

RECEIVED

NOV 26 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

JAMES EDDIE BAILEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000601

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF TRIAL (OCTOBER 8, 2014)	1
TRANSCRIPT OF TRIAL (OCTOBER 9-10, 2014)	96
DIRECT APPEAL DOCUMENTS	
FINAL BRIEF OF APPELLANT	311
FINAL BRIEF OF RESPONDENT	323
OPINION NO. 2016-UP-278 (S.C. Ct. App. filed June 8, 2016)	338
REMITTITUR	340
POST-CONVICTION RELIEF DOCUMENTS	
APPLICATION FOR POST-CONVICTION RELIEF	341
STATE’S RETURN	348
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (DECEMBER 15, 2017)	353
ORDER OF DISMISSAL	380
INDICTMENT	392

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JAMES EDDIE BAILEY,)
)
 DEFENDANT.)
 _____)

2013-GS-23-09292

TRANSCRIPT OF RECORD

OCTOBER 8, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE STEVEN H. JOHN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

ALLEN FRETWELL, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SYMME CULBERTSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.WEDNESDAY, OCTOBER 8, 2014:

OPENING STATEMENTS

MR. FRETWELL ----- 46

MR. CULBERTSON ----- 52

TOM NASH

DIRECT BY MR. FRETWELL ----- 57

CROSS BY MR. CULBERTSON ----- 90

CERTIFICATE OF REPORTER ----- 97

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Knife -----	7	X
S-2	U.S. Currency -----	7	X
S-3	911 Recording -----	7	X
S-4	Surveillance video ----- (Segments one, two and nine)	7	71
S-5	Baseball Hat -----	7	X
S-6	Gloves -----	7	X
S-7	Tan Boots -----	7	X
S-8	Photo -----	7	75
S-9	Photo -----	7	75
S-10	Photo -----	7	75
S-11	Photo -----	7	75
S-12	Photo -----	7	75
S-13	Photo -----	7	75
S-14	Photo -----	7	X
S-15	Photo -----	7	X
S-16	Photo -----	7	X
S-17	Photo -----	7	X
S-18	Photo -----	7	X
S-19	Photo -----	7	X
S-20	Photo -----	7	X
S-21	Map -----	7	X
S-22	Camouflage Pants -----	7	X
S-23	In-car video -----	7	X

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-24	Photo -----	7	X
S-25	Photo -----	7	X
S-26	Photo -----	7	X
S-27	Photo -----	7	X
S-28	Photo -----	7	X
S-29	Photo -----	7	X
S-30	Photo -----	7	X
S-31	Black Cloth -----	7	X
S-32	U.S. Currency -----	7	X
S-33	James Bailey ID -----	7	X
S-34	P&E Sheets -----	X	X
S-35	Miranda Form -----	7	X
C-1	Competency Evaluation -----	7	

1 WEDNESDAY, OCTOBER 8, 2014:

2 (Whereupon State's exhibits 1 - 33 and 35 were marked
3 for identification)

4 (Whereupon Court's exhibit 1 was marked)

5 (Whereupon the jury panel entered the courtroom at 2:22
6 pm)

7 **THE COURT:** Thank you very much. You may be seated.

8 Thank y'all. All right. Ladies and gentlemen, we are going
9 to pick the jury in the State of South Carolina versus James
10 Eddie Bailey. And in this particular matter the State has
11 brought a particular charge against the Defendant. And I'm
12 going to read that to you in just a second.

13 And in that indictment, which is the charge, okay, just
14 the charge that's been brought against the Defendant. It's
15 not evidence, can't be considered by anybody as evidence in
16 the case. Only reason I'm reading it to you is to see if
17 you happen to know anything about this particular case or
18 have any information about this particular case.

19 So there's a couple of charges that the State has
20 brought against the Defendant. The first one being that
21 James Eddie Bailey did in Greenville County on or about the
22 14th day of April, 2013, while armed with a deadly weapon or
23 while alleging either by action or words that he was armed
24 while using a representation of a deadly weapon or any
25 object which a person present during the commission of the

1 robbery would reasonably believe to be a deadly weapon, did
2 take by means of force or intimidation goods or monies
3 described as funds belonging to Dollar General taken from
4 the person or presence of Sharon Taylor and/or Tom Nash
5 and/or Karen Nartowicz, N-a-r-t-o-w-i-c-z, in violation of
6 the code of laws, State of South Carolina, 1976 as amended,
7 that being for armed robbery.

8 Next charge the State has brought against the Defendant
9 is the charge of kidnapping. That James Eddie Bailey did in
10 Greenville County on or about the 14th day of April, 2013
11 unlawfully seize, abduct, confine, decoy or carry away
12 Sharon Taylor, an employee of Dollar General, without
13 authority of law. Again, in violation of the code of laws
14 of the State of South Carolina, 1976 as amended.

15 And the third charge brought against the Defendant by
16 the State is the possession of a weapon during the
17 commission of a violent crime. That James Eddie Bailey did
18 in Greenville County on or about the 14th day of April, 2013
19 possess or visibly display a knife during the commission of
20 or attempted commission of a violent crime, to wit, armed
21 robbery and/or kidnapping in violation of the code of laws
22 of the State of South Carolina, 1976 as amended.

23 And the fourth and last charge the State has brought
24 against the Defendant is for resisting arrest. That James
25 Eddie Bailey did in Greenville County on or about the 14th

1 day of April, 2013 knowingly, wilfully and unlawfully oppose
2 or resist an arrest being made by Mike Giovanni and/or Matt
3 May with the Greenville County Sheriff's Office whom the
4 Defendant knew or reasonably should have known were law
5 enforcement officers. All this in violation of the code of
6 laws of the State of South Carolina, 1976 as amended.

7 So is there any member of the jury panel that has any
8 information about this case, knows anything about this case
9 or needs to bring anything to the Court's attention at this
10 time? If so, please stand.

11 (No response)

12 **THE COURT:** Very good.

13 I'm going to read to you now the possible or the
14 potential witnesses in this case. Not necessarily that all
15 these people may be called, but there's a potential for
16 these witnesses to be called in this case.

17 Karen Nartowicz, N-a-r-t-o-w-i-c-z, Tom Nash, Sharon
18 Taylor, Master Deputy Nathaniel Bruce Emily, Greenville
19 County Sheriff's Office, Master Deputy Michael Giovanni,
20 Greenville County Sheriff's Office, Master Deputy Matthew
21 May, Greenville County Sheriff's Office, Officer Ciera R.
22 Hilton, that's C-i-e-r-a, Greenville County Forensics, Kara
23 Bennick, B-e-n-n-i-c-k, I believe, with Greenville County
24 property and evidence, Investigator Michael Fortner,
25 Greenville County Sheriff's Office, James Eddie Bailey.

1 Any member of the jury panel that's related by blood or
2 marriage, close personal friends, acquaintances of, knows
3 any of these possible or potential witnesses, please stand.

4 (No response)

5 **THE COURT:** All right. Is there any member of the jury
6 panel that either you, yourself, or a member of your
7 immediate family that's ever had any matter of any kind in
8 any way handled or touched by the Thirteenth Circuit
9 Solicitor's Office? Remember, it covers two counties,
10 Greenville County and Pickens County, the prosecuting
11 office, the Solicitor's Office. If so, please stand.

