. You may have a seat.
6 Please your name again for the Record.

7 MR. SIMS: Thomas Sims, Jr.

8 THE CLERK: Thank you.

9 THE COURT: Your witness.

10 MS. CORNWELL: Thank you, Your Honor.

11 THOMAS SIMS, JR. - DIRECT EXAMINATION

12 BY MS. CORNWELL:

13 Q Mr. Sims, I know you've been in here all day Monday and
14 most of the day today, so you kind of know what we're doing
15 up there. So I'm going to cut straight to the chase. Were
16 you working at T-Mobile on May 16th, of 2014?

17 A Yes, I was. Yes.

18 Q And what was the capacity you were working in?

19 A I was a T-Mobile store -- I'm a store manager.

20 Q And while you were working, did you have occasion to see
21 this Defendant come into your store?

22 A Yes, ma'am.

23 Q Tell me about that?

24 A He came in shortly after we opened. He spoke to Jarron.
25 He was going over about getting an iPad for his daughter,

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1 which he said live in Virginia. He was on the phone the
2 whole time. I usually listen in to my sales reps. I listen
3 to them and I heard what the customer, see if I can help in
4 any way. While he was on the phone all the time, Jarron was
5 just covering everything. Everything as what he would have
6 to do to go through with a credit check and everything.
7 Shortly after, we had another customer which needed to make a
8 payment. After that, he left.

9 Q How long did that initial conversation between Mr.
10 Weaver and the Defendant last?

11 A It lasted anywhere from about five to ten minutes, I
12 think.

13 Q All right. And you were able to view this Defendant
14 this entire time?

15 A Yes.

16 Q What was he wearing?

17 A He had on a black shirt and khakis.

18 Q Okay. Anything on his head or face?

19 A He had sunglasses on and had a baseball cap on.

20 Q And did he keep those sunglasses and baseball hat on the
21 entire time?

22 A Yes.

23 Q Okay. So you're saying that the first conversation took
24 five to ten minutes and then he left the store?

25 A Yes.

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1 Q Did you have occasion to see him again?

2 A Yes.

3 Q And when was that?

4 A He came back in. Shortly after the customer left, he
5 came back in. And right behind was another customer. He
6 asked Jarron, what do you have to do to run his credit.
7 Jarron told him he needed a license and then he left. I told
8 Jarron to see where he was going because I thought he was a
9 secret shopper.

10 Q Okay. And to your knowledge was Jarron able to see
11 where he went?

12 A Jarron looked out and just saw him walk towards, like
13 the grass parking lot.

14 Q Okay. After that, what happened?

15 A After the customer left, a couple minutes passed and
16 then he came back and he had the other guy with him.

17 Q Okay. And what did they do?

18 A They came in with their guns out and told us, go to the
19 back. He had me and the other guy had Jarron. They marched
20 us to the back. When we got to the back, they were screaming
21 about the phones, where were the phones. Like I took a door
22 of the office. I told him I had somebody in here training.
23 Once I opened the door, Kirstie wasn't in there. So I told
24 him, well, she may be outside smoking. Don't be startled
25 when she comes back in. After that, that's when they took us

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1 back to the other room that's outside our office. They
2 wanted us to get on the ground, put our hands behind our
3 back. That's when they got the duct tape out and duct taped
4 my hands behind my back.

5 Q Okay. I'm going to stop you real quick. When you said
6 that you went back there and you were explaining to him that
7 Kirstie might be in the room or that she might be out back,
8 who is the him that you are talking?

9 A Hardin.

10 Q The Defendant, Archie Hardin?

11 A Yes.

12 MR. STEVENS: And, Your Honor, if the record will
13 reflect that the witness did point to the Defendant.

14 THE COURT: It so reflects.

15 BY MS. CORNWELL:

16 Q Okay. So you were on the ground being duct taped?

17 A Yes. I was being duct taped. The other guy, I believe,
18 was duct taping Jarron. And he told me to put my feet
19 together, they duct taped -- where he duct taped my feet.
20 Then, I believe, he went outside to get Kirstie while the
21 other guy had started putting the phones in whatever they
22 had.

23 Q Was the other guy -- did the other guy have anything on
24 his face?

25 A Yes. He had like a shear stocking cap over his head.

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1 Q Okay. What about this Defendant, did he have a stocking
2 or anything over his face?

3 A No. He had sunglasses and a hat.

4 Q He was wearing the exact same thing that he had been
5 previously?

6 A (Nods head affirmatively).

7 Q Okay. And after the robbery occurred, they ran out
8 back. You called law enforcement. Did y'all stick around at
9 T-Mobile during the course of the investigation?

10 A Yes. I stuck around until Paige, my DM got there.
11 That's after they said they had got him and everything.

12 Q Okay. And at some point did you have occasion to view a
13 photograph of the suspect?

14 A Yes. Uh-huh (affirmative).

15 Q And that was shown to you by law enforcement; is that
16 correct?

17 A Yes.

18 Q How was that shown to you?

19 A On a phone.

20 Q Okay. And when that photograph was shown to you, was
21 that shown to you while you were standing with the other
22 victims or did they separate you to show you those
23 photographs?

24 A Well, we were all separated. I was in the store and
25 that's when I was shown the picture.

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1 Q Okay. And when you were shown the picture, did the
2 officer tell you anything about the picture before he showed
3 it to you?

4 A No. He just said can you identify this person?

5 Q Okay. And I'm going to show you what's been marked as
6 State's Exhibit 2.

7 MS. CORNWELL: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. CORNWELL:

10 Q Do you recognize that photograph?

11 A Yes.

12 Q And what is that photograph?

13 A That's a photograph of him.

14 Q And have you seen this photograph before?

15 A No.

16 Q Is this the photograph that you identified at T-Mobile
17 that day?

18 A Yes. Yes.

19 Q This is what the officer showed you?

20 A Yes.

21 Q And when you were shown this photograph, I believe you
22 said it was on a cell phone?

23 A Uh-huh (affirmative).

24 Q Were you able to immediately identify the person in this
25 photograph?

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1 A Yes.

2 Q And what were you able to identify the person in this
3 photograph as?

4 A The person that robbed us.

5 Q Thank you, Mr. Sims. Please answer any questions
6 Defense counsel may have for you.

7 THE COURT: Cross-Examination.

8 MR. STEVENS: The Court's indulgence.

9 THOMAS SIMS, JR. - CROSS-EXAMINATION

10 BY MR. STEVENS:

11 Q Good afternoon, Mr. Sims. How are you today?

12 A Fine.

13 Q Thank you for coming this afternoon. My name is Breen
14 Stevens and along with Doug Mellard, we both represent the
15 accused in this matter. Let's just first start off and just,
16 you know, confirm, you were working at T-Mobile on May 16th,
17 2014?

18 A Yes.

19 Q And that was the day that T-Mobile was robbed; right?

20 A Yes.

21 Q Okay. And do you remember what time it was robbed?

22 A We opened at 10:00. I'd say maybe 10:15, 10:20, that's
23 when it started.

24 Q And about how long did it last?

25 A About ten or fifteen minutes, maybe.

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1 Q Okay. Total?

2 A Yeah.

3 Q Okay. All right. Now, before May 16th, had you ever
4 been robbed before?

5 A No.

6 Q Okay. Have you ever been involved in any robbery since
7 then?

8 A Uh-uh (negative).

9 Q Okay. Now, after the actual robbery, you said you spoke
10 with police and gave them some information; right?

11 A Yes.

12 Q Okay. And you gave a statement; right?

13 A Yes.

14 Q Okay. Would it help refresh your recollection about the
15 contents of this if you were able to see it?

16 A Yes.

17 Q Okay.

18 MR. STEVENS: Judge, may I approach?

19 THE COURT: You may?

20 MR. STEVENS: Thank you, ma'am.

21 BY MR. STEVENS:

22 Q Okay. What I'm showing you right now is your written
23 statement. Now, on this statement, obviously, you used the
24 same date, May 16th; right?

25 A Yes.

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1 Q Okay. And the statement was given there at the T-Mobile
2 Store; right?

3 A Yes.

4 Q Okay. And it's roughly, what, about two or three pages
5 long?

6 A Two. It's two pages.

7 Q Okay. Two-page content and then the last one's a
8 signature; right?

9 A (Nods head affirmatively).

10 Q Okay. Now, when it was written, did you write the
11 statement or did the police write it?

12 A I wrote the statement.

13 Q You wrote the statement in your own handwriting?

14 A Yes.

15 Q Okay. And, again, you gave the statement the same day
16 as the robbery; right?

17 A Yes.

18 Q Okay. And the time on that statement says --

19 MR. STEVENS: May I approach, Judge?

20 THE COURT: You may.

21 A Well, it's just 5/16/14.

22 BY MR. STEVENS:

23 Q Okay. So, therefore, it doesn't even say what time it
24 is on there; right?

25 A Yes.

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1 Q Okay. Now, when you wrote the statement, I assume that
2 you did want to make sure the robbers were caught; right?

3 A Yes.

4 Q Okay. And so you tried to put all of the information
5 that you felt would help police catch the robbers in there;
6 right?

7 A Yes.

8 Q Thank you, sir. And just so we're clear, you said you
9 saw two robbers at the store; right?

10 A Yes.

11 Q Okay. Now, in your statement, I'm just going to walk
12 you through. You said to police that the first guy came in
13 and asked about getting a tablet. He wanted that for his
14 daughter; right?

15 A Yes.

16 Q Now, it wasn't you that was talking to that individual;
17 right?

18 A No.

19 Q Okay. You said that it was Mr. Jarron Weaver?

20 A Yes.

21 Q Okay. And where were you specifically when they were
22 having a conversation?

23 A I was at the first round table.

24 Q Okay. About how far away is that?

25 A Probably two or three feet.

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1 Q Okay. Not far?

2 A Yeah.

3 Q Were you staring at them the whole time as they were
4 talking?

5 A No. I was listening in. I had given Jarron something
6 to write on.

7 Q Okay. But I mean you just weren't leering at them the
8 whole time they were having conversation; right?

9 A No.

10 Q Okay. Thank you. So just kind of watching them or
11 heard them a little bit and you later continued doing your
12 other work; correct?

13 A Yes.

14 Q I mean, you're manager. It's a pretty busy job.

15 A Yes, sir.

16 Q Okay. Also, when it comes to your statement you did
17 tell the police that he was on the -- he got on the phone;
18 right?

19 A Yeah.

20 Q He was talking to his wife on the phone about getting an
21 item for his daughter?

22 A Yes.

23 Q Okay. And then he left the store?

24 A Uh-huh (affirmative).

25 Q Then he came on back in?

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1 A Uh-huh (affirmative). Yes.

2 Q And was wanting to bring his credit card; right?

3 A His credit application.

4 Q Credit application. Okay. And you needed his driver's
5 license; right?

6 A Yes.

7 Q So he went back outside. Now, did you tell him that or
8 did somebody else tell him that?

9 A Me and Jarron told him that.

10 Q Together. So you were there, standing there when he
11 said you need to get your license --

12 A Yes, sir. And Jarron was back at the counter when they
13 came back in.

14 Q Okay. And now, T-Mobile does a good bit of business
15 there?

16 A Correct.

17 Q And you indicated that, at least on direct that another
18 customer came on in?

19 A Yes.

20 Q Okay. Do you remember what that customer looked like?

21 A Yeah. He was a short black guy. And I just remember
22 him asking me about my car. That's it.

23 Q You don't remember hair color?

24 A Short hair.

25 Q Short hair, thinner hair. You don't remember skin tone?

1 A Yeah. It was kind of --

2 Q Clothes?

3 A I don't remember his clothes.

4 Q Okay. Do you remember about how many other customers
5 were in the store before the first guy came on in, asking for
6 an iPad?

7 A He was actually the first customer.

8 Q First customer. Now, when the other customer came in,
9 who was it that serviced that customer?

10 A I was.

11 Q Okay. So when you were servicing that customer you let
12 Jarron deal with the other individual there?

13 A Yeah.

14 Q Okay. Well, getting back to your statement to the
15 police. You told them that the first guy after that, and
16 then after a while came on back in with the second guy;
17 right?

18 A Yeah.

19 Q Okay. And you told police the second guy's the one that
20 had the stocking over his face; right?

21 A Yes.

22 Q And what about shades, was the guy with the stocking
23 wearing shades too?

24 A No.

25 Q Okay. I'd like you to look at your statement.

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1 MR. STEVENS: Judge, may I approach?

2 THE COURT: You may.

3 MR. STEVENS: Thank you.

4 BY MR. STEVENS:

5 Q Okay. Let me help just direct you. Right here, about
6 halfway down on the first page. If you'd just look that
7 over, please?

8 A Okay.

9 Q Now that your memory's refreshed. Do you recall telling
10 the police that it was the second guy that had the stocking
11 on, but also had the sunglasses; correct?

12 A Yes.

13 Q Okay. And you're sure about that?

14 A Or at the time I wrote it. I was still excited.

15 Q And at the time, you're still trying to get police the
16 information to catch the guy; right?

17 A Yes.

18 Q Okay. And that's why you put in the statement; right?
19 You wanted to catch him?

20 A Yes.

21 Q Okay. Now, when they came on in, they pushed you to the
22 ground; right?

23 A They took us to the back room.

24 Q Oh, they took you to the back room. But you also --
25 they didn't put you to the ground?

State v Hardin pretrial Sims - Cross 2/25/15 186

1 A Yes.

2 Q They put you face down?

3 A Yes.

4 Q And they taped up your hand?

5 A Yes.

6 Q Was it behind the back or in front?

7 A Behind.

8 Q And the robbers are screaming?

9 A Yes.

10 Q Okay. Do you which one, the first robber or second one?

11 A Mostly it was the first robber.

12 Q First robber, okay. And they told you if you looked up,
13 they'd shoot you; right?

14 A Yes.

15 Q And you don't want to get shot?

16 A No.

17 Q So you don't look up?

18 A No.

19 Q I don't blame you at all for that. And then the robbers
20 got you on your feet; right?

21 A Yes.

22 Q And they told you not to look at them or they would
23 shoot you?

24 A That was after he was ripping up the security box.

25 Q Okay.

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1 A And he saw me looking at him.

2 Q Okay. I got you. And you didn't want to get shot
3 either?

4 A No.

5 Q So you turned your away and didn't look at him after
6 that?

7 A I just turned my head back to, pointing at the desk.

8 Q Okay. And so you did point out where the videos were;
9 right?

10 A Yes.

11 Q Okay. And then they put you back on the ground face
12 down?

13 A Yes.

14 Q Okay. And then your statement says they went out the
15 back door and left. That's when we heard them leave?

16 A Yeah.

17 Q Okay. Now you wrote that the same day as the robbery;
18 right?

19 A Yes.

20 Q And the statement is true to your knowledge?

21 A Yeah.

22 Q No lies, right?

23 A Uh-huh (affirmative).

24 Q Because it's what you remember about the robbery when
25 you spoke to law enforcement?

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1 A Yes.

2 Q All right. And the statement does describe the two
3 robbers right? I believe on the back page of description,
4 the --

5 A Yes.

6 MR. STEVENS: May we approach again, Judge?

7 THE COURT: You may.

8 MR. STEVENS: Thank you, ma'am.

9 BY MR. STEVENS:

10 Q Okay. That point right next. Thank you. Okay. And
11 you describe the two robbers; right?

12 A Yes.

13 Q And you said one was a short guy with black tee shirt
14 and short; right?

15 A Yes.

16 Q Okay. You said the short one had a stocking over his
17 face with shades and a baseball cap?

18 A Yes.

19 Q Okay. And then with the other one, you said the other
20 guy was tall?

21 A Yeah.

22 Q And you said the tall guy with the black shirt --

23 A Yes.

24 Q -- and khaki pants?

25 A Yes.

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1 Q And you thought they both had white shoes on; right?

2 A (Nods head affirmatively)

3 Q And actual statement was I think they have white shoes?

4 A Yeah.

5 Q Okay. And that was what you put in your statement;
6 right?

7 A Yes.

8 Q You didn't say how tall the other taller guy was. You
9 didn't say in your statement he was 5'10", he was 6'2", he
10 was 6'8"?

11 A No.

12 Q He was just the taller of the two; right?

13 A Yes.

14 Q Okay. You didn't give the hair color of the taller guy
15 in your statement?

16 A No.

17 Q Okay. You didn't say if he had light hair?

18 A No. He had on a cap the whole time.

19 Q Well, we'll talk about that in just a minute. But you
20 didn't say anything about the taller guy wearing a cap in
21 your statement did you?

22 A Well, what I said at that time, I was still excited
23 after the robbery.

24 Q All right. But you do want to make sure they got him
25 caught; right?

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1 A Yeah.

2 Q And you did want to put everything in there so they
3 could catch the robbers; right?

4 A Yes.

5 Q And the only person wearing a ball cap and sunglasses in
6 your statement is the shorter one?

7 A Well, that was --

8 Q I'm just going by your statement?

9 A And at the time of statement I was still excited. I
10 didn't have real time to actually think about it.

11 Q But you did remember that, at least, the shorter guy had
12 a ball cap and glasses on right?

13 A He didn't have glasses on; he just had the cap.

14 Q So now that's wrong is what you're saying?

15 A Yeah. At the time I wrote, like I say, I was excited
16 and --

17 Q But you'd agree that your statement does only say that
18 it's the short guy who had a ball cap?

19 A Yes.

20 Q And it's only the short guy who had on sunglasses?

21 A Yes.

22 Q Okay. And you didn't get the hairstyle of the taller
23 guy in there either, did you?

24 A No.

25 Q Okay. You didn't say whether he had dread locks. It

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1 didn't say if the taller guy had, you know, long hair or
2 short hair?

3 A No.

4 Q You didn't say whether he was clean shaven or had a
5 beard?

6 MS. CORNWELL: Your Honor, for the purposes of this
7 hearing, I think the witness has testified as to what he
8 described.

9 MR. STEVENS: Judge, I believe we do have to go
10 into depth as far as what wasn't described, which was later
11 on the picture to which he was presented.

12 THE COURT: I'll allow it. You may proceed.

13 MR. STEVENS: Thank you, Your Honor.

14 BY MR. STEVENS:

15 Q I'm sorry. You didn't say whether the taller guy was
16 clean shaven? You didn't say whether he had a beard? I'm
17 sorry.

18 A No.

19 Q You can answer?

20 A No.

21 Q Didn't say whether he had a beard?

22 A No.

23 Q Didn't say if he had a mustache?

24 A No.

25 Q Didn't say whether he had tattoos?

State v Hardin pretrial Sims - Cross 2/25/15 192

1 A No.

2 Q Or even the taller guy had scars?

3 A No.

4 Q So the only description you gave that day of the tall
5 guy in your statement was that he had a black shirt, khaki
6 pants, and maybe white shoes?

7 A Yes.

8 Q Now, that robbery must have been pretty scary?

9 A Yes

10 Q And you thought you might get shot?

11 A Yeah.

12 Q And since the robbery, you spoke with some folks about
13 it; right?

14 A Yes.

15 Q You've spoken to police?

16 A Yes.

17 Q You've spoken to family?

18 A Yes.

19 Q You've spoke to your father, especially? He's an
20 attorney, right?

21 A Yes.

22 Q Have you spoken with the prosecutor's office?

23 A Yes.

24 Q Have you spoken to other people who were in the store
25 during the robbery?

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1 A Yes.

2 Q And you were allowed, if you chose, to go over the
3 evidence as your rights as a victim; right?

4 A Yes.

5 Q Did you go over that?

6 A Go over the evidence?

7 Q Yes, sir. That the State has?

8 A Yes.

9 Q So you're aware of the other statements from the other
10 victims?

11 A No, I'm not.

12 MR. STEVENS: Court's indulgence.

13 BY MR. STEVENS:

14 Q One last thing, Mr. Sims. You were shown -- actually
15 two other things. I apologize. One, you were shown a
16 photograph later that day by police. It was on a cell phone,
17 you said?

18 A Yes.

19 Q And the cell phone was being held by someone you knew to
20 be an officer?

21 A Yes.

22 Q Okay. And there were no other pictures on that cell
23 phone that you saw?

24 A No.

25 Q Okay. And this is the photograph that you saw, State's

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1 pretrial Exhibit 2; right?

2 A Yes.

3 Q And you'd agree that there is an officer in the
4 background behind Mr. Archie Hardin's picture; correct?

5 A Yeah.

6 Q And you also agree that in that picture, Mr. Archie
7 Hardin has facial hair; correct?

8 A Yes.

9 Q One last thing, sir. I think I'm through then. A few
10 days later on the 21st, you were shown a photographic lineup
11 by the police; correct?

12 A Yes.

13 Q Okay. That was by Sergeant Stokes?

14 A Yes.

15 Q Okay. And you were shown a lineup with six pictures on
16 it; right?

17 A Uh-huh (affirmative).

18 Q Okay.

19 MR. STEVENS: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. STEVENS:

22 Q Look at it.

23 A (Reviews exhibit)

24 Q Does this look familiar?

25 A Yes.

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1 Q Okay. And you also filled out a form along with it;
2 correct?

3 A Yeah.

4 Q Okay. Does this look familiar?

5 A Yes.

6 Q Okay. Can you just state who that is for us? You don't
7 have to read it off, just what it is?

8 A It's the -- it's saying that this is the person.

9 Q Okay. Thank you. Now, I'm going to hand you that one
10 more time as far as the six-pack lineup. And you actually
11 circled on of the individuals on it; correct?

12 A Yes.

13 Q And it's number five; right?

14 A Yes.

15 Q And you put your initials next to it?

16 A Yes.

17 Q And you'd agree that that person does not look like
18 Archie Hardin; correct?

19 A No, he doesn't.

20 Q Okay. But you're certain that was one, positive that's
21 one of the guys that was there; right?

22 A Yes.

23 Q Okay. But you didn't have a chance to see the other
24 guy's face; right?

25 A I saw his face coming in.

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1 come back we was going to address it as if he was a secret
2 shopper.

3 Q Okay. And did he come back again to your knowledge?

4 A Yes, ma'am.

5 Q And tell us about that?

6 A That's when the whole scenario began. He came in, came
7 in front of the desk, gun drawn. He got behind Thomas, like,
8 instantly, another guy, a gentleman, came in behind him who
9 got behind me and marched us to the back. Once in the back,
10 we were forced to the ground, told to lay down, don't look
11 up, don't say nothing. Duct taped.

12 Q And approximately how long did the robbery last?

13 A It felt like a lifetime but specific time, probably like
14 ten, fifteen minutes.

15 Q Now, I'm going to show you -- do you recall writing a
16 statement?

17 A Yes, ma'am.

18 Q For the police that day?

19 A Yes, ma'am.

20 Q And when you wrote that statement, do you recall giving
21 a description of the clothing items that you thought the
22 Defendant was wearing?

23 A I can't recall.

24 Q If I showed you your statement, would that refresh your
25 recollection?

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1 A Yes, ma'am.

2 Q I believe it's specifically at page two.

3 A Okay. Yes, ma'am.

4 Q And what did you say that subject one was wearing?

5 A A gray undershirt, with a black shirt over it. A
6 baseball cap with black glasses, khaki pants.

7 Q Okay. And when you were describing subject one. I know
8 you had subject one and subject two?

9 A Yes, ma'am.

10 Q Who were you referring to as subject one?

11 A Mr. Archie.

12 Q The Defendant?

13 A Yes, ma'am.

14 Q Okay. And that was the gentleman that you recognized as
15 coming in and speaking to you at the store?

16 A Yes, ma'am.

17 Q A little while later on while police were investigating,
18 did you have a chance to see a picture from law enforcement?

19 A Yes, ma'am.

20 Q And what did they tell you about that picture?

21 A They just said can you identify this person?

22 Q Okay. And when they asked you that -- well, did they
23 show you the picture? What did they show you the picture on?

24 A A cell phone.

25 Q Okay. And were you by yourself or were you with the

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1 other victims when you looked at this picture?

2 A I was off to the side, near -- I was near the last
3 store. They called me over and, you know, asked me could I
4 recognize this person.

5 Q Okay. So you were off by yourself when the --

6 A Yes. Yes, ma'am.

7 Q And I'm going to show you State's Exhibit 2. Do you
8 recognize that photo?

9 A Yes, ma'am.

10 Q And what is that photo?

11 A A photo of the Defendant.

12 Q Okay. And when you saw that photo on the cell phone,
13 were you able to immediately recognize him?

14 A Yes, ma'am.

15 Q And what were you able to recognize him as?

16 A The person who robbed T-Mobile.

17 Q And how certain are you that this is the person that
18 robbed you that morning?

19 A A hundred percent.

20 MS. CORNWELL: No further questions, Your Honor.

21 THE COURT: Cross-examination.

22 MR. STEVENS: Thank you, Judge. The Court's
23 indulgence.

24 JARRON WEAVER - CROSS-EXAMINATION

25 BY MR. STEVENS:

State v Hardin pretrial Weaver - Cross 2/25/15 203

1 Q How are you, Mr. Weaver?

2 A All right.

3 Q My name is Breen Stevens. Along with Mr. Mellard I
4 represent the accused in the matter, Mr. Archie Hardin.
5 Okay. I understand you went over with the State on direct.
6 I'm just going to touch on some of the similar stuff and get
7 into a few more details. Okay?

8 A Okay.

9 Q Okay. You said you were working at T-Mobile that day on
10 May 16th?

11 A Yes, sir.

12 Q Okay. About what time did you get to work that day?

13 A About 9:30, 9:45, around that range.

14 Q Okay. I understand. And how long had you worked at
15 that T-Mobile?

16 A Almost a year. It was probably, soon to be a year.

17 Q Okay. I see. And let's talk about the robbery itself
18 because obviously you gave police a statement regarding that?

19 A Okay.

20 Q Okay. So you gave them a written statement; correct?

21 A Yes, sir.

22 Q The State already showed you what it was.

23 MS. CORNWELL: This one.

24 BY MR. STEVENS:

25 Q I'll get another copy up here for you if you'd like.

State v Hardin pretrial Weaver - Cross 2/25/15 204

1 Now, the statement, you actually made it on that same date,
2 May 16th; right?

3 A Yes, sir.

4 Q Okay. And --

5 MR. STEVENS: May I approach, Judge, just so I can
6 show it to him?

7 THE COURT: You may.

8 BY MR. STEVENS:

9 Q I'd just like to look up here, up here on the first
10 page.

11 A Okay.

12 Q It doesn't really have a time that they actually got it
13 from you; right?

14 A No, no time.

15 Q Okay. But it was given at the T-Mobile Store; right?

16 A Yes.

17 Q It's got your name on it?

18 A Uh-huh (affirmative).

19 Q Height, weight. And that's the statement you gave to
20 police; right?

21 A Yes, sir.

22 Q Okay. It's roughly what, about three pages long?

23 A Yeah. Well, two and the signature.

24 Q On the signature page. Now, did you write that or did
25 an officer write it for you?

State v Hardin pretrial Weaver - Cross 2/25/15 205

1 A I wrote it. My handwriting.

2 Q Okay. And, again, you gave it the same day as the
3 robbery; right?

4 A Yes, sir.

5 Q All right. And when you wrote, I assume you wanted to
6 make sure the robbers were caught; right?

7 A Correct.

8 Q Okay. So you put all the information in that you felt
9 would help police catch the robbers?

10 A Correct.

11 Q Okay. And just quickly, no doubt about it, there were
12 two robbers involved; right?

13 A Correct.

14 Q Okay. Now in your statement you said that the first guy
15 came in. And you call him John Doe one; right?

16 A Right.

17 Q Okay. And he talked about an iPad for his daughter?

18 A Uh-huh (affirmative).

19 Q Okay. And you were the one that spoke with him about
20 that; right?

21 A Yes, sir.

22 Q Okay. And you told that, you know, he left the store
23 because he wanted to run his credit; right?

24 A Right.

25 Q Okay. He got his wallet out looking for ID?

State v Hardin pretrial Weaver - Cross 2/25/15 206

1 A Uh-huh (affirmative).

2 Q All right. And then he left again?

3 A Correct.

4 Q Okay. And under your statement, John Doe one came back
5 in with John Doe two?

6 A Correct.

7 Q Okay. That's when they got inside and John Doe rushed
8 at you?

9 A Right.

10 Q John Doe two; right?

11 A Yes, sir.

12 Q And you said that John Doe two had a small gun with a
13 round chamber?

14 A Uh-huh (affirmative).

15 Q Okay.

16 THE COURT: Mr. Weaver, if you could say yes or no
17 rather than --

18 MR. WEAVER: Yes, ma'am.

19 THE COURT: Thank you.

20 BY MR. STEVENS:

21 Q Okay. And John Doe two basically told you -- your swore
22 in your statement is, told you to shut up and then took you
23 and Mr. Sims to the back of the store?

24 A Yes, sir.

25 Q Okay. And according to your statement, it's Mr. John

State v Hardin pretrial Weaver - Cross 2/25/15 207

1 Doe two that slammed you to the ground and told you to hold
2 your hands out?

3 A Yes, sir.

4 Q Okay. And he taped you up; right?

5 A Yes, sir.

6 Q Now, were you hands taped in front of you or behind you?

7 A Behind.

8 Q Behind you, okay. And according to your own statement,
9 you really couldn't see what happening because your face was
10 pointed down towards the carpet?

11 A Correct.

12 Q But you did hear the robbers yelling something; right?

13 A Yes.

14 Q About getting phones?

15 A Uh-huh (affirmative). Yes, sir.

16 Q Okay. And then the robbers got a box?

17 A Correct.

18 Q Filled it with phones?

19 A I assumed it was phones.

20 Q And you did give a statement about what John Doe one was
21 wearing; right?

22 A Correct.

23 Q Okay. You said he was wearing a gray undershirt?

24 A Correct.

25 Q With a black shirt over that gray undershirt?

State v Hardin pretrial Weaver - Cross 2/25/15 208

1 A Correct.

2 Q Okay. And your statement indicates he had a black
3 baseball cap?

4 A Correct.

5 Q And black glasses?

6 A Correct.

7 Q And khaki pants; right?

8 A Correct.

9 Q Okay. And you're sure about that; right?

10 A Yes, I am.

11 Q That's why you put it your statement; correct?

12 A Yes, sir.

13 Q And you're certain that statement's true; right?

14 A Yes, sir.

15 Q Okay. No lies whatsoever?

16 A No, sir.

17 Q Okay. Because it's what you remembered about the
18 robbery when you spoke with law enforcement?

19 A Correct.

20 Q Okay. Now, just to be sure, you didn't say how tall
21 John Doe one was; right?

22 A (Shakes head negatively)

23 Q Not in your statement?

24 A No, I didn't.

25 Q Okay. So you didn't say he was like 5'10" or 6'4" or

State v Hardin pretrial Weaver - Cross 2/25/15 209

1 anything?

2 A No, no.

3 Q You didn't give a hair color of John Doe one?

4 A No.

5 Q You didn't say he had gray hair, purple or anything?

6 A No.

7 Q Okay. The hair style that he had?

8 A No.

9 Q Okay. So dread locks or long hair, short hair, anything
10 like that; right?

11 A No, sir.

12 Q Didn't say if he was clean shaven or he had a beard?

13 A No, sir. No.

14 Q Okay. Didn't say if he had a mustache or anything;
15 right?

16 A No, sir.

17 Q Okay. You didn't say if he had tattoos or scars?

18 A No, sir.

19 Q Okay. So the only description that we have in your
20 statement that you gave to law enforcement of John Doe one is
21 that he had on a gray undershirt, a black shirt over that, a
22 baseball cap, black sunglasses and khaki pants; right?

23 A Yes, sir.

24 Q Okay. And since the robbery, you did have opportunity
25 to speak to people about the matter; right?

State v Hardin pretrial Weaver - Cross 2/25/15 210

1 A Yes, sir.

2 Q Okay. So you -- were you able to speak to the police
3 about it?

4 A Yes, sir.

5 Q Were you able to speak to your family about?

6 A Yes, sir.

7 Q Obviously, you're going to speak to the Solicitor about
8 it; right?

9 A Yes, sir.

10 Q You were able to speak with other people who were there
11 during the robbery; right?

12 A Yes, sir.

13 Q Okay. I just want to touch on something you said during
14 your direct in today's hearing?

15 A Okay.

16 Q You said that you're more of a face guy; right?

17 A Yes, sir.

18 Q Absolutely. And you said in your statement, you didn't
19 put anything about hair color, hair style or length or
20 anything; right?

21 A No, sir. I didn't.

22 Q Anything about facial hair?

23 A No, sir. I didn't.

24 Q And then you were shown a picture later that day as
25 well; right?

State v Hardin pretrial Weaver - Cross 2/25/15 211

1 A Yes, sir.

2 Q Okay. Now, with that picture, it was held by one
3 officer; right?

4 A Yes, sir.

5 Q And it was on that officer's phone; right?

6 A Yes, sir.

7 Q And it was right there at the store; right?

8 A Yes, sir.

9 Q Okay. And do you remember where in the store you were
10 at when he showed it to you?

11 A I was actually outside the store. I was outside the
12 store.

13 Q Do you remember who all was around it?

14 A It was so many people outside, I couldn't tell you who
15 exactly because I didn't know everybody out there.

16 Q Were any of your co-workers around at all?

17 A No.

18 Q Other officers around?

19 A Yes.

20 Q Okay. And the State showed you State's Exhibit 2 for
21 pretrial purposes that picture; correct?

22 A Yes, sir.

23 Q And in that picture, do you see any facial hair on that
24 individual?

25 A Not really. You know you can tell he had, you know --

State v Hardin pretrial Weaver - Cross 2/25/15 212

1 MR. STEVENS: May I approach, Judge?

2 THE COURT: You may.

3 BY MR. STEVENS:

4 Q Here you go. Hold onto that and take a better look.

5 A You can tell a mustache, look like a goatee.

6 Q Right. Now, just to back up a little bit, when you were
7 actually speaking with this other individual, John Doe one --

8 A Uh-huh (affirmative).

9 Q -- about perhaps purchasing an iPad?

10 A Right.

11 Q How close were you to him?

12 A About like, not even a foot away.

13 Q Okay.

14 A You know, pretty close.

15 Q And still no description of facial hair --

16 A No, I didn't. No.

17 Q Okay. And although he is wearing khaki pants, you'd
18 agree that there's no black shirt over a gray undershirt that
19 he's wearing in this picture; correct?

20 A Correct.

21 Q Okay. And you'd agree that he does have facial -- now
22 that you have a chance to look at it more closely --

23 A Uh-huh (affirmative).

24 Q -- he does indeed have facial hair; correct?

25 A Right.

State v Hardin pretrial Berry - Direct 2/25/15 213

1 Q And, also, one last thing. In that picture behind Mr.
2 Hardin in this picture, there's a uniformed police officer
3 standing right behind him; right?

4 A Correct.

5 Q Okay. Thank you, Mr. Weaver.

6 THE COURT: Any redirect?

7 MS. CORNWELL: No, Your Honor.

8 THE COURT: You may step down, Mr. Weaver. Thank
9 you.

10 You may call your next witness.

11 MS. CORNWELL: Thank you, Your Honor. The State
12 would call Kirstie Berry,

13 (WHEREUPON, Kirstie Berry was sworn
14 to tell the truth.)

15 THE CLERK: Thank you, you may have a seat. And
16 please state your name again for the record.

17 MS. BERRY: Kirstie Berry.

18 THE COURT: Your Witness.

19 MS. CORNWELL: Thank you, Your Honor.

20 KIRSTIE BERRY - DIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q Ms. Berry, just like I told Mr. Weaver, you've been here
23 Monday and all day today, so I'm going to jump right into it?

24 A Okay.

25 Q You were working at T-Mobile on May 16th of 2014?

State v Hardin pretrial Berry - Direct 2/25/15 214

1 A Yes, ma'am.

2 Q And how many days did your work for T-Mobile when y'all
3 had this --

4 A It was my third day.

5 Q So what were you scheduled to do that day?

6 A Just training videos in the back.

7 Q And originally at 10:00 when Mr. Weaver and Mr. Sims
8 were having conversations with the Defendant, you weren't in
9 the front of the store, were you?

10 A No. No, ma'am. I wasn't in the store at all. I was
11 out back smoking a cigarette.

12 Q So when is the first time that you were able to see the
13 Defendant in this case?

14 A When I was being snatched back through the door telling
15 me to get down on the ground.

16 Q Okay. And tell the Court about that?

17 A I was outside smoking. I was on the phone. I remember
18 hanging up from my phone conversation. I was playing
19 actually a game on my phone. So I had it and, you know,
20 Jarron, the big prankster, I thought he was jerking me back
21 through the door. I turned around, it wasn't Jarron. I
22 mean, I didn't even have time to flip my cigarette. He
23 grabbed it from me, told me to get the F down. I had back
24 surgery a year ago. So, I mean, I couldn't get down as fast
25 as I guess everybody else did. I felt something solid hit

State v Hardin pretrial Berry - Direct 2/25/15 215

1 the back of my head. I was laying down staring underneath
2 the bathroom door. Put your arms behind your head. He was
3 taping it. He taped my feet and then he was gone.

4 Q Okay. And when he came outside and grabbed you, were
5 you able to get a good look at him?

6 A Yes, ma'am. Because whenever he snatched me, I had to
7 turn directly, face-to-face with him.

8 Q And how far away from him were you when he snatched you?

9 A Less than a foot.

10 Q Okay. So pretty close to him?

11 A Uh-huh (affirmative).

12 Q And were you able to recall what he was wearing?

13 A Yes, ma'am.

14 Q What was he wearing?

15 A He had a long sleeved shirt on, lavender in color, with
16 a black tee shirt over it. And in there blue jeans. It was
17 jean material.

18 Q Okay. Anything else that he was wearing?

19 A A hat and sunglasses.

20 Q And do you recall writing a statement for the police?

21 A Yes, ma'am.

22 Q Would it help refresh your recollection of any other
23 items that you described if you looked at that statement?

24 A Yes, ma'am.

25 MS. CORNWELL: May I approach, Your Honor?

State v Hardin pretrial Berry - Direct 2/25/15

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1 THE COURT: You may.

2 BY MS. CORNWELL:

3 Q And in that statement, what else is he wearing?

4 A Mechanics gloves, which is the first thing I seen before
5 I seen him.

6 Q Okay. Thank you. And so your interaction with the
7 Defendant is brief; correct?

8 A Correct.

9 Q But in that brief time, were you able to get a look at
10 the Defendant?

11 A Yes.

12 Q And after the robbery, you were working with law
13 enforcement. Did you have an occasion to view a picture?

14 A Yes.

15 Q And what was that picture on?

16 A A cell phone.

17 Q And were you able to identify that picture?

18 A I was.

19 Q I'm going to show you what's been marked as State's
20 Exhibit 2. Do you recognize that?

21 A Yes, ma'am.

22 Q And what is that?

23 A The picture of the robber.

24 Q Okay. And when officers showed you this picture, did
25 they tell you anything about the picture before they showed

State v Hardin pretrial Berry - Direct 2/25/15 217

1 it to you?

2 A No. The only thing they asked me, they said can you
3 identify this as one of the guys that robbed the store. And
4 he showed it to me. And as soon as he showed it to me, I
5 said, yes, he's changed clothes but that is the guy who
6 robbed the store and the one who tied me up.

7 Q And you were able to immediately identify him?

8 A Yes.

9 Q And how certain are you that the man in the picture is
10 the man that assaulted you and robbed the T-Mobil Store?

11 A A hundred percent.

12 Q When you were shown this picture, were you shown this
13 picture with the rest of the victims or had you been taken
14 aside?

15 A I was inside the store, away from everybody else. And I
16 was actually sitting down in the front of the building by
17 myself.

18 Q And do you see the person that robbed you in court
19 today?

20 A Yes, ma'am.

21 Q Where is he?

22 A On that side of the room.

23 Q Can you describe what he's wearing?

24 A A white shirt, suit.

25 MS. CORNWELL: Let the record reflect that the

State v Hardin pretrial Berry - Cross 2/25/15 218

1 witness pointed out the Defendant.

2 Q Thank you, Ms. Berry. Please answer any questions
3 Defense counsel may have.

4 THE COURT: Cross-examination.

5 MR. STEVENS: Thank you, Judge.

6 KIRSTIE BERRY - CROSS-EXAMINATION

7 BY MR. STEVENS:

8 Q Good afternoon, Ms. Berry. My name is Breen Stevens. I
9 know you've already heard this before --

10 A Right.

11 Q -- because you're in here with all the other victims in
12 the case, too. Obviously, I'm Breen Stevens representing the
13 accused, along with my co-counsel Doug Mellard. Okay. Just
14 to touch base, you said you were working May 16th; right?