12 (No response)

13 **THE COURT:** Any member of the jury panel that's related
14 by blood or marriage, close personal friends, acquaintances
15 of anybody employed in the Thirteenth Circuit Solicitor's
16 Office either in Greenville County or Pickens County? If
17 so, please stand.

18 (No response)

19 **THE COURT:** All right. Counsel, if you would, from the
20 Solicitor's Office first, stand and identify yourself,
21 please, sir.

22 **MR. FRETWELL:** May it please the Court, Your Honor.

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

24 **MR. FRETWELL:** Ladies and gentlemen of the jury, my
25 name is Allen Fretwell. I'm a prosecutor here in Greenville

1 County. This is Lynn Crouch, and she's my assistant.

2 **THE COURT:** Very good. And from the Defense.

3 **MR. CULBERTSON:** May it please the Court. My name is
4 Symmes Culbertson. I'm an attorney here in Greenville, have
5 been for many years now. Today I'm here with the privilege
6 of representing Mr. Bailey, who the State says did some of
7 these things. Y'all will get to hear about that. Symmes
8 Culbertson, James Bailey. Thank you, Your Honor.

9 **THE COURT:** Thank you. All right.

10 Is anybody related by blood or marriage, close personal
11 friends, acquaintances of these lawyers that have identified
12 themselves to you? If so, please stand. All right. Yes,
13 ma'am. Your name and juror number, please, ma'am.

14 **MS. DUNHAM:** Juror number 65, Kimberly Dunham. I'm a
15 domestic attorney here in Greenville County. And I've had
16 cases against Symmes Culbertson. He ---

17 **THE COURT:** All right, ma'am.

18 **MS. DUNHAM:** --- was representing others.

19 **THE COURT:** Other parties. All right. So can I -- I
20 need to ask you the qualification question. Can you give to
21 the State of South Carolina and to the Defendant a fair and
22 impartial trial? Can you be a fair and impartial juror in
23 this case?

24 **MS. DUNHAM:** Certainly.

25 **THE COURT:** Thank you very much, ma'am. All right.

1 And I need to add then -- I'm glad you stood up, ma'am.
2 Regarding Mr. Culbertson's private practice of law, is there
3 any member of the jury here that's ever been a client of his
4 in the past or currently? If so, please stand. All right.
5 Thank you very much.

6 Any -- yes, ma'am. I'm sorry. Your name and juror
7 number?

8 **MS. HOLCOMBE:** Juror number 200.

9 **THE COURT:** Yes, ma'am.

10 **MS. HOLCOMBE:** Lynne Holcombe. I believe that we are
11 friends on Facebook.

12 **THE COURT:** All right. So you know the assistant to
13 the State's attorney, is that correct?

14 **MS. HOLCOMBE:** That's correct.

15 **THE COURT:** All right. Very good, ma'am. I need to
16 ask you the qualification question. Could you stand up
17 again, please. Thank you, ma'am. Can you give to the State
18 of South Carolina and to the Defendant a fair and impartial
19 trial? Can you be a fair and impartial juror in this case?

20 **MS. HOLCOMBE:** Yes, I believe so.

21 **THE COURT:** All right, sir. All right, ma'am. Thank
22 you very much. Thank you. All right. Anybody else?

23 (No response)

24 **THE COURT:** All right. Is there any member of the jury
25 panel that you believe you have any kind of personal,

1 political, religious, philosophical belief that you believe
2 would prevent you from being a fair and impartial juror? If
3 so, please stand.

4 (No response)

5 **THE COURT:** All right. Is there any member of the jury
6 panel either you, yourself, were a former law enforcement
7 officer or you have a current family member who is now in
8 law enforcement or was in the past in law enforcement? If
9 any of that applies to you, please stand. All right. We'll
10 start on this side. Yes, sir, your name and juror number,
11 please?

12 **MR. COLBY:** Eric Colby, juror number 52.

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

14 **MR. COLBY:** Father-in-law, uncles, I had several ---

15 **THE COURT:** Okay. And were they officers locally or
16 different states or ---

17 **MR. COLBY:** Boston.

18 **THE COURT:** In Boston?

19 **MR. COLBY:** Yes, sir.

20 **THE COURT:** All right. Can you give to the State of
21 South Carolina and to the Defendant a fair and impartial
22 trial?

23 **MR. COLBY:** Yes, sir.

24 **THE COURT:** Can you be a fair and impartial juror in
25 this case?

1 **MR. COLBY:** Yes, sir.

2 **THE COURT:** Thank you very much. All right. Yes,
3 ma'am, your name and juror number, please.

4 **MS. DAVIS:** 61, Cynthia Davis. My son-in-law is a
5 sheriff's deputy with the Spartanburg County Sheriff's
6 Office.

7 **THE COURT:** All right, ma'am. Can you give to the
8 State of South Carolina and to the Defendant a fair and
9 impartial trial? Can you be a fair and impartial juror in
10 this case?

11 **MS. DAVIS:** Yes, sir.

12 **THE COURT:** Thank you, ma'am. Yes, ma'am.

13 **MS. PADGETT:** 144, Roxanne Padgett. My dad is a
14 policeman in Saluda County, South Carolina. And my nephew
15 is a deputy sheriff in Saluda.

16 **THE COURT:** All right. Can you give to the State of
17 South Carolina and to the Defendant a fair and impartial
18 trial? Can you be a fair and impartial juror in this case?

19 **MS. PADGETT:** Yes, sir.

20 **THE COURT:** Thank you very much, ma'am. Yes, ma'am.
21 You have to state your name and juror number again.

22 **MS. HOLCOMBE:** Juror number 200, Lynne Holcombe. You
23 said current, so I wasn't sure. Both of them are deceased.

24 **THE COURT:** Well, that's all right. But the relatives
25 that were in the past?

1 MS. HOLCOMBE: Yes.

2 THE COURT: In law enforcement?

3 MS. HOLCOMBE: Yes.

4 THE COURT: And how were you related to them?

5 MS. HOLCOMBE: My grandfather, Ray Berry, was the
6 police captain in Greenville for a while, and also Russ
7 Sorrow, who was a cousin of mine, was actually killed in the
8 line of duty here.

9 THE COURT: All right. Can you give to the State of
10 South Carolina and to the Defendant a fair and impartial
11 trial? Can you be a fair and impartial juror in this case?

12 MS. HOLCOMBE: Yes.

13 THE COURT: Thank you very much, ma'am. All right.
14 Yes, sir, in the corner there.

15 MR. MANGUM: Yes. Juror 117.

16 THE COURT: Yes, sir.

17 MR. MANGUM: George Mangum. I've got cousins, one
18 former cousin, he retired, and one present in the Greenville
19 County ---

20 THE COURT: Okay. And were they with the Greenville
21 City or Greenville County.

22 MR. MANGUM: County.

23 THE COURT: The County Sheriff's Office.

24 MR. MANGUM: Yes.

25 THE COURT: All right. Can you give to the State of

1 South Carolina and to the Defendant a fair and impartial
2 trial? Can you be a fair and impartial juror in this case?

3 **MR. MANGUM:** Yes.

4 **THE COURT:** Thank you very much, sir. Yes, sir.

5 **MR. WHITLEY:** Yes, sir. Juror 205, Terry Whitley. I'm
6 a constable for license division for the purposes of
7 seizure.

8 **THE COURT:** Okay. And for the Tax Commission?

9 **MR. WHITLEY:** Yes, sir.

10 **THE COURT:** All right. Very good. Can you give to the
11 State of South Carolina and to the Defendant a fair and
12 impartial trial? Can you be a fair and impartial juror in
13 this case?

14 **MR. WHITLEY:** Yes, sir.

15 **THE COURT:** Thank you very much. And, yes, ma'am.

16 **MS. HUFFMAN:** My name is Leanna Huffman. My father is
17 a South Carolina Highway patrolman. And he retired back in
18 '09. He is now a Greenville Tech campus police.

19 **THE COURT:** All right. Very good. Can you give to the
20 State of South Carolina and to the Defendant a fair and
21 impartial trial? Can you be a fair and impartial juror in
22 this case?

23 **MS. HUFFMAN:** Yes, sir.

24 **THE COURT:** Thank you very much, ma'am. Thank you.

25 All right.

1 The next question, is there any member of the jury
2 panel, either you, yourself, or a member of your immediate
3 family a member of any kind of victim's rights or law
4 enforcement support organization? I'll give you a few
5 examples. This is not, you know, the list of every possible
6 organization. I'm just trying to give you some examples.

7 Citizens Against Violent Crime, Mothers Against Drunk
8 Driving, the South Carolina Law Enforcement Officers'
9 Association, South Carolina Sheriff's Association, just some
10 kind of victim's rights or law enforcement support
11 organization, either you, yourself, or a member of your
12 immediate family is a member. If so, please stand.

13 (No response)

14 **THE COURT:** All right. Very good.

15 The next question I'm going to ask, ladies and
16 gentlemen, is whether or not you, yourself, or a member of
17 your immediate family has ever been the victim of a crime?
18 Now, I am not going to ask you what occurred. I do not want
19 you to volunteer any information to me about what occurred.

20 It's going to be straightforward. If you stand up I'm
21 going to ask you was it yourself or a family member, and
22 then I'll ask the qualification question.

23 So is there any member of the jury panel either, you,
24 yourself, or a member of your immediate family has ever been
25 the victim of a crime? If so, please stand. All right.

1 Yes, ma'am, your name and juror number, please, ma'am?

2 MS. STURGILL: Evelyn Sturgill, 145.

3 THE COURT: Yourself or a family member?

4 MS. STURGILL: Family member.

5 THE COURT: Can you give to the State of South Carolina
6 and to the Defendant a fair and impartial trial? Can you be
7 a fair and impartial juror in this case?

8 MS. STURGILL: Yes, sir.

9 THE COURT: Thank you very much, ma'am. Yes, sir.

10 MR. WHITLEY: Juror 205, Terry Whitley. Family member.

11 THE COURT: All right. Can you give to the State of
12 South Carolina and to the Defendant a fair and impartial
13 trial? Can you be a fair and impartial juror in this case?

14 MR. WHITLEY: Yes, sir.

15 THE COURT: Thank you very much. All right. Yes,
16 ma'am, your name and juror number, please?

17 MS. LAGROON: Patricia Lagroon, number 112.

18 THE COURT: And yourself or a family member?

19 MS. LAGROON: Family member.

20 THE COURT: Can you give to the State of South Carolina
21 and to the Defendant a fair and impartial trial? Can you be
22 a fair and impartial juror in this case?

23 MS. LAGROON: Yes.

24 THE COURT: Thank you very much, ma'am. Anybody else?

25 (No response)

1 **THE COURT:** All right. I'm going to ask you one last
2 question, ladies and gentlemen. That's going to be what I
3 would classify as my general or catchall question. Do you
4 know of any reason, have any question in your mind, any
5 doubt in your mind that you believe you cannot give to the
6 State of South Carolina and the Defendant a fair and
7 impartial trial? That is for any reason whatsoever you
8 believe you cannot be a fair and impartial juror in this
9 case. If so, please stand.

10 (No response)

11 **THE COURT:** Very good. All right.

12 Ladies and gentlemen, this is going to be how the
13 process is going to take place if you have not experienced
14 it already. The clerk of court, in a random order, is going
15 to call a name. If and when your name is called, what you
16 do is you stand up and you come forward and you walk to a
17 place, basically right to where this podium is right here,
18 and you turn and you face to the back of the courtroom.

19 At that point in time the clerk will ask, inquire of
20 the State to present or excuse the juror. If you're
21 presented by the State, she'll go on to the Defense. But if
22 you're excused, obviously, go back and have a seat from
23 whence you came. If you are presented by the State, the
24 clerk will inquire of the Defense to seat or excuse the
25 juror.

1 So if you happen to have any kind of personal item, a
2 purse, a book, whatever that might be, bring it along with
3 you in case you are seated by the Defense, the clerk will
4 instruct you to go directly to the jury box over there and
5 have a seat in the jury box, all right? Madame Clerk, you
6 may proceed.

7 **MADAME CLERK:** Juror 97, Leanna Huffman.

8 (Whereupon juror 97, Leanna Huffman, a white female,
9 came forward)

10 **MADAME CLERK:** Just right up here, please. If you
11 could, just turn around and face the back door. What says
12 the State?

13 **MR. FRETWELL:** Present Ms. Huffman.

14 **MADAME CLERK:** What says the Defendant?

15 **MR. CULBERTSON:** Excuse Ms. Huffman, please.

16 **MADAME CLERK:** Okay. Please be seated.

17 Juror 117, George Mangum.

18 (Whereupon juror 117, George Mangum, a black male, came
19 forward)

20 **MADAME CLERK:** What says the State?

21 **MR. FRETWELL:** Present Mr. Mangum.

22 **MADAME CLERK:** What says the Defendant?

23 **MR. CULBERTSON:** Excuse Mr. Mangum, please.

24 **MADAME CLERK:** Sir, you can be seated. You have been
25 excused from this case.

1 Juror 200, Lynne Holcombe.

2 (Whereupon juror 200, Lynne Holcombe, a white female,
3 came forward)

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Present Ms. Holcombe.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. CULBERTSON:** Your Honor, with all due respect, we
8 would seek to excuse Ms. Holcombe for cause.

9 **THE COURT:** I appreciate that, but the Court would
10 respectfully decline to do so. Thank you.

11 **MR. CULBERTSON:** We'd still like to strike Ms.
12 Holcombe.

13 **MADAME CLERK:** All right. Ms. Holcombe, if you'd have
14 a seat. You have been excused from this case.

15 Juror 61, Cynthia Davis.

16 (Whereupon juror 61, Cynthia Davis, a white female,
17 came forward)

18 **MADAME CLERK:** What says the State?

19 **MR. FRETWELL:** Present Ms. Davis.

20 **MADAME CLERK:** What says the Defendant?

21 **MR. CULBERTSON:** Please swear Ms. Davis.

22 **MADAME CLERK:** All right. Ms. Davis, please have a
23 seat in the jury box.