15 A Yes.

16 Q Of 2014. And you said it was your third day on the job;
17 right?

18 A Yes.

19 Q Okay. So you were still in training?

20 A Yes.

21 Q Okay. And do you remember about what time it was when
22 you found out that you were getting robbed?

23 A I arrived at 10:00, right at 10:00 because I wasn't on
24 the floor yet. I just was to be there when they opened. It
25 must have been fifteen, twenty minutes after we got there.

State v Hardin pretrial Berry - Cross 2/25/15 219

1 Q Okay. All right. Now, obviously you gave a statement
2 to law enforcement after they arrived; right?

3 A Yes.

4 Q And that was the same day; right?

5 A Yes.

6 Q Okay. Now, let me just show you what I'm going to refer
7 to as we have this conversation?

8 MR. STEVENS: Judge, may I approach?

9 THE COURT: You may.

10 MR. STEVENS: Thank you, ma'am.

11 BY MR. STEVENS:

12 Q Okay. Here you go. Does this look like the statement
13 that you gave to law enforcement that day?

14 A Yes, sir.

15 Q Okay. It's got your name at the top?

16 A Yes, sir.

17 Q And it's got the date on there as well?

18 A Yes.

19 Q Also the place where it was given; right?

20 A Yep.

21 Q That's T-Mobile; right?

22 A Yes.

23 Q Okay. I'm sorry. May I have that for one moment,
24 please?

25 A (Hands document to counsel)

State v Hardin pretrial Berry - Cross 2/25/15 220

1 Q Thank you. Okay. Now, it's roughly three pages long;
2 right?

3 A Yes, sir.

4 Q Okay. And did you write your statement or did police
5 write it for you?

6 A I wrote it.

7 Q You wrote it. Okay, so this is your handwriting; right?

8 A Yes.

9 Q And that is your signature at the end; right?

10 A Yes.

11 Q Okay. And, again, you gave the statement the same day
12 as the robbery?

13 A Yes.

14 Q And again, I assume when you wrote it you wanted to make
15 sure the robbers were caught; right?

16 A Yes, sir.

17 Q So you put down all the information in there that you
18 felt would help police catch the robbers; right?

19 A They told us to write a description of what happened?

20 Q Excellent. Okay. And just so we're clear, you saw two
21 robbers in the store?

22 A Correct.

23 Q Okay. Now, in your statement also today, you said that
24 you were outside smoking; right?

25 A Yes, sir.

State v. Hardin pretrial Berry - Cross 2/25/15 221

1 Q Okay. And that's when a black arm and mechanics glove
2 pulled you inside?

3 A Yes, sir.

4 Q And he hit you on your face; right?

5 A Yes.

6 Q Okay. And he hits you in the back of the head. And
7 today you said it was something --

8 A It was solid.

9 Q It was solid. Okay. Now, your statement said it was a
10 gun. Just for clarity, did you see it at the time? You know
11 it was a gun that hit you or you just presumed it was a gun?

12 A You could tell it wasn't a hand. It was something
13 solid.

14 Q Okay. Something solid?

15 A Yes.

16 Q I got you. And I bet you saw stars?

17 A Uh-huh (affirmative).

18 Q Felt kind of woozy?

19 A Yes, sir.

20 Q You bet you. But you didn't lose consciousness; did
21 you?

22 A No, I did not.

23 Q But you did end up on the ground; right?

24 A Yes.

25 Q And the person with the gun told you not to look at him?

State v Hardin pretrial Berry - Cross 2/25/15 222

1 A Correct.

2 Q Okay. And I imagine you did what he said.

3 A Exactly.

4 Q And then the robbers wrapped your hands up with duct
5 tape?

6 A Yes.

7 Q Feet too?

8 A Yes.

9 Q Did they have your hands in front or behind you?

10 A Behind me.

11 Q Behind you. Okay. And you're lying face down on the
12 floor; right?

13 A Yes.

14 Q Now, at some point you're able to look and see at least
15 Jarron Weaver; right?

16 A Yes.

17 Q Okay. And he was also lying face down on the floor?

18 A Yes.

19 Q And so you asked him what to do; right?

20 A I told him that I feel like I could run. And he said be
21 still.

22 Q And you guys were also still tied up too; right?

23 A Yes.

24 Q So you were able at, safe to say, lay there face down;
25 right?

State v Hardin pretrial Berry - Cross 2/25/15 223

1 A Right.

2 Q Okay. Now, you do give descriptions of the assailants
3 in your statement to police; right?

4 A Yes, sir.

5 Q Okay. And you wrote that the man who snatched me was
6 wearing a long sleeved white shirt, black short sleeved
7 shirt, mechanics gloves, white shoes and he was a black male
8 about fifty; correct?

9 A Correct.

10 Q Okay. And you wrote the other robber was a younger guy
11 wearing blue jeans, a black hat, pantyhose and a black shirt?

12 A Yes.

13 Q Okay. And you're sure about that?

14 A Yes.

15 Q That's why you put in your statement; right?

16 A Correct.

17 Q And that's -- again, the statement is true to your
18 knowledge, right?

19 A Yes.

20 Q No lies?

21 A No.

22 Q All right. And it's what you remembered about the
23 robbery and told law enforcement that day; right?

24 A Yes.

25 Q Okay. Now, in your statement you didn't say how tall

1 the guy was; right?

2 A I know he was taller than I was.

3 Q Okay. But in your statement there's no description of
4 that right?

5 A No, we wasn't told to give a description of who robbed
6 us. They told us to give a series of events of what happened
7 that day.

8 Q Okay. Okay.

9 MR. STEVENS: Judge, may I approach?

10 THE COURT: You may.

11 BY MR. STEVENS:

12 Q Okay. On the first page, you'd agree that they asked
13 you a question whether you saw the other assailant; right?

14 A Yes.

15 Q Okay. And you indicated that, yes, you did. The person
16 that snatched you and then that's where you gave your
17 description; right?

18 A Yes.

19 Q We've already gone over it; right. And then on the
20 second page toward the end where they ask you if there's
21 anything else you remember hearing or seeing during or after
22 the incident, that's where you indicate your knowledge about
23 the younger guy. What he looked like; right?

24 A Yes.

25 Q And you'd agree you didn't give any height descriptions;

State v Hardin pretrial Berry - Cross 2/25/15 225

1 right?

2 A Yes.

3 Q In your two descriptions of the assailants, you didn't
4 give any hair color, whether somebody had gray hair or black
5 hair or purple?

6 A No.

7 Q Okay. Didn't give any hair style?

8 A No.

9 Q Didn't give short, long?

10 A No.

11 Q Didn't say whether the person was clean shaven or had a
12 beard or mustache or anything?

13 A No.

14 Q No scars or tattoos or anything anywhere?

15 A The only remember was he was tall.

16 Q Okay. Now, again, that robbery did have to be pretty
17 scary?

18 A Yeah.

19 Q Okay. And you probably thought you might get shot?

20 A I wasn't worried about getting shot. I was worried
21 about dying.

22 Q Well, one might think getting shot would lead to that;
23 right?

24 A Maybe.

25 Q I mean, it happened pretty quickly; right?

State v Hardin pretrial Berry - Cross 2/25/15 226

1 A Yes.

2 Q Okay. About how long do you remember the incident
3 taking?

4 A About ten, fifteen minutes.

5 Q Okay. And, again, since that robbery you did have a
6 chance to speak to others about it; correct?

7 A Yes.

8 Q Okay. Did you ever speak to the police about it?

9 A Yes.

10 Q Did you ever speak with your family about it?

11 A Yes.

12 Q With the prosecutors about it?

13 A Yes.

14 Q And you even had a chance to speak to other people who
15 were involved; correct?

16 A Yes.

17 Q And your co-workers and all?

18 A Yes, sir.

19 Q Okay. Now, what I'd like to do right now is just touch
20 on the picture that they showed you, okay?

21 A Okay.

22 Q Now, you said it was a single officer who showed you the
23 picture; correct?

24 A Yes.

25 Q And it wasn't like a six-pack photographic array or

State v Hardin pretrial Berry - Cross 2/25/15 227

1 anything like that; right?

2 A No.

3 Q Okay. And it wasn't like any -- you might see in the
4 old movies where you see six people standing up in a room and
5 you standing on the other side with the lights dark. Nothing
6 like that?

7 A No.

8 Q All right. Okay. There was one officer standing there;
9 right?

10 A Yes.

11 Q And he had his cell phone, had the photograph on the
12 cell phone; right?

13 A Yes.

14 Q Okay. And this is the single photograph that you were
15 shown; correct?

16 A Yes.

17 Q Now, in this single photograph, you'd agree that the
18 clothes are different than what you described; right?

19 A Yes.

20 Q Okay. And you'd also agree that he does have facial
21 hair; correct?

22 A (Witness pauses)

23 Q If you have to look closer. Here you go?

24 A Yes.

25 Q Were you able to see that when he showed you the phone

State v Hardin pretrial Berry - Cross 2/25/15 228

1 at the time or no?

2 A I mean, it was a pretty big phone screen but that's the
3 guy who robbed us. I was able to identify him, yes.

4 Q I understand. But at the time when he showed you, were
5 you able to see facial hair?

6 A Not really.

7 Q Okay. I understand. Now, you'd agree that the man
8 standing behind Mr. Hardin in this picture is a uniform
9 police officer; correct?

10 A Yes, sir.

11 Q Okay.

12 MR. STEVENS: Court's indulgence.

13 Q Thank you, Ms. Berry.

14 MR. STEVENS: No further questions, Judge.

15 THE COURT: Any redirect?

16 MS. CORNWELL: No, Your Honor.

17 THE COURT: You may call your next witness.

18 MS. CORNWELL: The State would call Investigator
19 Wade.

20 (WHEREUPON, Darius Wade was sworn to
21 tell the truth.)

22 THE CLERK: Thank you. You may have a seat.
23 Please state your name again for the record.

24 MR. WADE: Did you say state my name?

25 THE CLERK: State your name again for the record.

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1 MR. WADE: Darius Wade.

2 THE COURT: Your witness.

3 MS. CORNWELL: Thank you, Your Honor.

4 DARIUS WADE - DIRECT EXAMINATION

5 BY MS. CORNWELL

6 Q Investigator Wade, where are you currently employed?

7 A The Columbia Police Department.

8 Q And what is your position and rank at Columbia Police
9 Department?

10 A I'm an investigator assigned to violent crimes against
11 persons, assigned as the U.S. Marshall's Liaison to the
12 Fugitive Task Force for South Carolina.

13 Q And in that capacity, do you know Corporal Leonard Cain?

14 A Yes, I do.

15 Q How do you know Corporal Cain?

16 A We're assigned to the same task force out of the
17 Columbia Office, yeah.

18 Q And for purposes of this pretrial hearing, I'm going to
19 just kind of jump right into things. In that capacity, did
20 you have contact with Corporal Cain on May 16th of 2014
21 regarding an armed robbery that occurred at Orangeburg?

22 A Yes, I did.

23 Q Okay. And did you assist Corporal Cain in that
24 investigation?

25 A Yes, I did.

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1 Q And in that assistance were you with him tracking an
2 iPad?

3 A Yes, I was.

4 Q And eventually did that iPad lead you to an apartment
5 complex in Columbia?

6 A Yes, it did.

7 Q And can you tell the Court about what happened when you
8 went to the apartment complex or why you went to the
9 apartment complex?

10 A We went to the apartment complex after we received the,
11 I guess, the iPad information from -- the way I was explained
12 an iPad was taken in a robbery. And the owner of the iPad,
13 they had -- they was using the Find my iPhone iPad App. And
14 the iPad was showing it was in Columbia. And they were
15 relaying the information from where the iPad was to the
16 current location, but there was a delay between two different
17 people from where we were getting our information at. So
18 Corporal Cain actually got the username and password
19 information and give it to me. And I used my iPad and
20 actually logged into the victim's account. And I was able to
21 locate -- on the Find My iPad on my iPad, I was able to
22 locate and to see exactly where that iPad was.

23 Q Okay. And while y'all were searching the area, were you
24 also given any information as to a description of the
25 vehicle?

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1 A Yes, ma'am. They gave me a description of the vehicle.

2 Q And what was that description?

3 A I can't recall off-the-top-of-my-head.

4 Q And do you remember going over to the apartment complex
5 where you saw the iPad?

6 A Yes.

7 Q And you saw that -- you were personally on that screen
8 is that what you just testified to?

9 A Yes. Yes, I did.

10 Q Thank you. I apologize. I'm getting ahead of myself a
11 little bit. Do you have knowledge of the Locate My iPad app?

12 A Yes. I actually have -- my city phone is a iPhone. I
13 have a iPhone, an iPad and my wife and kids, they all have
14 iPads and iPhones also.

15 Q Have you had to use the locate my iPad app before?

16 A Yes. My daughter, she actually lost her iPhone inside
17 the Columbiana Mall one time and I actually used it. And we
18 were able to use it and play the sound reel to find the
19 iPhone in the bathroom where she left it at.

20 Q Okay. So you're pretty familiar with how the
21 application works from your experience?

22 A Yes.

23 Q And once you were able to see it on your iPad, where the
24 victim's iPad was located, is that when you went to the
25 apartment complex?

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1 A Yes.

2 Q Tell the Court what you saw when you drove up to the
3 apartment complex?

4 A When I drove up to the apartment complex from where the
5 dot showing was by the building, we were driving around and
6 saw the vehicle matching the description that was given to me
7 by Corporal Cain. The driver's side door was actually open
8 on the vehicle. No one was actually inside the vehicle. I
9 then noticed someone standing, looks closing and locking the
10 door of the apartment we eventually went into with the
11 consent to search. And that person was closing the door. At
12 that time, I got on my radio and had told the other units
13 that I located the vehicle and that the door was open. And
14 when I went to turn around in the parking lot to actually get
15 a better view so I could wait for somebody to come back to
16 the vehicle, since the vehicle door was still open. So that
17 lead me to believe that the person was either -- they ran
18 right into an apartment and was coming back and wasn't just
19 going to leave the vehicle unsecure like that. At that time,
20 by the time I turned around and came back, the Defendant was
21 actually getting in the vehicle at that time and I made
22 contact with him.

23 Q And when you made contact with the Defendant, did you
24 ask him whose car it was?

25 A Yes, I did.

2 A Yes. He said it was his car.

5 A I can't remember that.

8 A Yes.

12 (State's Exhibit No. 5, photo, was
13 marked and entered.)

15 BY MS. CORNWELL:

17 A Yes.

19 A The dark in color, looks like Toyota.

22 A Yes.

24 A A dark in color four-door Toyota.

229

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1 claimed ownership of the car?

2 A Yes.

3 Q What happened at that point?

4 A I asked him did he live here. He said, no, he was
5 actually just visiting a friend at that apartment. I told
6 him where I saw him. And he said he was visiting a friend
7 and he was knocking on the door and no one ever came to the
8 door and no one's home.

9 Q And through your investigation were you able to confirm
10 whether that story was true or not?

11 A Yes, I was able to confirm that he actually was lying to
12 me. When I rolled by, I was able to see that the door of the
13 apartment when he was actually open when he was in the, with
14 the -- he was actually pulling the door closed. So I knew at
15 that time he was actually lying to me. And he said he didn't
16 have a key inside his possession. At that time, for my
17 safety and his safety, I ask him if he mind if I pat him down
18 and see if he had any weapons or anything on him. I actually
19 patted him down. He didn't have any weapons or anything on
20 him at that time. So I continued to talk to him. There was
21 another officer that was standing probably a few feet behind
22 him at that time. And someone started talking to that
23 officer. I think they were saying, well, we can go to the
24 management and see if we can actually, see who actually owns
25 that apartment at that time. And while those officers were

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1 talking with the Defendant, he actually tried to -- in his
2 right hand -- he actually had a key in the right hand. He
3 actually attempted to throw the key in the grass behind the
4 vehicle, off to the side.

5 Q Okay. And did you talk to the Defendant about what you
6 were looking for?

7 A Yes. I gave him a description of a male that we were
8 looking for and an iPad that I told him we were looking for.

9 Q Okay. And at that point while you're talking to him. I
10 know you said you patted him down, but was he in custody at
11 that time?

12 A No, ma'am, he wasn't.

13 Q And at some point did you get a consent to search his
14 home?

15 A Yes. I explained to him exactly what we were looking
16 for, that we were looking for that gentleman that walks with
17 a limp. He said he didn't know. Once we got the key, once I
18 got the key, he said, yes, that was his house. And he said
19 no one was in there. I asked him could he verify that at
20 that time? He said he would be. I told him we were only
21 looking for the iPad and to see if that individual was
22 actually in the house.

23 Q And was he okay with that?

24 A Yes, he was.

25 Q At that time, did you have him fill out any forms?

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1 A Yes, a voluntary consent to search form.

2 Q I'm going to show you what's already been marked as
3 States Exhibit 1. Do you recognize that?

4 A Yes, I do.

5 Q Okay. And what is that?

6 A It's the Columbia Police Department, voluntary consent
7 to search form.

8 Q Okay. And did you fill that form out yourself?

9 A Yes, I did.

10 Q Okay. And the description of property being sought,
11 what did you write in there?

12 A I said, description of property to be search for is
13 described as follows. It says B/M then has the number 5 with
14 a hash mark, then 10, and the 190 to dash 200. And then it
15 has walks with a limp. That describes -- as I explained it
16 to him, it describes a black male, approximately 5'10"
17 height, between a hundred and ninety to 200 pounds. And I
18 had -- and also under, a line under that it says, any stolen
19 property. In parenthesis it has iPad. And then in a
20 different pen handwriting it has any firearms, handgun, and
21 it have my initials underneath it.

22 Q And that different handwriting that you're showing a
23 different pen, is that also your handwriting?

24 A Yes, it is.

25 Q And when did you add that language?

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1 A It was actually after we located the stolen property
2 from the T-Mobile store in Columbia.

3 Q Okay. So you were outside at the car talking to the
4 Defendant?

5 A Yes.

6 Q You told him what you were looking for. You filled out
7 the form with the exception of the firearms stuff?

8 A Yes.

9 Q And asked if you could go and look in his apartment for
10 that iPad at the time; is that correct?

11 A Yes. I actually explained everything in the form to
12 him. I actually asked a few questions before I asked can he
13 read and write, at which time he did answer to me, yes, he
14 can read and write. As I read over the form, I actually
15 explained it to him, everything. And I asked him what was
16 the highest grade he completed. And he also say he have a
17 high school diploma.

18 Q Okay. And can you read what that form says?

19 A It says, I, Hardin, Archie, do hereby consent to the
20 search of my premises and/or automobile without a search
21 warrant by officers of the Columbia Police Department,
22 Columbia, South Carolina. These officers are authorized by
23 me to take from the premises and/or automobile letters,
24 papers, material and other property, which they desire. The
25 description of property to be searched is described as

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1 follows: we're looking for a black male, approximately 5'10",
2 190 to 200 pounds, walks with a limp. Any stolen property,
3 in parenthesis iPad. And it has any firearms, handgun, with
4 my initials underneath the gun part it says DSW. It says, I
5 am aware that any evidence obtained as a result of this
6 search can be used against me in a court of law. By a
7 signature below I understand at any time I can withdraw my
8 consent. This written permission is being given by me to the
9 above officers voluntarily and without any threats or
10 promises of any kind. And then it has person authorizing
11 consent to search. And it has Mr. Hardin's signature. And
12 then it has two witnesses. The first one is my signature,
13 which is the Darius S. Wade, and it has my badge number, my
14 payroll number for the Columbia Police Department, which is
15 20318. It also has the other officer, which is G. Key and it
16 has his payroll number, 22317.

17 Q Okay. So after you discussed this consent form with the
18 Defendant and he signed it, what did y'all do?

19 A We actually -- he -- at that time, he said there was
20 nobody in there and he said would he be allowed to go up to
21 the apartment while we actually go in there and look. And I
22 told yes, he would, because he could stop us at any time.

23 Q Okay. And when you first went in the apartment that
24 first time, what was the reason for initially going in the
25 apartment?

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1 A Because he lied to me initially and said that no one --
2 he didn't know whose apartment it was. And I actually did
3 see the door open. So I was assuming that someone else was
4 in the apartment at that time. So for my protection, my
5 safety and the safety of the other officers, I told them at
6 first he would just have to stand by the front door while the
7 officers go do a protective sweep of the residence to make
8 sure no one else is inside the residence.

9 Q Okay. And did you do that protective sweep?

10 A Yes, we did.

11 Q Were there any other people found in the residence?

12 A No, there weren't.

13 Q And while you were doing the protective sweep, did you
14 or any other officers see anything of evidentiary value in
15 the apartment?

16 A Yes. One of the officers that were there doing a
17 protective sweep in the living room, they actually saw was a
18 brown box containing several different types of cell phones.

19 Q Okay. And did you personally see that box as well?

20 A Yes, I did.

21 Q Okay. And I'm going to show you three photographs.
22 These are State's 24, 17 and 47. If you could look at those.

23 A (Reviews Exhibits)

24 Q And do you recognize those photos?

25 A Yes, I do.

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1 Q And looking at State's 24, can you describe that for the
2 Court?

3 A It's a picture of the living room. Off to the side of
4 the door would be -- on the left side of the photo, it's a
5 white box you can see in plain view. It looks like cellular,
6 boxes of cellular devices inside that box.

7 Q And State's 17, is that just a closer --

8 A Yes. It's a closer view of that box, right there by the
9 television in the middle of the room.

10 Q And then in State's 47, what is that?

11 A This is a box. This is a picture of two black book bags
12 and has an ironing board, some shoes and some shoe boxes that
13 has Nike on them.

14 Q Okay. And those other items were all in plain view when
15 you did the protective sweep; correct?

16 A Yes. The last photo was actually the bedroom off to the
17 left of the living room.

18 Q Okay. And after you did the protective sweep, did you
19 allow the Defendant to come inside?

20 A Yes, we did. We actually cleared off one of the couches
21 for him so he could, so he actually can go in there. At that
22 time, he actually told me he was thirsty and he wanted
23 something to drink. I was like, I don't know where your
24 drink is. So he told me where the cup was. And I asked him
25 did he want ice? And I actually made him a glass of ice

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1 water so he can drink it.

2 Q And after you got him the ice water and everything and
3 allowed him in the house, at that point in time, did you look
4 for the missing iPad?

5 A Yes. I actually -- on my device, I actually, because I
6 wasn't playing a sound on the iPad prior to us entering the
7 house because I didn't want the suspect to know that we were
8 actually tracking. So actually, after we were inside the
9 house, I actually hit play a sound so the iPad, the device
10 could actually make a sound inside. At which time, I wasn't
11 able to locate the iPad inside the house.

12 Q Okay. So you couldn't locate the iPad inside the house.
13 Did you still have the map up?

14 A Yes. The map was still up and it still was saying, was
15 actually still saying it was in close proximity to the
16 building. At which time I actually walked down the back of
17 the back stairwell of the apartment building and actually
18 started walking and hitting to play the sound. But at that
19 time, I could hear the sound coming from by the dumpster of
20 the, the dumpster right on the side of the building.

21 Q Okay. And I'm going to show you what's been marked as
22 State's Exhibit 30. Are those the dumpsters that you're
23 referring to?

24 A Yes, ma'am.

25 Q And in this picture, this gray car, is that the gray car

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1 that the Defendant claimed as his?

2 A Yes, it is.

3 Q And approximately how far away from those, from the car
4 are those dumpsters?

5 A About, I'd say about a hundred feet, two hundred feet.

6 Q Okay. So relatively close?

7 A Yes.

8 Q And when you were looking at the perimeter of the area,
9 were you able to locate the iPad?

10 A Yes. I was actually right behind the dumpster.
11 Actually, the sound, every time I played the sound for the
12 iPad, it's actually coming from, looks like it was wrapped
13 inside a plastic grocery bag at that time.

14 Q Okay. I want to show you what's been marked State's
15 Exhibit 5. Is that what you saw?

16 A Yes, it is.

17 Q Did you look inside that blue plastic bag?

18 A Actually I did not. I actually called our crime scene
19 person to come and cover it.

20 Q Okay. And after you called crime scene personnel to
21 come in, did they come in and photograph the evidence?

22 A Yes, she did.

23 Q And once y'all found the iPad, did you then do a search
24 of the apartment?

25 A Yes. After we had the -- after we saw the other cell

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1 phones in plain view, we actually conducted a search, at
2 which time we asked him whose stuff was in the box? He said
3 a friend had actually dropped it off, dropped the box, and
4 asked him if he could hold some things for him, prior to it.
5 And I asked him did he mind if we searched his friends
6 belongings and he said he didn't.

7 Q And you could see all of that in plain view?

8 A Yes.

9 Q And this conversation that you had with the Defendant
10 inside the apartment about the other friend and all of that,
11 did you write that in a report or anything?

12 A I did initially do a report.

13 Q Okay. And were you able to route that report to the
14 Solicitor's office?

15 A I was not. At the time our department was going through
16 a -- we have a computerized system called FDR. Because I'm
17 actually not on site, so I don't get all the updates. And
18 when I actually submitted my report at that time, it says
19 send to supervisor. And I usually just -- because I don't
20 use that system everyday. And when I logged into that
21 system, it had like a bunch of my reports that was rejected.
22 And they were in the middle of upgrading some of the system
23 so some of my reports were lost. And they wasn't able to
24 retrieve that report out of the database.

25 Q Okay. And you and I have spoken briefly about this

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1 Q All right. And you didn't even lay eyes on the iPad in
2 question at that time at all; right?

3 A (Witness pauses)

4 Q Neither did Corporal Cain?

5 A No.

6 Q And neither did whoever was reportedly tracking it;
7 right?

8 A I'm not sure.

9 Q Well, if you're tracking it and it says it's in Columbia
10 --

11 A Yeah, yeah, yeah.

12 Q But that's the claim, right?

13 A Yeah. Uh-huh (affirmative). Right.

14 Q And you said that you do have knowledge of using the
15 application; correct?

16 A Yes, I do.

17 Q Okay. But you don't know how the code actually works?

18 A No, I don't know how that iPad code works.

19 Q And you don't know the accuracy of cell towers, whether
20 you know, if it's a higher cell tower with more array, and it
21 might be more accurate versus one that's shorter and the
22 footprint, the accuracy is not -- you're not qualified
23 regarding cell tower engineering?

24 A No, but on the app, the more imprecise the location of
25 the iPad is, it'll give a bigger blue. It'll give a bigger

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1 blue dot and it has a lighter field. And as it -- the more
2 accurate, the dot will get smaller and darker.

3 Q Okay. And again, that's only from a user experience.
4 It's not from --

5 A Yes, that's from --

6 Q -- how it works, like, from the person who designed it;
7 right?

8 A No. That's from -- that, no.

9 Q And it's also not from an engineering perspective to how
10 accurate that an engineer could actually say how precise it
11 is?

12 A No, I can only go on my personal experience. You're
13 right.

14 Q And in this instance, and your personal experience, the
15 only time you were first able to locate the iPad in question
16 was outside the apartment complex; correct?

17 A That I actually laid eyes on it, yes.

18 Q Well, big and full. But this was the first you heard;
19 right?

20 A Yes.

21 Q And you said it was in a blue plastic bag?

22 A Yeah. I said a grocery bag. It is a blue grocery,
23 yeah.

24 Q Okay. A grocery bag?

25 A Uh-huh (affirmative).

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1 Q And you said you didn't open that bag; right?

2 A No, I did not.

3 Q Okay. You left that for the forensics folks to do?

4 A Yes.

5 Q So you didn't even lay your eyes on it at that time;
6 right?

7 A Well, it was -- the sound was coming from the bag.

8 Q Right.

9 A And it stopped and then I pressed play again and it
10 started, the sound started coming back from the bag.

11 Q Right. And that location was outside of his apartment;
12 correct?

13 A Yes, it was.

14 Q Okay. Now, you said you went to the apartment complex
15 that day?

16 A Yes.

17 Q Bentley Court?

18 A Yes.

19 Q And you said the dot was showing by the building; right?

20 A It actually was -- when I first located it, when we were
21 first going to that, it was actually showing like directly on
22 top of the building. It has a hybrid satellite image of the
23 apartment complex and it just overlays the, with the blue dot
24 on top of that. And --

25 Q So your precision, you really can't testify to the

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1 precision of --

2 A Yes. And it was -- yes, it was coming from that
3 building. Once I got the code and actually put everything
4 into my iPad, it wasn't -- I wasn't in that area yet, so I
5 actually have to go to that area. And the first time, when
6 we first did the location of that iPad, it was showing
7 actually on top of the building, around about approximately
8 where his apartment was. And then the next time we did it,
9 once we got to the apartment, it was actually showing off to
10 the side.

11 Q So what you're saying then is even when you were trying
12 to track the device yourself with your own iPad; right?

13 A Uh-huh (affirmative).

14 Q That it gave different readings even though it didn't --

15 A I'm not sure. Like I said, I wasn't at the apartment
16 complex at the time. So I don't know if he had it in his
17 apartment at first and then threw it out or whatever. Like I
18 said, I wasn't there. But the first position, it was showing
19 directly on top --

20 Q And that's when you were there at the apartment?

21 A That wasn't when I was there. That was when I was en
22 route there.

23 Q Okay.

24 A But once we were actually there, it was showing off to
25 the side, not actually on top of the building anymore.

1 Q Okay. And even though it was showing outside the
2 building when you were there --

3 A Yes.

4 Q -- you didn't follow that did you?

5 A Did I? I did not follow what?

6 Q Not initially, you didn't follow to track where it was
7 at outside the building?

8 A Well, once, I think --

9 Q Let's follow the question. Well, get to it. Trust me.
10 We'll get to the other stuff. Just, let's follow the
11 question first.

12 A Okay. Go ahead.

13 Q When you first arrived, the dot for what you were
14 tracking was showing outside the apartment itself; correct?
15 Outside the complex?

16 A No.

17 Q Okay. I'm confused then. I really thought that's what
18 you just said?

19 A No. When I first, when I was en route there, it showed
20 which building it was at. And when I went into the apartment
21 complex, I made the left turn into that apartment complex,
22 that's when I saw the vehicle matching that description with
23 the open door. And he was by where it was. I didn't track
24 it again after that because we made contact with him. But
25 once we got consent to go inside, inside the building, I went

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1 and tried to play the sound again.

2 Q Right.

3 A And it wasn't in there. And then I did another locate
4 and it was showing off to the side.

5 Q Okay. Just so we're clear one more time. When you're
6 en route. And you're -- frankly, you're almost right there,
7 right before you saw and saw him, you said it was actually
8 showing on top of the, up on the complex.

9 A Well, I couldn't -- I was actually pulled over to the
10 side of the road right there by -- I think it was right
11 before we cross over the Broad River because I can't drive
12 and do this same thing. And so I was --

13 Q I understand. But your point is, initially it showed
14 the covering the entire top of the apartments. And then
15 later on after you're already there, it showed a different
16 location outside the apartments itself?

17 A Yeah. Not the apartment complex, the building itself.

18 Q Outside the building itself?

19 A Yeah.

20 Q Okay. Okay. So you get to the apartment complex. You
21 actually see a gray, a dark gray Toyota vehicle, right, a
22 four-door?

23 A Uh-huh (affirmative).

24 Q You agree that there are a lot of those on the road;
25 right?

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1 A Yes.

2 Q Okay. And you saw a person closing a door of an
3 apartment; correct?

4 A Yes. I saw the actual driver's door of the vehicle was
5 actually open.

6 Q Okay. And you waited until that person was getting into
7 a gray Toyota to come on up, to that person; right?

8 A Well, I relayed the information to the other officers
9 that I possibly had --

10 Q Well, I understand. But we're just talking about.
11 We're trying to cut off all that stuff and focus on when you
12 approached the person. You waited until he was in his car;
13 right?

14 A Well, he was actually getting to the car. It took him
15 long enough for me to turn around in the parking lot and for
16 him to walk down the stairs to go to the vehicle.

17 Q Okay. So basically, he was getting in the vehicle at
18 the time you approached?

19 A Yes.

20 Q Okay. And you're saying he claimed ownership of the
21 vehicle at that time?

22 A Yes.

23 Q And, again, there are a lot of gray four-door Toyota's
24 in Columbia; right?

25 A Yes. Right. I would assume so.

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1 Q You did a pat-down search of him?

2 A Yes.

3 Q And you found no weapons; right?

4 A No weapon.

5 Q Other officers were also present; correct?

6 A Yes.

7 Q Okay. Do you recall, do you recollect how many officers
8 were present?

9 A Not exactly. It might have been four. I think at first
10 it might have been probably three or four. I'm not sure.

11 Q Three or four others present?

12 A Yes.

13 Q Okay. And you told him the person you were looking;
14 right?

15 A Right.

16 Q And you said you already did a Terry frisk; right?

17 A Yes.

18 Q And you said he's not in your custody at the time?

19 A Yes.

20 Q Okay. So he was free to just say, you guys have a great
21 day and get in that car and drive away?

22 A Yes.

23 Q And you would have let him go?

24 A Um --

25 Q Okay. So let's talk about the consent form. You told

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256

1 him you were looking for a person that was a black male?

2 A Yes, sir.

3 Q About 5'10"?

4 A Yes, sir.

5 Q 190 to 200?

6 A Yes, sir.

7 Q Walks with a limp?

8 A Yes, sir.

9 Q And basically an iPad and any stolen property; right?

10 A Yes, sir.

11 Q Okay. Did you know what the stolen property
12 specifically was?

13 A Actually, I didn't.

14 Q Okay. Now, the State's gone over this with you, the
15 voluntary consent to search form; right?

16 A Yes.

17 MR. STEVENS: May I approach, Your Honor.

18 THE COURT: You may.

19 BY MR. STEVENS:

20 Q This is their Exhibit, Exhibit 1. Now, it does have
21 that information as far as what you were looking for;
22 correct, right on there?

23 A Yes, sir.

24 Q And then as you also indicated, it has in a different
25 pen and a different handwriting any firearms, handgun. And

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1 then it's got your initials; correct?

2 A Yes, sir.

3 Q And you'd agree that you're the one who actually added
4 that; correct?

5 A Yes, sir.

6 Q And that wasn't at the time he signed this consent form;
7 right?

8 A No, it wasn't.

9 Q Now, when it was initially signed he went up there with
10 you; correct? Or you allowed him to be brought up there with
11 you?

12 A Yes.

13 Q And you weren't going to let him just walk on in and
14 show you around; right?

15 A No.

16 Q Okay. But he was free to go?

17 A Yeah, if he -- if -- Yes, sir.

18 Q Even to his own apartment?

19 A At that time, but like I said --

20 Q But you weren't going to allow him to walk into his own
21 apartment?

22 A For our safety and -- for our safety and the safety of
23 the other officers, if we're going to go in there and I
24 suspect someone in there, yes, I'm going to check it just to
25 make sure nobody's standing in there with a gun or anything.

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1 Like I said, it's his home. I don't know if he got a gun or
2 something in there just waiting to shoot us.

3 Q Okay. Well, he told you there was no one there; right?

4 A But he lied to me initially.

5 Q But he did say that there was no one there; correct?

6 A Yes.

7 Q Okay. And, in fact, after you did the protective sweep
8 there was no one there, was there?

9 A No, there wasn't.

10 Q So he wasn't lying; was he?

11 A No, but he initially lied. So if I lie to you one time,
12 chances are you're going to lie to me again. So I'm going to
13 confirm that.

14 Q But he also told the truth to you as well; correct?

15 A But I also have to confirm everything.

16 Q But he did tell you the truth; correct?

17 A Yes. At one point, yes.

18 Q Thank you. And you'd agree that consent can be
19 withdrawn; right?

20 A Yes.

21 Q Okay. And after you did the protective sweep, you found
22 no one in the apartment; correct?

23 A Uh-huh (affirmative).

24 Q Okay. And you also said that you didn't really know
25 what the stolen items really you were looking for?

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1 A Yes, sir, I just know it was a actual -- just know it
2 was a cell phone, a cell phone store that was robbed, so --

3 Q Who told you that?

4 A That was Corporal Cain.

5 Q And when did Corporal Cain tell you that?

6 A That was the initial conversation that we had.

7 Q Did you know what was taken?

8 A No, because I would --

9 Q So from your perspective, it could have been just money?

10 MS. CORNWELL: Your Honor, can he finish his
11 answer?

12 THE COURT: Please allow the witness to answer
13 fully their answer.

14 A Yeah. Like I said, I didn't know exactly what was taken
15 from the store.

16 BY MR. STEVENS:

17 Q Okay. So it could have been just money?

18 A Yes. It could have just been money.

19 Q Okay. Or the single iPad you were tracking?

20 A Yes.

21 Q Okay. So you went up there to the apartment?

22 A Yes.

23 Q Didn't find anybody?

24 A Did not.

25 Q Didn't find the iPad in question?

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1 A Did not.

2 Q Okay. And he was brought inside?

3 A Yes.

4 Q Put on the couch?

5 A Yes.

6 Q You gave him water in his cup from his house?

7 A Yes.

8 Q Okay. And you still had to try and find that iPad;
9 right? Because that's what you were really intent on looking
10 for; right?

11 A Yes.

12 Q Okay. And you still heard no noise inside the
13 apartment?

14 A No.

15 Q Okay.

16 A And before I went out to actually look for the iPad,
17 that's when one of the officers told me. And he said what
18 was -- the uniform officer wasn't sure. Like they were just
19 there as backup for myself because I'm a plain-clothes
20 officer. And he actually said well, a box cell phones right
21 there. And being an investigator if a cell phone store was
22 just robbed and you've got a box of cell phones, nine times
23 out of ten, that's probably a box of cell phones from the
24 cell phone store that was just robbed, so --

25 Q Okay. But you didn't have personal knowledge that a box

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1 of cell phones was what was taken; correct?

2 A No.

3 Q But you would agree that you were informed of that;
4 right?

5 A No, not at the time.

6 Q Okay.

7 A When I found the box that's when I asked what was
8 actually -- then I knew what was actually taken.

9 Q And you said you've got no reports to show exactly that,
10 do you?

11 A To show what?

12 Q You said your reports were lost?

13 A I've got reports that show what part of it --

14 Q Were your reports lost or not?

15 A Yes, but I'm not understanding your question.

16 Q As part of your job as a police officer, you write
17 reports; correct?

18 A Yes.

19 Q And those reports essentially track your investigation;
20 right?

21 A Yes, but --

22 Q Okay. What --

23 THE COURT: He can answer. Let him fully answer
24 his question. He can say yes, no, maybe and then fully
25 explain and then he can move on to your next answer.

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1 A Well, like I said, the report that would have been
2 generated was just assisting other agencies saying that we
3 assisted Orangeburg County on that because I did not, myself
4 and CSI, nor -- we did not collect any evidence. Orangeburg
5 County collected all the information from that apartment.

6 BY MR. STEVENS:

7 Q Okay. So you don't think it was important to actually
8 have a record of what you did in your assisting
9 investigation?

10 A Well, I could have write a statement saying.

11 Q Well, but you didn't?

12 A No, I did not.

13 Q Okay. And, in fact, you said -- I believe you said on
14 direct that your report was lost?

15 A Yes, it was lost. Like I said, I did another assisting
16 agency.

17 Q Okay. And nowhere in that report -- well, let's back
18 up. I mean, the purpose of a report is to make sure it's
19 detailed so people can go back over what you did; right?

20 A Yeah. I don't remember exactly what I had on it.

21 Q Okay.

22 MR. STEVENS: Court's indulgence.

23 BY MR. STEVENS:

24 Q Okay. So you walk back outside to look for the iPad;
25 correct?

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1 A Yes.

2 Q Okay. You had to play music; right?

3 A Yes, I did.

4 Q Okay. And according to this map, now it say that it was
5 in close proximity to the building?

6 A Yes.

7 Q Whereas before you said it was just covering the whole
8 building; right?

9 A Yes. Well, not the whole building. It was on the side
10 where his apartment was.

11 Q Okay. But now it's actually reading something a bit
12 different; correct?

13 A Yes.

14 Q Okay. And so you went down and outside?

15 A Yes.

16 Q You heard playing?

17 A Yes.

18 Q And it was by a dumpster?

19 A Yes.

20 Q And the dumpster was outside the building?

21 A Yes, it is.

22 Q Okay. And it's coming from a plastic grocery bag?

23 A Yes, sir.

24 Q You did not look inside?

25 A No, I did not.

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1 Q Okay. After this, that's when you actually conducted
2 the search of Mr. Hardin's apartment; correct?

3 A I'm not sure of the exact time that it was actually
4 conducted. Like I said, it could have been when I walked
5 out. Like I say, other officers were still in the apartment
6 with him so I'm not sure if they -- but I already had the
7 consent. So I'm not the only one that's searching the
8 apartment.

9 Q Well, let's go back to the consent form. You'd agree
10 that those are your initials on there; correct?

11 A Yes, sir.

12 Q And that's your handwriting; correct?

13 A Yes, it is.

14 Q And that was added after he's signed it; right?

15 A Yes.

16 Q Okay. And what you added doesn't say any cell phones;
17 does it?

18 A No. It says stolen property.

19 Q Well, you've got it right there?

20 A Uh-huh (affirmative).

21 Q What you add to it says any firearms, handgun; correct?

22 A Uh-huh (affirmative). Yes.

23 Q And so you leave out iPhones?

24 A But it says stolen property. So if stolen property, I'm
25 assuming that iPad or cell phone stolen inside a robbery

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1 would be considered stolen property.

2 Q What we're focusing on is what you added.

3 A Okay. And what you said I added was actually any
4 firearms, handgun because I was told a handgun was used in a
5 robbery. And once cell phones in a box was located, it was a
6 possibility, a high possibility that a firearm would be
7 located in the house also.

8 Q Okay. And, of course, Archie Hardin is still free to
9 leave; right?

10 A At that time, I believe he wasn't because I think he was
11 already identified by the -- by Orangeburg. And I believe he
12 was in custody at that time.

13 Q Okay.

14 A And they were going to take him back to Orangeburg.

15 Q Well, let's just back up just a touch. When you left
16 him in the apartment, how many police officers were with him?

17 A I don't recall.

18 Q But officers were still standing around; correct?

19 A Yes, they were. I don't know that they were --

20 Q And it's your position even then, he was --

21 A I don't that they were standing around, but he was
22 actually still with the officers. So I'm not sure their
23 exact position, where they were in the apartment.

24 Q And it's your position that even though officers were up
25 in his apartment with him; right?

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1 A Yes.

2 Q And that you're still looking around; right, outside?

3 A Yes.

4 Q That he was even at that moment free to leave?

5 A At that moment. I'm not sure if he was already in
6 custody or not. But, like I said --

7 Q From your perspective.

8 A From my perspective, I wasn't in the apartment so I
9 believe he was already custody. He wasn't free to leave but
10 he was free to tell us to stop searching.

11 Q Okay. There's no counter-initialing or countersignature
12 next to your addition; is there?

13 A No, it's not.

14 Q The only signature -- I'm sorry. The only initials
15 there are yours; correct?

16 A Yes, it is.

17 Q Okay. And clearly you admit that this occurred
18 afterwards?

19 A Yes, I do. That adding of any firearms, the handgun
20 part.

21 MR. STEVENS: Court's indulgence.

22 BY MR. STEVENS:

23 Q Yes, one last thing. Now, you indicated that you did
24 speak with Archie Hardin; right? In the apartment?

25 A Yes, I did.

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1 Q Okay. You indicated that in that conversation with him,
2 he's the one that said a person came on up and dropped off
3 that box; correct?

4 A Yes.

5 Q Okay. And he also said the person, his friend, the way
6 to find him would be to actually find this other girlfriend
7 of his; right?

8 A Yes.

9 Q And that girlfriend's address was on an old bill of hers
10 that he gave you; correct?

11 A Yes.

12 Q Okay.

13 A Well, he didn't hand me the bill. He actually told me
14 where I could find the girl.

15 Q Okay. But you located her; right?

16 A Yes.

17 Q Okay. And if you located her, you're not the one --
18 it's not your office that had to track down and followup on
19 that; right?

20 A No, it's not.

21 Q You relay that over to the Orangeburg County Sheriff's
22 Office; correct?

23 A Yes, I do.

24 Q Okay. Do you remember the name that was on that bill?

25 A No, I don't.

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1 Q Do you remember what town that address was in?

2 A It was a Columbia address, I believe.

3 Q It was a Columbia address. Okay. Do you remember when
4 you actually relayed that to Orangeburg County Sheriff's
5 Office?

6 A They received all that, that day.

7 Q That day. All right. Thank you Investigator Wade.

8 A You're welcome.

9 MR. STEVENS: No further questions.

10 THE COURT: Any redirect?

11 MS. CORNWELL: No, Your Honor.

12 THE COURT: You may step down, sir. Thank you.

13 Solicitor, how many more witnesses do you intend on
14 calling.

15 MS. CORNWELL: I don't have any more witnesses,
16 Your Honor.

17 THE COURT: We told the jury we'd start going back
18 here based on y'all's assertion that we could start at 3:30.
19 I told them 3:45. It's after 4:00 now. What I'm going to do
20 is I'm going to bring the jury, swear them in, give them
21 their preliminary charge and then we'll excuse them until in
22 the morning.

23 You said you have no more witnesses, or you do?

24 MS. CORNWELL: I have no more witnesses, Your
25 Honor.

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1 THE COURT: Pardon me?

2 MS. CORNWELL: I have no more witnesses at this
3 time.

4 THE COURT: Do you plan on calling witnesses?

5 MR. STEVENS: I believe we have one witness for
6 pretrial hearing, Judge. It's Mr. Hardin.

7 THE COURT: Okay.

8 MR. STEVENS: And so if you want to go ahead, like
9 you said, bring the jury in, get sworn, give them your
10 instruction, we can probably just finish up with the
11 pretrials this afternoon.

12 THE COURT: What we'll do then is I'll -- we'll do
13 that. I'll give them preliminary charge. Send them home,
14 have them come back up in the morning. We'll finish up Mr.
15 Hardin's testimony. I'll allow you to argue your positions
16 on the record at that time.

17 MR. STEVENS: Thank you, ma'am.

18 MS. CORNWELL: And, Your Honor, before we bring the
19 jury in, I feel like I'm being hyper aware of scheduling and
20 all of that, but the State does have about twelve witnesses
21 that we're going to intend to call. When this case started
22 at the beginning of the week, I was unaware that these
23 pretrials were going to such a lot amount of time. I was
24 also unaware that we were going to miss an entire day of
25 Court due to weather. So I'm just trying to be aware of the

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1 Court's schedule and schedule the jury. And I think we told
2 the jury that we would try to be finished by Friday. We do
3 have twelve witnesses. I would hope that we would get
4 through. But when I thought that this was going to be a two-
5 day trial, I was thinking all day Wednesday, all day
6 Thursday, close and charge Friday. I know that you're in
7 Court next week in Calhoun County. So just out of an
8 abundance of caution if the trial runs past a week, will be
9 stay late on Friday, will we come back on Saturday. Or if we
10 cannot finish this. I'm just --

11 THE COURT: Why don't we just play that by ear at
12 this point. I intend on starting on time. So when we say
13 we're starting at 9:00, we're starting at 9:00. And we'll be
14 out here on the bench and everybody needs to be ready to go
15 on time, and we'll power through as quickly as we possibly
16 can. And, of course, if the jury needs a break, we'll take a
17 break for the jury or anybody else needs a break, let me
18 know. However, we'll try to be as expeditious and cautious
19 with our time as possible. I think we'll have a better idea
20 tomorrow where we are as far as that's concerned. It's a
21 little speculative at this point, not knowing the length of
22 each witness or I think for anybody's concern, really, the
23 length of cross-examination for that matter. But we'll try
24 to move it along as much as we can. Maybe we can reassess
25 tomorrow afternoon so that we can make some decisions at that

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1 point.

2 MR. STEVENS: That's fine.

3 MS. CORNWELL: Okay. Thank you.

4 THE COURT: All right. Let's have our jury,
5 please?

6 THE BAILIFF: Yes, Your Honor.

7 MR. MELLARD: Your Honor, one second, please?

8 THE COURT: Hold on. One second.

9 MR. MELLARD: He just informed me he has to use the
10 bathroom really bad.

11 THE COURT: Okay.

12 MR. MELLARD: If we could just take two minutes.

13 THE COURT: Sure. We'll wait for you. Go ahead,
14 Mr. Mellard.

15 MR. MELLARD: Thank you, Your Honor.

16 (Defendant and deputy exit
17 courtroom.)

18 (Court stands at ease)

19 (Defendant and deputy enter
20 courtroom.)

21 THE COURT: Okay. Everybody ready?

22 MR. MELLARD: Yes, Ma'am, thank you.

23 THE COURT: All right. Let's have our jury,
24 please?

25 THE BAILIFF: Yes, Your Honor.

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1 (Jury in at 4:11 p.m.)

2 THE COURT: Madam Clerk, if you would please swear
3 our jury in.

4 (WHEREUPON, the jury was sworn.)

5 THE COURT: Welcome back, ladies and gentlemen of
6 the jury. I certainly appreciate your patience with us this
7 afternoon. I know you feel like you're up and down a lot
8 today, so I certainly do appreciate your patience. We're
9 about to begin the trial of the State of South Carolina
10 versus Archie More Hardin. And the procedure that we will
11 follow this afternoon in order to facilitate time best and
12 not waste your time, is I'm going to, now that you have been
13 sworn, just give you a preliminary charge so that you
14 understand the procedure that we will follow with the trial.
15 And then we will proceed with opening arguments first thing
16 in the morning.

17 What I will now say to you is intended to serve as an
18 introduction in the trial of this case. These remarks are
19 not a charge on the law in this case. I will instruct you on
20 the law in this case that's applicable at the end of the
21 trial before you retire to consider your verdict. This is
22 merely an explanation of the procedure that we will follow in
23 the trial of this case so that you may better understand
24 what will be happening. You may not take notes during the
25 trial of this case.

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1 Ladies and gentlemen, the Defendant in this case is
2 charged with several indictments, which are filed in this
3 court. It's a charge of kidnapping, three counts of
4 kidnapping, a count for armed robbery and a count for assault
5 and battery of a high and aggravated nature and a count for
6 possession of a weapon during a violent crime. The elements
7 of each of those charges will be explained to you a later
8 date. The indictments are simply the charge by which the
9 case is brought into Court and it is not in any sense
10 evidence of any of the allegations that are contained in the
11 indictments. The Defendant has pled not guilty to these
12 indictments, and the State, therefore, has the burden of
13 proving each of the elements of each indictment beyond a
14 reasonable doubt.

15 It will be your duty, ladies and gentlemen, to decide
16 whether the State has met that burden. Your purpose as
17 jurors is to find and determine the facts. You are the sole
18 judge of the facts. If, at any time, I make any comment
19 regarding the facts, you must disregard that. You are to
20 determine the facts from the testimony you hear and from the
21 other evidence that's introduced into Court. It is up to you
22 to determine the inferences which you feel may be properly
23 drawn from the evidence. It is especially important that you
24 perform your duty of determining the facts diligently and
25 conscientiously because ordinarily, there's no way to correct

1 an erroneous determination of the facts by a jury.

2 On the other hand, and with equal emphasis, the same law
3 that makes you the judges of the facts makes me the judge of
4 that law. The law is given by the Court is the only law that
5 you may consider. You must accept it and follow it, even
6 though you may disagree with it. I cannot tell you what the
7 facts are and you cannot disagree with me what the law is or
8 should be. Your job is to take the law as I give it to you
9 and apply it to the facts as you find them from the testimony
10 of the witnesses and any other evidence that is introduced.
11 After doing that, you will render your verdict, a true and
12 just verdict under the solemn oath that you just took as
13 jurors.

14 Until I advise you to begin your deliberations, you must
15 not discuss this case with anyone, including your fellow
16 jurors, friends, family members, and anyone involved in the
17 case. This includes face-to-face discussions and those by
18 telephone, email, text, blogs, or any other method of
19 communication. You may not use a computer, cell phone or any
20 other electronic device with communication capabilities at
21 any time while in the courtroom or during your deliberations.

22 During your breaks for meals or overnight, if necessary,
23 you may use these devices; however, you may not, at any time,
24 use these devices to get or send information about the case.
25 This includes any information about a party, a witness, an

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1 attorney or court officer. Any news accounts about the case,
2 research on any topics that are raised, any topics you may
3 think will be helpful in deciding the case or any testimony
4 that is presented by a witness. During the trial, do not
5 read, listen to or watch any news reports about this case.
6 This includes anything that may be in the newspapers, on the
7 internet, radio or television. You must not consider
8 anything you may have read or heard about the case outside of
9 this courtroom, whether before or during the trial of this
10 case.

11 After the case is submitted to you, you must discuss it
12 only in the jury room with your fellow jurors. The attorneys
13 and parties in this case have been advised that they're not
14 to talk to you at all. So if you see any of the parties or
15 attorneys involved in the case during these proceedings --
16 and, again, if they don't say hello, they're not being rude.
17 They're just following the Court's instructions. It is
18 important that you keep an open mind and not decide any issue
19 in the case until all of the evidence has been presented, the
20 parties have made their closing arguments and I have
21 instructed you on the law in this case. It is your solemn
22 responsibility to determine the guilt or innocence of the
23 Defendant and your verdict must be based solely on the
24 evidence as it is presented to you during the trial and on
25 the law as I instruct you at the close of the trial.

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1 In the morning, the Solicitor will make what is called
2 an opening statement, in which the Solicitor will explain to
3 you what the issues in the case are, at least what the
4 Solicitor thinks the issues in the case are. The attorney
5 for the Defendant may also make an opening statement,
6 although he is not required to do so. What the attorneys
7 tell you during the opening statements is not evidence in
8 this case. It is only their contention as to what the issues
9 are. The evidence in this case will be presented to you by
10 the testimony of sworn witnesses from the witness stand
11 and/or any exhibits that are introduced into evidence. From
12 time to time during the trial you may hear one of the lawyers
13 say something like, Your Honor, I believe we have a question
14 of law or a matter of law to discuss with you. Or may we
15 approach the bench. Or sometimes I, myself, might find it
16 necessary to excuse you from the courtroom for a short while,
17 while the attorneys and I can discuss a matter of law. The
18 reason for this is because you are the judges of the facts in
19 this case. And sometimes when I'm discussing matters of law
20 with the attorneys, it may be necessary for me to make some
21 comment on the facts in connection with the ruling, as to
22 whether or not the particular law applies. I'm not supposed
23 to tell you what I think the facts are, so I will excuse you
24 from the courtroom while these discussions take place so that
25 I in no way will influence you by anything that I might say

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1 or do in connection with the facts of the case.

2 In determining what the true facts are in this case, you
3 must decide whether or not the testimony of witnesses is
4 believable. It will be my responsibility to rule as a matter
5 of law whether certain testimony is admissible or not. But
6 once the testimony is admitted, whether or not you believe it
7 is entirely up to you. In deciding whether to believe a
8 witness, you have the right to consider the interest of any
9 witness, the bias of any witness, the prejudice of any
10 witness, the opportunity for the witness to have seen the
11 matters and things about which the witness may testify and
12 the way the witness acts on the witness stand. You have the
13 right to consider anything that is in the record that will
14 help you evaluate the testimony of the witnesses. That means
15 it is your duty to pay close attention to these witnesses, to
16 observe the witnesses, to listen to the witnesses and to pay
17 close attention to the attorneys and to the Court. Don't let
18 your thoughts wander, but give strict attention to the
19 testimony in this case, so at the end of all the testimony
20 after the arguments of counsel and the charge on the law by
21 the Court, you will then be in a position to determine what
22 the true facts are and to apply the law to those facts and
23 render a true and just verdict.

24 It would be the added duty of the foreperson, which I
25 will appoint tomorrow, to be the liaison to the Court. So if

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1 you need anything during the proceedings or during the trial,
2 the foreperson will contact the Court and we will certainly
3 make sure we try to take care of all your needs.

4 Any objections or exceptions to the opening charge by
5 the State?

6 MS. CORNWELL: None from the State, Your Honor.

7 MR. STEVENS: Nothing from the Defense, Judge.

8 THE COURT: Ladies and gentlemen, it is now about
9 4:20, so it's a good break for us at this point before we'll
10 actually begin the opening statements in the morning. So I'm
11 going to excuse you. We will start the trial right at 9:30.
12 So if you could be in your jury room no later than 9:15 or
13 so, to ensure that we have everyone and we can get started on
14 time, I certainly would appreciate it. Thank you. And have
15 a nice night.

16 (Jury out at 4:20 p.m.)

17 THE COURT: All right. Mr. Stevens, are you ready
18 to proceed?

19 MR. STEVENS: Yes, sir [sic], Your Honor.

20 For the limited purpose of this pretrial hearing, Judge,
21 we respectfully call Archie Hardin to the stand.

22 THE COURT: All right, sir. If you'll please come
23 around to the witness stand.

24 (WHEREUPON, Archie More Hardin was
25 sworn to tell the truth.)

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1 THE CLERK: You may have a seat. Please state your
2 name again for the record.

3 MR. HARDIN: My name is Archie More Hardin.

4 THE CLERK: Thank you.

5 THE COURT: Your witness.

6 MR. STEVENS: Thank you, Judge.

7 ARCHIE MORE HARDIN - DIRECT EXAMINATION

8 BY MR. STEVENS:

9 Q Just to clarify Archie, in open court on the record,
10 this isn't to get into guilt or innocence. This is only for
11 the limited purposes of thee suppression hearings, all right?
12 That's the scope of the questions I'm going to ask you, okay?
13 Now, May 16th, 2014; do your remember it?

14 A Yes, sir.

15 Q Now, on that day where were you staying?

16 A I was staying in Columbia, Bentley Court Apartments.

17 Q Okay. I got you. Now, without getting into anything
18 before police arrived, I want you to focus on the time that
19 police arrived; okay? When police arrived in that apartment
20 complex, do you remember that moment?

21 A Yes.

22 Q Okay. What were you doing at that time?

23 A I was leaving out my apartment, getting into my car.

24 Q Okay. Did the police come up to you at all?

25 A Well, I was sitting inside the car. And I looked

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1 through the rearview mirror and I saw all the police cars
2 pull up behind me.

3 Q All right. Did they approach you?

4 A They all got out with their guns drawn so I stepped out
5 the car with my hands up.

6 Q All right.

7 A And they said who car is this?

8 Q And I said why?

9 A They said we have reason to believe that this car been
10 involved in a robbery. So I said, well, I don't know
11 anything about that. So I think I was speaking with Officer
12 Wade.

13 Q Okay.

14 A While I was talking to Officer Wade, they was already
15 searching the car. Them three other officers were searching
16 the car.

17 Q Okay. About how many officers did you see at that time?

18 A I saw Officer Wade, Office Cain, two Columbia officers
19 in uniform, two white officers, one fat, one short. A white
20 female officer and another black male officer.

21 Q Okay. So by your recollection approximately eight. Is
22 that what you're saying?

23 A Something like that, yes, sir.

24 Q Okay. And did more eventually arrive?

25 A Later on the evidence lady, I guess.

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1 Q Okay. I understand. And those officers that were there
2 at the time when they first arrived and approached you, they
3 were armed; correct?

4 A They was armed and they had their guns drawn on me.

5 Q Okay. And so eventually did they search you?

6 A Soon as they walked up on me they started searching me.

7 Q Okay. Did they want to search your home?

8 A Yes. But at first I asked them did they have a warrant
9 and they said, no.

10 Q Okay. Did you have a chance to interact with the
11 investigator?

12 A What?

13 Q Did you have a chance to speak with the investigator.
14 Was he talking with you?

15 A I was speaking with Officer Wade.

16 Q Okay. And what did he want to do?

17 A He said we looking for a certain individual. Five-
18 something, walk with a limp. So I said well, I don't know
19 anything about that individual. They say well, where you
20 live? I said, why? He said because we have reason to
21 believe that this car was involved in a robbery and this guy
22 that fit this description, we believe was involved with this
23 car.

24 Q Okay.

25 A So I told him, y'all don't have a warrant. No, you

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1 can't search my apartment.

2 Q Did they ask for a consent to search?

3 A Well, at that time, he said well, what we going to do,
4 we going to detain you. And we'll go back to Orangeburg to
5 get a warrant. So just to alleviate the scene because we was
6 out in the parking lot in front of my apartment, people
7 coming out, everybody coming out being nosey. So I live
8 there. I wanted to try to, you know, alleviate the scene.
9 So I said, I'll sign the consent form. So I went on and
10 signed the consent form.

11 Q At that time with all those officers around did you feel
12 free to leave?

13 A No. They told me I was detained. I couldn't leave.
14 They told me I couldn't leave.

15 Q So did you believe that you were detained?

16 A Yes, that's what they said.

17 Q All right. And did you feel pressured to sign the
18 consent form?

19 A Well, I'm not going to say pressured. I just felt it
20 would be best just to get it over with, just to try and get
21 this over with.

22 Q Okay. Now, so you went ahead and you signed a consent
23 form?

24 A Yes.

25 Q Okay. I'm going to show you State's pretrial Exhibit

State v Hardin pretrial Hardin - Direct 2/25/15 283

1 No. 1.

2 MR. STEVENS: May I approach Judge?

3 THE COURT: You may.

4 BY MR. STEVENS:

5 Q That's the voluntary consent to search form from the
6 Columbia Police Department. Is that the form that they had
7 you sign?

8 A Yes.

9 Q Okay. Now, if you look at that form Archie --

10 A Uh-huh (affirmative).

11 Q -- your signature is in a thick-lined ink or a thinned-
12 line ink?

13 A Thin.

14 Q The thin, okay. There's also thick-lined ink on there;
15 right?

16 A Yes.

17 Q Was that thick-lined ink on there when you signed it?

18 A No. No, it wasn't.

19 Q Okay. So that came after you signed it?

20 A Right.

21 Q Okay. Now, they eventually went upstairs to search your
22 home. Is that so or no?

23 A Well, before all this happen, when I was speaking with
24 Officer Wade, Officer Cain came around the corner and took
25 his phone and took my picture.

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1 Q Okay.

2 A And when he did that -- before we even went upstairs
3 they put the handcuffs on me first.

4 Q Okay.

5 A So I asked them, I said if I'm not arrested why y'all
6 putting handcuffs on me? He didn't answer that. So I gave
7 them my key. So he lied when he said I threw my keys. I
8 gave them my keys. We went upstairs. I didn't wait outside.
9 Two officers went in front of me. I went in behind them.
10 When they went int, you know, they got their guns, they
11 searching rooms and stuff. They don't find no one. So by
12 this time, all of us is in the apartment.

13 Q All right.

14 A About eight officers and myself is in my living room,
15 standing in my living room.

16 Q Okay. And you said you were in handcuffs at that time?

17 A I'm in handcuffs.

18 Q Did you feel free to leave?

19 A I couldn't leave.

20 Q Did they ask you about anything inside there?

21 A They said -- well, I'm thinking what they said from the
22 start. They looking for a certain individual and some stolen
23 merchandise.

24 Q Okay. Now, did they take anything at that time from the
25 inside of your home?

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1 A No. At that time, Officer Wade and Officer Cain had
2 something like a, I don't know, a device. So I overheard
3 them saying, I don't hear it in here. I don't hear it. I
4 don't know what they talking about. So they leave out.
5 Officer Wade, Officer Cain, they leaves out. Myself --

6 Q I'm sorry. I don't mean to interrupt you. Are you
7 saying Cain or --

8 A Officer Cain.

9 Q Okay.

10 A Maybe, I'm not -- I might not be pronouncing his name
11 right.

12 Q I understand. Please continue.

13 A Officer Wade and Officer Cain, they leaves out. Myself,
14 the two Columbia officers in uniform and another officer.

15 Q Okay. So you were left there in the apartment with
16 several officers?

17 A Right. With four or five other officers.

18 Q Okay.

19 A While we in there, they looking around. They looking in
20 the closet, in my bathroom -- because I'm following them.
21 They pull the shower curtain.

22 Q Uh-huh (affirmative).

23 A They messing with my shoes. They go in the closet. So,
24 I don't know. I guess they don't see what they looking for.

25 Q Okay.

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1 A So we all in there. We in there for about fifteen
2 minutes.

3 Q Okay. Did anybody come back up?

4 A No.

5 Q Okay. So Officer Wade did not come back up before you
6 were taken on out?

7 A No, he didn't come back up.

8 Q Okay. So eventually you were taken from your apartment
9 or no?

10 A Well, after maybe fifteen minutes or so, myself and all
11 the officers that was in there, we leave out. So I tell, I
12 said, lock my door. So they lock my door.

13 Q Uh-huh (affirmative).

14 A And then we go downstairs and they put me in Officer
15 Cain's car, a black charger with tinted windows. They put me
16 in the car. So while I'm in the car, the white female
17 officer closed the door. The two Columbia officers was
18 standing outside. At first, the door was open and I had my
19 legs outside the car because it was hot. She, I don't know,
20 for no apparent reason, tells me to put my legs in the car
21 and close the door. So I'm sweating. It's hot and I'm in
22 handcuffs. So I'm trying to talk to her through -- from the
23 inside to the car. I said it's hot. Can you at least crack
24 the window. When she did open the door, I overheard Officer
25 Wade say something. I don't know who he was talking to. He

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1 said, give me the key. Give me the key to that apartment.

2 Who got the key. So whoever had the key. I don't know who
3 had the key. They gave him the key and him and Officer Cain
4 went back upstairs in my apartment.

5 Q Okay.

6 A I overheard them. I'm sitting in the car. I heard
7 Officer Wade say how did y'all overlook that, that stuff. I
8 don't know what he talking about, but I heard him say that.

9 Q Okay. At any time did Investigator Wade or Corporal
10 Cain come back to you in regards to the consent form?

11 A At that time, the next thing Officer Cain did -- I mean,
12 Officer Wade, he walked over to the car. I'm sitting in the
13 car. He had this form. He had written, any firearms or
14 handguns. He said, look, he said, Mr. Hardin, I'm going to
15 do you a favor. I said, what's that? He said, I'm going to
16 make -- I'm a man of my word. This was his exact words. He
17 said, I'm a man of my word. I promise you if I find any
18 handguns in your apartment, I won't charge you. I'll let
19 Orangeburg charge you. So I said, what is you talking about.
20 He said, I need you to sign this form again for me to search
21 your apartment for guns. I said, I'm not going to sign that
22 form no more. I said, y'all searched my apartment one time
23 you didn't find anything. You went back in there without me
24 being present. I don't know what you done or what you did
25 do, but I'm not signing it. That's when he put his initials

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1 and did it.

2 Q Okay. So you specifically didn't give them more
3 permission to go back in a second time?

4 A No. I saw it when he put his initials. When I wouldn't
5 sign it, he put his initials there.

6 Q Did he search it anyway?

7 A Yes, they did.

8 Q Were you free to leave?

9 A No.

10 Q Were you still in handcuffs?

11 A Yes.

12 Q Still in the back of the car too or --

13 A I was in the front seat, front passenger seat.

14 Q All right. Archie, I want to move to another location,
15 another scene. After that point, did they take you anywhere?

16 A Okay, After that --

17 Q Well, did they take you to Orangeburg, I should say.

18 A Well, I want to talk about when they did go back in the
19 apartment if you don't mind.

20 THE COURT: Mr. Hardin, you need to answer the
21 questions you are asked.

22 MR. HARDIN: All right

23 A Well, yes. After that they took the stuff from my
24 apartment, they towed the car, Officer Cain transported me
25 back to Orangeburg.

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1 BY MR. STEVENS:

2 Q Okay. So you were taken back to Orangeburg by Officer
3 Cain you said.

4 A Uh-huh (affirmative).

5 Q By Officer Cain, you said. Did they take you to a room
6 there?

7 A Yes.

8 Q Okay. Was it a big room, small room, how big a room was
9 it?

10 A They took me to a building. I guess it was their
11 office.

12 Q Was there a Mexican restaurant nearby too?

13 A Yes. It was in the back, in the back of the building.
14 And you go inside. And they took me into an office.

15 Q Okay. Is it a big room, a small room?

16 A About a medium-sized room.

17 Q Okay. Were you still in handcuffs?

18 A Yes.

19 Q Okay. Did you feel free to go?

20 A No.

21 Q Okay. Was there anyone there in the room with you?

22 A Not at first but maybe a couple minutes later Sergeant
23 Stokes came in.

24 Q Okay. Did he read your Miranda warnings?

25 A Yes.

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1 Q Was he armed?

2 A Yes.

3 Q Okay. Were there other officers there at the station
4 too?

5 A Not in the office I was in, but it was other officers in
6 there, you know.

7 Q Okay. And Sergeant Stokes, did he ask you any
8 questions?

9 A He asked me -- well, he read me my Miranda rights.

10 Q Uh-huh (affirmative).

11 A And I read them and I understood them. I put my
12 initials and I understood them.

13 Q Okay. Did you agree to give a written statement at all?

14 A No. I told him I wasn't giving no statements.

15 Q Okay. Where did they put you next, Archie?

16 A (Witness pauses)

17 Q I'm sorry. Let me back up. Did you ever tell Sergeant
18 Stokes that you were forced to take part in the robbery at T-
19 Mobile?

20 A No, no, no. No, I never told him that.

21 Q All right. And did you give any statements to them at
22 that time?

23 A No.

24 Q Where did they put you next, Archie?

25 A They brought me to the Orangeburg jail, detention

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1 center.

2 Q All right. And eventually were you brought to a
3 Magistrates Court?

4 A That was on a Friday. That Sunday afternoon they took
5 me to the court building, I guess.

6 Q Okay. And when you were there, were you still
7 handcuffed or no?

8 A Yes.

9 Q Okay. And did the judge that you were in front of, do
10 you remember his name?

11 A No, not really.

12 Q Okay. But did he tell you what your charges were?

13 A Uh-huh (affirmative).

14 Q Okay. And did the judge also ask you a lot of other
15 questions?

16 A He asked me -- I think he asked me my address, did I
17 work? Did I work? Did I have a job?

18 Q Did he ask you about your prior convictions?

19 A Yeah. I think he did.

20 Q Okay. Now, earlier on in the hearing, did you try and
21 actually say something on your behalf?

22 A Well, I tried several times because I mean, I felt, I
23 felt -- I mean, I was scared.

24 Q I understand. Did the judge let you say what you wanted
25 to say or did he just cut you off?

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1 A Well, he let me speak from the start when I was telling
2 him about making bond. I was letting him know I didn't have
3 any money so I wasn't concerned about a bond, making bail.

4 Q Okay.

5 A But then, you know, I think Ms. Berry mother was making
6 statements that was -- I guess I got frustrated because she
7 was calling me an animal.

8 Q Okay.

9 A I mean, here -- I mean, I haven't been found guilty of
10 nothing. Even though I've been charged with these charges, I
11 haven't been found guilty, so --

12 Q Okay. Well, in fact, before Ms. Berry spoke, did you
13 have a chance to say anything? Did you tell the judge, for
14 example, that you just wanted to focus on these charges and
15 prove your innocence?

16 A Right.

17 Q Okay. And then, like you said, what happened after Ms.
18 Berry spoke? Well, Ms. Berry's mother?

19 A Well, I was trying to let the judge know that, your
20 honor, I'm not guilty. But he kept cutting me off every
21 time. He cut me off two or three times. And all I was
22 trying to say is that I'm not guilty. Why I'm being accused
23 and called an animal. But he kept cutting me off. So I
24 never really got an opportunity to complete what I wanted to
25 say.

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1 Q Okay. So roughly about in the middle then, did you
2 start to say I'm guilty, and then you were cut off by the
3 judge?

4 A I never said, I'm guilty.

5 Q Okay. So what were you trying to tell the judge before
6 you were cut off?

7 A I was trying to tell the judge, I'm not guilty. But it
8 -- it seemed like I'm being treated like I'm guilty. But, I
9 mean, like I said, he kept cutting me off. So --

10 Q And, again, later on, I'd say up to about twelve minutes
11 or so, that's pretty much what you express as well; is that
12 correct?

13 A Right. Exactly.

14 Q And that they got the wrong man?

15 A Right.

16 Q Okay.

17 MR. STEVENS: Court's indulgence. No further
18 questions at this time.

19 Q Archie, please answer questions of the State.

20 ARCHIE MORE HARDIN - CROSS-EXAMINATION

21 BY MS. CORNWELL:

22 Q Mr. Hardin, you stated when you were approached at your
23 house, you were getting your car; is that correct?

24 A Yes, ma'am.

25 Q And that was your gray Toyota Corolla that you were

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1 getting into; is that correct?

2 A Well, it's a rental car. It's not my personal car. I
3 was renting the car.

4 Q You were renting it, so you were in possession of it
5 that day?

6 A Yes, ma'am.

7 Q Okay. And when you were talking to Officer Wade, you
8 admitted that that's your signature. You signed this
9 voluntary consent to search form?

10 A Uh-huh (affirmative).

11 Q Correct?

12 A Uh-huh (affirmative).

13 Q And you told me and you told the Court that you have a
14 high school diploma. You can read. You can write. You
15 understand everything. So when you signed this and read it,
16 you understood what you were signing; didn't you?

17 A A consent form. Giving them permission to search my
18 apartment.

19 Q Okay. And you didn't feel pressured or anything. They
20 told you that, you know, they can detain you and go get a
21 search warrant or you could let them search your apartment.
22 At that point in time, you decided to let them search your
23 apartment?

24 A Well, I didn't feel pressured. But I like I told Mr.
25 Stevens, I wanted -- I know I didn't have anything to hid. I

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1 know I hadn't robbed no store. And I know it wasn't no one
2 in my apartment. So I didn't have a problem letting them
3 search my apartment.

4 Q Okay. So you were agreeable to them searching your
5 apartment?

6 A Yes.

7 Q Okay. And you were even inside the apartment when they
8 were searching; weren't you? You said you followed them from
9 room to room as they were going through the rooms?

10 A Well, I couldn't follow all the officers because it was
11 two over here, one over here, one over there. So --

12 Q But you were present in your apartment when the officers
13 were inside your apartment?

14 A Yes, ma'am.

15 Q And on this form that you signed that you stated you
16 understood, there's a line right there that says by signature
17 below, I understand at any time I can withdraw the consent;
18 is that correct?

19 A I see it on there.

20 Q And you signed that. So you signed it understanding
21 that you could withdraw your consent at any time; correct?

22 A Uh-huh (affirmative).

23 Q At any time, did you try to withdraw your consent?

24 A No. I didn't have no reason to.

25 Q So you signed the voluntary consent to search form, you

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1 against you in a court of law?

2 A Uh-huh (affirmative).

3 Q You understood that you had the right to talk to a
4 lawyer for advice before answering any questions; is that
5 correct?

6 A Uh-huh (affirmative).

7 Q You under --

8 THE COURT: Mr. Hardin, if you could, when you
9 answer, if it's affirmative, just say yes or no so that we
10 have an accurate record.

11 MR. HARDIN: All right.

12 A Yes.

13 THE COURT: Okay.

14 MR. HARDIN: Yes, ma'am.

15 BY MS. CORNWELL:

16 Q You understood that if you couldn't afford a lawyer, one
17 would be appointed to you?

18 A Yes.

19 Q And you understood that if you decided to start
20 answering questions without a lawyer present, you still have
21 the right to stop answering questions at any time?

22 A Yes.

23 Q And you understood you also had the right to stop
24 answering any questions until you spoke to an attorney?

25 A Yes.

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1 Q Okay. So you understood all of those rights that were
2 given to you?

3 A Yes, ma'am.

4 Q Okay. And it's your testimony now that you never gave
5 any statements to Officer Stokes that day?

6 A I mean, you mean written statements or verbal
7 statements?

8 Q Verbal statements?

9 A Yes, I talked -- we talked, yes.

10 Q Okay. What did you talk about?

11 A He talked about -- he asked me questions about the
12 robbery.

13 Q Okay. And you had signed your waiver of rights so you
14 knew that you didn't have to answer his questions; correct?

15 A Right.

16 Q But you answered them anyway; didn't you?

17 A I talked to him.

18 Q Okay. Didn't want to write a statement, did you?

19 A I didn't feel like I needed to.

20 Q Okay. But you were willing to talk him about the case?

21 A Uh-huh (affirmative).

22 Q And in saying that, at one point you said that you
23 didn't have anything to do with the robbery?

24 A (No verbal response).

25 Q But you also told him at one point that it was this

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1 fellow Black. And that Black is the one that made you do the
2 robbery?

3 A No, I never said that.

4 Q Do you know a guy by the name of Black?

5 A That's the guy that used my car that morning.

6 Q Okay. And eventually you told Officer Stokes that you
7 were tired of talking. You just wanted to be taken to jail;
8 is that correct?

9 A Well, not -- no, not like that. I kept trying to
10 explain to them that I could help them get Black, because I
11 felt that I was setup myself by Black, because I didn't have
12 no knowledge of what Black was going to do. I didn't have
13 knowledge that the stuff he put in my apartment was from a
14 robbery. So I felt just a victim myself. And I kept telling
15 them, if y'all will do this, we can catch him. If we go
16 here, I know some of the places I have been with him. I even
17 volunteered. I said, y'all can put me in a car and we can go
18 to certain places that I went with Black, and I'll help y'all
19 catch Black. They wasn't trying to hear nothing, nothing I
20 said. So at that point, I just said, well, there ain't no
21 sense in talking no more. Ain't no sense in talking no more.
22 They wasn't trying to hear nothing I had to say, so why
23 continue trying to talk?

24 Q Okay. And before an officer approached you at the
25 apartment complex, you told them that you were there visiting

State v Hardin pretrial Hardin - Cross 2/25/15 301

1 friends?

2 A No, no, no, that's -- see, I don't have no reason to say
3 that. I didn't throw no keys. Why would I throw a key and
4 then turn around and give consent to search the apartment.
5 It just don't make sense.

6 Q Okay.

7 A And what really don't make sense is sworn officers
8 telling lies. So I don't-- it just don't make sense. Throw
9 a key, but then turn around to give consent to search. I
10 never threw no key. I never lied that I didn't live there.

11 Q Okay. And I'm going to jump back -- forward to the bond
12 hearing. You went to the bond hearing. You were in court
13 and you had an opportunity to speak with the judge at that
14 point; is that correct?

15 A Yes, ma'am.

16 Q And the judge also advised you of your rights, that you
17 could get an attorney, that you could get a public defender,
18 that you would need to pay forty dollars for the public
19 defender. He went over all of that with you at the bond
20 hearing; didn't he?

21 A Uh-huh (affirmative). Yes, ma'am.

22 Q He asked you a couple of questions, including your
23 questions about your prior record; correct?

24 A Yes, ma'am.

25 Q And you told him that the last time you had been

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1 arrested was in 1988, that you did a little time for drugs
2 and that was the last time you've been arrested?

3 A No, I didn't say it like that. I told him the last
4 felony charge I had was in 1988 for drug possession. The
5 last felony charge.

6 Q Okay. All right. And you told him about a couple of
7 little misdemeanors too; right?

8 A Yes, ma'am.

9 Q That those were all back in the '80s?

10 A I think in '92, '93, something like that.

11 Q Okay. But those aren't actually all your convictions
12 are they? You weren't being completely truthful; were you?

13 A I mean, what you mean? I think in 2000 --

14 Q Don't you also have a conviction in 2010 for possession
15 of cocaine?

16 A No. 2010? No, no, I don't.

17 Q Don't you also have a conviction in 2006 for receiving
18 stolen goods?

19 A I don't --

20 MR. STEVENS: Judge, if we want to go through a 609
21 analysis for all of his priors we certainly can.

22 A I don't know nothing about that.

23 THE COURT: At this point, I'll allow it. But,
24 obviously, prior to further testimony we'll go through the
25 609 analysis.

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1 BY MS. CORNWELL:

2 Q And you have a 2006 conviction for receiving stolen
3 goods?

4 A I think in 2006 I was living in Charlottesville,
5 Virginia. I think I had a charge for unauthorized use of a
6 vehicle. I don't -- I'm not sure. I'm not sure. But in
7 2010, I don't have no drug charges or cocaine convictions in
8 2010. Matter of fact, in 2010 is when I first came back to
9 South Carolina from Virginia. I paroled from Virginia to
10 South Carolina to my mother's house. And I was on parole for
11 two and a half years. And that's probably what those charges
12 are. I didn't have those -- I didn't catch no charges in
13 2010. I was on parole for those charges, which happened back
14 in the '80s, '80-something. '88 or something.