24 Juror 140, Francis Nuthalapaty.

25 (Whereupon juror 140, Francis Nuthalapaty, other male,

1 came forward)

2 **MADAME CLERK:** I know it wasn't close, but ---

3 **MR. NUTHALAPATY:** Close enough.

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Present Dr. Nuthalapaty.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. CULBERTSON:** Just a moment, please.

8 **MADAME CLERK:** That's fine.

9 **MR. CULBERTSON:** Please swear him.

10 **MADAME CLERK:** Sir, please have a seat in the jury box.

11 Juror 36, Christopher Burch.

12 (Whereupon juror 36, Christopher Burch, a white male,

13 came forward)

14 **MADAME CLERK:** What says the State?

15 **MR. FRETWELL:** Please excuse Mr. Burch from the trial

16 of this case.

17 **MADAME CLERK:** All right. Mr. Burch, you may be

18 seated. You have been excused from this case.

19 **MR. CULBERTSON:** I'm sorry. What was that number?

20 **MADAME CLERK:** 36.

21 **MR. CULBERTSON:** Thank you.

22 **MADAME CLERK:** Juror 38, Kelly Burns.

23 (Whereupon juror 38, Kelly Burns, a white female, came

24 forward)

25 **MADAME CLERK:** What says the State?

1 **MR. FRETWELL:** Present Ms. Burns.

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

3 **MR. CULBERTSON:** Please excuse Ms. Burns.

4 **MADAME CLERK:** All right. Ms. Burns, please be seated.

5 Juror 194, David Winchester.

6 (Whereupon juror 194, David Winchester, a white male,
7 came forward)

8 **MADAME CLERK:** What says the State?

9 **MR. FRETWELL:** Present Mr. Winchester.

10 **MR. CULBERTSON:** Please swear him.

11 **MADAME CLERK:** Thank you. Sir, please have a seat in
12 the jury box.

13 Juror 136, Billie Nelson.

14 **MR. CULBERTSON:** Sorry. That number one more time?

15 **MADAME CLERK:** 136.

16 **MR. CULBERTSON:** Thank you.

17 (Whereupon juror 136, Billie Nelson, a white female,
18 came forward)

19 **MADAME CLERK:** What says the State?

20 **MR. FRETWELL:** Present Ms. Nelson.

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

22 **MR. CULBERTSON:** Give me just one moment.

23 **MADAME CLERK:** Yes, sir.

24 (Pause)

25 **MR. CULBERTSON:** Please excuse her.

1 **MADAME CLERK:** All right. Ma'am, please take a seat.

2 You have been excused from this case.

3 Juror 96, Kristin Hrabe.

4 (Whereupon juror 96, Kristin Hrabe, a white female,
5 came forward)

6 **MADAME CLERK:** What says the State?

7 **MR. FRETWELL:** Present Ms. Hrabe.

8 **MADAME CLERK:** Hrabe. What says the Defendant?

9 **MR. CULBERTSON:** Please excuse her.

10 **MADAME CLERK:** All right. Ma'am, please have a seat.

11 You've been excused from this case.

12 Juror 204, David Tuttle.

13 (Whereupon juror 204, David Tuttle, a white male, came
14 forward)

15 **MADAME CLERK:** What says the State?

16 **MR. FRETWELL:** Please excuse Mr. Tuttle from the trial
17 of this case.

18 **MADAME CLERK:** All right. Sir, you may take a seat.

19 You have been excused from this case.

20 Juror 145, Evelyn Sturgill.

21 **MR. CULBERTSON:** I'm sorry?

22 **MADAME CLERK:** 145.

23 **MR. CULBERTSON:** Thank you.

24 (Whereupon juror 145, Evelyn Sturgill, a white female,
25 came forward)

1 **MADAME CLERK:** What says the State?

2 **MR. FRETWELL:** Present Ms. Sturgill.

3 **MADAME CLERK:** What says the Defendant?

4 **MR. CULBERTSON:** Please excuse her.

5 **MADAME CLERK:** All right. Ma'am, please have a seat.

6 Juror 173, Ronald Sloan.

7 (Whereupon juror 173, Ronald Sloan, a white male, came
8 forward)

9 **MR. FRETWELL:** Please excuse Mr. Sloan.

10 **MADAME CLERK:** All right. Sir, have a seat.

11 Juror 45, Jamie Chapman.

12 (Whereupon juror 45, Jamie Chapman, a black female,
13 came forward)

14 **MR. FRETWELL:** Please excuse Ms. Chapman.

15 **MADAME CLERK:** All right.

16 **MR. FRETWELL:** Thank you.

17 **MADAME CLERK:** Juror 52, Eric Colby.

18 (Whereupon juror 52, Eric Colby, a white male, came
19 forward)

20 **MADAME CLERK:** What says the State?

21 **MR. FRETWELL:** Present Mr. Colby.

22 **MADAME CLERK:** What says the Defendant?

23 **MR. CULBERTSON:** Please excuse him.

24 **MADAME CLERK:** All right. Sir, please have a seat.

25 Juror 100, Gregory Jaeggi.

1 (Whereupon juror 100, Gregory Jaeggi, a white male,
2 came forward)

3 **MADAME CLERK:** What says the State?

4 **MR. FRETWELL:** Present Mr. Jaeggi.

5 **MADAME CLERK:** What says the Defendant?

6 **MR. CULBERTSON:** Please swear him.

7 **MADAME CLERK:** Sir, please have a seat in the jury box.
8 Juror 35, Michael Bullock.

9 (Whereupon juror 35, Michael Bullock, a white male,
10 came forward)

11 **MADAME CLERK:** What says the State?

12 **MR. FRETWELL:** Present Mr. Bullock.

13 **MADAME CLERK:** What says the Defendant?

14 **MR. CULBERTSON:** Just one moment, please.

15 **MADAME CLERK:** Yes, sir.

16 (Pause)

17 **MR. CULBERTSON:** Please swear him.

18 **MADAME CLERK:** Sir, please have a seat in the jury box.
19 Juror 104, James Kaltenibach. 104, yes, sir.

20 (Whereupon juror 104, James Kaltenibach, a white male,
21 came forward)

22 **MR. FRETWELL:** Present Mr. Kaltenibach.

23 **MADAME CLERK:** Thank you.

24 **MR. CULBERTSON:** Please excuse him.

25 **MADAME CLERK:** All right. Sir, please have a seat.

1 You've been excused from this case.

2 Juror 205, Terry Whitley.

3 (Whereupon juror 205, Terry Whitley, a white male, came
4 forward)

5 **MADAME CLERK:** What says the State?

6 **MR. FRETWELL:** Present Mr. Whitley.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. CULBERTSON:** Please excuse him.

9 **MADAME CLERK:** All right. Sir, please have a seat.

10 Juror 90, Janice Harrison.

11 (Whereupon juror 90, Janice Harrison, a black female,
12 came forward)

13 **MADAME CLERK:** What says the State?

14 **MR. FRETWELL:** Present Ms. Harrison.

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

16 **MR. CULBERTSON:** Swear Ms. Harrison.

17 **MADAME CLERK:** Ms. Harrison, please have a seat in the
18 jury box.