15 Q So you were on parole for over twenty years for a drug
16 charge?

17 MR. STEVENS: Judge, this is getting a little bit
18 far beyond the scope of the purposes of the hearing.

19 THE COURT: Let's move on Solicitor.

20 BY MS. CORNWELL:

21 Q In that bond hearing, you kept trying to interrupt the
22 victims, the victim's advocate and the judge during that
23 hearing; didn't you? Kept trying to put your own words into
24 it; correct?

25 A Can you repeat yourself, ma'am?

State v Hardin pretrial Hardin - Cross 2/25/15 304

1 Q During that bond hearing, you kept interrupting the
2 judge and the victims and the victims' advocate. You kept
3 wanting to inject your opinion into those proceedings;
4 correct?

5 A Well, I'm not going to say I kept on doing it. I don't
6 want to make a scene. Like it happened several times. Maybe
7 I did it twice. I mean, I was getting a little agitated
8 being called names, animals, and monsters, you know. I think
9 anyone would get a little agitated. So I was just -- I
10 wanted to also get my point across too. That's all I was
11 trying to do.

12 Q And you were in here earlier when we played the audio
13 from that hearing; correct?

14 A Yes, ma'am.

15 Q And won't you agree that at one point while Mr. Sims was
16 speaking, you interrupted and said, Your Honor, I'm guilty.
17 And before you could go on, the judge cut you off; correct?

18 A No, I didn't say that.

19 Q You didn't say, I'm guilty and the judge cut you off
20 before you could say anything else?

21 A Well, I mean, I'm going to put it like this, Ms.
22 Cornwell, if I was going to do that, I would have did that
23 from the beginning. I wouldn't have said, Your Honor, I
24 don't have no interest in making bond. I'm guilty of these
25 charges so we don't need to be concerned about a bond. So

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1 why go, why -- cut through the chase. If I'm going to say
2 that, I would have said all of that from the beginning.

3 Q But you were getting --

4 A That makes sense. See, at least I try to do things that
5 make sense. I mean, I'm not the smartest person in the
6 world, but I do have a little bit of sense. I'm not going to
7 turn around and say, I'm not concerned about this. I'm
8 innocent. And then turn right around again and say, your
9 honor, I'm guilty. It just don't make sense. And I try to
10 do -- I mean, I'm fifty-five years old. I'm not a child.
11 I'm not stupid, illiterate or a kid. I do have a little bit
12 of sense.

13 Q Okay.

14 A And I don't try to play with the court time or the court
15 system. Like, you know, you know I do have a record, so I am
16 a little familiar with the proceeding of how the court runs
17 and how it operates. I don't play games like that. I don't
18 -- and I don't like to be falsely accused because I do know
19 how to throw myself on the mercy of the court, too, when I am
20 wrong about something. I have done time for things I did do.
21 So I do know how to man-up.

22 Q Okay.

23 A I didn't do these robberies. I didn't beat up a little
24 innocent girl. I don't, I don't, I don't do that. It's just
25 things I -- I -- drugs, yes. Most of my problems have been

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1 drugs, using, selling. Robbery, no. Beating up womens, no.
2 Robbing businesses, no. That's not, that's just not me.
3 That's not my profile. If you looked at my record, my
4 records will show you most of my involvement's been drugs.
5 No robbery, no violence, no guns, none of that. So now I
6 wait until I get fifty-five years old and start doing these
7 things. It don't make sense.

8 Q That's not a hundred percent true, right? Because you
9 do have larcenies on your record. You've got assaults on
10 your record. You've got stolen goods on your record. So,
11 yes, you have a lot of drug charges, but you also have some
12 thefts and some assaults too; correct?

13 A Violence. I said violence. A lot of them charges, if
14 you look at them, they was dismissed or non processed.

15 Q Okay.

16 A I mean --

17 Q And you would agree with me that sometimes when people
18 get frustrated they don't want to hear anymore. They end up
19 saying stuff without thinking; correct?

20 A Well, I can't speak for some people. I can only speak
21 for myself. I can't speak for some people.

22 Q But in this bond hearing you were advised of your
23 rights. When you spoke to Sergeant Stokes you were advised
24 of your rights and you knew that anything that you were
25 saying could be used against in a court of law; right?

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1 A Yes, ma'am.

2 MS. CORNWELL: Nothing further, Your Honor.

3 THE COURT: Any further redirect?

4 MR. STEVENS: Very briefly, Judge.

5 ARCHIE MORE HARDIN - REDIRECT EXAMINATION

6 BY MR. STEVENS:

7 Q All right, Archie, how you doing?

8 A I'm fine.

9 Q You got enough water? Are you okay?

10 A No, I'm fine.

11 Q Okay. When the Solicitor asked you regarding consent
12 and whether you withdrew consent about the searches of your
13 home?

14 A Uh-huh (affirmative).

15 Q I believe she indicated to you her question, you never
16 withdrew your consent. Do you remember that, her saying that
17 to you?

18 A Yes.

19 Q Okay. Did you mean the first time they were in your
20 apartment or the second time when they went back up to your
21 apartment?

22 A I never gave them consent to go the second time.

23 Q So, are you -- so when you responded to her, were you
24 talking about the first time?

25 A The first. And then, furthermore, even though it might

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1 not make a difference right now, when I read that consent
2 form, I only read what Officer Wade wrote in. A certain
3 individual, walk with a limp, stolen merchandise.

4 Q I understand.

5 A I didn't read all that other stuff. And that could be
6 my fault, because I should have read the whole form.

7 Q I understand. But did they go back the second time?

8 A I guess. I didn't see them.

9 Q I understand. But basically, what I'm trying to ask
10 Archie, is that when Investigator Wade added the information
11 to the consent form?

12 A Yes.

13 Q Okay. And did you sign it after he added that
14 information?

15 A No, I didn't. I told him I wasn't going to sign it.

16 Q Okay. So did they have your consent at that time to
17 search your apartment again?

18 A No. No, they didn't.

19 Q All right. Thank you, Archie.

20 A Yes, sir.

21 THE COURT: You may step down, sir. Thank you.

22 MR. HARDIN: Yes, ma'am.

23 THE COURT: Counsel, I'll allow you to briefly
24 place your arguments on the record regarding your motions.

25 MR. STEVENS: Thank you, Judge. Just for clarity's

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1 sake, would it be okay if we just, you know, issue by issue,
2 where I'm not to rush. That way you can make your ruling and
3 we can go to the next one or do you just want to rule on all
4 of them?

5 THE COURT: I'm going to rule on all them.

6 MR. STEVENS: Oh.

7 THE COURT: I'm just going to allow you to put your
8 argument on the record. And however you would like to do it,
9 whatever you think?

10 MR. STEVENS: Thank you. Okay. Regarding our
11 first issue, Judge, the search. Our position is that no one
12 actually saw the iPad in question until they heard it in a
13 plastic bag outside. It was in the weeds, in the tree line,
14 near the dumpster, not in Mr. Hardin's apartment. The State
15 wants to say that it was tracked in realtime, although as
16 we've already discussed on several occasions through
17 objections, that no one can actually say that -- what the
18 parameters are of the accuracies of the device.

19 Additionally, we know that after police arrived, they
20 claim that they saw Mr. Hardin downstairs in the car and they
21 essentially surround him, and all the police officers were
22 armed. They asked some questions about the car. They asked
23 questions about the person they were searching for. And they
24 had Mr. Hardin sign a consent form.

25 It's important to note, as far as our motion goes, that

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1 at that time, it's got one type of ink on here as is
2 indicated by the evidence. Here it is. On the voluntary
3 consent form that is on State's Exhibit 1 for pretrial
4 purposes. What we also know, Judge, is when they did go up
5 there, during the search, there was a protective sweep. They
6 found no one there. They were looking for an iPad and they
7 were listening. And that wasn't there either. We also know
8 that even though they indicated that they were searching for
9 -- or they were there because of a robbery of the T-Mobile,
10 we also know that they didn't know what, specifically, what
11 may have been taken. Whether it was cash or phones or what,
12 and so they later on went down and outside. And that's where
13 they located the iPad. They find it outside, not in the
14 apartment, in essentially the woods, in the tree line or near
15 a tree line. It was after that that they actually altered
16 the consent form, Judge. We know that because they admitted
17 to it, as well as it being clearly in different ink, in
18 different handwriting on the consent form itself, initial by
19 only one party, that of the officer, Mr. Darius Wade. The
20 Defendant refused to sign it.

21 When we actually look at what's going on here, his
22 consent was essential -- our position is, his consent was
23 effectively revoked considered rescinded at that time. And,
24 yet, they still went ahead, went back in, and searched the
25 residence itself, and that is essentially done without

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1 consent. It's done without a warrant, even though they could
2 have actually had time to get a warrant. We know that no
3 exigent circumstances applied either. We know they already
4 did a protective sweep inside, Judge. There was no one
5 there. They know this themselves. They're the ones who
6 actually searched. We also know that no one would have been
7 there to help destroy evidence. It's not like drugs that can
8 just be flushed down the toilet.

9 So, in other words, Judge, there are essentially no
10 exigent circumstances. Archie Hardin was in cuffs. It's not
11 like he could actually go off and try and destroy evidence or
12 hide anything either. Or actually reach on anything in his
13 area of his arms, to reach around.

14 On top of that, he was already searched and patted down
15 by the police officers. They found him no weapons on him
16 either.

17 Accordingly, Judge, our position is that consent was
18 effectively revoked, withdrawn -- we know this not only from
19 testimony of various people. We also know that it's actually
20 backed up by the only hard evidence in this matter, when it
21 comes to it, and that's this consent form itself. That
22 actually does verify what Mr. Hardin said.

23 When it comes to it, Judge, it's a warrantless search,
24 which is per se, not allowed. And, therefore, it's out.
25 Unless, of course, they can come up with the exigent

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1 circumstances. And none here exists.

2 Accordingly, Judge, we respectfully request that the
3 search be deemed unlawful and violative of not only the
4 Fourth Amendment, but also Article 1, Section, I believe, 10
5 of the South Carolina Constitution. That frankly affords
6 more protection than does the Federal Constitution, Judge.
7 That's not only based on the language of the amendment
8 itself, but also in State versus Forrester, which
9 specifically does say our State version of privacy does
10 actually include privacy language. And, therefore, actually
11 applies more, probably, for our protections here under the
12 State Constitution than does the Federal Constitution.

13 Accordingly, Judge, our position is that it's a
14 warrantless search. They had ample time to get a warrant.
15 They should have gotten a warrant. They chose not to get a
16 warrant. And, under the circumstances, the evidence gleaned
17 therefrom should be suppressed as fruits from the poisonous
18 tree. Thank you.

19 THE COURT: Solicitor?

20 MS. CORNWELL: Thank you, Your Honor. In looking
21 in the light most favorable to the non-moving party, the
22 State has offered testimony from officers regarding the
23 voluntary consent to search form, which is State's Exhibit 1
24 where the Defendant signed giving his consent to search. The
25 Defendant himself admitted on the stand that he was never

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1 pressured to sign that form, that he willingly gave his
2 consent to officers, that he never withdrew his consent from
3 officers. There's been multiple testimony that he was in the
4 apartment at the time that the apartment was searched.
5 Coming from the testimony of the Defendant himself, he was
6 present in the apartment. He actually followed officers from
7 the rooms. He never withdrew his consent. Based on that, I
8 believe the search was proper.

9 Even if Your Honor decides that consent was forced in
10 some way or not consensual, I believe that the State would
11 have an inevitable discovery argument. You've heard
12 testimony that the personal iPad of Mr. Sims' that was stolen
13 during the robbery from T-Mobile was tracked via an
14 application called Locate My iPad. That is a very common
15 iPad app. It's common through most Apple users that uses
16 GPS. GPS is another common system used by most people.
17 Officers were able, through their investigation, track what
18 they believed to be the iPad from various points and
19 locations, which ultimately lead them to the Defendant's
20 apartment.

21 At the Defendant's Apartment, they found a car that
22 matched the description of the vehicle that was used to get
23 away. Officer Cain took a photograph of this Defendant, sent
24 it to three victims, who all immediately identified this
25 Defendant as the man that robbed them. They did a search of

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1 the area, found the iPad that was stolen from T-Mobile.
2 You've also heard that during the protective sweep they were
3 able to see, in plain view, a number of cell phones and items
4 that appeared to have been part of the robbery at T-Mobile.
5 Based on that information, I believe that even without
6 consent to search, there was more than enough probable cause
7 to get a search warrant. And it would inevitably be
8 discovered, even without the Defendant's consent.

9 The Defendant himself even claimed that officers told
10 him that if he would not get consent, that they could
11 obviously detain him until they got a search warrant and they
12 would go and get a search warrant. That was, in no means,
13 made as a threat. The Defendant himself admitted that there
14 was no pressure or anything. He just thought that it would
15 expedite things and he went ahead and gave consent instead of
16 waiting for the search warrant. Based on these admissions on
17 the stand, the testimony, we think his consent was voluntary.
18 It was inevitable discovery. And we respectfully ask that
19 you deny Defendant's motion.

20 THE COURT: All right. Next motion, Mr. Stevens.

21 MR. STEVENS: Just briefly reply, if I may, Judge.
22 First of all, obviously our position is the proper standard
23 when reviewing the matter is totality of the circumstances.
24 It's not a civil Rule 56 where the evidence is looked in the
25 light most favorable to the Defendant. It's the totality of

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1 the circumstances is what it is.

2 Second of all, our position is that inevitable discovery
3 does not apply. They were looking for the iPad. They were
4 very clear about that. That was outside his apartment, not
5 inside his apartment. It was not even right next to his
6 apartment door. It was way out next to -- or in grass, next
7 to the dumpster.

8 Plain view, obviously, our position from what one of the
9 investigators, I believe, Wade said, they weren't officially
10 aware of specifically what they were looking for.

11 And, finally, Judge, they really can't even say GPS.
12 They know for a fact and are certain that's how this
13 application works. They have no witnesses on the stand who
14 are even qualified to say that. In fact, from what I
15 understand from discovery, that Ashley, gave us the cell
16 phone tower locations, which is an entirely a different
17 technology than satellite application technology. So when it
18 comes to it, there's absolutely no basis for that either.

19 Accordingly, Judge, we simply maintain our request for
20 suppression.

21 THE COURT: Next motion.

22 MR. STEVENS: Yes, ma'am. I believe our next issue
23 is under Jackson versus Denno. Specifically, Judge, we're
24 looking at two statements. First, the statement allegedly
25 made to Sergeant Stokes in Orangeburg. Second, the

1 statements made at the bond hearing. Regarding the
2 statements allegedly made to Sergeant Stokes in Orangeburg,
3 South Carolina, we know that Sergeant Stokes admitted that
4 the Defendant did not agree to give a statement. In fact,
5 the waiver of rights form indicates exactly that. In fact,
6 so did Sergeant Stokes on cross-examination. We also note
7 that despite his direct testimony that he continued to speak
8 with the Defendant after that. And the Defendant allegedly
9 said quote, he was forced to take part in this incident. We
10 also know that Stokes essentially recanted that part on his
11 cross-examination. When he said that he didn't talk to the
12 Defendant after he refused to sign.

13 So we do have a conundrum even on the record from
14 Detective Stokes' own testimony when it comes to that.

15 Additionally, when we look at Archie Hardin's testimony,
16 he was very candid with the Court about his conversation with
17 Sergeant Stokes. And one thing we know is that he never
18 said, oh, I was forced to take part in this. Never said
19 that. Accordingly, Judge, when it comes to that our position
20 is that it's simply untrue -- And -- because of
21 voluntariness, assuming due process applies when false
22 information is not to be taken from the stand whatsoever. I
23 believe there's actually some case law on that, both out of
24 Wisconsin, out of California, out of the First Federal
25 Circuit, out of the Third Circuit, all touching on that

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1 issue. I believe the First Circuit case is LaFrance, United
2 State's versus LaFrance, from the 1970s. And that issue, of
3 course, is basically whether it's admissible, not necessarily
4 along the Denno line cases but due process itself. Whether
5 information that we pretty much know to be false should be
6 allowed to even go to the jury in the first place. Our
7 position is that it should not.

8 Next, Judge, regarding Archie's statement at the bond
9 hearing. We have two bases for this. Obviously, first and
10 foremost, it is very, very clear from what Sergeant Stokes
11 was able to testify to after his memory was refreshed and what
12 we were all allowed to hear on the audio from the bond
13 hearing. We know that Archie Hardin did assert his innocence
14 in the beginning. We know that even afterwards, he was
15 asserting his innocence. And we also know that when he said
16 this alleged statement, I'm guilty or some version of that,
17 it was not complete. He was literally cut off by the judge.
18 And he was basically trying to respond to being called an
19 animal by one of the victims' parents.

20 Accordingly, Judge this also goes with -- essentially
21 skewing the truth. This under due process. This shouldn't
22 be allowed to go to the jury when we know, it's knowingly
23 false.

24 On top of that Judge, for our second basis, we also
25 raise Rothberry versus Gillespie County, Texas, which is a

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1 United States Supreme Court Opinion cited at 554 US 191, 128
2 SCT 2578. It's a 2008 United States Supreme Court Opinion
3 where it affirms what the overwhelming majority of American
4 jurisdictions understand, and that's that criminal
5 defendant's initial appearance before a judicial officer,
6 even Magistrates Court, it was there at the initial bond
7 hearing, was there for arraignment. An initial appearance
8 before a judicial officer where he learns the charges against
9 him and his liberty is subject to restriction, marks the
10 start of the adversary judicial proceedings that trigger
11 attachment of the sixth amendment right to counsel.

12 Archie Hardin didn't have counsel present. He didn't
13 even have the opportunity to make sure counsel was present.
14 At his bond hearing he was told by the judge if he wants a
15 lawyer, a public defender, he can spend a forty dollar
16 application fee and ask for one. And then if he actually
17 gets one, then they can get one for him. Now, clearly, this
18 is the system we have all throughout South Carolina. But
19 it's also a system that does not conform with what the United
20 States Supreme Court demands. And that's to make sure he has
21 one there available if that's what he wants. And, frankly,
22 if he did have an attorney there with him, I doubt this would
23 actually have occurred on the record whatsoever.

24 Even though he was informed of his right to have an
25 attorney, to apply for one anyway, not only could he not

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1 fulfill that process by the time of that hearing where he was
2 actually elicited this from the judge, himself, number one.
3 But number two, it was quite clear from the factual
4 proceedings at that hearing, that he was indigent. I mean,
5 he, himself is the one that said he basically can't afford
6 even a bond. And so he's there. He's in shackles. The
7 judge actually heard about his background, heard about his
8 work. It's very clear that he could not even afford one,
9 even if he wanted to when it comes to it. And our process in
10 the system of appointment of public defenders in this State,
11 is that it would not even be possible, especially in
12 Orangeburg County, maybe not other counties. But it was in
13 Orangeburg County, he wouldn't even be able to have a public
14 defender appointed to him until weeks, if not a month or more
15 afterward.

16 So, therefore, his Sixth Amendment Rights were actually
17 denied at that bond hearing when he was confronted by the
18 judge, when he was questioned by the judge, when he was
19 informed of the charges. And pursuant to the Sixth
20 Amendment, his Sixth Amendment Right did attach. And
21 pursuant to Rothberry versus County of Gillespie Texas,
22 United States Supreme Court, 2008, it attached and, frankly,
23 was violated. Accordingly, Judge, based on that reason, we
24 also request that any statements made at the bond hearing
25 also be suppressed. Thank you, Judge.

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1 THE COURT: Solicitor

2 MS. CORNWELL: Thank you, Your Honor. You heard
3 testimony from Corporal Cain that he advised the Defendant of
4 his Miranda rights in Columbia when he detained him and
5 brought him back to Orangeburg County. The Defendant signed
6 this Miranda form and acknowledged his rights on that form,
7 signed that form. You heard by the Defendant's own admission
8 he knew what his Miranda rights were. You also heard him
9 admit that while he told officers he wasn't going to write a
10 statement, he willingly had a conversation with them about
11 it. Now, whether what he's saying the conversation was,
12 which is what Sergeant Stokes say the conversation was,
13 that's a matter for the jury. And that's a credibility
14 issue. That should be up for the jury.

15 What we have in Denno is whether or not he was advised
16 of his rights, whether he was knowing of his rights. The
17 Defendant himself has admitted that he was advised of his
18 rights. He knew of his rights. Therefore, any statements
19 should be allowed in.

20 As for the bond hearing, we heard during the course of
21 this pretrial the tape and how it went down at the bond
22 hearing. And it was clear that in the middle of that bond
23 hearing, he did say, I'm guilty. He was interrupted by the
24 judge. The judge wasn't going to let him go on because a
25 victim was speaking at the time. But I think that any

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1 statements made in the bond hearing -- he has been advised of
2 his rights multiple times prior to that bond hearing. The
3 judge again advised him of his rights. Furthermore, that
4 statement that he made -- any statement that he made during
5 the bond hearing was not the result of any interrogation by
6 police. For those reasons, we would simply ask that you deny
7 the Defendant's request to suppress the statements.

8 MR. STEVENS: Just very briefly in reply, Judge.
9 We would simply assert that the Fifth Amendment Miranda
10 Rights are definitely separate and distinguishable from Sixth
11 Amendment Right to counsel. Thank you, Judge.

12 THE COURT: All right. Next motion.

13 MR. STEVENS: Yes, ma'am. I believe next we're
14 getting to the Biggers motion. Federal or State case law
15 regarding that. Obviously, Judge, case law is quite clear by
16 the criminal defendant may be deprived of due process of law
17 by identification procedures, which are unduly suggestive and
18 conducted, that are conducive to irreparable and mistaken
19 identification. We're provided a two-prong inquiry when it
20 comes to it. First we have to determine whether the
21 identification process was unduly suggestive. If it is, then
22 we proceed to the second prong of analysis, which is whether
23 the out-of-court identification is nevertheless so reliable
24 that no substantial -- identification exists. Our position
25 here Judge is quite obviously that number one, the

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1 identification process was unduly suggestive. And number
2 two, that clearly our position is that a substantial
3 likelihood of misidentification does exist because the out-
4 of-court identifications was not so reliable.

5 Regarding whether it's unduly suggestive. We've been
6 over this with every single witness which was shown that
7 photograph. It was a single photograph of Archie Hardin. We
8 have that right here. It's actually State's Exhibit for
9 pretrial purposes No. 2. It's a single photograph of Archie
10 Hardin. He's standing there. There is a uniform police
11 officer standing directly behind him. This was sent, whether
12 it was text or email, we're not certain. But it was sent to
13 another phone held by another officer there at the scene
14 investigating the incident. At the scene of the incident in
15 the hand of an officer, the phone was shown directly to the
16 people. There was no six-pack lineup. There was no
17 traditional standup lineup with actual people there. It
18 wasn't even just a single large photograph or maybe that they
19 could actually go through a whole stack of them, with just,
20 you know, a face on it. It wasn't that at all. It was
21 literally a man standing there with an officer standing
22 behind him, badge clearly seen and in full uniform as well.

23 Our position, Judge, is this is clearly unduly
24 suggestive, especially since it's right after the robbery and
25 especially give -- I believe what one of the witnesses said -

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1 - I beg the Court's indulgence. It's Kirstie Biggers {sic}
2 regarding her statement to the Court.

3 THE COURT: You mean Ms. Berry?

4 MR. STEVENS: Yes, ma'am, Kirstie Berry. Yes, it
5 was on, I believe, direct testimony when asked by the
6 prosecutor regarding the showing of the picture. She was
7 asked if she can identify this as one of the robbers? Oh,
8 that's not a problem. The folks might say, look, hey -- this
9 is in the police officer's hand, it's the only picture there.
10 There's another officer standing directly behind him. And he
11 said, hey, is this one of the robbers right here? Is this
12 one of the robbers? That's unduly suggestive, Judge.

13 Given the factors, the photograph of Archie Hardin was
14 not just unduly suggestive to her, but also suggestive to all
15 of the witnesses who were shown it in this manner because it
16 was the manner shown. All of them testified to how they were
17 presented or confronted with the photograph.

18 Going on to the second prong for all three. Did they
19 have, you know, basically a substantial likelihood of
20 misidentification. Did exist because they're not afforded
21 identifications that's reliable. Obviously, we're giving
22 factors. Under both Cash and Biggers, what I'd like to do is
23 just walk through each factor and then touch on each on each
24 one.

25 THE COURT: I'm familiar with the factors and what

1 each witness testified to. If you could just give me your
2 legal argument as to how it differed or what your position
3 is.

4 MR. STEVENS: Certainly, Judge. When we actually
5 look at it, their opportunity to view it. They were on the
6 ground face-down claiming for most of the time, which as Sims
7 indicated that, you know, there's a gun at him. He was taped
8 up on the ground, ordered not to look and put his head down
9 we know that. When it comes to Kirstie Berry, we also know
10 that she was outback smoking when snatched from behind, was
11 punch in the face and hit in the back of the head. Then
12 taped up, ordered on the floor, and not to look. When it
13 comes to Jarron Weaver, he serviced the potential customer
14 and then later on had a gun at him, slammed to the floor and
15 then taped up, face to the floor.

16 When it comes to the opportunity to view the perpetrator
17 at the time of the offense, Judge, even though they were
18 there for five minutes or up to fifteen minutes, our position
19 is that when it comes to it, the opportunities were limited.
20 Also, when it comes to degree of attention, Sims, Jr.
21 indicated that -- obviously, again, the gun was pointed at
22 him. He was taped up. He was on the ground ordered not to
23 look and his head was actually put to the ground. The same
24 thing when it comes to Kirstie Berry and from my prior
25 argument, she was punched in the face, hit over the head and

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1 taped up, ordered to the ground not to look. Jarron Weaver,
2 again, the gun at him, slammed to the floor, taped up, face
3 on the ground.

4 What we're really concerned about, Judge, primarily is
5 not just the other factors but the accuracy of the prior
6 descriptions of the perpetrator. When we get in to it, for
7 example, Mr. Jarron Weaver indicated he's a face man. That
8 was his own testimony, and yet the one description lacking in
9 his statement is any description of his face, light skin,
10 dark skin, hair, no hair, bald, dread locks, corn rows,
11 anything. What we also know is that he didn't notice any
12 facial hair. And, in fact, when we specifically showed him
13 the photograph of the State's Exhibit in this case, when I
14 was standing a little away, he didn't even see the facial
15 hair at all. And when I came up to him and handed it to him,
16 that's when he can only see the facial hair. Now, that's a
17 much larger picture on an eight and a half by eleven paper
18 that whatever is going to be on a cell. So, if anything,
19 it's highly likely that not just Mr. Jarron Weaver, who
20 indicated he was a face man, but also everybody else who saw
21 it, actually didn't see the facial hair on the camera. One
22 thing we do know is that they did not mention any facial hair
23 whatsoever of the assailant in this case. A person who was a
24 foot or two away from him during conversation. A person who
25 allegedly was, you know, when they snatched Ms. Berry from

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1 the back was not far from her either. And yet not one of the
2 did actually included whether the most readily obvious things
3 that sticks out on the face of Archie Hardin, and that's his
4 facial hair, or his skin color, or his hair color or his
5 height. The only the thing they give are clothes. Even
6 that's different from each one, Judge. Thomas Sims, Jr.,
7 indicates, well black shirt, khaki pants. Okay. And it was
8 the second guy, according to Sims, Jr.'s statement that had
9 short -- a black shirt -- I'm sorry, a short black shirt and
10 shorts, a stocking on his face and a ball cap. Both had
11 white shoes. Kirstie Berry says long sleeved white shirt,
12 short sleeved black shirt, white shoes, and mechanics gloves.
13 By the way, she's the only person that says anything about
14 gloves. Neither one of the others said that either one of
15 these assailants had gloves, much less the person they later
16 attempted to identify as Archie Hardin, the man in the
17 suggestive photograph. And, in fact, Ms. Berry says, well,
18 yeah. Looks like he changed clothes. So they can't even say
19 the clothes match. And finally, Mr. Jarron Weaver indicates
20 that John Doe number one had a gray shirt under and a black
21 shirt over, black baseball cap, black glasses and khaki
22 pants. None of the statements really even concur with each
23 other.

24 In short, there's no description of facial hair.
25 There's discrepancies in as to color, discrepancies in

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1 whether a ball cap was worn, discrepancies on whether black
2 glasses were worn.

3 Next, Judge, is the level of -- demonstrated by the
4 witness in confrontation -- the first we heard was today.
5 And then finally, the length of time between events and
6 catching, confrontation. Again, we tried to find out
7 specifically what time the alleged events occurred. And
8 later on what time it was that they were shown. They didn't
9 give an exact time for that, either, Judge. All we know is
10 the same day.

11 Therefore, Judge, not only was the photograph unduly
12 suggestive, but it's the Defense's position that there's a
13 substantial likelihood that these other -- exists. Given the
14 limits on the degree of attention and opportunities to view
15 the assailants and specifically discrepancies in shirt color,
16 presence of the ball cap, presence of glasses, and even the
17 presence of facial hair, or skin color or type of hair on
18 their head, and especially considering the unduly suggestive
19 nature and how they were confronted with the suspect, we
20 respectfully need to have out of court identification as well
21 as in court identification suppressed under Biggers and Cash,
22 Judge. Thank you.

23 THE COURT: Solicitor.

24 MS. CORNWELL: Thank you, Your Honor. As stated in
25 Stave v. -- and Stave v. Brown, under the Neil v. Biggers

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1 two-prong test, notwithstanding the apparent suggestiveness
2 and general disfavoring of one on one show of
3 identifications, they may be proper where they occur shortly
4 after the alleged crime, near the scene of the crime, as the
5 witnesses memory is still fresh, where the suspect has not
6 had time to alter his looks or dispose of evidence, and a
7 show up might expedite a release of innocent subjects and
8 enable the police to determine whether to continue searching.

9 In the matter at hand you heard both Jarron Weaver and
10 Thomas Sims state that this Defendant came in the store
11 multiple times before committing the robbery. That the first
12 interaction took anywhere between five to fifteen minutes
13 according to both of their testimonies. They both said that
14 they had a good chance to look at him and both gave
15 descriptions of him at that time. When he came back the
16 third time, they both stated that guns were pointed at them
17 and they were escorted to the back. Mr. Sims was able to
18 discuss how this Defendant lead them to the office. He had a
19 conversation with this Defendant about whether or not there
20 was going to be another employee in the office. When they
21 opened the door, the employee wasn't in the office. So he
22 then told the gentleman, told Mr. Hardin that the other
23 employee would likely be outside. So, again, even after the
24 robbery, they were having a conversation in close proximity.
25 Even after that, the Defendant, according to Mr. Sims got him

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1 up at another point to find the security box and had another
2 conversation with him. Mr. Sims stated that he was looking
3 at the Defendant at that time, too, and told him to turn his
4 head or he would shoot him. They were all able to give
5 descriptions. Obviously, in an excited moment, once an
6 armed robbery has occurred, they might not put all
7 information that they know into a statement. They're giving
8 to police what information they have at that time and can
9 readily give them. Some statements can get mixed up. But in
10 each and every description that they gave them, they identify
11 clothing, they identify the hat, the sunglasses, black shirt,
12 pants and in Ms. Berry's testimony, she even gives the age
13 range, what she states is a fifty-year-old man. She was in
14 close proximity of him as well. While she did not see him in
15 the store prior to, this Defendant is the one that she claims
16 punched her in the face, grabbed her and pulled her back into
17 the store. She also states that she was in close proximity.
18 As for the timing and when the picture took place, we heard
19 Mr. Hardin's testimony that Corporal Cain took his picture
20 shortly after they arrived on scene and while he was standing
21 out by his car.

22 The consent to search is signed at 2:00 p.m., which
23 would have been approximately three hours after this incident
24 occurred. And according to Mr. Hardin, the picture was taken
25 before the consent to search was signed. So the picture was

1 taken and sent within three hours of the robbery occurring.
2 And each and every victim saw the picture separate from each
3 other. And each and every one of the immediately identified
4 the Defendant in that picture as the man that robbed them.
5 Based on those Standards and in Brown and in Govan, I think
6 the State has shown that this happened shortly after the
7 incident occurred. It happened within three hours, the
8 identification. The witnesses memory was still fresh.
9 Again, it happened within three hours. It wasn't a long
10 period of time where they would have forgotten or gotten
11 confused on anything. The suspect did not have time to
12 change or alter his looks or dispose of evidence.

13 In this case, Ms. Berry did say that he was wearing
14 different clothes at the time. But even with that, he was
15 not able to change his physical appearance in any way. He
16 wouldn't have been able to automatically grow facial hair or
17 shave or anything of that nature. He was also unable to
18 dispose of any of the evidence. Because as we heard, the
19 evidence was found in his own apartment.

20 And lastly, the show up might have expedited the release
21 of innocent suspects. Again, when police showed the
22 photographs to all of the victims, they just stated can you
23 identify this person? I believe it's safe to say that if the
24 victims were not able to identify this person, that would
25 have possibly expedited the release of innocent suspects.

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1 I'm not saying police would have released the Defendant at
2 that time. There would have been further investigation, but
3 that prong was also met by their identification, it could
4 have met that prong. Based on State v. Govan and State v.
5 Brown, I believe that the State has met the burden. Though,
6 while it may be unduly suggestive it was not in such a matter
7 that would create a substantial likelihood of irreparable
8 misidentification. And based on that, we would respectfully
9 ask you to deny the Defendant's motion to suppress the
10 identification.

11 THE COURT: Thank you. Anything further at this
12 time?

13 MR. STEVENS: Say it again. I'm sorry, Judge.

14 THE COURT: Anything further at this time?

15 MR. STEVENS: Yes, ma'am. I believe we have our
16 final pretrial motion for the Court. And we've kind of
17 danced around this issue during, you know, direct and cross-
18 examination. Essentially, it's about the iPad track and
19 discussion of it or mentioning of it without proper
20 foundation. We respectfully move to suppress reference to
21 the iPad tracking in the present case or alternatively to
22 present -- or prevent or prohibit reference to the same until
23 the proper foundation is laid, Judge.

24 In the present case, my position is clear. The State
25 seeks to enter testimonial evidence regarding the specific

1 locations of Mr. Thomas Sims, Jr.'s iPad between the time
2 when it was allegedly taken and when it was discovered. Now
3 Mr. Sims, Jr.'s iPad was purportedly tracked via a software
4 application accessed remotely by Mr. Sims, Jr., where --
5 actually, we just found out recently it was really Mr. Sims,
6 Jr. It was really Mr. Sims, Sr., or somebody like that
7 accessing it. Regardless, it was in Orangeburg, which pinged
8 the location. It was a pinging location also based on
9 information which, I believe, one ping that we actually got
10 in discovery, it's from cell towers. It only had three
11 individual locations from when it was actually pinged.
12 That's all we've got. But what's clear is that it's through
13 cell towers and that's technology it's using to find the
14 alleged location, which was then relayed to others in
15 Columbia. However, no one on the State's witness list
16 actually saw or heard Mr. Sims', Jr.'s iPad until it was
17 eventually located in tall grass, near a tree line by the
18 dumpster in Columbia. The State is yet to produce any
19 information relating to cellular tower data necessary to
20 specifically show where Mr. Sims' iPad was located, which
21 towers were involved, trouble with any or all of the towers
22 involved and the dates and times that they were used in the
23 purported tracking of Mr. Sims' iPad. Additionally, the
24 State's failed to provide any information on how precisely
25 the application software in question operates, whether it was

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1 properly downloaded, whether it was properly operated or what
2 the error rate is even for the technology and the software
3 application in question. Or even whether the application
4 software in question has ever been peer reviewed. We don't
5 know. That's never been presented or offered or anything.
6 And there's no one on the witness list indicating that they
7 would have someone to properly laying that foundation when it
8 comes to it. In short, the State only has lay witnesses who
9 would not be able to testify regarding the information, to
10 provide the necessary foundational basis for admission of the
11 specific various locations of Mr. Sims' iPad. And,
12 accordingly, we respectfully move to suppress any and all
13 reference to the tracking of Mr. Sims' iPad. Obviously, if
14 they saw it, heard it, touched it, felt it, whatever it is,
15 that's different. That's direct testimony. They can go into
16 that. But anything regarding what we just covered they won't
17 be able to bring it up to prove the foundational basis
18 required for it. In the alternative, we also would
19 respectfully ask that the State be prohibited from mentioning
20 this until they can lay their proper foundational basis
21 including, frankly, Judge, in opening statements, which is
22 why it's kind of necessary that we do broach this question
23 now. Thank you.

24 THE COURT: Solicitor?

25 MS. CORNWELL: In the first place, as to the issue

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1 of the preciseness of the application or anything, it seems
2 to be pretty doggone precise to me since it lead police
3 straight to the iPad, which was found in front of this
4 Defendant's apartment. But other than that, if you look at
5 South Carolina Rules of Evidence, Rule 701, it lays out
6 opinion testimony by lay witnesses. That rule states that if
7 the witness is not testifying as an expert, the witnesses'
8 testimony of opinions or inferences is limited to those
9 opinions or inferences with (a) a rationally based or
10 perception of a witness; (b) is helpful to a clear
11 understanding of a witnesses testimony or determination of a
12 fact in issue; and, © does not require special knowledge,
13 skill, experience or training. It's the State's position
14 that each and every witness that has testified and that will
15 testify to the Locate My iPad App, is simply testifying as to
16 their knowledge of the app. The Locate My iPad App, again,
17 is universal on any Apple Product. Apple Product is a multi-
18 billion dollar corporation and there are billions of cell
19 phones and iPads and other electronic devices by Apple given
20 to everyday people. The location -- Locate My iPad App is a
21 simple App and it's made to be simple so that people can
22 locate their phones, locate their iPads, whether they're
23 lost, stolen or misplaced. It's made in a simple and easy-
24 to-understand format so that a lay person can go onto the
25 application and find their missing or stolen iPhone, iPad or

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1 whatever it may be. In this case, the officers would give
2 their -- have given their explanation of their knowledge of
3 the application. The application, they're not saying whether
4 or not it's complete accurate, whether the cell towers that
5 they hit off of or anything of that level. They're not
6 trying to give expert opinion on the application itself.
7 They're simply saying that if you log-in to the application,
8 based on what they saw the application on this screens, they
9 followed those points throughout their investigation and it
10 ultimately lead them to this Defendant's apartment where the
11 iPad was located, just where it said it was going to be, at
12 this Defendant's residence. You also heard testimony from
13 Corporal Cain that while he was tracking him he was able to
14 see the dark gray car and this Defendant at a location at a
15 motel, which is where the iPad said it would be. You also
16 heard testimony that this Defendant mentioned that he had
17 seen Corporal Cain on another road, that the iPad was pinging
18 off of because they thought that he was the co-defendant's or
19 the co-accomplices probation officer. So, again, it goes to
20 show that while we're not trying to have testimony giving
21 the, necessarily the reliability or any of that information,
22 the investigation tracked to where the iPad was located. The
23 time line fits with where this Defendant was. And
24 ultimately, it lead from them from A, Orangeburg, to point C,
25 which was this Defendant's apartment, which is where the

1 application was found. Under rule 701, I believe that the
2 witnesses can testify as to their inherent knowledge of the
3 application. It's not overly scientific. It's not overly
4 complicated. It's a normal, everyday application. And for
5 those reasons, the opinions of the lay witnesses should be
6 allowed in to assist the jury in understanding the issue of
7 that.

8 THE COURT: All right. Thank you.

9 MR. STEVENS: Very briefly from me, Judge.
10 Obviously, the State wants to say that it lead police
11 straight to the iPad. Well, that's not necessarily true. We
12 know that there are discrepancies that from Investigator
13 Wade's statement today. Oh, it's got a big, big, large dot,
14 but you can't really whittle it down, but when it does get
15 more accurate then it gets smaller. How do we know this?
16 How does he really know how this worked and what's accurate,
17 what's not accurate. In fact, if it was so accurate then how
18 come did you have to make it play music to find it. If it
19 was that accurate you could lead them directly over to it.
20 Oh, here it is. Pick it up. You can't say that. No one can
21 say, oh, the iPad is here. The iPad is there. It's not
22 that's precise. At least there's no testimony that they can
23 show saying that.