19 Juror 112, Patricia Lagroon.

20 (Whereupon juror 112, Patricia Lagroon, a black female,
21 came forward)

22 **MR. FRETWELL:** Please excuse Ms. Lagroon from ---

23 **MADAME CLERK:** All right. Ma'am, ---

24 **MR. FRETWELL:** --- the trial of this case.

25 **MADAME CLERK:** --- you may be seated.

1 Juror 65, Kimberly Dunham.

2 (Whereupon juror 65, Kimberly Dunham, a white female,
3 came forward)

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Present Ms. Dunham.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. CULBERTSON:** Please swear her.

8 **MADAME CLERK:** All right. Ma'am, please have a seat in
9 the jury box.

10 Juror 30, Timothy Brown.

11 (Whereupon juror 30, Timothy Brown, a black male, came
12 forward)

13 **MADAME CLERK:** What says the State?

14 **MR. FRETWELL:** Present Mr. Brown.

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

16 **MR. CULBERTSON:** Swear Mr. Brown.

17 **MADAME CLERK:** Mr. Brown, please have a seat in the
18 jury box.

19 Juror 144, Roxanne Padgett.

20 (Whereupon juror 144, Roxanne Padgett, a white female,
21 came forward)

22 **MADAME CLERK:** What says the State?

23 **MR. FRETWELL:** Present Ms. Padgett.

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

25 **MR. CULBERTSON:** Swear Ms. Padgett.

1 **MADAME CLERK:** Ms. Padgett, please have a seat in the
2 jury box.

3 Juror 54, David Connis.

4 (Whereupon juror 54, David Connis, a white male, came
5 forward)

6 **MADAME CLERK:** What says the State?

7 **MR. FRETWELL:** Present Mr. Connis.

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

9 **MR. CULBERTSON:** Please swear him.

10 **MADAME CLERK:** Sir, Mr. Connis, please have a seat in
11 the jury box.

12 Juror 202, Richard Lee.

13 (Whereupon juror 202, Richard Lee, a white male, came
14 forward)

15 **MADAME CLERK:** What says the State?

16 **MR. FRETWELL:** What was the name again?

17 **MADAME CLERK:** Connis. Richard Lee.

18 **MR. FRETWELL:** Present Mr. Lee.

19 **MADAME CLERK:** Thank you. What says the Defendant?

20 **MR. CULBERTSON:** Please swear him.

21 **MADAME CLERK:** Sir, please have a seat in the jury box.

22 Juror number 10, Brad Bartley.

23 (Whereupon juror 10, Brad Bartley, a white male, came
24 forward)

25 **MADAME CLERK:** What says the State?

1 **MR. FRETWELL:** Present Mr. Bartley.

2 **MR. CULBERTSON:** Please swear him.

3 **MADAME CLERK:** Thank you. Sir, please have a seat in
4 the jury box.

5 **THE COURT:** All right. The first alternate will be one
6 and two, please. One and two on the first alternate.

7 **MADAME CLERK:** Juror 127, Connie Medley.

8 (Whereupon juror 127, Connie Medley, a white female,
9 came forward)

10 **MADAME CLERK:** What says the State?

11 **MR. FRETWELL:** Present Ms. Medley.

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

13 **MR. CULBERTSON:** Please swear her.

14 **MADAME CLERK:** Ms. Medley, please have a seat in the
15 jury box.

16 **THE COURT:** And we'll have one other alternate, please,
17 ma'am. The same, one and two.

18 **MADAME CLERK:** Juror 199, Elizabeth Chapman.

19 (Whereupon juror 199, Elizabeth Chapman, a white
20 female, came forward)

21 **MADAME CLERK:** What says the State?

22 **MR. FRETWELL:** Present Ms. Chapman.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. CULBERTSON:** Please swear her.

25 **MADAME CLERK:** All right. Ma'am, please have a seat in

1 the jury box.

2 **THE COURT:** All right. Is there any objections to the
3 jury as empaneled from the State?

4 **MR. FRETWELL:** Not at all, Your Honor.

5 **THE COURT:** From the Defense?

6 **MR. CULBERTSON:** No, sir.

7 **THE COURT:** All right. Very good. I find the panel
8 has been properly empaneled pursuant to Batson versus
9 Kentucky and JEB versus Alabama. All right.

10 The jurors that were not selected for this case, the
11 jury coordinator has asked that y'all call back that juror
12 information line tonight after 6:00. So call that juror
13 information line tonight after 6:00. You're now excused.
14 Thank you.

15 (Whereupon the remaining jurors exited the courtroom)

16 **THE COURT:** All right. Ladies and gentlemen of the
17 jury panel, in this particular case I'm going to ask that
18 you do one thing in just a few minutes. You're going to go
19 to your jury room and you're going to select your foreperson
20 for this particular jury. So let me tell you very briefly
21 what the foreperson's duties and responsibilities are.

22 If we're here in the courtroom and the jury as a whole
23 needs attention to some matter, the witnesses need to speak
24 up, or the lawyers, or whatever it is, the foreperson of the
25 jury, they'll raise their hand, they'll get the Court's

1 attention, and I'll handle the matter, whatever it is.

2 Now, if you're back in your jury room and some matter
3 comes up, there'll be a pad and pen provided in the jury
4 room. And the foreperson will take, obviously, that pad and
5 pen and write out a note, sign it, get it to the bailiff.
6 And then it'll come to me and we'll handle that matter,
7 whatever that issue might be.

8 When we have gone through the evidentiary portion of
9 the trial, we've heard all the witnesses and received the
10 documentary or other type of physical evidence that might be
11 received in this case, and you've heard the closing
12 arguments of the attorneys, and then I have given you the
13 law that you will apply to the facts and evidence you find
14 to be true, and then I submit the case to you for your
15 deliberations and your unanimous decision in this matter.

16 The foreperson's duties and responsibilities change in
17 this regard. The foreperson's going to act like the
18 chairperson at a meeting. An important duty and
19 responsibility that the foreperson has is to make sure that
20 everybody has an opportunity to speak that wants to.
21 Everybody's voice has an opportunity to be heard if they
22 want to speak on a particular matter.

23 Now, the foreperson's voice and vote carries no more
24 weight than any other member of the jury. Everybody's equal
25 in that regard. But somebody does need to be in charge, if

1 necessary, guide the discussions during the deliberations.
2 And then, obviously again, if some question comes up, take
3 that pad and pen, write out the note, sign it and give it to
4 the bailiff, it'll come to me, and we'll answer that
5 question.

6 The final duty that the foreperson has is once the jury
7 has well and truly deliberated in this matter and you have
8 reached your unanimous decision in this particular matter,
9 the foreperson will take the written verdict form that the
10 Court will provide to you and check the appropriate box or
11 the appropriate word and thereafter sign their name as the
12 foreperson indicating that that indeed is the verdict of
13 each and every member of the jury of this particular case.

14 So with that, and understanding the duties and the
15 responsibilities of the foreperson, I'm going to ask you to
16 go to your jury room, select your foreperson, knock on the
17 door, let the bailiff know who that is.

18 Now, Ms. Medley and Ms. Chapman, as the alternates,
19 y'all can vote on the foreperson, but obviously can't be the
20 foreperson. All right? So if y'all would all just go to
21 the jury room and select your foreperson, please. Thank you
22 very much.