24 Regarding Rule 701, we point to -- see, first of all,
25 the elements of Rule 701 are conjunctive, not disjunctive.

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1 So it's got to meet each and every one of those, and
2 specifically, under subsection ©, in order for them -- it has
3 to not require special knowledge, skill, experience or
4 training. We've heard testimony from various people saying,
5 oh, it's got a realtime mapping when it comes to it. The
6 State has tried to elicit that testimony. Again, they don't
7 know what realtime mapping is. Sergeant Stokes didn't. A
8 lot of folks don't even know what realtime mapping is or
9 specifically what technology is used. They know that Google
10 maps are overlaid on top of whatever the system is, but they
11 don't really know how that works or why or accurate that is.
12 And that's what our problem, what it is, when it comes to
13 this Judge. It's one thing to say, oh, well, you know, we
14 tried to follow where our investigation lead to from up to
15 point X. It's another thing to say, oh, we specifically know
16 that this iPad was on Sunset Boulevard at this specific
17 location at the intersection of X and Y. They can't say
18 that. They don't know it. In fact, we heard from
19 Investigator Wade he couldn't tell if it was inside or
20 outside even when they're at the location they claim to know
21 where the iPad was.

22 Accordingly, Judge, again, I simply respectfully request
23 they have mention of it, especially regarding specific
24 locations of where they're trying to say where the iPad was.
25 That's our problem with it. Thank you.

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1 THE COURT: All right. We will be at recess until
2 9:00 in the morning. At that point, I will issue my ruling
3 and we'll proceed with the trial.

4 MR. STEVENS: Thank you, Judge.

5 MS. CORNWELL: Thank you, Your Honor.

6 (Court in recess February 25, 2014
7 at 5:36 p.m.)

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(Court in session February 26, 2014

at)

THE COURT: Are the parties ready to proceed this morning?

MR. STEVENS: Yes, ma'am: Yes, we're ready, Judge.

MS. CORNWELL: The State's ready, Your Honor.

MR. STEVENS: Very briefly, Judge, as a housekeeping matter, I spoke with opposing counsel and we just -- we didn't have extra copies of the three statements of the victims yesterday, so we did get those printed off. I'm going to pre-mark them as Court's Exhibits simply for purposes of the pretrial.

THE COURT: All right.

MR. STEVENS: I'm going to respectfully move them in at this time.

THE COURT: That's fine.

MR. STEVENS: Thank you, Judge.

(Court's Exhibit No. 2, statement, was marked.)

(Court's Exhibit No. 3, statement, was marked.)

(Court's Exhibit No. 4, statement, was marked.)

THE COURT: All right. In regards to the pretrial motions here are the Court's rulings on each of the motions

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1 that were previously raised. Regarding the search issue, the
2 Defendant obviously had the authority to consent to the
3 search. The Defendant testified that he had, that he
4 understood the search. That basically he had understanding
5 of the content of the document. At no time -- he testified
6 at no time he withdrew the consent to search as he had
7 nothing to hide. His testimony is, said, never tried to
8 withdraw consent because I had nothing to hide. I talked to
9 them willingly. I wanted to help them try to get Black. So
10 definitely, the Court does find that the consent was valid
11 and voluntary. So the search is valid and the items that
12 were found in the apartment and in the car are admissible.

13 In regards to the language that was added on the consent
14 form, the Court finds that the officers testimony was
15 credible. Upon getting him on the witness stand and
16 observing his demeanor and manner in which he testified, the
17 Court finds that he was credible, that he testified that he
18 advised the Defendant that he was adding such language, that
19 the Defendant did not object. And further, the Court finds
20 that the Defendant's own testimony is contradictory in
21 nature, there are certain aspects of it which raise questions
22 to the veracity of the conflict of his testimony. So the
23 Court does find that the added language in there was
24 explained to the Defendant and the consent was never
25 withdrawn and, therefore, the items that were found will be

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1 admissible.

2 Regarding the -- the next issue is the identification
3 issue. Obviously, the picture procedure in which the picture
4 was shown to the victims is unduly suggestive. The Court
5 disfavors such type of photo identification in that it is
6 unduly suggestive. However, the Court must then determine
7 whether or not it is reliable. The factors in determining
8 the reliability are the witnesses' opportunity to view the
9 criminal at the time of the crime, which of the three
10 witnesses all testified that they were one hundred percent
11 certain that they were in close proximity of the Defendant,
12 of the person who perpetuated the crime for a period of time,
13 between five and fifteen minutes, that they were in close
14 radius of the person, that they were able to pay close
15 attention to what the person looked like and the accuracy of
16 their description was accurate. They described what the
17 person was wearing and they each testified that their level
18 of certainty was one hundred percent. They were absolutely
19 certain that that was the person that perpetrated the crime
20 against them. Further, the time between crime and the
21 confrontation of when they identified the photograph was
22 short in nature. It was the same day of. It was at the
23 location where the crime happened or right outside of the
24 location where the crime happened. And, further, there was
25 testimony that it was daylight hours. It was morning hours.

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1 And certainly, there was nothing to prevent them from being
2 able to see him. So considering all of the applicable
3 factors and the reliability test, the Court find that the
4 identification is proper and it is in.

5 Regarding the Jackson v. Denno hearing, testimony is
6 that Defendant was advised of his Miranda warnings. The
7 Defendant himself testified that he understood his Miranda
8 warnings. He signed that he understood the Miranda warnings
9 and he initialed by each of the warnings having an
10 understanding of the Miranda warnings. His testimony was
11 that he freely and voluntarily talked to law enforcement
12 because he had nothing to hide. His testimony was that I
13 talked with them willingly. I wanted to help them get Black.
14 Therefore, the Court finds that the statement was voluntarily
15 taken and in compliance with Miranda versus Arizona.
16 Further, in regards to the statements at the bond hearing,
17 the Court finds as follows: In accordance with State v.
18 Curtain, a Defendant's voluntary statement made at a bond
19 hearing is admissible. Further, the statement in State
20 versus Terry the Court finds that a statement made at a bond
21 hearing is not pursuant to a law enforcement interrogation
22 and it's not intended to elicit any kind of incriminating
23 response. In fact, the Defendant blurted out on the tape at
24 the bond hearing that, Your Honor, I'm guilty. And that was
25 after Mr. Sims, Sr., was addressing the court or during his

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1 address to the Court. The Defendant, in no response to any
2 law enforcement questioning made that statement. That's a
3 hearsay statement, which is the exception to the hearsay rule
4 that it's a statement against interest. The self-serving
5 other statements that I'm an innocent man, I'm trying to
6 prove my innocence, are hearsay statements. Those are not
7 coming in unless the Defendant testifies.

8 And that's the rulings of the Court.

9 MR. STEVENS: Thank you, Judge.

10 THE COURT: The only other ruling is that the
11 Statement that was given by the Defendant where he told the
12 officer that I saw you at a certain location, and I thought
13 you were Black's probation officer. That's not coming in.
14 It wasn't previously disclosed to the Defense in a timely
15 manner so that will be excluded.

16 MS. CORNWELL: Your Honor, for the record and we
17 didn't address this when he said it was a civil violation.
18 The State did disclose that to the Defense. There was a
19 verbal conversation when the State gave additional
20 supplemental evidence to the Defense counsel, including
21 several photographs that were investigated, several
22 photographs of several different people. When we gave those
23 photographs to Defense counsel, the statement we made was
24 these photographs are because he stated, I thought this was
25 the probation officer. The probation officer was contacted

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1 about Black and there were about six people that she was
2 aware of with the nickname of Black, and so they provided all
3 six photographs to Orangeburg County. That was disclosed in
4 discovery. They were given the six photographs with rap
5 sheets through the investigation. Like I said, it was a
6 quick, verbal conversation but that was disclosed to Defense
7 counsel.

8 The only thing that was not disclosed to Defense counsel
9 was Officer Wade when he stated that in the apartment this
10 Defendant started talking about Black and how he could help
11 them, and the girlfriend and all of that. That was the first
12 time the state had heard that statement, even though we had
13 met with Investigator Wade several times, and that is why I
14 elicited testimony from Investigator Wade, had you ever told
15 me this before? And he stated, no. But as to the
16 conversation with Corporal Cain, that was disclosed to
17 Defense counsel when giving the supplemental evidence. It
18 was a verbal conversation. I don't have any written
19 documentation, but it was in conversation.

20 THE COURT: Do you remember that Mr. Stevens?

21 MR. STEVENS: Not to my memory at all, Judge. I
22 don't recall anything about a statement by our client to law
23 enforcement that was verbal at all. Also, when it comes to,
24 you know, whether this is an identification of a person named
25 Black, I'm not aware of that as well. Specifically, though,

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1 in regards to our other grounds on the Jackson v. Denno
2 hearing.

3 THE COURT: No, no. Hold on. Let me back up one
4 second. I forgot to put on the record regarding the iPad
5 situation. You can have a seat Mr. Stevens.

6 MR. STEVENS: Thank you, ma'am.

7 THE COURT: Regarding the iPad situation and its
8 admissibility, that iPad application is something that's
9 general knowledge amongst the population. You don't have to
10 have any specialized training or education to be able to use
11 it. Quite frankly, I'm about the most technologically
12 challenged person on this earth and I can use it. It's much
13 akin to getting into your car, punching in the address on a
14 navigation system and following it to the destination. The
15 witnesses will not be allowed to testify regarding their
16 knowledge of how it works. There's no testimony to be
17 allowed as to the pinging or that nature. However, they can
18 testify that it was on there, that it was activated, that it
19 worked and that's where it lead them to. So I think that's
20 within the general common knowledge of the general
21 population. And so it's not an opinion, would not come in as
22 a lay opinion but merely just under observation and
23 experience as to what they actually did. So as to direct
24 testimony as to what they did and what they saw. Anything
25 further at this time.

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1 give or take. During the course of that conversation the
2 Defendant stated he needed to go out and call his wife. So
3 he left the store. A few minutes later, he came back and had
4 a second conversation with Mr. Weaver, stating he wanted to
5 get a credit check or get his credit run. At that time,
6 another customer came into the store so this Defendant left
7 again. After the Defendant left the second time, and the
8 other customer left.

9 What started off as a normal day for Thomas, Jarron and
10 Kirstie, ended up turning into the most terrifying day of
11 their lives, because at that point, that Defendant and
12 another accomplice came in the store, waving guns, wearing,
13 masks, wearing gloves. They pointed the guns at Jarron and
14 Thomas, forced them to the back of the storage room where
15 they demanded that they get on the ground. This Defendant
16 and his accomplice then took duct tape and taped their hands
17 behind their back, taped their feet together and made the
18 stay on the floor. Thomas advised that Defendant that
19 Kirstie was supposed to be in the office, because he was
20 afraid that if the Defendant went into the Office and saw
21 Kirstie, he might shoot her. So he said, look, man, there's
22 somebody in that office. Don't hurt them. When that
23 Defendant went into the office, Kirstie wasn't there. She
24 had stepped out back to have a cigarette. That Defendant
25 then walked through the storage room, down the hallway, out

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1 the door where Kirstie was standing. He punched her in the
2 face, grabbed her and pulled her back into the store where he
3 demanded that she also get on the ground. But Kirstie wasn't
4 moving fast enough for this Defendant. So what does he do?
5 He takes his gun and he pistol whips her in the back of the
6 head, forcing her to fall on the ground. He then rips her
7 arms behind her, duct tapes them and duct tapes her feet.

8 Once he and his accomplice had all three victims
9 restrained, they ran into the storage room and started
10 ransacking the storage room. They both had black bags. They
11 started filling those bags with telephones, electronics, and
12 various other items. Once they -- they were even savvy
13 enough to grab the security box out of the office so there
14 wouldn't be any video of the robbery. They then ran out the
15 back, jumped over a fence, where two eyewitnesses saw them
16 get into a gray car and drive off.

17 Now, normally, that would probably be the end of this
18 case because the reality is the Defendants were wearing
19 gloves, so there was no going to be any fingerprints or DNA
20 evidence in the store. We have eyewitness testimony that two
21 black men jumped over a fence and got into a dark gray car,
22 but you're going to hear that those witnesses were in their
23 apartments. So they weren't close enough to see a license
24 plate number or anything. They took the security box, so
25 there's no video clip of the armed robbery. And you're going

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1 to hear that this Defendant doesn't live in Orangeburg. He
2 lived in Columbia. So the likeliness of police coming upon
3 him would have been unlikely.

4 It would have been a difficult case to solve. But what
5 we have is that Defendant's greed. And that Defendant's
6 greed is ultimately what landed him in that chair right
7 there. There's a Chinese Proverb that says love is blind,
8 greed is insatiable, and it was that Defendant's insatiable
9 greed that day that allowed police to go to his front door
10 and find all the evidence in his apartment, because it wasn't
11 enough for that Defendant to simply rob the store and take
12 items from a business, which is bad enough. But he had
13 greed. He saw Mr. Sims' book bag with all of his personal
14 items, all of his personal effects also in the office. So he
15 decided he was going to take Mr. Sims' hard earned property
16 as well. What he didn't realize is that in that bag was Mr.
17 Sims' personal iPad. And that iPad had what we know is the
18 Locate My iPad App. And Mr. Sims was able to tell officers.
19 Officers I have that application on my iPad. I need to
20 activate it. And through his father's phone, he was able to
21 log-in to his account and show officers exactly where that
22 iPad was at all times, from Orangeburg County, all the way to
23 Columbia, right to that Defendant's front door.

24 You're going to hear when officers went to that
25 Defendant's front door, they drive up and lo and behold,

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1 there's a gray Toyota four-door right in front of his
2 apartment. That Defendant's coming out of his apartment. As
3 he's coming out of his apartment police officers say, whose
4 car is this? He admits it's his car. They then look at the
5 application and see that the iPad is in the area. They
6 search the area and within about a hundred yards from that
7 Defendant's front door, behind a dumpster, they find Mr.
8 Sims' iPad. They search the Defendant's apartment and lo and
9 behold all of the items that were stolen from T-Mobile are in
10 that man's apartment where he is the only person in the
11 apartment at the time. They also found two guns, the two
12 guns that match the description that those victims gave that
13 day.

14 Officers took a picture of the Defendant, sent it back
15 to Orangeburg via text message on his cell phone. Officer's
16 showed each victim a picture of that man. And every one of
17 them identified, with a hundred percent certainty, that that
18 Defendant was the man who came in the store and talked to
19 Jarron. He was the man that came in the store and pointed a
20 gun at Thomas, forced him on the ground and duct taped him.
21 And he was the man who punched Kirstie in the face, pistol
22 whipped her in the back of head and forced her on the ground.
23 That Defendant is charged with armed robbery.

24 He's charged with three counts of kidnapping. He's
25 charged with assault and battery of a high and aggravated

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1 nature, and with possession of a weapon during the commission
2 of a violent offense, and I will tell you that in South
3 Carolina armed robbery, kidnapping and assault and battery of
4 a high and aggravated nature are all crimes of violence.

5 Now, it's on the burden of the State to prove each and
6 every element of each and every crime charged against that
7 Defendant. And we will do just that. You will hear through
8 evidence and testimony, the items that were found in his
9 apartment, how it got to his apartment and the
10 identifications made by each of these victims.

11 You're also going to hear throughout the course of this
12 trial a lot about reasonable doubt, and you're going to hear
13 about this accomplice, this second person. I will tell you
14 now that you're going to hear testimony the investigation of
15 that second Defendant is still on-going. But don't get
16 distracted by that. Don't let them distract you because this
17 trial is not about that second accomplice. This trial is
18 about that man right there, Archie Hardin, and his
19 participation and what he did in robbing T-Mobile and in
20 kidnapping the victims and assaulting the victims and having
21 a weapon. So don't get distracted by what the other person
22 may or may not have done. This is about that man right
23 there.

24 And at the end of this trial, after you have heard all
25 of the testimony from the witness stand, after you have seen

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1 all of the evidence as it's been presented to you, the
2 evidence that is found in that man's apartment, in that man's
3 possession where he was the only person that had access to
4 the items that were stolen from T-Mobile, to the guns that
5 were used in the robbery, to the iPad that belonged to Mr.
6 Sims', and to the getaway car. I am certain that you are
7 going to find that Defendant, Archie Hardin, guilty of armed
8 robbery from the T-Mobile. You're going to find him guilty
9 of kidnapping Thomas Sims, Jr. and duct taping his hands and
10 feet. You're going to find him guilty of kidnapping Jarron
11 Weaver and duct taping his hands and feet. You're going to
12 find him guilty of kidnapping Kirstie Berry and duct taping
13 her hands and feet. You're also going to find him guilty of
14 assault and battery of a high and aggravated nature for
15 punching and pistol whipping Kirstie Berry during the course
16 of the armed robbery. And you're going to find him guilty
17 that he was in possession of a weapon during the commission
18 of these violent and horrible offenses. Thank you.

19 MR. STEVENS: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. STEVENS: Madam Prosecutor.

22 DEFENSE - OPENING STATEMENT

23 BY MR. STEVENS:

24 Appearances are not always what they seem. Contrary to
25 the State's assertions, Archie Hardin is not guilty of armed

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1 robbing the T-Mobile Store. He wasn't even in Orangeburg at
2 the time. He's not even guilty of kidnapping anyone, much
3 less hurting anyone. He wasn't even there. These
4 appearances are not what they seem. Despite what the State
5 claims that they're going to show you, you're also going to
6 hear evidence that shows appearances are not what they seem.

7 For example, you're going to hear testimony that the
8 description of the robbers of the T-Mobile are at variance
9 with the description of Archie Hardin on the day in question,
10 even to this very day. You're going to hear that because
11 appearances are not always what they seem. You're also going
12 to hear that, yes, DNA evidence was indeed collected at
13 various places, and yet none of it, none of it places Archie
14 Hardin in the T-Mobile Store on May 16th or even driving the
15 getaway vehicle afterward.

16 In fact, you're also going to hear that the DNA evidence
17 was never even tested by the State. They collected it but
18 chose not to test it. You're also going to hear that there
19 weren't any fingerprints found on the stolen items. Now,
20 they collected those fingerprints and they checked them, but
21 they didn't check them against a database full of other
22 potential suspects. Didn't do that. They only checked those
23 fingerprints against one person's full fingerprint spread,
24 Archie Hardin. And the one thing we know about that, whether
25 the fingerprints on the items stolen, we know that they do

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1 not match in any way, shape or form, Archie Hardin's
2 fingerprints. They're not his. That's what the State's own
3 test is going to show you. Not his. And that's because
4 Archie Hardin stands before you right now an innocent man.
5 He carries that presumption, just as everybody does in the
6 United States of America who is accused of an offense. He is
7 presumed innocent right now. He's presumed innocent
8 throughout the duration of this trial. And he will remain
9 presumed innocent even after the end of evidence as you walk
10 into that jury room and debate his fate. In fact, he bears
11 absolutely no burden of proving anything, let alone his
12 innocence. The only burden in this entire matter is on the
13 State. It's the government that bears the burden of proof.
14 They must prove every single element of every single charge
15 beyond a reasonable doubt, not just 50/50 and maybe a little
16 more. Beyond a reasonable doubt. It's the heaviest burden
17 in the criminal justice system. The highest standard we
18 have. What is? Well, simply stated and simply put,
19 reasonable doubt is the doubt you can put a reason on. I
20 know. That's not catchy. DNA not tested, discrepancies in
21 descriptions. Another way of stating it is something caused
22 you to hesitate to act, that's reasonable doubt.

23 Now, at the close of this case, it's going to be on you.
24 We want you to pay attention to every single witness and all
25 the evidence and specifically pay attention to what the State

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1 chose not to do, because if you do that and you do your sworn
2 duty and apply the law, especially the law of reasonable
3 doubt, I'm confident you'll find that Archie Hardin is not
4 guilty of the charged offenses. He is not guilty. My name
5 is Breen Stevens and together with lead counsel, Douglas
6 Mellard, we represent the accused in this matter, Mr. Archie
7 Hardin. Thank you.

8 THE COURT: You may call your first witness.

9 MS. CORNWELL: Thank you, Your Honor. The State
10 would call Thomas Sims, Jr.

11 (WHEREUPON, Thomas Sims, Jr., was
12 sworn to tell the truth.)

13 THE CLERK: You may have a seat. Please state your
14 name again for the record?

15 MR. SIMS: Thomas Sims.

16 THE COURT: Your witness.

17 THOMAS SIMS, JR., - DIRECT EXAMINATION

18 BY MS. CORNWELL:

19 Q Good morning, Mr. Sims?

20 A Good morning.

21 Q How old are you?

22 A Thirty-one.

23 Q And where do you live?

24 A St. Matthews.

25 Q Who lives there with you?

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1 A My wife, my daughter and my wife's grandmother.

2 Q Can you tell the jury what your educational background
3 is.

4 A I'm currently in school at Claflin University getting my
5 degree in organizational management.

6 Q And where are you employed?

7 A T-Mobile.

8 Q What is your position at T-Mobile?

9 A I'm the store manager.

10 Q And how long have you held that role?

11 A Close to two years.

12 Q Can you tell the jury what your duties as manager
13 entail?

14 A Duties entail the merchandising, inventory, floor coach,
15 meaning coaching my employees on how to make sales, how to
16 gain sales, meeting their quotas, meeting their different
17 activation goals and adding add-ons like insurance and data.

18 Q Okay. And were you working in that capacity on May 16th
19 of 2014?

20 A Yes, I was.

21 Q And can you tell the jury what you remember happening on
22 that day?

23 A On that day, I remember getting there about 8:50. I had
24 a conference call so usually I come in early. The conference
25 starts at 9:00, so I had my iPad in order to look at my

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1 current goals and data for the day. Jarron --

2 Q Is that your personal iPad or is that a work iPad?

3 A That's my personal iPad.

4 Q Okay.

5 A Jarron got there around 9:30. He opened, you know,
6 started opening up the tills, counting the safe and
7 everything. And then Kirsten came in around 10:00 because
8 she was training. So right after we opened, I remember my
9 first customer was him. He came in. He went -- started
10 talking to Jarron about getting an iPad for his daughter that
11 lived in Virginia.

12 Q And how close were you standing to Jarron and the
13 Defendant when they were having this conversation?

14 A I was at the round table and they were at the iPads. So
15 it's about two feet.

16 Q Okay. And let me show you what's been marked as State's
17 Exhibit 66. Do you recognize that photograph?

18 A Yes.

19 Q And is that true and accurate depiction of how the store
20 looks?

21 A Yes.

22 MS. CORNWELL: Your Honor, the State would ask to
23 move State's 66 into evidence.

24 THE COURT: Any objection?

25 MR. MELLARD: No objection, Your Honor.

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1 (State's Exhibit No. 66, photo, was
2 marked and entered.)

3 MS. CORNWELL: May we publish to the jury.

4 THE COURT: You may.

5 BY MS. CORNWELL:

6 Q I'm going to let you hold on to that photograph, Mr.
7 Sims. And, Mr. Sims, I don't know if you can see, but you've
8 got the photograph in front of you.

9 A Uh-huh (affirmative).

10 Q That's a photograph of what?

11 A The T-Mobile Store. The front of the store by the front
12 doors.

13 Q And you said that you were standing at the first round
14 table?

15 A Yes. I was standing to the side of this table.

16 Q And where, in this picture, is that first table?

17 A It's next to the iPhone display.

18 Q Okay. And is that the round table that you see in the
19 picture?

20 A Yeah.

21 Q And where was the Defendant and Mr. Weaver standing?

22 A. They were standing right in front of the iPads.

23 Q Okay. So that'd be about right here?

24 A Yes.

25 Q So you were within a couple of feet of them; is that

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1 correct?

2 A Yes.

3 Q Could you overhear the conversation that they were
4 having?

5 A Yes. He was talking, like I said, to Jarron about
6 getting an iPad for his daughter. He was on the phone saying
7 he was trying to talk to his wife. She was at work. And
8 that went on for about ten minutes while they were talking.
9 At that time, he then left because we had a customer come in.
10 I helped that customer. It was just a bill payment. Then he
11 came in again.

12 Q How long did the first conversation last with the
13 Defendant and Mr. Weaver?

14 A About five to ten minutes.

15 Q And after you helped that second customer, what
16 happened?

17 A Then he came back in but he was followed up by another
18 customer. When he came back in, me and Jarron were both
19 standing at the cash box. Then he asked what he would have
20 to do to run his credit. Jarron told him he needed a
21 license, so then he left. I then told Jarron --

22 Q How long did that conversation last?

23 A It had lasted probably about two to three minutes. It
24 wasn't that long.

25 Q Okay.

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1 A He then left out again. I told Jarron, well, Jarron, go
2 look because he may be a secret shopper.

3 Q And what is a secret shopper?

4 A A secret shopper is a test T-Mobile gives us to actually
5 see how we assist the customer, make sure we are able to
6 right fit them into the right device.

7 Q So you told Jarron to go look to see where he was going
8 because you thought he might be a secret shopper?

9 A Yes.

10 Q And then what happened?

11 A After that, and the customer had finally left, it was
12 probably two or three minutes, he came back. And that's when
13 he had the other guy with him.

14 Q Okay. And what did they do?

15 A They came in. He grabbed me. The shorter guy grabbed
16 Jarron.

17 Q And when you say "he," grabbed me, who are you referring
18 to?

19 A The Defendant.

20 Q Okay.

21 A They were ordering us to the back. He had the gun to my
22 back. We went to the back. That's when I told him we have
23 somebody -- I have somebody training in the office. So when
24 I opened the door --

25 Q And why did you tell him that?

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1 A Because I didn't want them to get startled and start
2 shooting.

3 Q Okay.

4 A And then told them, well, maybe she's out back smoking
5 when I didn't see her in there. So at that time, they order
6 us to the ground. He told me to put my hands behind my back.
7 That's when they took the duct tape, taped my hands, taped my
8 feet. And at that time, you know, Jarron was in front of me.
9 And that's when I believe he went in got Kirstie while the
10 other guy started loading up the --

11 Q Okay. I'm going to stop you there for a second and show
12 you a few more photographs so we can get a better idea of the
13 layout of the store. Mr. Sims, I'm going to show you what's
14 been marked previously as State's Exhibit 56, 57, 60, 63, 61,
15 and 64. Can you look at those photos and tell me if you
16 recognize what's in those photos?

17 A Yes. This is the front of the store.

18 THE COURT: Mr. Sims, if you could --

19 Q And there's a number on the --

20 THE COURT: Right. If you could identify it by the
21 number when you're describing it, that might be helpful.

22 BY MS. CORNWELL:

23 Q And the number will be on the back.

24 A No. 56, this is the front of the store. No. 57, this is
25 the hallway going to the back of the store, to the back room.

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1 No. 60, this is the area where we were held. No. 63, this is
2 the hallway going to the back door. No. 61, this is the
3 area, the floor area, where me and Jarron were held. And No.
4 64, this is the office.

5 Q Okay. And are these all true and accurate depictions of
6 the way that the store looked that day.

7 A Yes.

8 Q All right.

9 MS. CORNWELL: Your Honor, the State would like to
10 move State's 64, 61, 63, 60, 57, and 56 into evidence.

11 THE COURT: Any objection?

12 MR. MELLARD: No objection.

13 (State's Exhibit No. 56, photo, was
14 marked and entered.)

15 (State's Exhibit No. 57, photo, was
16 marked and entered.)

17 (State's Exhibit No. 60, photo, was
18 marked and entered.)

19 (State's Exhibit No. 61, photo, was
20 marked and entered.)

21 (State's Exhibit No. 63, photo, was
22 marked and entered.)

23 (State's Exhibit No. 64, photo, was
24 marked and entered.)

25 MS. CORNWELL: May we publish?

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1 THE COURT: You may.

2 BY MS. CORNWELL:

3 Q And look at the first photograph, which is State's 56.

4 What is that a picture of?

5 A The front of the store.

6 Q And looking at State's 57?

7 A That's going to the back room.

8 Q There you go. And is that -- if you're looking in from
9 the front of the building?

10 A That's the doorway going to the back room and to the
11 customer bathroom.

12 Q Okay. And is that what that is, directly in front of
13 the door?

14 A Yes.

15 Q And State's -- I apologize. State's 60?

16 A That's another shot of the back room part of it.

17 Q Okay. And looking at State's 60, you said that this
18 customer bathroom?

19 A Yes.

20 Q Where does this door lead to?

21 A That's the door to the hallway that leads to the back
22 door.

23 Q Okay. And State's 63?

24 A This is the hallway towards the back door. And I
25 believe that's where Kirstie was held.

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1 Q Okay. State's 61?

2 A This is the rest of the back room where me and Jarron
3 were.

4 Q And, let me see if I can turn this around for you. I
5 know that that picture is very dark, but if you could maybe
6 step down.

7 A (Witness complies.)

8 Q And show the jury exactly where you were forced to lay
9 down.

10 A I was right here.

11 Q Okay. And what is that door to the very back, on the
12 right?

13 A That's that door to the office.

14 Q Okay. And so you were laying down in the front of the
15 office. Where was Jarron laying down?

16 A Jarron was in front of me. He would have been right
17 here, right in front of the door to the hallway.

18 Q And this is the hallway going where?

19 A To the back room, to the door to the back.

20 Q All right. And then I'm going to show you State's 64.
21 And what is that a picture of?

22 A That's the back office.

23 Q Okay.

24 A (Witness returns to stand.)

25 Q So you were brought in -- you were forced in the back,

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1 duct taped, made to lay down. Do you recall what the subject
2 was wearing that day?

3 A I remember he was wearing sunglasses, a black hat and
4 black shirt and khakis.

5 Q And once he went and got Kirstie, what happened?

6 A After he went and got Kirstie, they came back and he was
7 fussing about the security box. And that's when he got me up
8 and wanted me to point out the security box in the office.

9 Q Okay. And when he got you up, how close was your face
10 to his?

11 A Not even a foot. Because I pointed out the security
12 box. And that's when he was ripping it out. He realized I
13 was looking at him. That's when he told me, don't look me or
14 he'll shoot me.

15 Q Okay. And did you see the box that they took when they
16 started taking the items?

17 A Yes.

18 Q And what kind of box was it?

19 A It was an NEXUS (sp) box.

20 Q And looking at State's 64, are those the boxes like what
21 he took?

22 A Yes. That's where we keep our old paperwork.

23 Q Okay. And that lid that's on the bottom, did that lid
24 belong to the box that he took?

25 A Yes.

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1 Q When they came in, did you see them with any guns?

2 A Yes.

3 Q Were you able to get a pretty good look at the guns?

4 A Yes.

5 MS. CORNWELL: Your Honor, I'd like to show the
6 Defendant [sic] State's 69 and 71 for identification purposes
7 only.

8 THE COURT: All right.

9 BY MS. CORNWELL:

10 Q Mr. Sims, if you could look in this box and tell me if
11 you recognize State's 69 and 71?

12 A Yes.

13 Q And what do you recognize those as?

14 A The guns used in the robbery.

15 Q And how do you know that those were the guns used in the
16 robbery? Is there anything distinctive about them?

17 A I remember one being old looking, looking like it was
18 rusty. The other one looked like it was maybe a newer one
19 and they were both revolvers.

20 Q Okay. And after the Defendant and the other subject
21 took the security box, what happened?

22 A That's when they left out the back door. We waited a
23 second. That's when I told Kirstie, lock the back door. And
24 that's when we called 9-1-1.

25 Q Okay. And approximately how long do you think the

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1 robbers were in the store while you were lying on the floor
2 duct taped?

3 A About fifteen minutes, ten or fifteen minutes.

4 Q Okay. And you said after they left, you were able to
5 call '9-1-1?

6 A Yes.

7 Q I'm going to show you what's been marked as State's
8 Exhibit 67. Do you recognize this?

9 A Yes.

10 Q And what is that?

11 A That's the recording of the 9-1-1 call I made.

12 Q And have you listened to this before?

13 A Yes.

14 Q Are you able to identify yourself on this?

15 A Yes.

16 Q And is this a true and accurate depiction of the call
17 that you made that day?

18 A Yes.

19 MS. CORNWELL: Your Honor, the State would move to
20 have State's 67 into evidence.

21 THE COURT: Any objection?

22 MR. MELLARD: Yes, ma'am. No foundation.

23 THE COURT: He's testified he's listened to it.

24 It's the true and accurate copy of the call that he made and
25 he testified that was his voice on there.

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1 MR. MELLARD: And it's our position that there
2 should be somebody who can identify it at its origin. In
3 other words, the person that recorded this, this day. They
4 can testify as to the date it was done, they can testify when
5 it was done, they can testify how it was done. He can't do
6 any of that.

7 THE COURT: He can testify that he's the one that
8 made the call. That's what he said. That it's a fair and
9 accurate, exact copy of what he said. And that's what he has
10 already testified to. So it's in.

11 MS. CORNWELL: Thank you, Your Honor.

12 (State's Exhibit No. 67, 911 call CD
13 was marked and entered.)

14 MS. CORNWELL: The Court's indulgence while we pull
15 it up, Your Honor.

16 (State's Exhibit No. 67 was played.)

17 BY MS. CORNWELL:

18 Q And was that you on that tape?

19 A Yes.

20 Q So law enforcement got there pretty quickly; right?

21 A Yes.

22 Q And other than law enforcement, did anyone else come to
23 the store that day?

24 A Yes. After I called them I called my dad and our co-
25 worker Pam came.

1 Q All right. Once law enforcement arrived, what did you
2 do?

3 A Told them what happened and also told them that they had
4 taken my iPad, that had Find My iPad App on it.

5 Q Okay. And are you familiar with that application
6 through your line of work?

7 A Yes.

8 Q What is your basic understanding of that application?

9 A Basically --

10 MR. MELLARD: Your Honor, at this time we renew our
11 objections to this line of testimony.

12 THE COURT: My ruling stands.

13 A Basically, if you happen to lose your iPad, Apple
14 device, iPad, iPhone, you're able to find it using the app.

15 BY MS. CORNWELL:

16 Q And how were you able to find it?

17 A It shows you a map and it shows you a blue dot on where
18 it is.

19 Q Okay. And in order to access that map, do you have to
20 have any special log-in or anything like that?

21 A Just your Apple ID for your iCloud information.

22 Q Okay. And at that time, did you have another device
23 that you could use to log-in to your account?

24 A My dad's device. My dad's Apple device.

25 Q Okay. And what was that? Was it an iPhone an --

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1 A It was an iPhone.

2 Q And once you log-in to the account, were you able to see
3 where your iPad was at that time?

4 A Yes.

5 Q And where did it appear to be?

6 A It appeared to be in Columbia.

7 Q And when you gave that information to officers, were the
8 officers able then to begin -- were you able to give officers
9 information as to where that iPad was?

10 A Yes.

11 Q Okay. And to your knowledge, were they able to locate
12 the iPad?

13 A Yes.

14 Q And after they located the iPad, what happened?

15 A After they located the iPad, I was then shown a picture.

16 Q Okay. And when you saw that picture, what did you view
17 it on?

18 A A smart phone.

19 Q And where were you when you looked at the picture?

20 A I was in the store at the front of the store.

21 Q Okay. Was anybody else with you when you looked at the
22 picture?

23 A No.

24 Q And when you saw the picture, were you able to recognize
25 what the picture was?

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1 A Yes. It was a picture of the person that robbed us.

2 Q And were you able to give that identification to
3 officers?

4 A Yes.

5 Q And how certain are you that the person that you saw in
6 the photograph is the person that robbed you?

7 A A hundred percent.

8 Q Okay. I'm going to show you what's been marked as
9 State's Exhibit 2. Is that a photograph that you were shown
10 by officers?

11 A Yes.

12 Q Is that a true and accurate depiction of the photograph
13 you were shown by officers?

14 A Yes.

15 MS. CORNWELL: Your Honor, at this time, the State
16 would move to have State's 2 into evidence.

17 THE COURT: Any objection?

18 MR. MELLARD: No objection.

19 (State's Exhibit No. 2 was entered.)

20 MS. CORNWELL: May we show the jury?

21 THE COURT: You may.

22 (State's Exhibit No. 2, photo, was
23 marked and entered.)

24 BY MS. CORNWELL:

25 Q And this is this the picture that was shown to you by

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1 law enforcement; is that correct?

2 A Yes.

3 Q And you were able to identify the person in this
4 photograph?

5 A Yes.

6 Q And who is the person in this photograph?

7 A The Defendant.

8 Q And what did he do?

9 A Robbed T-Mobile.

10 Q Is he the one that pointed the gun at you?

11 A Yes.

12 Q Did you see this Defendant with one of the guns?

13 A Yes.

14 Q And I'm going to show you what's been marked as State's
15 Exhibit 54. Do you recognize that?

16 A Yes. That's our cabinet where we keep our phones.

17 Q Okay. And is that cabinet normally filled?

18 A Yes.

19 Q These top two shelves, do they normally have items on
20 them?

21 A Yes.

22 Q Through your job at T-Mobile, were you able to identify
23 any of the items? Was T-Mobile given back any of the items?

24 A Yes, they were.

25 Q And were you able to identify those at the items that

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1 you thought were stolen from the store?

2 A Yes, ma'am.

3 MS. CORNWELL: I apologize, Your Honor. I don't
4 know that I moved this into evidence before I published.
5 This is State's 54.

6 THE COURT: 54 is not in yet.

7 MS. CORNWELL: Your Honor, at this time the State
8 would move to have State's 54 into evidence.

9 THE COURT: Any objection?

10 MR. MELLARD: No objection.

11 THE COURT: It's in.

12 (State's Exhibit No. 54, photo, was
13 marked and entered.)

14 BY MS. CORNWELL:

15 Q And you identified the man in the photograph as the man
16 that duct taped you and robbed you. Do you see the man who
17 duct taped, robbed you, and held you at gunpoint in the
18 courtroom her today?

19 A Yes, I do.

20 Q And where is he?

21 A Right there at the table.

22 Q Can you describe for the jury what he's wearing?

23 A A suit with a blue shirt and tie.

24 MS. CORNWELL: Let the record reflect the victim
25 identified the Defendant.

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1 BY MS. CORNWELL:

2 Q Mr. Sims, after you met with law enforcement initially
3 and gave them a statement, did you also give a written
4 statement?

5 A Yeah.

6 Q And how were you feeling at the time that you gave the
7 written statement. I know we heard you on the 9-1-1 tape,
8 but what were you feeling like at that time?

9 A Still, I'd say in shock. Still, you know, excited about
10 the situation.

11 Q Okay. And so when you gave this statement to law
12 enforcement, it was pretty soon after the incident occurred;
13 correct?

14 A Yes.

15 Q Okay. Were you able to give them every single detail at
16 that moment?

17 A No.

18 Q But you were able to identify the Defendant; is that
19 correct?

20 A Yes.

21 Q Thank you, Mr. Sims. Please answer any questions
22 Defense counsel may have.

23 THE COURT: Your witness.

24 MR. MELLARD: I've just got a few questions.

25 THOMAS SIMS, JR., - CROSS-EXAMINATION

1 BY MR. MELLARD:

2 Q So, if I get you right, on May 16th you were working at
3 the T-Mobile; right?

4 A Yes.

5 Q And that was the day that the T-Mobile got robbed?

6 A Yes.

7 Q Okay. And after the robbery you spoke to the police?

8 A Yes.

9 Q And you gave them that written statement that she was
10 just talking about?

11 A Yes.

12 Q Okay. Now, in this statement -- and I assume when you
13 gave them this statement -- I understand you were excited.
14 But I assume you wanted them to catch the robbers?

15 A Yes.

16 Q I'm sure that was why you gave the statement?

17 A Yes.

18 Q Okay. And I assume that you put everything in that
19 statement that you thought would help them catch the robbers?

20 A Yes, at that time.

21 Q Now, in your statement, I believe you said the first guy
22 came in and asked about getting a tablet for his daughter.
23 Do you remember that in your statement?

24 A Yes.

25 Q Okay. And this first guy was talking to Jarron Weaver?

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1 A Yes.

2 Q All right. And you were just kind of watching; is that
3 correct?

4 A Yes.

5 Q You weren't actually in the conversation. You were
6 just kind of watching the conversation?

7 A Well, I watch and listen.

8 Q Okay.

9 A So usually, if they intend to walk a sale, I hop in to
10 help with the sale.

11 Q Okay. And I believe you told the police that the person
12 got on the phone and was talking to his wife about getting an
13 iPhone for his daughter?

14 A For getting an iPad.

15 Q Getting an iPad?

16 A Yes.

17 Q An iPad. All right. And then he left the store?

18 A Yes.

19 Q Okay. And then he came back in; right?

20 A Yeah.

21 Q Asked about running a credit application?

22 A Yes.

23 Q Okay. And I believe he was told he needed a driver's
24 license?

25 A Yes.

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1 Q And so he left the store again?