23 (Whereupon the jury exited the courtroom at 2:59 pm)

24 **MR. CULBERTSON:** Your Honor, if you don't mind, while
25 we await, I believe, Ms. Manigault's arrival, which ought to

1 be momentarily, just ---

2 **THE COURT:** Yes, sir. I'd be glad to hear from you.

3 Yes, sir.

4 **MR. CULBERTSON:** Just a couple of things I'd like to
5 bring up real quickly.

6 **THE COURT:** Sure. Absolutely.

7 **MR. CULBERTSON:** While I like the idea of allowing the
8 jury panel itself to select its own foreman, I think that
9 always works better than just them being appointed as the
10 foreperson, I'm curious if it's going to be your intent to
11 notify us, the attorneys trying the case, as to who the
12 foreman ---

13 **THE COURT:** Oh, as soon as the jury tells us who the
14 foreperson is, I'll let y'all know exactly who that person
15 is. And then you'll know anyway. It's going to be the
16 person that's occupying that end seat right there. So --
17 but, yeah, absolutely. As soon as I know, y'all will know.

18 **MR. CULBERTSON:** Thank you, sir. Thank you, sir.

19 **THE COURT:** Absolutely.

20 **MR. CULBERTSON:** And two other matters.

21 **THE COURT:** Yes, sir.

22 **MR. CULBERTSON:** I don't know if you'd like for me to
23 bring them up now or ---

24 **THE COURT:** Sure. Go ahead. I mean, you might as
25 well. Go ahead.

1 **MR. CULBERTSON:** Your Honor, my client has asked me to
2 do -- to ask for two things by way of motion. First one
3 kind of dovetails into the second. And that is, first, he'd
4 like a continuance on this matter. I know we've already
5 selected a jury and started this thing. I know you haven't
6 sworn the jury yet.

7 **THE COURT:** Yes, sir.

8 **MR. CULBERTSON:** So I think it's still appropriate, if
9 you're so inclined, ---

10 **THE COURT:** And what would the grounds for a
11 continuance be?

12 **MR. CULBERTSON:** He tells me that he's somewhat --
13 would like more time to review some of the material that's
14 been provided to him. I pointed out to him, I'm sure Your
15 Honor would also, that he's now had ample time to review
16 that material.

17 As was evidenced a little bit earlier, there was some
18 difficulty in actually getting some of the videotape stuff
19 to play. That problem we had today is, of course, magnified
20 down at the Law Enforcement Center where my client's been
21 housed for the last several months. He did not have the
22 ability to see these tapes down there.

23 He was able to view portions of them up here today.
24 He's just asking for a continuance so that he can have the
25 opportunity to think about that, review those a little bit

1 more in-depth and be better prepared himself for trial.

2 **THE COURT:** I appreciate that. Let me ask you, Mr.
3 Culbertson, you have had that information, you've had an
4 opportunity to review those tapes, correct?

5 **MR. CULBERTSON:** Yes, sir.

6 **THE COURT:** All right, sir. I appreciate the request
7 of your client. The discovery has been provided by the
8 State for some period of time. I did delay this trial today
9 to allow the Defendant to view the videotape regarding the
10 -- his statement.

11 And so I respectfully decline to grant a continuance.
12 I find that the -- it would not aid in the defense of this
13 matter. There's been ample time to do that. All right.
14 Your other matter?

15 **MR. CULBERTSON:** And, Your Honor, also, somewhat tied
16 into that first motion, my client, while we were at break,
17 giving him a chance to look at the tapes more in-depth and
18 while everybody else went to lunch and whatnot, he expressed
19 to me some dissatisfaction with my role as his attorney in
20 this matter.

21 **THE COURT:** All right.

22 **MR. CULBERTSON:** So ---

23 **THE COURT:** I'll explore that with Mr. Bailey right
24 now. Mr. Bailey, stand up.

25 **MR. BAILEY:** Yes, sir.

1 **THE COURT:** All right. Tell me what the problem is.

2 **MR. BAILEY:** I just got this here last Thursday.

3 **THE COURT:** And this here is what?

4 **MR. BAILEY:** This is supposed to be my motion.

5 **THE COURT:** Your motion for what?

6 **MR. BAILEY:** For this case here.

7 **MR. CULBERTSON:** Discovery.

8 **MR. BAILEY:** Discovery.

9 **THE COURT:** Oh, that's the discovery, okay. All right.

10 **MR. BAILEY:** Okay.

11 **THE COURT:** So you got it last Thursday.

12 **MR. BAILEY:** Last Thursday.

13 **THE COURT:** Okay.

14 **MR. BAILEY:** I've been up -- I've been in the
15 Greenville County Detention Center almost eighteen months.

16 **THE COURT:** All right, sir.

17 **MR. BAILEY:** I've been asked for my motion of
18 discovery.

19 **THE COURT:** All right, sir.

20 **MR. BAILEY:** Just like the videotapes and all that,
21 wasn't none of that even brought up to my attention til
22 today.

23 **THE COURT:** All right, sir. I appreciate that, Mr.
24 Bailey, but I do not find that to be sufficient reason to
25 remove Mr. Culbertson and stop this trial. Thank you very

1 much. Any further motions from the Defense?

2 **MR. CULBERTSON:** Not at this time, Your Honor.

3 **THE COURT:** All right. Counsel, the previous case,
4 there's a matter involving the jury in the previous case.
5 And I need to speak to counsel at this time. Thank you.

6 **MR. CULBERTSON:** Yes, sir.

7 (Whereupon court was in recess at 3:03 pm)

8 (Whereupon court reconvened at 3:10 pm)

9 **THE COURT:** Number 65, Kimberly Dunham, Kimberly Dunham
10 is the foreperson.

11 (Whereupon court was in recess at 3:10 pm)

12 (Whereupon court reconvened at 3:40 pm)

13 **THE COURT:** Thank you very much. You may be seated.
14 All right. Solicitor, is the State ready for the jury to
15 come in?

16 **MR. FRETWELL:** Just a moment, Your Honor. I just want
17 -- before the jury comes in, I wanted ---

18 **THE COURT:** Yes, sir.

19 **MR. FRETWELL:** --- to bring to the Court's attention
20 upon Mr. Culbertson's motion the Defendant was evaluated by
21 the Department of Mental Health in Columbia.

22 **THE COURT:** All right, sir.

23 **MR. FRETWELL:** Judge Verdin, I believe, signed that
24 order. The opinion of the doctors at the Columbia
25 Department of Mental Health is that the Defendant was

1 competent to stand trial. I have a copy of that report that
2 I have marked as a Court's exhibit. And I would like to
3 enter that into the record at this time.

4 **THE COURT:** All right, sir. Any objection to that, Mr.
5 Culbertson?

6 **MR. CULBERTSON:** No, sir.

7 **THE COURT:** All right, sir. And do you in any way
8 challenge the findings of the State Department in that
9 matter? The State Department of Mental Health?

10 **MR. CULBERTSON:** No, sir.

11 **THE COURT:** All right, sir. Very good. All right.
12 Based upon the matters presented, the evaluation, the
13 findings therein, I do find that the Defendant is competent
14 to stand trial in this particular matter.