2 A Yes.

3 Q Now, in this statement that you gave to police, what she
4 was talking about, you don't say anything about other
5 customers being in the store when those conversations too
6 place; correct?

7 A Yeah.

8 Q Okay. Now, you also told the police that the first guy
9 left. He came back with a second fellow?

10 A Yes.

11 Q All right. And you told the police that the second guy
12 had a stocking over his face?

13 A Yes.

14 Q And he was wearing shades?

15 A Yes.

16 Q And by shades you mean dark glasses?

17 A Yes.

18 Q All right. And you're sure about that?

19 A He was not wearing glasses.

20 Q He was not wearing glasses?

21 A No.

22 Q But you put that in your statement?

23 A Yeah, because I was still excited and I was, you know,
24 filling out the information kind of fast.

25 Q Okay. So you put in your statement that the second guy

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1 had a stocking over his face and was wearing glasses. But
2 it's your testimony today he was not wearing glasses?

3 A Yes.

4 Q All right. And then you were pushed to the back of the
5 store?

6 A Yeah.

7 Q Okay. You were put on the ground?

8 A Uh-huh (affirmative).

9 Q Face down?

10 A Yeah.

11 Q Your hands were tied behind your back; right?

12 A Yeah.

13 Q And your legs were taped up?

14 A Yeah.

15 Q And that was with duct tape?

16 A Yes.

17 Q All right. Where did the robbers get the duct tape
18 from? Y'all keep it in the store?

19 A No.

20 Q They brought it with them?

21 A Yes, I believe so.

22 Q Okay. And the robbers were screaming at you; correct?

23 A Yeah.

24 Q Telling you they would shoot you?

25 A Uh-huh (affirmative).

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1 Q And told you, don't look up if you don't want to get
2 shot?

3 A Yeah.

4 Q And you didn't look up?

5 A No.

6 Q Because you didn't want to get shot?

7 A Yes.

8 Q Okay. Then at some point they got you on your feet?

9 A Uh-huh (affirmative).

10 Q All right. Told you not to look at them?

11 A Yes. That's after he saw I was looking at him --

12 Q Okay.

13 A -- while he was ripping out the security box.

14 Q Okay. And so at that point you didn't want to look at
15 him?

16 A No.

17 Q Okay. And then you say in your statement they went out
18 the back door and left?

19 A Yes.

20 Q All right. And that's when we heard them leave?

21 A Yeah.

22 Q Okay. And you wrote that statement the same day as the
23 robbery?

24 A Yes.

25 Q And the statement was true?

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1 A Yeah.

2 Q All right. You didn't put in there anything that wasn't
3 true in your opinion?

4 A No.

5 Q Okay. Now, in your statement you describe the two
6 robbers; you remember doing that?

7 A Yeah.

8 Q All right. And you put one was a short guy with a black
9 shirt and shorts?

10 A Yes.

11 Q Okay. The short one had a stocking over his face with
12 shades and a baseball cap?

13 A Yeah.

14 Q Okay. And now you're telling us that he didn't have the
15 shades?

16 A When I had time to calm down and reflect, he didn't have
17 on shades.

18 Q Okay. What about the baseball cap?

19 A Yes.

20 Q Okay. What about the stocking?

21 A Yes.

22 Q Okay. And then you said the taller guy, the other one
23 was a tall guy with black shorts and khaki pants?

24 A Black shorts?

25 Q Black shirt. I'm sorry. Black shirt?

1 A Yes.

2 Q And khaki pants?

3 A Yeah.

4 Q And you thought he -- they both had white shoes on?

5 A Yes.

6 Q Okay. I think your statement was, I think they both had
7 white shoes. All right. And that's what you put in your
8 statement?

9 A Yes.

10 Q Didn't say how tall the taller guy was?

11 A No.

12 Q Didn't say if he was 5'10", 6'4"?

13 A All I could tell you, he was tall.

14 Q Okay. Didn't give the hair color of the taller guy?

15 A He had on a baseball cap.

16 Q Okay. Didn't give the hairstyle of the taller guy?

17 A No.

18 Q Didn't say whether the taller guy had long hair or short
19 hair?

20 A No.

21 Q All right. Didn't say whether he was clean shaven?

22 A No.

23 Q Didn't say whether he had a beard?

24 A No.

25 Q Didn't say whether he had a moustache?

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1 A No.

2 Q Didn't say whether he had a goatee?

3 A No.

4 Q All right. Didn't say whether he had tattoos or scars?

5 A No.

6 Q The only description that you put in your statement was
7 he had a black shirt and khaki pants and maybe white shoes?

8 A Yes.

9 Q Didn't say anything about a baseball cap?

10 A No.

11 Q Didn't say anything about dark shades on the taller
12 fellow?

13 A No.

14 Q But you're saying he had that today?

15 A Yes.

16 Q Okay. All right. So let me just understand. Your
17 description today is slightly different from your description
18 at the actual time of the event?

19 A Yes.

20 Q And you're putting a baseball cap and dark glasses on
21 the taller fellow?

22 A Yeah.

23 Q Okay. And was the cap pulled down?

24 A Yeah. It was right above the glasses.

25 Q And the glasses were on?

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1 A Yes.

2 Q Right. And you're sure about that?

3 A Yeah.

4 Q All right. Even though it's different than what you
5 gave at the time, you're sure about that?

6 A At the time, I was just rushing through the statement.
7 Still excited, still scared.

8 Q Okay. So he had a black cap on and dark shades?

9 A Yeah.

10 Q So you would have seen him from the nose down?

11 A Yeah.

12 Q Okay. But you didn't put anything about a beard or a
13 goatee or a mustache or anything that you would have seen
14 from the nose down?

15 A No. Like I said, at the time, I was still scared and
16 excited.

17 Q Okay. Now, we just heard the 9-1-1 call. And the 9-1-1
18 call is a little bit different than your statement at the
19 time of the incident that you wrote to the police. And also
20 kind of what you're saying today. You said there were two
21 black guys. We know that; right?

22 A (Nods head affirmatively)

23 Q You said they both came in with masks on. Did we just
24 hear that?

25 A Yeah.

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1 Q Okay. You said they both had masks on?

2 A Yeah.

3 Q Okay. Now, which one is true? Is it, did they have
4 masks on or did they not have masks on?

5 A Well, at the time calling 9-1-1, I just wanted somebody
6 to get there.

7 Q And you told the police the people had masks on. You
8 did that for a reason?

9 A Well, one of them had the stocking cap on.

10 Q All right. But that's not what you told the 9-1-1 call
11 that we just heard?

12 A No. Because I was, you know, just fearing for my life.
13 I wanted a police officer to get there on time.

14 Q Okay. And you also said on that 9-1-1 call you don't
15 know how the people left?

16 A Yeah. I don't know how they left the area.

17 Q Okay. And, again, on the 9-1-1 call you didn't say
18 anything about a ball cap or dark glasses?

19 A No.

20 Q All right. But it's your testimony today that you could
21 see the person from the nose down?

22 A Yes.

23 Q Okay. Now, on the day of the robbery, you were shown
24 this picture; correct?

25 A Right.

1 Q All right. But this is a pretty -- what is it, about
2 eight by eleven kind of picture?

3 A Yeah.

4 Q All right. But you weren't shown an eight by eleven
5 picture of him on the day of that; right?

6 A No.

7 Q No. This picture was shown on, what did you say, a
8 smart phone?

9 A Yes.

10 Q Do you know what kind of smart phone it was shown on?

11 A I don't remember.

12 Q You don't remember it. Do you know how big the screen
13 was?

14 A It was a pretty big size.

15 Q All right. Well, this is mine.

16 A Uh-huh (affirmative).

17 Q What are we talking about, a little bit smaller, a
18 little -- I mean?

19 A About the same size.

20 Q About the same size. So you weren't shown this?

21 A No.

22 Q You were actually shown something like this?

23 A Yes.

24 Q All right. And you would agree this person has a goatee
25 on it, a goatee?

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1 A Yes.

2 Q All right.

3 MR. MELLARD: One second.

4 BY MR. MELLARD:

5 Q Now, one final thing. I don't see in any of statements,
6 9-1-1, what you're saying today, what you wrote to the
7 police, where you said anything about the robbers having any
8 gloves on?

9 A Yes.

10 Q Never said any of that?

11 A No.

12 Q Okay. All right.

13 MR. MELLARD: That's all the questions I have.

14 THE COURT: Any redirect?

15 MS. CORNWELL: Briefly, Your Honor.

16 THOMAS SIMS, JR. - REDIRECT EXAMINATION

17 BY MS. CORNWELL:

18 Q Mr. Sims, in the statement you gave, you said you were
19 feeling excited when you gave it?

20 A Yes.

21 Q Still scared?

22 A Uh-huh (affirmative).

23 Q Did somebody come in the store with a baseball hat and
24 shades on?

25 A Yes.

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1 Q Who was that?

2 A It was him.

3 Q Okay. And Mr. Mellard just went through how you were
4 able to see him from here down. But while he was in the
5 store talking to Mr. Weaver the first time, did you also see
6 him from the side?

7 A Yes.

8 Q And when he was taking the security box out, you also
9 saw him from the side?

10 A Yes.

11 Q So you were able to see his profile as well; is that
12 correct?

13 A Yes.

14 Q And just some housekeeping. I spoke to you about T-
15 Mobile getting their items returned. You had mentioned your
16 book bag being stolen and all of that.

17 THE COURT: What is it?

18 MR. MELLARD: Your Honor, this is beyond the scope
19 of cross-examination.

20 THE COURT: It's beyond the scope.

21 MS. CORNWELL: I have nothing further, Your Honor.

22 THE COURT: All right.

23 You may step down, sir. Thank you.

24 You may call your next witness.

25 MS. CORNWELL: The State would call Jarron Weaver,

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1 Your Honor.

2 (WHEREUPON, Jarron Weaver was sworn
3 to tell the truth.)

4 THE CLERK: You may have a seat. Please state your
5 name again for the record.

6 MR. WEAVER: Jarron Weaver.

7 THE COURT: Your witness.

8 JARRON WEAVER - DIRECT EXAMINATION

9 BY MS. CORNWELL:

10 Q Good morning, Mr. Weaver?

11 A Good morning.

12 Q How old are you?

13 A Twenty-six.

14 Q And where do you live?

15 A Santee, South Carolina.

16 Q Who lives there with you?

17 A Me and my wife, my little mama. My in-laws.

18 Q How old is your little mama?

19 A One.

20 Q Okay. Can you tell the jury what your educational
21 background is?

22 A I have a Bachelors in Business Management from Benedict
23 College.

24 Q Okay. And where are you currently employed?

25 A Time Warner Cable.

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1 Q And prior to working at Time Warner, where did you work?

2 A T-Mobile.

3 Q And how long did you work at T-Mobile?

4 A Going on a year.

5 Q Okay. And were you working at T-Mobile on May 16th of
6 2014?

7 A Yes, ma'am.

8 Q Can you tell the jury what you remember from that day?

9 A Got there at 9:30, opened the store as usual, count the
10 registers, make sure all the phones is plugged up, that sort
11 of thing. Spoke with Thomas. When the day got started, the
12 Defendant was one of the first customers. Spoke with me
13 about getting a tablet.

14 Q Okay. I'm going to stop you for a second. You said you
15 spoke to Thomas. Was Thomas already there?

16 A Yes, ma'am.

17 Q Do you know why he was there?

18 A A business meeting. Well, a conference call.

19 Q Okay. And did Thomas generally carry a book bag with
20 him when he came to the store?

21 A Every day.

22 Q Would you recognize that bag?

23 A Yes, ma'am.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 11. Do you recognize the bag in that picture?

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1 A Yes, ma'am. Thomas' book bag.

2 Q Okay. Is that a true and accurate picture of Thomas'
3 book bag.

4 A Yes, ma'am.

5 MS. CORNWELL: Your Honor, at this time the State
6 would move State's Exhibit 11 into evidence?

7 THE COURT: Any objection?

8 MR. MELLARD: Yeah. Your Honor, we don't believe
9 there's enough foundation for that. May we approach for a
10 second?

11 THE COURT: You may approach.

12 (Off the record bench conference with counsel and the Court.)

13 BY MS. CORNWELL:

14 Q And, Mr Weaver --

15 A Yes, ma'am.

16 Q -- did Mr. Sims have the book bag with him that day?

17 A Yes, ma'am.

18 Q And did you see the book bag on May 16th of 2014?

19 A Yes, ma'am.

20 Q And is State's 11 the bag that you saw him carry?

21 A Yes, ma'am.

22 MS. CORNWELL: Your Honor, at this time the State
23 would move State's 11 into evidence.

24 MR. MELLARD: We'd have the same objection, Your
25 Honor.

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1 THE COURT: Overruled. It's in.

2 (State's Exhibit No. 11, photo, was
3 marked and entered.)

4 MS. CORNWELL: Thank you.

5 Q And this is the book bag that you recognize as Thomas'
6 book bag?

7 A Yes, ma'am.

8 Q And once you spoke to Thomas and opened up the register,
9 what happened?

10 A I opened the store at 10:00. Shortly after, the
11 Defendant was one of the first customers in. Walked in
12 speaking about a tablet, you know. When customers come in
13 about a tablet, it's always a good sign because we've got to
14 sell tablets. So he came in speaking on getting one for his
15 daughter and his wife. So I'm going through the role
16 playing, going with him, speaking on it. Trying to, you
17 know, get him to actually purchase it. Shortly after,
18 another customer walked in. Thomas, you know, addressed
19 them. He said, okay, I've got to call my wife. I was like,
20 okay, that's fine, because I know what's that like. You've
21 got to call your spouse and let them know a purchase you're
22 going to make, especially something of that magnitude. So he
23 left.

24 Q Let me stop you right there. When you were having the
25 conversation about the daughter and everything, did he

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1 indicate where they lived?

2 A Yes, Virginia. He said Virginia.

3 Q Okay. All right. And how long did that conversation
4 last?

5 A Ten, maybe fifteen minutes. I'm not specific with time
6 so in that range.

7 Q Okay. All right. But you spoke to him for a while?

8 A Yes, ma'am.

9 Q And I believe you were telling me that he left the store
10 at that time to call his wife?

11 A Yes, ma'am.

12 Q And what happened next?

13 A Once he left, Thomas was taking a bill statement. We
14 standing there at the front talking, as usual. Shortly
15 after, he came back. So, I'm like, okay, I've got him now.
16 He came back so he's going to buy this tablet. So he asked
17 what do we need to do, like, as far as what do you need to
18 run his credit. I told him ID. He said, okay. A customer
19 came in behind him. He said, okay, I'm going to get that.
20 And he left.

21 Q Okay. What was he wearing when he coming into the
22 store?

23 A A gray undershirt, a black shirt, khaki pants.

24 Q Did he have anything on his head or on his face?

25 A A baseball cap and glasses.

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1 Q Okay. All right. But you were able to look at him for
2 a pretty good time?

3 A Yes, ma'am.

4 Q And the second time he came in about how long did that
5 conversation last?

6 A Not long. Five minutes.

7 Q Okay. All right. And you said he left a second time?

8 A Yes, ma'am.

9 Q And what happened next?

10 A He came back a third -- well, upon him leaving Thomas
11 told me to check and see if it was a secret shop because, of
12 course, we judged based off secret shops. So he told me to
13 look. I looked out. I saw him walk toward the grass. I'm,
14 okay -- we park over there so I'm well, maybe he parked over
15 there. You know, he's going to take a picture of the store.
16 That's what secret shops do. So, okay, we came back like it
17 was normal. We talking, as usual --

18 Q Did you see the car or anything that he went to or did
19 he go to a car?

20 A No, ma'am. You really couldn't tell. You just saw him
21 going towards the grass.

22 Q Okay. Next thing, he came back. This time when he came
23 back, the gun was drawn. He was walking towards Thomas
24 short, like -- shortly after, another guy, a gentleman walked
25 in behind him with a gun.

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1 Q And did the second gentleman have anything on his face?

2 A I glanced. It was a ski mask on, like a stocking cap.
3 I ain't get a good look or anything like that. They rushed
4 us to the back.

5 Q And when you say "stocking cap," are you talking about
6 like a little stocking cap that's worn on your head or was it
7 like pantyhose?

8 A It was like pantyhose type.

9 Q And was it just on top of his head or was it pulled all
10 the way down?

11 A Full covered face.

12 Q Okay. All right. So they came in the store. Did you
13 see any weapons on them?

14 A Yes, ma'am.

15 Q How many weapons?

16 A Two. They both had a gun.

17 Q Okay. And what did they do then?

18 A Forced us to the back, forced us to get on the ground.
19 Taped our hands behind our back, our feet together. They
20 were asking about Kirstie because Thomas said that someone's
21 going to be in the office, but she wasn't in there. She was
22 out in the back smoking a cigarette. So they went looking
23 for her. After they got Kirstie in and did whatever they did
24 to her in the back, they went back to Thomas. The whole
25 time, I'm taped to the ground. So I can't see Thomas or let

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1 alone know what they're even, you know, doing or anything
2 like that..

3 Q Sure. And the guns that you saw, can you describe the
4 guns?

5 A For what I remember, I know I said it was like -- I said
6 a old like western type gun. I know it was like, you know,
7 revolver or some sort.

8 Q Okay. And Im going to show you for identification
9 purposes only State's 69 and State's 71. Do you recognize
10 those items?

11 A Yes, ma'am.

12 Q And what do you recognize those items as?

13 A The weapons used to rob T-Mobile.

14 Q And you saw these items in the Defendant's hand and the
15 other guy's hand?

16 A Yes, ma'am.

17 Q And approximately how long were you lying on the floor
18 duct taped while the robbers were robbing the store?

19 A I couldn't tell you a time, just what it felt. It felt
20 forever. But if I have to give you a specific time, I would
21 say fifteen, twenty minutes.

22 Q Okay. And after the robbers took the items then what
23 did they do?

24 A They ran out the back door.

25 Q And what happened next?

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1 A We did our best to rip the duct tape off. Kirstie ran,
2 locked the back door. I ran and locked the front door.
3 Thomas and Kirstie both called 9-1-1.

4 Q Okay.

5 A I personally called my wife.

6 Q Okay. And how long did it take law enforcement to
7 arrive at the store?

8 A It didn't take them -- not even five minutes went by.

9 Q And once law enforcement arrived, what did you do?

10 A I was back in the back sitting on the floor, you know,
11 asked me to get up, sit at the table. And asked us what
12 happened. Asked me was I able to write a written statement
13 right there or did I need to, you know, take a break or get
14 some air or anything like that.

15 Q And did you give a written statement at that time?

16 A Yes, ma'am.

17 Q How were you feeling when you gave that written
18 statement?

19 A I was a little shaken up, startled a little bit, but I
20 was able to, you know, to compose myself and write to the
21 best of my ability.

22 Q Okay. And at some point while you were at T-Mobile, to
23 your understanding, were you shown a photograph?

24 A Yes, ma'am.

25 Q And before you were shown that photograph, were you told

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1 Q Okay. So they had sat the box down beside you and then
2 picked it up and ran out?

3 A Yes, ma'am.

4 Q Was there anything else that you were able to see that
5 they were carrying out of the store?

6 A Not physically, but I, you know, you hear. He was
7 grabbing the phones and that sort of thing. So I don't know
8 what they was grabbing outside the office because I couldn't
9 see what was in the office that they were taking, but --

10 Q When they came in the store with the guns pointed at you
11 and everything else, did you see whether they were carrying
12 any bags or anything with them too?

13 A No, I couldn't tell.

14 Q Okay. I believe that's all the questions I have.
15 Please answer questions Defense counsel may have for you?

16 A Yes, ma'am.

17 THE COURT: Cross-examination?

18 MR. MELLARD: Yes, ma'am.

19 JARRON WEAVER - CROSS-EXAMINATION

20 BY MR. MELLARD:

21 Q Now, on May 16th, you were at the T-Mobile Store?

22 A Yes, sir.

23 Q Okay. And that's the day the T-Mobile Store got robbed?

24 A Yes, sir.

25 Q Okay. And do you remember what time it was?

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1 A No, I don't know an approximate time, but it was shortly
2 after we opened. So it could be 10:10, 10:20, 10:30.

3 Q Okay. And I believe you've testified earlier that you
4 were kind of shaken up as a result of this?

5 A Yes, sir.

6 Q I mean, it's pretty traumatic.

7 A Yes, sir.

8 Q And it would be traumatic for anybody. And you felt
9 that?

10 A Yes, sir.

11 Q And you were shaken up by it?

12 A Yes, sir.

13 Q All right. But you did give a statement to the police?

14 A Yes, sir, I did.

15 Q All right. And that was the day of the robbery?

16 A Yes, sir.

17 Q All right. It was actually the same day?

18 A Yes, sir.

19 Q All right. And it is a written statement?

20 A Yes, sir.

21 Q And I assume that when you wrote the statement you put
22 everything in you could think of?

23 A Yes, sir.

24 Q And to make sure that the robbers were caught?

25 A Yes, sir.

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1 Q All right. Now, your statement, do you remember your
2 statement?

3 A Yes, sir.

4 Q All right. You remember your statement says that John
5 Doe came into the store looking for an iPad for his daughter?

6 A Yes.

7 Q All right. Now, you're shaken up but you remember that
8 as what happened?

9 A Yes, sir.

10 Q And then you spoke with him for about what school his
11 daughter goes to and where he is from?

12 A Yes, sir.

13 Q And you remember that even though it was a traumatic
14 event?

15 A Yes, sir.

16 Q All right. And then the second time John Doe one came
17 in, he wanted to run his credit and he got his wallet out of
18 his pocket to look for his ID?

19 A Yes, sir.

20 Q And all that's true?

21 A Yes, sir.

22 Q I'm mean, you're shaken up but all that's true?

23 A Yes, sir.

24 Q All right. And then you start talking about the events
25 that you've testified to, that he came in, he had a small

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1 gun, I believe you said?

2 A Yes, sir.

3 Q All right. And that's true; correct?

4 A Yes, sir.

5 Q All right. That part of your statement's true?

6 A Yes, sir.

7 Q You remember that?

8 A Yes, sir.

9 Q All right. And then he took you and Thomas Sims, Jr. to
10 the back of the store?

11 A Yes, sir.

12 Q All right. And, again, you're shaken up but you're
13 clear about that?

14 A Yes, sir.

15 Q All right. And then he put you on the ground and duct
16 taped you?

17 A Yes, sir.

18 Q All right. The duct tape, do you know where it came
19 from?

20 A No, sir.

21 Q Wasn't in the store?

22 A No, sir. We don't keep duct tape in the store. If
23 we've got tape, it's like the little -- what's that, the
24 clear, electro tape?

25 Q Yes?

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1 A That's what we keep in the store.

2 Q Kind of like the packing tape kind of thing?

3 A Uh-huh (affirmative). That's right.

4 Q Okay. All right. And you put in your statement that
5 John Doe one was wearing a gray undershirt?

6 A Yes, sir.

7 Q And you're sure about that?

8 A Yes, sir, I'm sure about it.

9 Q Okay. A black shirt over the gray undershirt?

10 A Yes, sir.

11 Q All right. A black baseball cap?

12 A Yes, sir.

13 Q Black glasses?

14 A Yes, sir.

15 Q And khaki pants?

16 A Yes, sir.

17 Q And even though you were shaken up, you're sure about
18 that?

19 A Yes, sir.

20 Q Okay. Now, was he wearing the black hat and glasses the
21 entire time he was in the Store?

22 A Yes, sir.

23 Q All right. So you would have seen him from about, from
24 my glasses on down, nose down?

25 A Yes, sir.

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1 Q Okay. The cap was on his head?

2 A Yes, sir.

3 Q Glasses were dark?

4 A Dark.

5 Q So you'd have seen nose down?

6 A Yes, sir.

7 Q All right. In your statement, and I understand you're
8 shaken up, but you've pretty much described the events
9 leading up to what happened?

10 A Yes, sir.

11 Q Pretty accurately, correct?

12 A Yes, sir.

13 Q But you didn't say anything in there about how tall John
14 Doe was?

15 A No, sir.

16 Q Even though you, you know, you didn't say he was 5'10"
17 or 6'4"?

18 A Correct.

19 Q Didn't give a hair color, didn't see white hair or dark
20 hair?

21 A No, sir.

22 Q All right. Didn't have give a hair style, don't know if
23 he had dreads. You didn't put that?

24 A No.

25 Q All right. Didn't say whether he was clean shaven?

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1 A No, sir, I didn't.

2 Q All right. Didn't say whether he had a beard?

3 A No, sir, I didn't.

4 Q Didn't say whether he had a goatee?

5 A Uh-uh (negative).

6 Q All right. Didn't say tattoos or scars?

7 A No, sir, I didn't.

8 Q The only description that you gave was the gray
9 undershirt, black shirt over that, black baseball cap, black
10 glasses and khaki pants?

11 A Correct.

12 Q All right. Now, later that day you were shown this
13 photo?

14 A Correct.

15 Q And you would agree this person does not have on a
16 baseball cap?

17 A Correct.

18 Q And you would agree this person does not have on
19 glasses?

20 A Correct.

21 Q But you would agree that this person does have a goatee?

22 A Correct.

23 Q And this is a what, about an eight by eleven --

24 A Correct.

25 Q -- sheet of paper?

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1 A Correct.

2 Q You weren't shown an eight by eleven sheet of paper by
3 the police?

4 A No.

5 Q You were shown this picture on a cell phone, I believe?

6 A Cell phone, correct.

7 Q How big was the cell phone?

8 A I don't remember.

9 Q All right. Was it bigger or smaller?

10 A Not sure. Most times, a lot of people do carry big
11 phones. Like, I carry a huge phone.

12 Q All right. You carry a huge phone?

13 A Correct.

14 Q Now, who were the person that showed you the phone, was
15 it a police officer?

16 A Yes, it was a police officer.

17 Q All right. You don't know what normally police officers
18 carry?

19 A No, no.

20 Q You might carry a bigger phone?

21 A Right.

22 Q They might carry a smaller phone?

23 A Correct.

24 Q And you don't remember what the phone --

25 A No.

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1 Q Okay. One final question. Were you aware that the
2 police were tracking Thomas Sims' iPad. I mean, I believe he
3 told us --

4 A Yes. I heard that conversation going on. I wasn't in
5 the proximity but I know he has it and that's how they were
6 trying to locate it.

7 Q Okay. And you knew that before you were shown this
8 picture?

9 A Yes, sir.

10 Q Okay.

11 MR. MELLARD: One second.

12 BY MR. MELLARD:

13 Q Now, I believe that at some point you think you -- you
14 said you were a face guy; is that correct? Maybe yesterday?

15 A Yes.

16 Q Okay. And I guess by a face guy, that means you're
17 pretty good at identifying peoples' faces?

18 A Right.

19 Q But you didn't give any identifying in your statement?

20 A No, I did not.

21 Q Didn't identify any facial features?

22 A When we wrote the statement they told us to write the
23 events of what occurred.

24 Q Okay.

25 A And then later they asked me what was he wearing?

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1 Q All right. So you gave a statement to police?

2 A Correct.

3 Q And you gave a statement that you intended for them to
4 use to help catch the person?

5 A Correct.

6 Q But you didn't put anything in there about the facial
7 features?

8 A No, I did not.

9 Q Even though you're a great face person?

10 A Not great, but I tend to look at faces.

11 Q Thank you.

12 THE COURT: Redirect?

13 JARRON WEAVER - REDIRECT EXAMINATION

14 BY MS. CORNWELL:

15 Q Mr. Weaver, do you see the face of the person that
16 robbed you?

17 A Yes, ma'am.

18 Q Where's that face?

19 A Next to the end of the table, on that side.

20 Q Okay. Is that face on the man wearing the blue shirt
21 and blue tie that you described earlier?

22 A Yes, ma'am.

23 Q Is that the face of the Defendant?

24 A Yes, ma'am.

25 Q And that's the face you saw?

1 A Yes, ma'am.

2 Q That's the face you identified in that picture?

3 A Yes, ma'am.

4 Q Let's talk about this picture one more time. When you
5 were shown this picture, were you with -- where were you
6 shown the picture?

7 A I was outside of the T-Mobile Store.

8 Q Okay. Was anybody with you when you made that
9 identification?

10 A No, ma'am.

11 Q And we've talked a lot about what John Doe one and John
12 Doe two?

13 A Correct.

14 Q When you're discussing John Doe one, who are you
15 referring to?

16 A The Defendant.

17 Q Okay. And it was the Defendant that you saw wearing the
18 gray shirt with the black shirt over it and the baseball cap
19 and the shades?

20 A Yes, ma'am.

21 Q And it was John Doe one, the Defendant, who came in the
22 store originally?

23 A Yes, ma'am.

24 Q Okay Thank you.

25 THE COURT: You may step down, sir. Thank you.

(Jury out at 10:59 a.m.)

(Court in recess at 10:59 a.m.)

(Jury in at 11:20 a.m.)

THE CLERK: You may have a seat. Please state your

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1 name again for the record.

2 MS. BERRY: Kirstie Berry.

3 THE CLERK: Thank you.

4 MS. CORNWELL: Good morning, Ms. Berry.

5 THE COURT: Your witness.

6 MS. CORNWELL: Thank you, Your Honor.

7 KIRSTIE BERRY - DIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q Ms. Berry, how old are you?

10 A Twenty-five.

11 Q And where do you live?

12 A Orangeburg County.

13 Q Okay. Who lives there?

14 A I stay with my friend and her parents.

15 Q Okay. And can you tell the jury what your educational
16 background is?

17 A I'm currently in the process of a OC Tech, full-time
18 student for getting a degree in physical therapy.

19 Q And, are you currently employed?

20 A I'm working part-time with my brother at Stratosphere
21 Quality doing quality control.

22 Q All right. And prior to doing that, where did you work?

23 A T-Mobile.

24 Q And, how long had you worked at T-Mobile before this
25 incident occurred?

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1 A Three days.

2 Q Okay. And were you working at T-Mobile on May 16th of
3 2014?

4 A Yes, ma'am.

5 Q Please tell the jury what you remember from that day?

6 A I wasn't supposed to come in until 10:00. I wasn't in
7 the system yet, so I was just doing training on the computer,
8 learning how to interact face to face with customers. Mr.
9 Sims, my manager, showed me how to log-on to the computer,
10 got me all my log-ins, put me at the back desk in the room
11 where the safe is, the office, I guess. I started doing
12 trainings, about 10:05. I got there exactly at 10:00. I
13 remember the computer started getting real slow. And I stuck
14 my head around the door up front and asked Thomas if he
15 minded if I had a smoke break. He said, no, he didn't mind.
16 Just keep them quick. So I went out back. I had my back
17 against the building. The door was cracked maybe an inch or
18 so, up against my arm.

19 Q Let me slow you down real quick and just show you a
20 couple of pictures so we can kind of get an idea of where you
21 were in the building and all of that?

22 A Okay.

23 Q Looking at State's 60, can you tell what that is?

24 A That's the hallway where the customer restroom and the
25 doorway to the back door is.

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1 Q Okay. And obviously that's the restroom and then that's
2 the doorway to the back?

3 A Correct.

4 Q And State's 63, what does that show?

5 A That's the hallway where I was taped.

6 Q. Okay. And that door in that picture, is that leading,
7 is that the exit leading out back?

8 A That is the exit. The other door is the employee
9 restroom.

10 Q Okay. And this picture is really dark. But State's 61,
11 can you tell what that is?

12 A That's the hallway adjacent. The customer restroom is
13 here. And this is the hallway leading to the back door.

14 Q Okay. And what's this far door back here?

15 A That is the office door.

16 Q Okay. This is the office door?

17 A (Nods head affirmatively)

18 Q And once you go in the office -- I'm going to show you
19 what's been marked as State's 64. Is that the inside of the
20 office?

21 A That is.

22 Q And is this where you were working?

23 A Yes, ma'am. Right there is the end of the desk. And I
24 was sitting in a chair just right off the photo.

25 Q Okay. And State's 54, is that -- what is that?

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1 A That is the cell phone stock cabinet.

2 Q And in looking at State's 64, is that --

3 A That's just a black cabinet, yes.

4 Q And this is the inside view; is that correct?

5 A Yes.

6 Q And that cabinet when you got to work that day, did it
7 look like this?

8 A No, ma'am.

9 Q What did it look like?

10 A It's full.

11 Q And I'm going to show you what's been marked as State's
12 55. Do you recognize that?

13 A Yes, ma'am. Overstock.

14 Q All right. And where is that located?

15 A It's in the office on the back wall.

16 Q And is that shown also in State's 64?

17 A Yes, ma'am.

18 Q Is this a true and accurate depiction of the shelf
19 that's in that office?

20 A Yes, ma'am.

21 MS. CORNWELL: Your Honor, at this time, the State
22 would move 55 into evidence.

23 THE COURT: Any objection?

24 MR. STEVENS: No objection.

25 (State's Exhibit No. 55, photo, was

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1 marked and entered.)

2 BY MS. CORNWELL:

3 Q And that's the overstock; is that correct?

4 A (Nods head affirmatively)

5 Q And does that shelf normally look like that?

6 A Yes, ma'am.

7 Q And you said that you were standing and you went out
8 back. I'm going to show you what's been marked as State's
9 Exhibits 45, 59, 65 and 60. If you flip through those photos
10 and tell me if you recognize those?

11 A Yes, ma'am. This is the back steps where I was
12 standing.

13 Q Don't show it to the jury just yet. I'm sorry.

14 A The back steps where I was standing.

15 THE COURT: Ms. Berry, if you could -- when you're
16 describe a picture, if you could tell --

17 MS. BERRY: The number?

18 THE COURT: -- what number it is.

19 A 45, is the back steps where I was standing smoking a
20 cigarette. 59 is actually mine and Mr. Weaver's car parked
21 in the back parking lot. 65 is the back door. 60 is the
22 remaining of the parking lot and my vehicle.

23 BY MS. CORNWELL:

24 Q Okay. And are those true and accurate pictures of the
25 way the back door looked that day?

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1 A Yes, ma'am.

2 MS. CORNWELL: Your Honor, at this time the State
3 would move State's 60, 65, 59 and 45 into evidence.

4 THE COURT: Any objection?

5 MR. MELLARD: No objection.

6 (State's Exhibit No. 45, photo, was
7 marked and entered.)

8 (State's Exhibit No. 59, photo, was
9 marked and admitted.)

10 (State's Exhibit No. 60, photo, was
11 previously entered.)

12 (State's Exhibit No 65, photo, was
13 marked and entered.)

14 BY MS. CORNWELL:

15 Q And looking at State's 45, what is that again?

16 A The back steps where I was standing.

17 Q Okay. And that little concrete pad, it's not very large
18 is it?

19 A No, ma'am.

20 Q Where, exactly, and if you can kind of hold it up and
21 show the jury.

22 A (Witness complies).

23 Q Where exactly were you standing?

24 A I actually was standing on the black mat with my whole
25 back against the door. The only thing that was over the edge

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1 was my arm that had the door open about an inch and a half,
2 where I was able to stick my hand back in it to open it, to
3 get back in.

4 Q Okay. And looking at State's 60, 65, and 59, I believe
5 you said those were views out the back door?

6 A. Correct.

7 Q And that chainlink fence was there?

8 A Yes.

9 Q I think on the photograph there's a couple of apartment
10 complexes. Are those behind the store?

11 A Yes, ma'am.

12 Q Okay. So you were standing out back on the concrete pad
13 and what happened? What were you doing?

14 A I was standing there. I had just ended a phone
15 conversation. I still had my phone in my hand. I ended the
16 conversation. I was smoking a cigarette and I felt a hand
17 come from the inside of the door and snatch me by the front
18 of shirt into the store.

19 Q And did anything happen to your face?

20 A Yes. Whenever he stuck his hand out the door, it hit
21 right on the edge of my jaw.

22 Q Okay. And when you were grabbed, what was your first
23 thought?

24 A I actually thought it was Jarron joking with me, my
25 third day, you know. I know he's a prankster already. So I

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1 just thought he was picking.

2 Q Okay. And did you turn around and get a look at who was
3 pulling at you?

4 A Yes. I met Mr. Hardin face to face as soon as I was
5 snatched through the door.

6 Q Okay. And what did he do once he snatched you through
7 the door?

8 A He told me to get down and I was moving fast enough.
9 And I felt a solid object hit me in the back of the head.

10 Q Okay. When Mr. Hardin grabbed you, did you see him with
11 any weapons?

12 A Yes, ma'am.

13 Q What type of weapon did he have?

14 A It was an old gun. That's all I could tell. It looked
15 like tarnished and old, like rust.

16 Q Okay. And you said he hit you on the back of the head
17 with something solid?

18 A Correct.

19 Q What did you think that was?

20 A Well, you can tell the difference in a hand hitting you
21 and something else, and there isn't anything in reach. So, I
22 mean, I knew he had to have, you know, something in his hand.
23 Whenever I happened to look up, it was a gun.

24 Q Okay. And so once he hit you on the back of the head,
25 you fell to the ground, what happened?

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1 A He kept telling me to put my hands behind my back. Put
2 my hands behind my back. Once I got my hands up, he taped my
3 hands. And then he also taped my feet.

4 Q Okay. Let me show you for identification purposes only,
5 just look at the one. State's 69.

6 A Yes, that is the gun.

7 Q Do you recognize that item?

8 A Yes, ma'am.

9 Q And is that the item that you describe as the rusty gun?

10 A Yes, ma'am.

11 Q And you saw that in the Defendant's hand?

12 A Yes, ma'am.

13 Q So he knocked you on the ground. He taped your feet and
14 hands, then what happened?

15 A He told me not to look at him or he would shoot me.

16 Q Okay. And were you able to see where anybody else was?

17 A I was able -- once I could hear them walk past me, when
18 they were back into the hallway where I couldn't be seen by
19 them, I looked up and saw Mr. Weaver.

20 Q Okay. And looking at State's 63 again, can you show
21 where you were hit and put on the ground? Is it in this
22 picture?

23 A Yes, ma'am. My head was laying right here at this
24 corner and my feet were stretched out to the back door.

25 Q Okay. And at State's 64, were you able to see Mr.

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1 Weaver or Mr. Sims anywhere?

2 A I was able to see Mr. Weaver, not Mr. Sims. Mr.
3 Weaver's head was right about in the center here, and his
4 body was back towards the office.

5 Q Okay. And in looking at State's 61, which I know it's
6 kind of dark, can you tell me where, kind of where Mr. Weaver
7 was in that photograph?

8 A The door right here to the hallway, his head was here
9 and his body was stretched out across there.

10 Q And were you able to see whether he was taped up or not?

11 A I could tell his hands were taped up.

12 Q Okay. And as you were laying there on the ground, what
13 happened?

14 A I told Jarron I felt like I could run. And he told me
15 to just be still that it would be safer. Otherwise, they
16 just kept walking -- both men walked several times to the
17 back door.

18 Q Okay. Did you hear them doing anything?

19 A Yelling about the cameras. I could hear things being
20 strung throughout the office.

21 Q While you were laying on the ground, were you able to
22 see them carrying anything out?

23 A I remember a bag going by me and that was Thomas' book
24 bag.

25 Q Okay. How long do you think the robbers were in the

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1 store while you were laying on the floor?

2 A It felt like a lifetime but I mean, it was fifteen,
3 twenty minutes maybe.

4 Q Okay. And after they got the security box and left,
5 what did you hear; what did you see?

6 A They went out the door once and I immediately started
7 yelling you want me to lock the door, you want me to lock the
8 door. And then I heard them coming back up the steps. So I
9 put my head back down into the concrete and they started
10 yelling about the security box. And once they were gone
11 again, I could hear the chainlink fence, which I know is
12 about fifty to a hundred feet out the back door, so I knew
13 they were far enough away. And I jumped up and locked the
14 door with my shoulder.

15 Q Okay. And after you were able to lock the door with
16 your shoulder, what happened?

17 A Mr. Sims took the tape off me and me and him both called
18 9-1-1 while Jarron run to the front of the store and locked
19 it.

20 Q Okay. I'm going to show you --

21 MS. CORNWELL: Where did that 9-1-1 tape go?

22 COURT REPORTER: The 9-1-1 tape?

23 MS. CORNWELL: Yes, ma'am.

24 Court's indulgence, Your Honor.

25 COURT REPORTER: Is it in your computer?

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1 MS. CORNWELL: I'm sorry, Your Honor.

2 BY MS. CORNWELL:

3 Q I'm going to show you what's been marked as State's
4 Exhibit 67. Do you recognize that?

5 A Yes, ma'am.

6 Q And what is that?

7 A This is the recording I listened to of the 9-1-1 call.

8 Q And how do you know that that's recording?

9 A I listened to it.

10 Q Okay. Is there anything on there?

11 A I initialed, after I listened.

12 Q And is this --

13 MR. MELLARD: And, Your Honor, we would renew our
14 same objection.

15 THE COURT: Based upon her finishing the proper
16 foundation as before.

17 BY MS. CORNWELL:

18 Q And is this your voice on the 9-1-1 tape?

19 A Yes, ma'am.

20 Q Is this a true and accurate depiction of the call you
21 made that day?

22 A Yes, ma'am.

23 MS. CORNWELL: Your Honor, at this time, the State
24 would move State's 67 into evidence.

25 MR. MELLARD: Your Honor, the same --

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1 THE COURT: Is this the second portion of it?

2 MS. CORNWELL: It's the second portion.

3 THE COURT: Okay. So this would be, I guess, 67-B
4 or something?

5 MS. CORNWELL: Yes, Your Honor.

6 THE COURT: The entire --

7 MS. CORNWELL: The entire.

8 THE COURT: -- Okay.

9 MR. MELLARD: Same objection. Also, she can
10 testify as to what's on it. We don't have to listen to it.
11 It's preferable if we're doing that.

12 THE COURT: Overruled.

13 MS. CORNWELL: Thank you, Your Honor.

14 (State's 67-B, second portion of
15 tape, was marked and entered.)

16 (Second portion played.)

17 BY MS. CORNWELL:

18 Q And I'm sorry that you had to listen to that again. I
19 know that that's difficult. In that tape, you said something
20 about he kicked your phone from your chin. Can you tell the
21 jury about that?

22 A I still had my phone in my hand whenever he brought me
23 inside and whenever I laid down, I put my hand down, I also
24 laid my phone on the ground. I was going to try to lay on
25 top of it. That way, you know, it wouldn't get taken. I

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1 mean, I could tell immediately it was a robbery. I guess
2 whenever he seen me come through the door, he seen the phone.
3 And he said give me that phone, give me that phone, and he
4 kicked it out from underneath. Like it was right here.

5 Q So he also kicked at your face?

6 A Yes.

7 Q And in that tape you were able to give a pretty good
8 description?

9 A Yes, ma'am.

10 Q About how long did it take law enforcement to arrive at
11 the store?

12 A Not very long at all.

13 Q Okay. Other than law enforcement, did anybody else come
14 to the store?

15 A My grandmother and my dad. And medical attention, I got
16 my head check out while I was there.

17 Q Okay. And what did they tell you about your injuries to
18 your head?

19 A My blood pressure was high. And they said as long as it
20 was swelling on the outside -- because I had a big knot on
21 the back of my head that, you know, I should be fine. Check
22 with a local doctor if I, you know, got headaches or anything
23 else.

24 Q And did you ever get headaches? Did you had to check
25 with the local doctor at any time?

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1 A No.

2 Q Okay. And once law enforcement arrived, what did you
3 do?

4 A I was with my family at first and with the ambulance for
5 the first thirty, forty-five minutes after everything had
6 happened. After that, I was put in a police car and told to
7 give my statement of the events that occurred.

8 Q And was that in a written statement?

9 A Yes.

10 Q Okay. And how were you feeling when you gave that
11 written statement?

12 A Traumatized.

13 Q Okay. But you still wanted to give a statement and help
14 out?

15 A Correct.

16 Q And then what happened next? What do you remember
17 happening?

18 A I gave my statement. The officer sat in the car with
19 me. She wrote a few questions on the statement and I
20 answered them. After that was over, I went inside with one
21 of the crime scene investigators and showed her where I was
22 laying and things like that.

23 Q Okay. And at some point were you shown a photograph?

24 A Yes, I was.

25 Q And what was that photograph shown to you on?

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1 A A cell phone.

2 Q Okay. Was anybody around you when you looked at that
3 photograph?

4 A No, ma'am.

5 Q When they showed you the photograph, who showed you the
6 photograph?

7 A An officer.

8 Q Okay. Did the officer tell you anything about the
9 photograph before he showed it to you?

10 A He just asked could I identify one of the robbers from
11 this photograph.

12 Q Okay. And looking at State's Exhibit 2, is that the
13 photograph that you were shown?

14 A Yes.

15 Q And were you able to identify the person in that
16 photograph?

17 A Yes, I was.

18 Q Who was the person in that photograph?

19 A The robber.

20 Q Okay. And is this the person that you saw punch you in
21 the face and grab you and pull you back in the store?

22 A Yeah. I'll never forget it.

23 Q Okay. And is this the person that was holding the gun?

24 A That is.

25 Q Okay. And how certain are you that this is the person

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1 that did those things to you?

2 A A hundred percent.

3 Q And did you see the man that robbed you, and punched you
4 and hit you, and duct taped you in the courtroom today?

5 A Yes, ma'am.

6 Q Can you point him out to the jury?

7 A He's on that side.

8 MS. CORNWELL: Your Honor, let the record reflect
9 that she pointed the Defendant.

10 BY MS. CORNWELL:

11 Q Ms. Berry, thank you. Please answer any questions
12 Defense counsel may have.

13 THE COURT: Cross-examination.

14 KIRSTIE BERRY - CROSS EXAMINATION

15 BY MR. MELLARD:

16 Q You're good?

17 A Yeah.

18 Q Okay. I just want to briefly talk about this, okay?
19 You were working at the T-Mobile on May 16th?

20 A Yes, sir.

21 Q All right. And you'd been there about three days?

22 A Yes, sir.

23 Q All right. And May 16th was the day of the robbery?

24 A Yes.

25 Q All right. And you're sure about that?

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1 A Yes, sir.

2 Q Okay. And on that same day you gave a written statement
3 to the police?

4 A Yes.

5 Q All right. Now, we just heard your 9-1-1 tape?

6 A Yes, I heard it.

7 Q And in that 9-1-1 tape you said you were robbed at
8 gunpoint?

9 A Yes, sir.

10 Q Said you were punched in the face?

11 A Yes, sir.

12 Q I believe you said you didn't remember if you got
13 knocked out or not?

14 A Yes.

15 Q Did you lose consciousness; do you remember?

16 A I did not.

17 Q You did not?

18 A No.

19 Q All right. And the description you gave on the 9-1-1
20 tape was an old guy with mechanics gloves, blue jeans, and a
21 white long sleeved shirt?

22 A Yes.

23 Q You remember that?

24 A Yes.

25 Q Okay. Now, getting back to the statement you gave, the

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1 written statement, all right? Now, I understand you were
2 under a lot of stress?

3 A Yes, sir.

4 Q I understand that. But you did give a statement to the
5 police?

6 A Yes.

7 Q And, you ,in your statement you said you were outside
8 smoking?

9 A Yes.

10 Q All right. And that's correct?

11 A Yes.

12 Q Trauma aside, that's one hundred percent correct?

13 A Yes, I was smoking.

14 Q All right. And then an arm with a mechanic's glove
15 pulled you inside?

16 A Yes, sir.

17 Q And you're sure about that?

18 A Positive.

19 Q Okay. And then you were hit in the right side of your
20 face with a fist; correct?

21 A Yes.

22 Q All right. And then hit in the back of your head with
23 something solid?

24 A Yes.

25 Q. Now, you testified earlier you had a knot on the back of

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1 your head?

2 A I did.

3 Q And so I guess when you got hit you probably saw some
4 stars?

5 A I mean, it was enough to leave a knot.

6 Q It was enough to leave a knot. Didn't pass out?

7 A No, I did not.

8 Q And then you ended up on the ground?

9 A Yes, sir.

10 Q All right. And your hands were tied?

11 A. Behind my back, yes, sir.

12 Q Behind your back; right. And your legs were tied?

13 A Yes, sir.

14 Q And it was with duct tape?

15 A Yes, sir.

16 Q All right. And you were face down on the floor?

17 A Yes, sir.

18 Q Now, in your statement, the police asked you to describe
19 the assailants?

20 A Yes, sir.

21 Q And in your written statement you wrote, the man who
22 snatched me was wearing a long sleeve white shirt?

23 A Yes, sir.

24 Q All right. And you're sure about that?

25 A Yes, sir.

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1 Q Black short sleeve shirt?

2 A Yes, sir.

3 Q Mechanic's gloves?

4 A Yes.

5 Q And white shoes?

6 A Yes.

7 Q All right. And was a black male about fifty years old?

8 A Yes.

9 Q All right. And I understand you were traumatized?

10 A Yes.

11 Q But that is correct?

12 A Yes.

13 Q All right. And that is exactly what you remember?

14 A Yes.

15 Q Didn't put in there anything about a black baseball cap?

16 A I mean, they just told us to identify clothes and that's
17 what I did.

18 Q It's -- actually, it says, and if you'd like to see it,
19 I'll just show this to you. Just so we're clear.

20 MR. MELLARD: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. MELLARD:

23 Q Is this your witness statement?

24 A Yes, it is.

25 Q Okay. And you see this question right here. After he

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1 brought you back inside and has you standing -- I notice you
2 stated you looked up. Could you see the other assailant?

3 A Yes.

4 Q All right. So they asked you to describe him?

5 A Yes.

6 Q Okay. All right. And you never put in there anything
7 about a black baseball cap?

8 A No.

9 Q And you never put anything in there about black
10 sunglasses?

11 A No.

12 Q In your 9-1-1 tape, you didn't say anything about a
13 black baseball cap?

14 A No.

15 Q Didn't say anything about black sunglasses?

16 A No.

17 Q All right. You've never said anything in either 9-1-1
18 or your written statement about how tall the person was?

19 A I said he was a taller male. I mean, he's taller than I
20 am and I'm significantly tall to be a girl.

21 Q How tall are you?

22 A I'm 5'10".

23 Q 5'10". All right. You didn't say whether the person
24 was over 5'10", 6'4", 6'8", didn't say that?

25 A No.

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1 Q Didn't give hair color; correct?

2 A Correct.

3 Q Okay. Didn't say whether he had white hair, dark hair?

4 A No, sir.

5 Q Didn't give hair style?

6 A No, sir.

7 Q Didn't say dreads, short hair?

8 A No, sir.

9 Q Medium hair? Didn't say whether the person was clean
10 shaven?

11 A No.

12 Q Had a beard?

13 A No.

14 Q Had a goatee?

15 A No.

16 Q Mustache?

17 A No.

18 Q Nothing about tattoos?

19 A I didn't have time to look for tattoos.

20 Q Nothing about scars?

21 A No.

22 Q The only description you gave was the long sleeve white
23 shirt, black short sleeved shirt, mechanics gloves, white
24 shoes about fifty years old?

25 A Correct.

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1 Q All right. Now, at some point you were shown -- you
2 weren't shown this picture; right? I mean, you were shown a
3 picture but it wasn't a eight by eleven picture?

4 A Correct. It was on a cell phone.

5 Q Cell phone. Do you remember what kind of cell phone it
6 was?

7 A It was a smart phone.

8 Q A smart phone?

9 A Yes.

10 Q Are we talking -- are we talking -- this is -- I guess
11 it's kind of smart. Is it about this size, the screen?

12 A It was about that size, yes.

13 Q About this size screen?

14 A Yes.

15 Q So it wasn't -- you weren't shown this. You were shown
16 something about this size?

17 A Yes, sir.

18 Q One more question. Before you were shown this picture,
19 were you aware that the police were tracking Mr. Sims'
20 iPhone?

21 A Correct.

22 Q You were aware of that?

23 A Yes.

24 MR. MELLARD: One second, Your Honor. That's all
25 the questions we have.

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1 THE COURT: Any redirect?

2 KIRSTIE BERRY - REDIRECT EXAMINATION

3 BY MS. CORNWELL:

4 Q You said you were aware that they were tracking Mr.
5 Sims' iPhone, iPad?

6 A Correct.

7 Q Do you know where they found it?

8 A At first at a hotel and then at an apartment complex.

9 Q Do you know whose apartment complex that was?

10 A Mr. Hardin.

11 MS. CORNWELL: Okay. That's all the questions I
12 have, Your Honor.

13 THE COURT: You may step down Ms. Berry. Thank
14 you.

15 You may call your next witness.

16 MS. CORNWELL: Your Honor, the State would call
17 Lieutenant Antonia Turkvant.

18 (WHEREUPON, Antonia Turkvant was
19 sworn to tell the truth.)

20 THE CLERK: Thank you. You may have a seat. And
21 please state your name again for the record.

22 MR. TURKVANT: Antonia Turkvant.

23 ANTONIA TURKVANT - DIRECT EXAMINATION

24 BY MS. FORD:

25 Q Good morning?

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1 A Good morning.

2 Q What type work do you do?

3 A I'm a Lieutenant at the Orangeburg County Sheriff's
4 Office.

5 Q How long have you been in law enforcement?

6 A Almost eighteen years.

7 Q Eighteen years, okay. Tell us, what type of work have
8 you done in those eighteen years of law enforcement?

9 A I've worked patrol division, some investigation, some
10 narcotics.

11 Q Okay. Have you always worked for Orangeburg County?

12 A No. No, ma'am.

13 Q Well, tell us about what you've done before you started
14 working for Orangeburg County?

15 A I worked for the Orangeburg Department of Public Safety.
16 And I worked for Santee Police Department. And also State
17 Office of Victim Assistance as an investigator.

18 Q Tell the jury what you do day-to-day?

19 A On a day-to-day basis, I oversee a shift of deputies at
20 the Orangeburg County Sheriff's Office. Kind of direct their
21 coming and their going, and make sure that they're safe and
22 that the calls get answered properly and in a timely manner.

23 Q So as a shift supervisor, you and your deputies are
24 often the first on the scene?

25 A Yes, ma'am.

1 Q Were you working on May 16th of 2014?

2 A Yes, ma'am.

3 Q Did you respond to a call at T-Mobile --

4 A Yes, ma'am.

5 Q -- here in Orangeburg?

6 A Yes, ma'am.

7 Q What was the nature of that call?

8 A I believe it was a armed robbery.

9 Q What did you do when you first arrived on the scene?

10 A I made contact with -- I think the first person came to
11 the door was Mr. Sims. I believe he's a black male. He came
12 to the door and he was explaining to me basically what
13 happened. And I went inside the building and spoke with
14 other people. And then by that time, other officers and
15 other people were there.

16 Q You said that you spoke with Mr. Sims and then also some
17 other people?

18 A Yes, sir.

19 Q Who were the other people?

20 A It was a white female and another black male. Seemed
21 like he was a little younger.

22 Q Were they employees at the T-Mobile?

23 A Yes. They were employees at T-Mobile.

24 Q Did you notice anything about the store when you first
25 entered?

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1 A It wasn't in disarray, but Mr. Sims' the first man that
2 came to the door, I could see he had something -- I believe
3 it was duct tape on his right pants legs, near his shoes. So
4 he was explaining what happened.

5 Q What did you do next while you were inside the T-Mobile?

6 A I went into the back room where I believe it was a
7 younger man. He was sitting on the floor. I spoke with him,
8 made sure everybody was okay. And I gave out direction of
9 travel. I believe they said he left out the back door. And
10 I was just relaying information to the people that were
11 coming so that we may set up a perimeter and try to contain
12 anyone that may have left the building.

13 Q Did you inquire about any sort of video or surveillance
14 in the T-Mobile?

15 A I asked if they have video surveillance. I believe Mr.
16 Sims told me that it would have been in that back room here
17 they were, that it was gone.

18 Q Did he indicate how it was missing?

19 A No. I believe he said that the suspects --

20 MR. MELLARD: Objection, Your Honor, hearsay.

21 THE COURT: Sustained.

22 BY MS. FORD:

23 Q Did you learn what was stolen from the T-Mobile?

24 A Yes. Some cell phones, some surveillance equipment from
25 the back room, and some personal property of Mr. Sims.

1 Q Do you know what personal property?

2 A I know it was a iPad. One thing was a iPad. And
3 another, like, tablet that he said he had in a book bag. I
4 know it was all in a book bag.

5 Q After learning what was stolen, what did you do next?

6 A Asked mr. Sims about his iPad, if it had, if it was on
7 and he said, yes. So we entered in the NCIC, national crime
8 information center, so that we could know that it was stolen.
9 And he couldn't tell me at the time exactly everything that
10 was stolen from the store as far as the inventory.

11 Q Okay. You said that an iPad, his iPad was stolen;
12 correct?

13 A Yes.

14 Q Did you inquire anymore about that?

15 A I inquired if --

16 MR. MELLARD: Objection, Your Honor, hearsay.

17 THE COURT: It's what she inquired not what
18 somebody else told her was the question.

19 A I inquired if he -- my iPad came with a Find My iPad
20 that's standard on it. And I asked him if he had it still on
21 his iPad.

22 BY MS. FORD:

23 Q And did he have that?

24 A He told me he did.

25 Q What is Find My iPad?

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1 A I know that when you lose your iPad, it comes on the
2 iPad and allows you to find your iPad if it's lost.

3 Q Did you attempt to log into that or to track that in any
4 way?

5 A I spoke with Mr. Sims and I believe he spoke with
6 someone from investigations who helped him with that.

7 Q At this point were the investigators, was investigations
8 on the scene?

9 A Yes, they were.

10 Q And did you do anything else to investigate the armed
11 robbery at the T-Mobile?

12 A No, not that I remember.

13 MS. FORD: Beg the Court's indulgence, Your Honor.
14 No further questions, Your Honor. Please answer any
15 questions the Defense may have?

16 THE COURT: Cross-Examination.

17 ANTONIA TURKVANT - CROSS-EXAMINATION

18 BY MR. MELLARD:

19 Q You responded to the T-Mobile on May 16th?

20 A Yes.

21 Q 2014?

22 A Yes, sir.

23 Q You were the first officer there?

24 A I may have been the second.

25 Q May have been the second?

1 A Yes, sir.

2 Q All right. But by the time you got there, the robbery
3 was over?

4 A Yes, sir.

5 Q All right. You didn't witness the robbery?

6 A No, sir.

7 Q Okay. You didn't see any of the robbers?

8 A No, sir.

9 Q You don't know if there was a getaway vehicle?

10 A No, sir.

11 Q Okay. But you did speak to the employees?

12 A Yes, sir.

13 Q Okay. And then you turned the investigation over, I
14 guess, to your investigators?

15 A Yes, sir.

16 Q Okay. Now, is a shift supervisor, and that's my
17 understanding that's what you are, a shift supervisor?

18 A Yes, I am.

19 Q All right. I would assume you make sure that your
20 officers do their job correctly?

21 A Yes, sir.

22 Q Okay. You make sure they investigate fully?

23 A Investigations normally does the investigations.

24 Q Okay.

25 A Yes, sir.

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1 Q All right. As part of your job, do you collect
2 evidence?

3 A Sometimes.

4 Q All right. And if you are doing that, you'd make sure
5 that it's done correctly?

6 A Yes, if I collected evidence.

7 Q How about the officers under your shift, would you make
8 sure they did it correctly?

9 A Yes, I would.

10 Q Okay. And what about testing evidence, do you make sure
11 they do that correctly?

12 A We don't test evidence from the crime scene.

13 Q Y'all don't test it?

14 A I don't test it personally, sir.

15 Q Okay. All right. What about lineups, photo lineups,
16 you ever do those?

17 A I have in the past.

18 Q Okay. And I assume you make sure they're done
19 correctly?

20 A The investigators do and the deputies that do it.

21 Q Make sure they're done right?

22 A Yes.

23 MR. MELLARD: That's all we have.

24 THE COURT: Any redirect?

25 MS. FORD: Nothing, Your Honor.

24 MS. CORNWELL: We have everybody, Your Honor, I
25 think.

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1 THE COURT: Are we ready to proceed?

2 MR. MELLARD: We have two quick issues, Your Honor.

3 THE COURT: Okay.

4 MR. MELLARD: We're trying to get some
5 clarification on the iPad issue, I believe. I'm a little
6 confused about whether the Court is going to allow them to
7 testify where that dot is on the particular map and I just
8 need some clarification on that.

9 THE COURT: If they saw it, basically where it lead
10 them to, they can testify to that.

11 MR. MELLARD: To the location but not where the dot
12 is on the map?

13 THE COURT: Well, they can say where the dot is if
14 they saw it. I mean, if they're the ones looking at the dot
15 and it said it went down this road and then it went down this
16 road, according to the app, they can testify to that. I
17 mean, you can certainly cross-examine regarding accuracy and
18 all of that. But if they physically saw it, then they can
19 testify to that.

20 MR. MELLARD: Okay. And then the second issue is
21 regarding statements that Mr. Hardin made to law enforcement
22 officers about a person named Black.

23 THE COURT: Right.

24 MR. MELLARD: We would waive -- we spoke to Mr.
25 Hardin about this. And we would waive, you know, our

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1 objections to that line of questioning. In other words, I
2 understand the Court -- I believe the Court kind of said that
3 one officer could testify about that, but I believe there's a
4 couple of other officers too. And we spoke with Mr. Hardin
5 and if the officers want to get into that, we would not
6 object.

7 THE COURT: Okay. That's fine. And I appreciate
8 that clarification. I was concerned, and obviously this is
9 something that goes along with that, is the statement that
10 when he saw the officer and he thought that he was Blacks
11 parole or probation agent. I'm concerned about that having
12 any kind of prejudicial effect on Mr. Hardin, that that's who
13 he's with, or that's who he's alleged to be with. And I
14 don't know if that's a concern for you as far as -- That's
15 part of trial strategy for you to talk about that. I just --

16 MR. MELLARD: It is going to come out and we have
17 no problem with that.

18 THE COURT: Okay. All right. Let's make sure
19 we're all on the same page.

20 MS. CORNWELL: Thank you, Your Honor. We just need
21 that on clarification, with Corporal Cain, obviously, he
22 didn't see the blue dot until they were at the apartment
23 complex, but he went to several locations at the direction of
24 his supervisor, you know, saying, you know, go here. Hey, go
25 here. Go here. Go here. He doesn't have to explain to the

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1 jury well, this is where the iPad was seen. But he can say
2 at the direction of my superior, I went to this place to try
3 to locate the iPad. I went to this place to try to locate
4 the iPad and so on; is that correct?

5 THE COURT: That's fine. Because he can't testify
6 that he saw it.

7 MS. CORNWELL: He can't testify that he saw it, but
8 he was given direction by his supervisor that that's where --

9 THE COURT: Just like any other directive in an
10 investigation.

11 MS. CORNWELL: Yes, Your Honor.

12 MR. MELLARD: And we understand. But it would be
13 our position that is at least double hearsay. The reason the
14 iPad, to an officer, to Cain. And in certain circumstances,
15 it would be triple hearsay. So each one is saying for the
16 truth of the matter asserted to another person, who's then
17 relaying it to Cain.

18 THE COURT: Not for truth of the matter asserted.
19 It doesn't say he robbed him. They say it's an investigative
20 tool at the location. It doesn't go to the truth of the
21 matter asserted. And, basically, it's -- he's not saying --
22 they're not going to be allowed to testify the hearsay aspect
23 of Officer so and so told me specially go to this site. He
24 can say, based upon the direction and investigation, this is
25 where I went, which is, your objection is overruled on that.

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1 MR. MELLARD: Yes, ma'am.

2 THE COURT: Anything further?

3 MS. CORNWELL: Thank you, Your Honor, no. Nothing
4 from the State.

5 THE COURT: Are we ready for our jury? Let's bring
6 our jury, please.

7 THE BAILIFF: Yes, Your Honor.

8 (Jury in at 1:18 p.m.)

9 THE COURT: Welcome back, ladies and gentlemen of
10 the jury. I hope you had a nice lunch. We are now ready to
11 resume the trial.

12 Solicitor, you may call your next witness.

13 MS. FORD: Thank you, Your Honor. The State calls
14 investigator Sam Norton.

15 (WHEREUPON, Samuel S. Norton was
16 sworn to tell the truth.)

17 THE CLERK: Thank you. You may have a seat. And
18 please state your name again for the record, please?

19 MR. NORTON: Samuel S. Norton.

20 THE CLERK: Thank you.

21 THE COURT: Your witness.

22 MS. FORD: Thank you, Your Honor.

23 SAMUEL S. NORTON - DIRECT EXAMINATION

24 BY MS. FORD:

25 Q Good afternoon, investigator?

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1 A Okay.

2 Q Where do you work?

3 A Orangeburg County Sheriff's Office, Criminal
4 Investigations Division.

5 Q And in what capacity are you employed?

6 A I'm an investigator.

7 Q What do you do as an investigator?

8 A Investigate crimes, process information, evidence
9 gathering, prosecution.

10 Q How long have you been in law enforcement?

11 A Fourteen years.

12 Q Were you working on May 16th of 2014?

13 A Yes, ma'am, I was.

14 Q Did you respond to an incident at the T-Mobile here in
15 Orangeburg?

16 A Yes, ma'am, I did.

17 Q What was the type of incident that you were notified it
18 was?

19 A We were told that a theft/robbery had just occurred.

20 Q So you responded to the T-Mobile is that correct?

21 A Yes, ma'am.

22 Q When you first responded, what did you do?

23 A We established a roving perimeter, which basically
24 travel around the area looking for any kind of evidence,
25 witnesses, subjects, and discarded, something that will lead

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1 Q Okay. The complex, the apartment complex?

2 A The system had administrative privileges so all I could
3 do was view it. You know, I could rewind it and view it but
4 I could not do any kind of -- anything intricate to it. I
5 had to call in the IT person for the security system to come
6 and actually burn it to a disk for me, to author it or burn
7 it to a flash drive.

8 Q So you were able to just simply watch it. You had to
9 call in someone else to --

10 A I could not alter it or anything. I could just view it
11 like a --

12 Q Or download it?

13 A I could not download it. I couldn't slow it down. I
14 couldn't speed it up, I could just view it.

15 Q So who did you call to do that?

16 A I asked the manager in the leasing office who is in
17 charge of the security system. She made a phone call. He
18 was in Charleston. I wait until he could get here. And he
19 came up and handled the technical aspect of it. And it's
20 about a little over an hour of footage from start to finish.
21 I needed about thirty seconds of it, so he took the pieces I
22 wanted and put them on a flash drive for me.

23 Q And that's what's on this flash drive?

24 A Yes, ma'am.

25 MS. FORD: I beg the Court's indulgence, Your

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Norton - Cross

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1 Honor. No further questions at this time.

2 Q Please answer any questions the Defense may have.

3 THE COURT: Cross-examination?

4 MR. MELLARD: Briefly.

5 SAMUEL S. NORTON - CROSS-EXAMINATION

6 BY MR. MELLARD:

7 Q So you responded to the T-Mobile on May 16th?

8 A I responded to the call, not the actual physical
9 business.

10 Q Oh, to the call. Okay. An so you're not a witness to
11 any actual robbery?

12 A As far as, did I watch someone get --

13 Q In other words, you didn't see any --

14 A -- robbed, no, sir.

15 Q And you didn't see any of the robbers inside the T-
16 Mobile?

17 A No, sir.

18 Q Okay. Didn't see any of the robbers walking out of the
19 T-Mobile Store?

20 A No, sir.

21 Q Okay. But what you did do is, I believe you responded
22 to the Summit Apartments?

23 A Yes, sir.

24 Q Okay. And you just spoke to the people that were there?

25 A I drove around and looked at things --

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1 Q Right.

2 A -- and then I went and spoke to the leasing office.

3 Q Okay. All right.

4 MR. MELLARD: That's all the questions we have.

5 THE COURT: Any further redirect?

6 MS. FORD: No redirect, Your Honor.

7 THE COURT: You may step down, sir. Thank you.

8 MR. NORTON: Thank you.

9 THE COURT: You may call your next witness.

10 MS. FORD: The State calls Hyrett Hamilton.

11 (WHEREUPON, Hyrett Hamilton was

12 sworn to tell the truth.)

13 THE CLERK: Thank you. You may have a seat.

14 Please state your name again for the record.

15 MS. HAMILTON: Hyrett Hamilton.

16 THE COURT: Your witness.

17 MS. FORD: Thank you, Your Honor.

18 HYRETT HAMILTON - DIRECT EXAMINATION

19 BY MS. FORD:

20 Q Good afternoon, Ms. Hamilton?

21 A Hi.

22 Q What type of work do you do?

23 A I'm a patient accounts counselor for TRMC.

24 Q How long have you been doing that kind of work?

25 A Well, in this position it's been almost a year in that

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1 position.

2 Q But you've worked at TRMC in other capacities?

3 A Yes. Supervising.

4 Q Back in May of 2014, where were you living?

5 A I was living in the Summit Apartments Complex.

6 Q And where are those apartments located?

7 A St. Matthews Road.

8 Q Okay. And where in that apartment complex was your
9 particular apartment located?

10 A My apartment was located on the back side of the
11 alleyway. Where the alleyway is, my apartment faces the
12 fence.

13 Q I'm going to show you what's been entered as State's
14 Exhibit 60. What is that?

15 A This is the fence that faces the alleyway of my
16 apartment.

17 Q Okay. So this is your apartment building?

18 A Yes.

19 Q And you said that's a fence there?

20 A It's a fence.

21 Q So in between the apartment building and the fence
22 that's what you're referring to as an alleyway?

23 A An alley, alleyway.

24 Q Okay.

25 A Uh-huh (affirmative).

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1 Q What were you doing on the morning of May 16th, 2014?

2 A I was watering my plants and, you know, opening up my
3 blinds to let in some sunshine.

4 Q Did you notice anything unusual that morning while you
5 were getting ready for your day?

6 A Yes. I saw a box come across the fence, and then I saw
7 two black males come across the fence, coming across the
8 fence. And they had, which I thought was unusual for someone
9 to come across the fence like that.

10 Q Well, what's on the other side of the fence? Your
11 apartment building is on one side, then there's the fence.
12 What's on the other side?

13 A On the other side is, I think, it's George Sink and T-
14 Mobile and some other businesses along that strip.

15 Q Like a strip mall?

16 A A strip mall, uh-huh (affirmative).

17 Q Okay. So you saw two black males jumping over the fence
18 and a box is what you noticed first; right?

19 A A box, uh-huh (affirmative).

20 Q Can you describe what those two men looked like?

21 A They were black males. They were dressed in black
22 basically and had on hats and gloves. They had a back pack
23 and one had on a lighter shade of pants, but there were two
24 males.

25 Q Did you see -- after they jumped the fence, did you see

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1 where they went?

2 A They went toward the parking lot. After they came over
3 the fence, they went toward the parking lot. And then they -
4 - I didn't see them anymore.

5 Q Okay. So you said earlier that was pretty unusual?

6 A That was very unusual.

7 Q What did you do next?

8 A I called my landlord, called the manager and said, you
9 know, I think -- I don't know what's going on, but two males
10 came across the fence and had boxes and back packs. And it
11 didn't look right to me so I called her and she told me to
12 come up there, to the office.

13 Q So did you go to the office?

14 A I went to the office and wrote down a statement of what
15 I saw. The officers were in there. And I wrote down the
16 statement of what I saw.

17 Q Okay. Are you aware if there are any video cameras in
18 your apartment complex?

19 A I knew there were cameras. I didn't know there were
20 cameras, you know, toward the alleyway. But I do know there
21 are cameras.

22 Q There are?

23 A Yeah.

24 MS. FORD: I beg the Court's indulgence, Your
25 Honor.

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1 BY MS. FORD:

2 Q Did you notice if either of those two men that came
3 across the fence, were they wearing anything on their heads?

4 A Black. Black caps on the head.

5 Q Thank you, Ms. Hamilton.

6 A Uh-huh (affirmative).

7 Q Please answer any questions the Defense may have.

8 THE COURT: Cross-examination.

9 HYRETT HAMILTON - CROSS-EXAMINATION

10 BY MR. MELLARD:

11 Q You gave a statement to police that day?

12 A Yes, that day.

13 Q All right. And in your statement you told the police
14 they were wearing what you just said, the black shirts, and
15 the black gloves, the lighter colored pants. You remember
16 that?

17 A Yeah.

18 Q And you also told the police that the black males looked
19 you; you remember that?

20 A Yeah. Well, they had on back packs so I originally
21 thought maybe they might be students. So --

22 Q Okay. So they looked --

23 A That's what I originally thought because of the back
24 packs they might be students.

25 Q Okay. All right.

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1 MR. MELLARD: One second. That's all I've got.

2 THE COURT: Anything further?

3 MS. FORD: Just briefly, Your Honor.

4 HYRETT HAMILTON - REDIRECT EXAMINATION

5 BY MS. FORD:

6 Q Ms. Hamilton, when you said they appeared you was it
7 because of the back packs or was it because of their facial
8 features that you determined they were young?

9 A Back packs and, you know, caps.

10 Q So not their physicality?

11 A No. Just the back pack.

12 Q Thank you, Ms. Hamilton.

13 THE COURT: You may step down, ma'am. Thank you.

14 MS. HAMILTON: Thank you.

15 THE COURT: You may call your next witness.

16 MS. FORD: The State calls Destiny Brown.

17 (WHEREUPON, Destiny Brown was sworn
18 to tell the truth.)

19 THE CLERK: Thank you, you may have seat. Please
20 state your name again for the record?

21 MS. BROWN: Destiny.

22 THE CLERK: Last name?

23 MS. BROWN: Brown.

24 THE COURT: Your Witness.

25 MS. FORD: Thank you.

1 DESTINY BROWN - DIRECT EXAMINATION

2 BY MS. FORD:

3 Q Good afternoon, Ms. Brown.

4 A Hello.

5 Q How old are you?

6 A Twenty-four.

7 Q What kind of work do you do?

8 A I'm in retail.

9 Q Do you live here in Orangeburg?

10 A Yes, ma'am.

11 Q Back in May of 2014, were you living here in Orangeburg?

12 A Yes, ma'am.

13 Q Where did you live?

14 A Summit Apartments.

15 Q And where are they located?

16 A Off of St. Matthews Road.

17 Q Okay. Where was your apartment located?

18 A I stayed in the first building.

19 Q Okay. Now, was it a bottom floor apartment or --

20 A Third floor.

21 Q Third floor apartment. On the morning of May 16th of
22 2014, what were you doing?

23 A I was vacuuming and exercising.

24 Q Okay. While you were doing your household chores and
25 things, did you notice anything unusual that morning that

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1 caught your attention?

2 A Yes, ma'am. After I was done and I was sitting in the
3 window, I did notice some strange things.

4 Q Tell us what you observed? What did you see?

5 A I saw two men walking with some boxes in the apartment
6 complex.

7 Q Okay. Describe what those two men looked like?

8 A One was a little taller than the other. They weren't
9 the same body stature.

10 Q Okay. Did you notice anything about their clothing?

11 A They seem to -- they could have been dressed alike. I
12 want to say like cargo bottoms and black top.

13 Q Okay. What did you do? You see these men carrying, you
14 said a box; correct?

15 A Uh-huh (affirmative).

16 Q Okay. What did you do, just watched them?

17 A Well, I saw until I heard all the sirens and everything
18 and I assumed something had happened.

19 Q What did the men do?

20 A They got into their car and left.

21 Q Did you see what kind of car it was?

22 A It was a small vehicle.

23 Q I'm going to show you what's been marked State's Exhibit
24 32. Do you recognize those?

25 A Yes, ma'am.

1 Q What is this?

2 A That's the smaller car that left the parking complex,
3 the parking lot.

4 Q Was this the car that the two gentlemen got into and
5 drove away in?

6 A I would say, yes, ma'am.

7 Q This is the car?

8 A Uh-huh (affirmative).

9 MS. FORD: Your Honor, at this time the State would
10 offer State's Exhibit 32 into evidence.

11 THE COURT: Any objection.

12 MR. MELLARD: No objection.

13 THE COURT: It's in.

14 (State's Exhibit No. 32, photo, was
15 marked and entered.)

16 BY MS. FORD:

17 Q So this is the car that you saw the two men that were
18 carrying the boxes get into and drive out of the apartment
19 complex parking lot?

20 A Yes, ma'am.

21 Q So you said -- just a minute ago, you said that you
22 heard sirens and things?

23 A Uh-huh (affirmative).

24 Q Tell me about that. What did you hear?

25 A I heard the police cars coming and I saw some circle the

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1 parking lot, and that's it.

2 Q So what did you do next?

3 A I went downstairs.

4 Q What's downstairs?

5 A The manager's office for our apartment complex.

6 Q So the office then?

7 A Uh-huh (affirmative).

8 Q What did you do when you got into the office?

9 A I asked her what happened and she told me. She asked
10 had I seen anything and I did.

11 Q Okay. Were any law enforcement officers in the office?

12 A Yes, ma'am.

13 Q Did you ever write a statement regarding what you saw
14 and testified to today?

15 A Yes, ma'am.

16 Q Are there any surveillance cameras at your apartment
17 complex?

18 A Yes, ma'am.

19 Q Do you know if there's a surveillance tape of that
20 morning?

21 A Yes, ma'am.

22 Q Have you had the opportunity to watch that surveillance
23 tape?

24 A Uh-huh (affirmative).

25 Q Let me show you what's been marked State's Exhibit 80.

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1 You can open that. Do you recognize that?

2 A Yes, ma'am.

3 Q What is that?

4 THE COURT: Mr. Mellard, you have --

5 MR. MELLARD: We have an objection based on
6 foundation, Your Honor.

7 THE COURT: She hasn't stated --

8 MR. MELLARD: I know. That's why I was standing
9 up. I was just waiting to give her an opportunity.

10 BY MS. FORD:

11 Q I'm sorry. What is this?

12 A That is the surveillance video from that morning.

13 Q How do you know that?

14 A Those are my initials. I initialed it after I watched
15 it.

16 Q Okay. And this is --

17 A That is the video.

18 Q Okay. And what you saw on this video, does it truly and
19 accurately depict the actual events that you saw on the
20 morning of May 16th, 2004 [sic)?

21 A Yes, ma'am.

22 Q Where you saw the two men start walking and then get
23 into a car, this car from State's 32?

24 A Uh-huh (affirmative).

25 Q And drive away?

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1 A Yes, ma'am.

2 MS. FORD: Your Honor, at this time the State would
3 offer State's Exhibit 80 into evidence, Your Honor.

4 MR. MELLARD: We would object on the grounds that
5 they haven't established a foundation. They can't say who
6 burned that disk and they can't say anything about what time
7 it was burned. And we've heard earlier testimony, at least
8 the police officer couldn't burn it himself. He had to get a
9 special IT person to do it. So it's our position they have
10 not established a foundation.

11 THE COURT: Solicitor?

12 MS. FORD: Your Honor, she's testified that what is
13 on this video, she's observed what's on this video. And it
14 truly and accurately depicts exactly what she saw on the
15 morning of May 16th. So it would be the State's position
16 that since this video accurately depicts what she's already
17 seen, then she would be able to certainly authenticate that.
18 And that would be the basis of us moving it into evidence.

19 THE COURT: Would the parties please approach?
20 (Off the record bench conference with counsel and the Court.)

21 THE COURT: Your Objection is sustained.

22 MS. FORD: I beg the Court's indulgence, Your
23 Honor.

24 BY MS. FORD:

25 Q Ms. Brown, just one more thing. Did you see anything on

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1 those gentlemen that -- you said you saw them jump the fence
2 with the boxes. Did you notice anything on their head or on
3 their hands?

4 A They were wearing ball caps, baseball caps.

5 Q Okay. Did you notice anything on their hands?

6 A I don't recall.

7 Q Would it help refresh your memory if you took a look at
8 your statement that you wrote?

9 A Yes.

10 Q Did you notice anything on their hands?

11 A Yes, ma'am.

12 Q And what was that?

13 A They were wearing gloves.

14 Q Thank you, Ms. Brown. Please answer any questions the
15 Defense may have.

16 THE COURT: Cross-examination?

17 MR. MELLARD: No questions.

18 THE COURT: You may step down, Ms. Brown. Thank
19 you.

20 MS. BROWN: Thank you.

21 THE COURT: You may call your next witness.

22 MS. CORNWELL: The State would call Sergeant John
23 Stokes.

24 THE CLERK: Thank you. You may have a seat.
25 Please State your name again for the record?

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1 MR. STOKES: Sergeant John C. Stokes.