15 With that is the State ready to proceed?

16 **MR. FRETWELL:** We are, Your Honor.

17 **THE COURT:** And the Defense?

18 **MR. CULBERTSON:** Yes, sir.

19 **THE COURT:** Very good. Ask the jury to come in,
20 please, ma'am. Solicitor, I am going to have to talk to the
21 jury very briefly.

22 **MR. FRETWELL:** Yes, sir.

23 **THE COURT:** So if you could ---

24 **MR. FRETWELL:** Move it out of the way.

25 **THE COURT:** --- just move it this way for just a little

1 bit, and then you can move it back just as soon as I'm done.

2 All right.

3 **MR. FRETWELL:** Is that ---

4 **THE COURT:** Well, we've got two alternates in this --
5 there you go. That's good. Thank you, sir.

6 **MR. FRETWELL:** Yes, sir. That's fine.

7 **THE COURT:** You can move it back as soon as I'm done
8 talking to them. I don't have a problem with that.

9 **MR. FRETWELL:** I appreciate it.

10 **THE COURT:** I just want to be able to see them when I'm
11 talking to them.

12 **MR. FRETWELL:** Yes, sir.

13 **THE COURT:** Thank you.

14 (Whereupon the jury entered the courtroom at 3:44 pm)

15 **THE COURT:** All right. Ms. Duncan [sic], the jury has
16 selected you to be the foreperson of this particular jury.
17 Is that correct, ma'am?

18 **MS. DUNHAM:** Yes, sir.

19 **THE COURT:** All right. Very good. And, again, I would
20 ask you, Ms. Duncan, and the two alternates, Ms. Medley and
21 Ms. Chapman, if y'all would just occupy the seats that y'all
22 are in now. I just need to know where the foreperson and
23 the alternates are, all right? And then the rest of you,
24 ladies and gentlemen, if you'd just kind of happen to fill
25 in wherever it is you come back from the jury room, there

1 wouldn't be any other assigned seating except the foreperson
2 and the alternates, all right?

3 The very first thing that's going to happen is the
4 Clerk Of Court's representative is going to administer the
5 oath to you. So if you would all please stand at this time.

6 **MADAME CLERK:** Please raise your right hand. You shall
7 well and truly try the case, 2013-GS-23-9292, the State
8 versus James Eddie Bailey, indicted for armed robbery,
9 kidnapping, possession of a weapon during the commission of
10 a violent crime and resisting arrest and a true verdict
11 rendered according to the law and the evidence so help you
12 God. I will?

13 **THE JURY:** I will.

14 **MADAME CLERK:** Thank you. Please be seated.

15 **THE COURT:** All right. Ladies and gentlemen, in this
16 particular matter, first, did any member of the jury panel
17 not affirmatively take the oath as just given by the clerk
18 of court? If anyone did not, please stand.

19 (No response)

20 **THE COURT:** No juror having stood, I find the jury is
21 properly sworn in this particular matter.

22 Ladies and gentlemen, you have been selected to be the
23 jury in this criminal case. And that gives you a special
24 status in this judicial proceeding. You will, in fact,
25 during the course of this trial and by your unanimous

1 verdict in this matter be the judges of the facts of this
2 case.

3 I will not indicate to you in any way during these
4 proceedings what I believe the facts of this case are
5 because that will not be my job. It will be your job and
6 your responsibility to listen to the facts and evidence
7 presented in this case and find that evidence which
8 convinces you of its truth.

9 Now, based upon that evidence you find to be true, you
10 will at the end of the case listen to the law that the Court
11 will give to you and you will apply the law that I give to
12 you to the facts and evidence you find to be true. And with
13 that you will then decide did the State prove the Defendant
14 guilty of the crime or crimes charged beyond a reasonable
15 doubt.

16 And the reason for that is the State has the burden of
17 proof in this case. The Defendant is presumed innocent. I
18 tell juries all the time, a defendant need not even show up
19 for trial because they don't have to prove anything to you.
20 They don't have anything to show to you.

21 It is the State's full and complete responsibility to
22 prove the Defendant guilty by the evidence presented beyond
23 a reasonable doubt. And at the end of it, based upon the
24 evidence you find to be true, the law I give you, you will
25 make that determination, whether or not the State has proven

1 the Defendant guilty of those crimes that have been charged
2 against him.

3 Now, in this particular matter, Defendant has been
4 charged with four crimes. So you are going to be making
5 four separate decisions. He has been charged with armed
6 robbery, kidnapping, possession of a weapon during the
7 commission of a violent crime and resisting arrest.

8 Each one of those crimes has different elements,
9 elements of the law that I will talk to you about at the
10 very end. But suffice it to say, you've got to listen to
11 the facts so that you know what the facts of the case are so
12 that you can apply those facts to the different charges.
13 And you will be making a separate decision on each one of
14 the charges.

15 And your decision on one doesn't govern the decision on
16 another one. All of them could be the same. They could be
17 all different in some manner. So you're basically trying
18 four cases in one in effect. So that's what you're going to
19 be doing in this particular matter.

20 How we'll go forward with the trial is when I get done
21 with these brief statements to you, we'll hear the opening
22 statements of the attorneys. Then we'll hear the evidence,
23 the evidentiary portion of the trial. Witnesses will come
24 before you and testify under oath. We'll receive certain
25 documentary or other kind of physical evidence that will be

1 received in this particular case.

2 After that we'll have the closing arguments of the
3 attorneys. And then I will give you the law that you'll
4 apply to the facts and evidence you find to be true. And
5 then I'll submit the case to you for your deliberations and
6 your unanimous decision in this particular matter.

7 The opening statements and the closing arguments, they
8 are important, but remember, they are not evidence. They
9 cannot be considered by you as evidence in the case. They
10 are each side's position.

11 The opening, they're trying to introduce the case to
12 you. The closing, they're making their comments on what's
13 already occurred and asking you to reach a certain result.
14 You need to listen to those, but remember, that's not the
15 facts, that's not the evidence. That'll come from the
16 witness stand and the matters that are introduced into
17 evidence.

18 I'm going to be asking you not to formulate any
19 opinions about this case during the course of the trial.
20 When we take breaks or you're together in your jury room,
21 I'm going to ask you to not discuss this case until I give
22 it to you at the very end.

23 There might be a tendency on some to, after they've
24 heard one witness or so, to reach a conclusion not knowing
25 that the very next witness might very well totally change

1 your mind. You wait until you've received all the evidence
2 in this case before you reach your conclusions and before
3 you start to discuss the matter.

4 And then, obviously, you need to know the law that
5 you've got to apply to the facts in evidence before you can
6 discuss that. So you wait til the very end when I give it
7 to you at the end for your deliberations to do that.

8 During the course of the trial there may be certain
9 matters the attorneys may bring to the Court's attention by
10 reason of an objection, or a motion, or just in some way
11 they want to speak to the Court about some matter. If I
12 rule on that in your presence, and I don't send you back to
13 the jury room so I can talk about it more fully with the
14 lawyers, please remember, I am adamant about one of my
15 duties, that is, governing the conduct of the trial, how the
16 trial will proceed, but I'm not making any comments on the
17 facts or the credibility and believability of the witnesses,
18 because again, that's your job and your responsibility.