2 THE COURT: Your witness.

3 MS. CORNWELL: Thank you, Your Honor.

4 JOHN C. STOKES - DIRECT EXAMINATION

5 BY MS. CORNWELL:

6 Q Good afternoon, Sergeant Stokes.

7 A Good afternoon.

8 Q Sergeant Stokes, where are you currently employed?

9 A At the Orangeburg County Sheriff's Office.

10 Q And what is your role at the Orangeburg County Sheriff's
11 Office?

12 A I'm a Sergeant and I'm attached to the Criminal
13 Investigations Division.

14 Q And were you working in that capacity on May 16th of
15 2014?

16 A Yes, ma'am.

17 Q In that capacity, did you assist in the investigation of
18 an armed robbery that occurred at T-Mobile off of St.
19 Matthews Road?

20 A I did.

21 Q And what county is that in?

22 A The County of Orangeburg.

23 Q What was your role in that investigation?

24 A I was lead investigator.

25 Q And can you tell the jury what being the lead

1 investigator entails?

2 A Well, being the lead investigator is basically
3 administrative. You delegate to other officers. You control
4 the crime scene. And you also are responsible in the
5 paperwork that's generated during that case.

6 Q And as lead investigator, do you personally collect any
7 of the evidence?

8 A No.

9 Q Who does that?

10 A The crime scene unit. They are specifically trained in
11 collecting evidence so nobody else is touching stuff besides
12 them.

13 Q And as the lead investigator, are you tasked with
14 interviewing each and every victim and each and every witness
15 on the scene?

16 A No. Basically, once I arrived on scene, I surveyed the
17 crime scene, see what's going on. I delegate other officers
18 to speak to other witnesses and other victims of the cases so
19 they can get their accounts of what happened in the incident.

20 Q And what did you do when you arrived on scene at T-
21 Mobile?

22 A When I arrived on scene at the T-Mobile on that day, I
23 made contact with officers that was there and also the three
24 victims.

25 Q And once you spoke to the three victims, were you able

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1 to get an account of what happened that day?

2 A Yes.

3 Q And in speaking to the victims, were you able to obtain
4 any information that immediately assisted you in your
5 investigation?

6 A Yes. While we were there, I made contact with Mr.
7 Thomas Sims, Jr., and he advised me that his personal iPad
8 was stolen during the robbery. And he had the Find My iPad
9 App.

10 Q Okay. And are you familiar with the locate my iPad app?

11 A Yes.

12 Q And just what is your understanding roughly from a
13 laymen's terms as to how that works?

14 A It's an application --

15 MR. STEVENS: We'd simply -- we'd raise our prior
16 objections.

17 THE COURT: Subject to your objection, I think this
18 witness has been properly instructed.

19 MS. CORNWELL: Thank you, Your Honor.

20 BY MS. CORNWELL:

21 Q Just like I said, a laymen's term as to just a basic
22 general overview of how that works?

23 A Basically, it's an application that's used to locate
24 either stolen or lost iPads and -- iPads and iPhones.

25 Q Okay. And how were you able to see where -- I mean, do

1 you have to log into a system. How do you do that?

2 A The user has a Apple ID and also a password and they log
3 into their account. And once they log into an account a map
4 appears and a blue dot shows the location of either the iPad
5 or the iPhone.

6 Q And once you discovered the application was on Mr. Sims'
7 iPad, what did you do?

8 A At that time, Mr. Sims, he activated that application on
9 his father's iPhone.

10 Q Okay. And through your investigation, were you able to
11 see where the iPad was at that time?

12 A Yes.

13 MR. STEVENS: Judge, We've been over this before.

14 THE COURT: We have been over this before --

15 MR. STEVENS: We respectfully --

16 THE COURT: Your objection's overruled.

17 BY MS. CORNWELL:

18 Q And once you discovered where the iPad was -- and where
19 you able to see where the iPad was?

20 A Well, at the time the iPad was located in Columbia.

21 Q Okay. And once you discovered where the iPad was, what
22 did you do?

23 A Once we discovered that the iPad was located in
24 Columbia, we started contacting both officers from the City
25 of Columbia and also Richland County Sheriff's Office. While

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1 we were doing that, Corporal Cain was on the radio. He
2 advised that he was coming from the Rock Hill area and he
3 would be able to assist.

4 Q And what did you do once Corporal Cain made contact?

5 A Once Corporal Cain made contact, we were able to give
6 him, like I said, several locations in Columbia where the
7 iPad was. We also was able to provide him with the log-on
8 information to him and an Officer Wade, an officer from the
9 Columbia Police Department, and they were able to try to
10 pinpoint exactly where the iPad was.

11 Q Okay. And they were able to see that themselves once
12 you gave them the information?

13 A Yes.

14 Q Okay. And to your knowledge, did Corporal Cain and the
15 other officers locate the iPad?

16 A Yes, they did.

17 Q Where did they locate the iPad?

18 A Behind Mr. Hardin's apartment complex, next to the trash
19 can.

20 Q And to your knowledge, was the Defendant present when
21 the iPad was located?

22 A Yes.

23 MR. STEVENS: Judge, he doesn't have any specific
24 personal knowledge of this. Object.

25 THE COURT: During his role as the investigative

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1 officer, he obtained knowledge. If he has knowledge, he can
2 testify to it. If he doesn't have knowledge, then he can say
3 so.

4 MS. CORNWELL: Thank you, Your Honor.

5 BY MS. CORNWELL:

6 Q And were you able -- to your knowledge, were you able to
7 understand if the other officers discovered any additional
8 evidence at that location?

9 A Yes. Once the iPad was located, they were able to get a
10 voluntary consent to search from the Defendant in this case.
11 Once inside that Defendant's apartment, they were able to
12 locate several iPads, iPhones, and also two guns that fit the
13 description described by the victims in this case.

14 Q Okay. And were you advised as to whether there were any
15 other people in the apartment besides the Defendant?

16 A No.

17 Q No, you were not advised?

18 A Well, I was advised by no where -- nobody else was in
19 the apartment along with him.

20 Q Thank you. And I interrupted you. You said, no, there
21 was nobody else in the apartment complex?

22 A Nobody else there.

23 MR. STEVENS: And, again, Judge. We simply do
24 reassert our objection to the property search.

25 THE COURT: Your objection's overruled.

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1 BY MS. CORNWELL:

2 Q Upon receiving information of the items that were
3 discovered in the Defendant's apartment, what did you do?

4 A AT that time we were advised about the location of some
5 of the stolen property. I was able to send Rashad Moore and
6 also Investigator Elizabeth Schumpert to Columbia to collect
7 those items. And also, at that time, Corporal Cain took a
8 photo of the Defendant in this case.

9 Q Okay. And looking at State's Exhibit 2, is it your
10 understanding that this is the photograph that was taken?

11 A Yes, ma'am.

12 Q By Corporal Cain?

13 A Yes, ma'am.

14 Q And did you have or was that photograph sent to
15 Officers.

16 A Yes.

17 Q And to your knowledge, was that photograph shown to
18 anybody at the location?

19 A To my knowledge it was shown to the victims in this
20 case.

21 Q And were the victims able to identify the person in that
22 photograph?

23 A Yes.

24 Q Each and every victim?

25 A Yes.

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1 Q And who did they identify the person in that photo as?

2 A The Defendant, Archie Hardin.

3 Q And what did they claim that he did?

4 A Robbed the T-Mobile.

5 Q And did he do anything else to them?

6 A Ms. Kirstie stated that --

7 MR. STEVENS: Judge, this is hearsay.

8 THE COURT: Sustained.

9 A Ms. Kirstie --

10 THE COURT: You can't --

11 MR. STOKES: Oh, sustained.

12 THE COURT: Sustained.

13 MR. STOKES: Okay.

14 BY MS. CORNWELL:

15 Q All right. So after Corporal Cain took the photograph
16 and sent it to you, what else did you have Corporal Cain do?

17 A At that time, the Defendant was detained and transported
18 back here to Orangeburg.

19 Q. Okay. And once Corporal Cain brought the Defendant back
20 to Orangeburg, did you meet with the Defendant?

21 A I did.

22 Q And before speaking to him, did you advise him of his
23 Miranda Rights?

24 A I did.

25 Q I'm going to show you what's been marked as State's 3.

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1 Do you recognize that?

2 A I do.

3 Q What is that?

4 A This is the waiver of rights form.

5 Q And can you read what that waiver of rights form says?

6 A I can.

7 MR. STEVENS: Objection, Judge. It hasn't been
8 offered into evidence yet for the purposes of the trial, only
9 pretrial.

10 THE COURT: And lay the proper foundation?

11 MS. CORNWELL: Yes, Your Honor. I'm sorry.

12 BY MS. CORNWELL:

13 Q You said this was the advisement of Miranda Rights form?

14 A Yes.

15 Q And did you give this, these rights to the Defendant?

16 A I did.

17 Q Did he understand the rights as you gave them to him?

18 A He did.

19 Q And how do you know that he understood those rights?

20 A He initialed beside all five. And, also, signed his
21 signature.

22 Q Okay. And is this a true and accurate copy of what you
23 showed him and what he signed?

24 A It is.

25 MS. CORNWELL: Your Honor, at this time, the State

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1 would offer State's 3 into evidence.

2 THE COURT: Any objection?

3 MR. STEVENS: Without objection.

4 THE COURT: Thank you.

5 MS. CORNWELL: Thank you, Your Honor.

6 (State's Exhibit No. 3, waiver of
7 rights form, was marked and entered.)

8 Q Sergeant Stokes, at this time, would you read what's on
9 that piece of paper?

10 A Okay. These are your rights. Please read them
11 carefully. Before we ask you any questions, you must
12 understand your rights. Please initial beside each sentence.
13 You've got a right to remain silent. Anything you say can be
14 used against you in a court. You have a right to talk to a
15 lawyer for advice before we ask you any questions and to have
16 him or her with you during questioning. If you cannot afford
17 a lawyer, one will be appointed for you before any
18 questioning if you wish. If you decide to answer questions
19 without a lawyer present, you would still have the right to
20 stop answering at any time. You also have the right to stop
21 answering at any time until you talk to a lawyer.

22 Q And did the Defendant understand those rights as you
23 gave them to him?

24 A He did.

25 Q And how do you know that he understood those?

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1 A He initialed beside all five and signed.

2 Q Okay. And after you advised the Defendant of his
3 rights, there's also a waiver of rights down here?

4 A Correct.

5 Q Did you also read those to him?

6 A I did.

7 Q And what does that waiver of rights state?

8 A It states I've ready this statement of my rights and I
9 understand what my rights are. I'm willing to make a
10 statement and answer questions. I do not want a lawyer at
11 this time. I understand and know what I'm doing. No
12 pressure or threats have been made to me. And no pressure or
13 coercion of any kind has been used against me.

14 Q Okay. And the Defendant signed that portion?

15 A He did.

16 Q All right. And you asked -- did you get the Defendant
17 to write a written statement for you?

18 A No, I didn't.

19 Q Why not?

20 A He refused to write a written statement. He stated that
21 we already had him and he wasn't going to incriminate himself
22 anymore.

23 Q Okay. And is that when he refused to sign on this
24 because he didn't want to write a written statement?

25 A Correct.

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1 Q And after he refused to give that written statement,
2 what did you do?

3 A Well, after he refused the written statement, we stayed
4 in the interview room a little bit longer. He stated that he
5 was actually hungry. So I was able to give him a sandwich
6 and a bag of potato chips and something to drink. While we
7 were in there, you know, then he made the statements that --
8 first he said that he was forced to take part in the crime.
9 And then he went back to saying that he didn't have anything
10 else to do with it. We went on for a little bit longer. And
11 then he advised he wanted -- just go to jail.

12 Q Okay. And in your experience as a law enforcement
13 officer, does it cause you concern when the Defendant that
14 you're questioning changes his story.

15 MR. STEVENS: Objection, Judge. This goes to --
16 credibility not only this witness but other folks. This is
17 for the jury to determine, I believe.

18 THE COURT: Overruled.

19 BY MS. CORNWELL:

20 Q You can answer.

21 A What's the question?

22 Q In your experience as a law enforcement officer, does it
23 concern you when defendants change their story?

24 A It does.

25 Q And I'm going to backtrack a little bit. The items that

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1 were found inside this Defendant's apartment, were you made
2 aware of any weapons that were found in the apartment?

3 A Yes, ma'am. Two handguns.

4 Q After ending the interview, after he was asked to be
5 taken back to jail, did you have any other occasion to meet
6 with the Defendant?

7 A Yes. At his bond hearing.

8 Q And did the Defendant make any statements at his bond
9 hearing?

10 A Yes. He stated he was guilty.

11 Q And when was that?

12 A When exactly was it?

13 Q Yes?

14 A When Thomas Sims' father was speaking on his behalf at
15 the bond hearing.

16 Q Okay. All right. And have you had any further
17 interaction with the Defendant since this bond hearing?

18 A Well, I tried to at one point get him to identify his
19 co-defendant and he refused.

20 Q Okay. After you met with the Defendant they day of the
21 incident.

22 MR. STEVENS: We object to what was just spoken and
23 request that it be stricken. Goes to Fifth Amendment Rights,
24 particularly under Doyle.

25 THE COURT: Your position?

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1 MS. CORNWELL: I'm not sure I understand what the
2 objection is, Your Honor. May we approach?

3 THE COURT: You want to approach?

4 (Off the record bench conference with counsel and the Court.)

5 THE COURT: Ladies and gentlemen of the jury, I'm
6 going to strike that last answer. You're not to consider it
7 whatsoever or give it any weight in your consideration of the
8 testimony.

9 You may proceed.

10 MS. CORNWELL: Thank you, Your Honor.

11 BY MS. CORNWELL:

12 Q Officer Stokes, you testified that once the items were
13 found in the Defendant's apartment, you sent Sergeant Moore
14 to retrieve the evidence; is that correct?

15 A That's correct.

16 Q What did Sergeant Moore do with that evidence?

17 A He brought it back to Orangeburg.

18 Q And who did he give that to?

19 A Me.

20 MR. STEVENS: Just this is information that the
21 detective or the officer needs to testify to, not Sergeant
22 Stokes.

23 THE COURT: As the case officer if he has knowledge
24 that that's what happened, it's his case. If he has personal
25 knowledge that that's what happened, he can testify to it.

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1 MR. STEVENS: Thank you, Judge.

2 BY MS. CORNWELL:

3 Q And so he gave you the evidence?

4 A He did.

5 Q And do you recall exactly what that evidence was that he
6 gave you?

7 A Phones and other electronics.

8 Q Do you typically fill out a report on what evidence you
9 take into custody?

10 A Yes.

11 Q If I show you that report, would that refresh your
12 recollection as to exactly what was taken?

13 A It would.

14 Q Is that the list that you would have filled out when you
15 received the evidence?

16 A It is.

17 Q And what evidence did you receive from Sergeant Moore
18 that day?

19 A I got fifteen iPhone 5s, eight HTC One --

20 MR. STEVENS: Judge, we object. He's not just
21 refreshing his recollection he's literally just reading off
22 of the document itself. There's a distinction between
23 publishing a document and refreshing recollection.

24 THE COURT: I agree, Mr. Stevens.

25 Mr. Stokes, if you would use the document to refresh

1 your recollection. And once it's refreshed, then you can
2 testify regarding what your recollection is.

3 BY MS. CORNWELL:

4 Q So approximately how many iPhone 5s?

5 A I think it was eight.

6 Q Would it refresh your recollection to look at this and
7 see exactly how many iPhone 5s that you took into custody?

8 A Yes, ma'am. Fifteen.

9 Q And how many HTC Ones were you able to take into
10 custody?

11 A I'll have to refresh my memory again.

12 Q Would it refresh your recollection if you were able to
13 view your report?

14 A I have to. Which one you ask about?

15 Q The HTC One.

16 MR. STEVENS: Judge, we've got the same problem.
17 They're just going back and forth, individualizing each one,
18 having him read it directly off the report. It's the same
19 thing.

20 THE COURT: The ultimate effect is the same thing,
21 Mr. Stevens, if he refreshes his recollection. He can hold
22 the document to refresh his recollection. Or if you prefer,
23 she can take it back and forth, each time. Which would you
24 prefer.

25 MR. STEVENS: Well, we'd prefer that he just not

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1 read it off to the jury.

2 THE COURT: He can use it to refresh his
3 recollection.

4 You can set it down after you refresh your recollection
5 and then tell the jury.

6 MR. STEVENS: Thank you, Judge.

7 THE COURT: You're welcome.

8 A Eight.

9 BY MS. CORNWELL:

10 Q And how many Apple Headphones did you take into custody?

11 A Can I refresh my memory? One.

12 Q And do you remember how many Galaxy Note 3s?

13 A Eight.

14 Q What about Galaxy Note 4s? Would it refresh your
15 recollection to look at your report?

16 A It will. Three.

17 Q And approximately LG Flexes did you take into custody?

18 A Refresh my memory. Two.

19 Q And how many iPhone 5cs did you take into custody that
20 day? Would it refresh your recollection if you could look at
21 your report?

22 A It will. The iPhone Flex 2?

23 Q The iPhone c?

24 A Nine.

25 Q And how many Samsung Galaxy Notes? Would it refresh

1 your recollection if you could look at your report?

2 A It will. One.

3 Q And how many Galaxy 5s cellular phones do you recall?
4 Would it refresh your recollection if you could look at your
5 report?

6 A It will. s5?

7 Q Yes.

8 A Twelve.

9 Q And when you took those items into evidence, did those
10 match up with the items that were described as being stolen
11 from T-Mobile?

12 A It did.

13 Q And you stated as part of the lead investigator you
14 gather evidence. Were you able to, when you met with the
15 Defendant -- approximately how tall is the Defendant?

16 A Maybe 6'2", maybe.

17 Q And approximately how old is the Defendant?

18 A He's in his fifties.

19 Q And did that match up with the description that you were
20 given?

21 A The description I was given was a older, tall guy.
22 Basically, yes.

23 Q Okay. And would you consider 6'2" to be taller?

24 A Yes.

25 Q Okay. And would you consider somebody in their fifties

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1 -- I know that it's not old, old.

2 A Right.

3 Q But would you consider that older?

4 A I don't know. I guess. I -- not really.

5 MS. CORNWELL: The Court's indulgence, Your Honor.

6 Q Thank you, Sergeant Stokes. Please answer any questions
7 Defense counsel may have for you.

8 A Okay.

9 THE COURT: Cross-examination.

10 MR. STEVENS: The Court's indulgence.

11 JOHN C. STOKES - CROSS-EXAMINATION

12 BY MR. STEVENS:

13 Q Good afternoon, Officers Stokes. How you doing today?

14 A Pretty good. How about yourself?

15 Q I'm doing all right. As you know, my name is Breen
16 Stevens and together with Mr. Mellard, we represent the
17 accused in this matter?

18 A Yes, sir.

19 Q This isn't the first time we've had a chance to speak;
20 is it?

21 A No, sir.

22 Q Okay. Let's kind of back up a little bit and start on
23 May 16th, morning of, all right?

24 A Okay.

25 Q On May 16, 2014, you were dispatched to the T-Mobile in

1 reference to a robbery; correct?

2 A Yes, sir.

3 Q All right. And after you got there, you said you spoke
4 with some of the some of the employees; right?

5 A Yes, sir.

6 Q And you got their version of what happened; right?

7 A Yes, sir.

8 Q Okay. Now, on May 16th, you stayed in Orangeburg;
9 correct?

10 A Yes, I did, sir.

11 Q Okay. You didn't drive to Columbia?

12 A No, sir.

13 Q You weren't looking for the people in the robbery
14 yourself?

15 A I wasn't look?

16 Q You weren't the one driving around --

17 A No, sir. No, sir. No, sir.

18 Q -- looking for people?

19 A No, sir.

20 Q Okay. So you did not go to Mr. Hardin's apartment?

21 A No, sir.

22 Q You did not go to the apartment complex?

23 A No, sir.

24 Q But you did speak with him later that night; right?

25 A With Mr. Hardin?

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1 Q Yes, sir?

2 A Yes, sir. Yes, sir.

3 Q Okay. And this was after he was brought to you in your
4 office in Orangeburg; right?

5 A Yes, sir.

6 Q Okay. And just so we're clear, Mr. Hardin was driven
7 from Columbia to Orangeburg?

8 A Yes, sir. Yes, sir.

9 Q And it was by law enforcement; right?

10 A Yes, sir.

11 Q And so he was under arrest at that time?

12 A Yes, sir.

13 Q Okay. He wasn't free to leave?

14 A No, sir.

15 Q Okay. So he couldn't just get up and go back to
16 Columbia?

17 A No, sir.

18 Q Okay. And because he was under arrest before you could
19 talk to him, you gave him Miranda Rights; right?

20 A Yes, sir.

21 Q Okay. And you had a sheet that you go over with people
22 about that; right?

23 A Yes, sir.

24 Q Okay. Now, the State showed you State's Exhibit 3,
25 which is this right here; right?

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1 A Yes, sir.

2 Q Okay. Now, when it comes to this, this basically spells
3 out the Miranda Rights; correct?

4 A Yes, sir.

5 Q Okay. And it basically walks through all those rights.
6 A person's got a right to remain silent?

7 A Yes, sir.

8 Q And a right to have a lawyer present?

9 A Yes, sir.

10 Q Okay. And if they can't afford one, you know, one can
11 be appointed to them?

12 A Yes, sir.

13 Q Right.

14 A Yes, sir.

15 Q And that he doesn't have to answer any questions; right?

16 A Yes, sir.

17 Q Okay. And like you already testified to, you went over
18 these rights with Mr. Hardin?

19 A Yes, sir.

20 Q Okay. And there's a section on the sheet that says, I
21 understand my rights; right?

22 A Yes, sir.

23 Q Right there?

24 A Yes, sir.

25 Q Okay. And that's signed; right?

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1 A Yes, sir.

2 Q And it's signed by Archie Hardin?

3 A Yes, sir.

4 Q Okay. Now, there's also the waiver of rights section on
5 the form; correct?

6 A Yes, sir.

7 Q Okay. And this section -- and I'll hand it to you so
8 you can look at it as I read, since it's already in evidence
9 -- it says, I am willing to make a statement and answer
10 questions. I do not want a lawyer at this time. I
11 understand and know what I am doing. No promises or threats
12 have been made to me, etcetera; right?

13 A Yes, sir.

14 Q Okay. And Archie Hardin never signed that section;
15 right?

16 A Yes, sir.

17 Q In fact, someone actually wrote something on the line
18 where a signature should be; right?

19 A Yes, sir.

20 Q And what does that say?

21 A Refuse to sign.

22 Q And it wasn't even Archie Hardin who wrote those words;
23 is it?

24 A No, sir.

25 Q It was you wrote it; right?

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1 A Yes, sir.

2 Q Okay. So I'm getting the feeling you guys, you still
3 asked him questions anyway; right? Afterward?

4 A We talked. I didn't ask him anything after that.

5 Q Okay. So none of the words you said were in the form of
6 eliciting information?

7 A We just talked. We were talking.

8 Q Okay.

9 A Because after he -- once he said that we already had him
10 and he was not going to incriminate himself anymore, then
11 that's when we stopped. But we actually stayed in the
12 office. But we didn't -- I didn't ask him any questions. He
13 continued to talk.

14 Q Okay. So you were like at church mouse. You didn't say
15 anything after that point?

16 A We talked. Yes, sir. We talked but not in the form of
17 me asking him, me interviewing him or interrogating him.
18 Interrogating him, no, sir.

19 Q Well, you'd agree that a question can be asked without a
20 question mark at the end of it; right?

21 A That's correct.

22 Q So you agree with that?

23 A I agree with that?

24 Q Kind of like I'm asking leading questions now?

25 A Yes.

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1 Q And you don't hear a question mark at the end of those?

2 A I don't.

3 Q And yet they're still treated as questions?

4 A That's true. That's true.

5 Q Now, let's talk about where y'all were when you had this
6 conversation?

7 A Yes, sir.

8 Q Now, this was in your office?

9 A Well, an interview room.

10 Q An interview room?

11 A Yes, sir.

12 Q In earlier times, would we have called that an
13 interrogation room?

14 A Yes, sir.

15 Q All right. Now, this is located in a building; right?

16 A Yes, sir.

17 Q And that building's on Chestnut Street; right?

18 A Yes, sir.

19 Q All right. And it's called the Central Investigative --

20 A Division.

21 Q Division?

22 A Yes, sir.

23 Q Okay. And that building's the one right next to the
24 Mexican place; right?

25 A It is.

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1 Q The Mexican food joint?

2 A It is.

3 Q Now, there are a good number of other folks there in
4 that building as well; right?

5 A During a normal day?

6 Q Yes, sir?

7 A Yeah. Yes, it is.

8 Q Okay. So the office itself as far as with all the other
9 sub rooms in there; it's pretty big; right?

10 A It's a pretty good size.

11 Q Okay. I mean, every time we go by it always seems
12 pretty busy?

13 A Yeah.

14 Q And like you said, you guys have interview/interrogation
15 rooms in there; right?

16 A That's correct.

17 Q Okay. And before, we've actually seen some videos of
18 interrogations; right?

19 A That's correct.

20 Q Okay. And I didn't see any interrogation of Archie
21 Hardin this time?

22 A That's correct.

23 Q Right?

24 A That's correct.

25 Q Okay. No videotape?

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1 A No, sir.

2 Q No audiotape?

3 A No, sir.

4 Q No cell phone recordings?

5 A No, sir.

6 Q Nothing?

7 A Nothing.

8 Q Okay. I mean, it's almost like you didn't bother to
9 record the interview at all; right?

10 A I didn't.

11 Q Okay. Now, I mean, lots of folks recording lots of
12 things nowadays; right?

13 A Yes, sir.

14 Q Now, these are pretty serious charges; you'd agree?

15 A They are.

16 Q Okay. And recording of an interview is a crime fighting
17 tool, just like DNA or fingerprints; right?

18 A It is.

19 Q Okay. Is there a policy against recording an interview?

20 A Officer's discretion.

21 Q Okay. So there's nothing against it though; right?

22 A No.

23 Q All right. So you could have recorded it?

24 A I could have.

25 Q But you said it's discretion; right?

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1 A It is.

2 Q So you chose not to; right?

3 A On that date, yes.

4 Q Okay. So the only thing we have here is what you're
5 saying?

6 A Yes, sir.

7 Q All right. Let's focus your attention now on bond
8 court; all right?

9 A Okay. Uh-huh (affirmative).

10 Q Now, according to your testimony today, you said you
11 went to the bond hearing; right?

12 A I did.

13 Q Okay. And you're saying in open Court that Archie
14 Hardin made a statement that he was guilty?

15 A Yes.

16 Q Okay. But you'd also agree that when Archie Hardin is
17 speaking, he was cut off before he could finish everything he
18 was saying; correct?

19 A Correct.

20 Q So we don't know what he would have actually said had he
21 had an opportunity to continue saying what he was saying?

22 A I just heard, I'm guilty.

23 Q Okay. And it was actually the judge who cut him off;
24 right?

25 A Correct.

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1 Q Okay.

2 A Uh-huh (affirmative).

3 Q And without getting into anything specially that Archie
4 Hardin said before or after, you'd agree that he also made
5 other statements at that bond hearing; correct?

6 A Based on the audio I heard; correct.

7 Q After?

8 A After, yeah.

9 Q And you'd agree without getting into the details of it,
10 that those statements were not incriminating; correct?

11 MS. CORNWELL: Objection, Your Honor.

12 THE COURT: Sustained. You stay within the --

13 BY MR. STEVENS:

14 Q Let's back up. So the statement you previously heard,
15 you admit he was cut off by the judge; correct?

16 A Correct.

17 Q Okay. Before he could finish really saying what he was
18 allegedly guilty of; right?

19 MS. CORNWELL: Objection, Your Honor. He stated
20 what was said in the bond hearing.

21 THE COURT: That one's overruled.

22 MR. STEVENS: Thank you.

23 BY MR. STEVENS:

24 Q So you don't know what he could have said after that;
25 right?

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1 A No.

2 Q Right. Could have said he was guilty of bad judgment?

3 A He could have.

4 MS. CORNWELL: Objection, Your Honor. This is
5 speculation at this point.

6 THE COURT: Sustained.

7 MR. STEVENS: Okay.

8 BY MR. STEVENS:

9 Q And that's just the point. We don't know what he said.
10 It was just speculation as far as what you're saying he's
11 guilty of; correct?

12 A I can only go by what I heard.

13 Q Which is that he was cut off before he could finish
14 saying what he did; right?

15 A Yes, sir.

16 Q Okay. All right. Sergeant Stokes, let's talk briefly
17 about the evidence management report, the one you just were
18 speaking with the State about.

19 A Okay.

20 Q Okay?

21 A Okay.

22 Q Now, you'd agreed that you did have some extreme
23 difficulty in remembering what was on this report; right?

24 A Yes, sir.

25 Q Okay. And it does have a lot of information on there;

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1 right?

2 A It does.

3 Q Okay. And you said this is your report; right?

4 A It is.

5 Q Okay.

6 MR. STEVENS: Request permission to approach?

7 THE COURT: You may approach.

8 MR. STEVENS: Thank you, Judge.

9 BY MR. STEVENS:

10 Q And you'd agree that there's roughly two pages; right?

11 A Yes.

12 Q Okay. You'd also agree that even though it has your
13 name printed on there, you never signed this; right?

14 A Correct.

15 Q So even though you claim that this is your report, it
16 was received on the 16th of May; right?

17 A (No verbal response)

18 Q And that this was submitted four days later on the 20th;
19 right?

20 A (No verbal response)

21 Q No one actually signed for it; did they?

22 A Did I actually sign my signature?

23 Q Did you sign your signature to the evidence report?

24 A No. I didn't sign it. There's no signature, no.

25 Q Okay. But you'd agree that on this report, there's a

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1 line for you to sign; right?

2 A That's correct.

3 Q And strangely enough, you had a very difficult time
4 remembering anything on the face off this report; didn't you?

5 A There's a lot of information on it.

6 Q Even after it was put in your hands and you had a chance
7 to look over it, and then given back, you couldn't even
8 remember what was next; could you?

9 A Still a lot of stuff to remember if fifteen seconds.

10 Q You couldn't; could you?

11 A Nope.

12 MR. STEVENS: Court's indulgence.

13 BY MR. STEVENS:

14 Q You weren't there at the robbery that day; were you?

15 A No, sir.

16 Q You didn't see the actual people who committed the
17 robbery; did you?

18 A No, sir.

19 Q You said you were there when a photograph was sent from
20 Columbia though; didn't you?

21 A I was on the scene, yes, sir.

22 Q Okay. And like you said, you're the main investigator;
23 right?

24 A Correct.

25 Q Okay. And as lead investigator, you're aware that it

VOLUME TWO OF TWO

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions, First Judicial Circuit
The Honorable Maite Murphy**

**Circuit Court Case No. 2014-GS-38-0088-0093
South Carolina Court of Appeals Case No. 2015-000516**

THE STATE,

RESPONDENT,

V.

ARCHIE MORE HARDIN,

APPELLANT

APPELLATE CASE NO 2015-000516

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT 2 (Cell phone identification photograph); COURT'S EXHIBIT 1 (Bond Court audio); STATE'S EXHIBITS 17, 24 and 47 (Photographs of items seized); STATE'S EXHIBITS 26, 27, 28 and 29 (Photographs of duct tape collected from the scene); STATE'S EXHIBITS 73, 74, 75, 76, 77 and 78 (Duct tape collected from the scene); and SUBPOENAS TO ORANGEBURG COUNTY FOR LIEUTENANT SCHUMPERT'S CELL PHONE

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1 was actually on a small cell phone rather than a larger
2 photograph; correct?

3 A Yes.

4 Q Okay. And as the lead investigator, you're aware that
5 that smaller photograph was held by an officer; right?

6 A Yes, sir.

7 Q And you're aware that that smaller photograph held by
8 the officer was shown directly to them in their face; right?

9 A Correct.

10 Q And that there was no six-pack photographic lineup;
11 right?

12 A Correct.

13 Q And that there was no standup photographic lineup or
14 standup lineup with people in person; right?

15 A Correct.

16 Q Okay.

17 MR. STEVENS: Court's indulgence.

18 BY MR. STEVENS:

19 Q Oh, one last thing and we'll be done I think.

20 A Okay.

21 Q On direct you said that the Defendant, Archie Hardin, as
22 you know him now stands about 6' tall or 6'2" and in his
23 fifties; right?

24 A Yes.

25 Q Okay. And you said the description of what you were

1 looking for was an older, tall guy; right?

2 A Yes, basically.

3 Q Okay. You'd agree that that covers a lot of people;
4 don't you?

5 A It does.

6 Q Okay. Thank you Sergeant Stokes.

7 A Yes, sir.

8 MR. STEVENS: No further questions at this time,
9 Your Honor.

10 THE COURT: Any redirect?

11 MS. CORNWELL: Briefly, Your Honor.

12 JOHN C. STOKES - REDIRECT EXAMINATION

13 BY MS. CORNWELL:

14 Q We talked about the waiver of rights and where the
15 Defendant refused to sign?

16 A Yes.

17 Q And then the conversation that occurred after that?

18 A Yes.

19 Q Who initiated that conversation?

20 A The Defendant did.

21 Q We also talked about that photograph and how it was show
22 into somebody's face and there was no six-pack or anything
23 like that. Who did the victims identify?

24 A The Defendant.

25 Q And 6' and older, that's a broad spectrum. Does it

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1 match the description of the Defendant?

2 A It does.

3 Q And while he was at bond court, what did you hear him
4 definitively say out of his mouth?

5 A I'm guilty.

6 MS. CORNWELL: Thank you, Your Honor. No further
7 questions.

8 THE COURT: You may step down, sir. Thank you.
9 You may call your next witness.

10 MS. CORNWELL: Your Honor, I think we're moving a
11 little faster than anticipated. We're going to call
12 Investigator William Ketcherside.

13 The State would call Investigator William Ketcherside,
14 Your Honor.

15 (WHEREUPON, William Ketcherside was
16 sworn to tell the truth.)

17 THE CLERK: Thank you. You may have a seat.
18 Please state your name again for the record.

19 MR. KETCHERSIDE: William Ketcherside.

20 THE COURT: Your witness.

21 WILLIAM KETCHERSIDE - DIRECT EXAMINATION

22 BY MS. CORNWELL:

23 Q Good afternoon Investigator Ketcherside. Where are you
24 employed?

25 A The Orangeburg County Sheriff's Office.

1 Q And how long have you been employed by the Orangeburg
2 County Sheriff's Office?

3 A Right at ten years.

4 Q What is your position with the Orangeburg County
5 Sheriff's Office?

6 A Crime Scene Investigator.

7 Q And can you tell the jury what that entails?

8 A Yes, ma'am. It basically -- we respond to scenes. Once
9 we're there, we process, search for evidence. Document and
10 collect any evidence on scene.

11 Q Okay. And were you working in that capacity on May 16th
12 of 2014?

13 A Yes, I was.

14 Q And actually, I'm going to go back a little bit. Do you
15 have any specialized training in forensics and the collection
16 of evidence?

17 A Yes, ma'am. I have twenty-four hours of basic crime
18 scene photography, as well as roughly forty-eight hours of
19 basic crime scene processor training.

20 Q And approximately how many times have you lifted and
21 examined fingerprint evidence?

22 A We don't keep a running count on those. Probably
23 somewhere in the area of three or four hundred.

24 Q Okay. And approximately how many times have you
25 collected DNA evidence?

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1 A Again, we don't keep a running number. A guess would be
2 somewhere two to three hundred.

3 Q Okay. And you said that you were working the capacity
4 of crime scene on May 16th of 2014?

5 A Yes, ma'am.

6 Q And in that capacity, did you assist in the
7 investigation of an armed robbery?

8 A I did.

9 Q And where was that armed robbery?

10 A At the T-Mobile Store on St. Matthews Road.

11 Q And what county is that in?

12 A Orangeburg County.

13 Q Okay. And can you tell the jury what you did when you
14 arrived?

15 A Once I arrived I entered through the front of the
16 business. In the front of the business it's about like any
17 other business. It's got display shelves setup in the center
18 and up both walls. I did observe some tape on the floor at
19 the rear desk of the front part of the store, duct tape
20 grade, gray in color duct tape. Then we went into a second
21 room where it appeared that they had it setup for employees
22 or sales employees to do paperwork and so forth. There were
23 multiple other pieces of tape on the -- duct tape on the
24 floor, all the way along the floor, to a storage room, as
25 well as there was duct tape inside a the bathroom on the

1 sink.

2 Q Okay. Now, I'm going to show you what's been marked as
3 State's 56. Do you recognize that?

4 A Yes, ma'am.

5 Q And what is that?

6 A That's the front of the T-Mobile.

7 Q Okay. And I'm going to show you a lot of pictures. Who
8 took these pictures?

9 A I did.

10 Q And State's 66?

11 A Yes, ma'am. That's the front part of the T-Mobile
12 Store.

13 Q And this front part of the store, is this how it looked?

14 A Yes, ma'am.

15 Q Was it ransacked or anything when you entered the store?

16 A No, ma'am, not the front part.

17 Q Okay. I'm now going to show you what's been marked as
18 State's Exhibit 26, 27, 28, and 29. Can you look at those
19 photographs and just look through them and let me know if you
20 recognize them.

21 A Yes, ma'am.

22 Q Okay. And if you will tell the Court what's in each of
23 these pictures. There's a number on the back. If you can
24 read off the number and then tell what's in that picture.

25 A Yes, ma'am. On State's Exhibit 26, it's marked as item

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1 number 4. You can see on the floor, that's duct tape kind of
2 balled up. It's --

3 MR. MELLARD: Your Honor --

4 MS. CORNWELL: I'm sorry.

5 MR. MELLARD: -- that's not yet into evidence.

6 THE COURT: It's not.

7 MR. KETCHERSIDE: Oh.

8 BY MS. CORNWELL:

9 Q If you'll just tell the court what's in the photograph
10 and then I will ask you a couple of questions about it before
11 we show it to the jury.

12 A Okay. Yes, ma'am. State's Exhibit 27, duct tape on the
13 floor in the back room of the business.

14 Q Okay.

15 A Same here. This is duct tape on the floor in the same
16 room. It's a bigger amount of duct tape in one location.

17 THE COURT: Is that 28?

18 MS. CORNWELL: That was State's 28, Your Honor.

19 A State's Exhibit 29, it's going to be duct tape on the
20 sink in the bathroom?

21 BY MS. CORNWELL:

22 Q Okay. And are these true and accurate depictions of
23 what you saw on the scene that day?

24 A Yes, ma'am.

25 Q And did you take these photographs?

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1 A Yes, ma'am.

2 MS. CORNWELL: Your Honor, at this time, the State
3 would move to have State's 26, 27, 28 and 29 moved into
4 evidence.

5 THE COURT: Any objection?

6 MR. MELLARD: No objection.

7 THE COURT: They're in.

8 (State's Exhibit No. 26, photo, was
9 marked and entered.)

10 (State's Exhibit No. 27, photo, was
11 marked and entered.)

12 (State's Exhibit No. 28, photo, was
13 marked and entered.)

14 (State's Exhibit No. 29, photo, was
15 marked and entered.)

16 BY MS. CORNWELL:

17 Q So in looking at State's 26 --

18 A Yes, ma'am.

19 Q -- you've got a marker there?

20 A Yes, ma'am.

21 Q What is that marker?

22 A That marks the item number of the piece of evidence.

23 And in that case, that would be item number 4.

24 Q And what is the piece of evidence that you found there?

25 A A piece of gray duct tape.

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1 Q And is this in the front part of the store or the back
2 part of the store?

3 A Front part of the store.

4 Q And in looking at State's 27?

5 A Yes, ma'am. It has items number five, six and seven.

6 Those were collected separately. That's also duct tape there
7 in the floor. And that's in the second room of the business,
8 the back room.

9 Q And in State's 28?

10 A That's item number eight. It's also duct tape that's on
11 the floor in the back room of that business.

12 Q And, finally, State's 29?

13 A That's item number nine. Duct tape on the sink of a
14 bathroom that's attached to the employees room.

15 Q And did you collect those items after you photographed
16 them?

17 A Yes, I did.

18 Q I'm going to show you what's been previously marked as
19 State's Exhibits 77, 76, 75, 74, 73, and 78. I believe
20 there's some seals on them with some initials?

21 A Yes, ma'am. That would be my initials and the date
22 which they were sealed.

23 Q Okay. And has anybody tampered with this evidence since
24 then?

25 A No, ma'am, it doesn't appear.