19 So to touch on that final matter, credibility and
20 believability, something you're going to have to decide in
21 this case based upon the witnesses that come before you and
22 testify under oath. They mean the same thing, credibility
23 and believability.

24 When you think about it, it's something you do every
25 single day of your life. When somebody tells you something,

OPENING STATEMENTS - MR. FRETWELL

46

1 you're automatically judging in your own mind whether or not
2 you believe them. And how do you do that? You use your
3 good common sense. You use your good judgment.

4 That's what we're going to be asking you to do here
5 today. Use your good common sense, apply it to the facts
6 and evidence in this case, find that evidence which
7 convinces you it's true, apply the law that I give to you,
8 and then decide whether or not the State has proven the
9 Defendant guilty of the crime or crimes charged beyond a
10 reasonable doubt.

11 With that, I'm going to turn it over to the lawyers for
12 their opening statements. Solicitor.

13 **MR. FRETWELL:** May it please the Court, Your Honor.

14 **THE COURT:** Yes, sir.

15 **MR. FRETWELL:** Mr. Culbertson.

16 **MR. CULBERTSON:** Yes, sir.

17 **MR. FRETWELL:** Madame Forelady, ladies and gentlemen of
18 the jury, good afternoon. On April 14th, 2013 Sharon Taylor
19 was managing the Dollar General on Poinsett Highway near
20 Rutherford Road. Shortly before close a man walked in,
21 indicated he just needed to get some pet supplies or pet
22 food and then went on about to walk into the store.

23 A short time later Sharon noticed the man walking along
24 the back aisle of the store and asked if she could help him
25 find the pet food. His response, I've got everything. So

OPENING STATEMENTS - MR. FRETWELL

47

1 Sharon went back to her closing duties.

2 Sharon's boyfriend, Tom Nash, who also happened to be
3 Sharon's ride home that evening, was assisting a female
4 customer to her car with some bags. As Tom stepped out of
5 the store, the man inside the store asked the cashier where
6 the other lady was.

7 When Sharon emerged from her office, the man asked her
8 for some help finding some snacks and motioned for her to
9 walk and follow him to the back of the store. Feeling
10 uneasy, since the snacks were clearly visible in front of
11 them, Sharon began to slow down as the man began to slow
12 down.

13 That man, ladies and gentlemen, later identified as the
14 Defendant, James Bailey, suddenly grabs Sharon by the hair,
15 bent her over, started dragging her down the aisle and then
16 he threw her down on the ground, laid on top of her and
17 placed a large knife to her neck. The Defendant told
18 Sharon, you need to understand, this is a robbery, and I
19 will kill you.

20 He then moved the knife to her stomach, on the side of
21 her stomach, and repeated his threat to kill her. The
22 cashier, who had walked over to look down the aisle, saw her
23 manager in trouble and ran to get Tom and to call 911. Tom
24 ran to the back of the store and found Sharon on the ground
25 with the Defendant lying on top of her.

OPENING STATEMENTS - MR. FRETWELL

48

1 When Tom attempted to intervene, the Defendant moved
2 the knife back to Sharon's throat and applied enough
3 pressure that a trickle of blood began to run down her neck.
4 The Defendant told Tom, go get money or she's dead.
5 Realizing the gravity of the situation and the importance of
6 not antagonizing the Defendant, Tom returned to the front of
7 the store to find some money that he could exchange for
8 Sharon's life.

9 The cashier was able to open the cash drawer. And Tom
10 grabbed twenty-two dollars out of the drawer and headed to
11 the back of the store. The Defendant took the money and
12 began to complain that it was not enough. He wanted the
13 money from the safe.

14 Tom made up a story that the safe was locked or empty
15 and told the Defendant that he needed to leave since the
16 police were on their way. The Defendant eventually got up
17 off the floor, off of Sharon and started walking back to the
18 front of the store with Tom close behind.

19 Now, meanwhile, in response to the cashier's call to
20 911, Master Deputy Bruce Emily from the Greenville County
21 Sheriff's Office had pulled up outside. And as he
22 approached the front door the front door swung open and out
23 stepped the Defendant matching the robbery suspect
24 description, money in one hand and knife in the other.

25 Deputy Emily told the Defendant to stop, at which point

OPENING STATEMENTS - MR. FRETWELL

49

1 he turned and began to run. Deputy Emily ran after the
2 Defendant and called in his clothing description to dispatch
3 along with their direction of travel.

4 Other deputies quickly arrived and caught sight of the
5 Defendant as he was going around the corner of a church on
6 Poinsett Highway. Deputies May and Giovanni jumped out of
7 their vehicles in pursuit of the Defendant.

8 After identifying himself and instructing the Defendant
9 to stop, Deputy Giovanni deployed his taser, bringing the
10 Defendant to the ground. With Deputy May on one side and
11 Deputy Giovanni on the other, the Defendant continued to
12 struggle and resist their efforts to bring his arms behind
13 his back so that he could be handcuffed.

14 When Deputy May was eventually able to drag one of the
15 Defendant's arms out from underneath him, he noticed that
16 still clutched in his hand was a knife with an open blade.
17 Deputy May began striking the Defendant in order to get him
18 to release his grip on the knife.

19 When Deputy May was able to get the knife out of his
20 hand and throw it clear, Deputy Giovanni began wrestling
21 with the Defendant's other arm. Eventually they got his
22 hands behind his back and he was taken into custody.

23 The deputies did notice that he was still wearing the
24 gloves he had put on inside the floor -- inside the store.
25 They also, in one of his pockets, found the twenty-two

OPENING STATEMENTS - MR. FRETWELL

50

1 dollars in cash that he had robbed from the store.

2 This Defendant, as the Judge has told you, is charged
3 with armed robbery, kidnapping, possessing a weapon during
4 the commission of a violent crime and resisting arrest.
5 Ladies and gentlemen, in order to establish the Defendant's
6 guilt for the charge of armed robbery, let me just make sure
7 everybody can see this, we must establish that the Defendant
8 took something of value from the person or presence of
9 another with the intent permanently to deprive that
10 individual of the property using violence or by causing fear
11 and while armed with a deadly weapon.

12 For the charge of kidnapping the State must prove that
13 the Defendant knowingly and unlawfully seized, confined,
14 inveigled, decoyed, kidnapped, abducted or carried away any
15 other person by any means whatsoever without the authority
16 of law. Basically any restriction on another's freedom or
17 liberty or freedom of movement if performed without the
18 authority of law constitutes the crime of kidnapping in
19 South Carolina.

20 Now, to establish the Defendant's guilt for possessing
21 a weapon during the commission of a violent crime the State
22 must prove that the Defendant was in possession of a knife,
23 which the Court will instruct you under South Carolina law
24 is a weapon, in fact, a deadly weapon, and that the
25 Defendant possessed that weapon while committing an armed

OPENING STATEMENTS - MR. FRETWELL

51

1 robbery, or a kidnapping or both. As the Court will
2 instruct you that both armed robbery and kidnapping have
3 been classified as violent crimes under South Carolina law.

4 Finally, in order to establish the Defendant's guilt
5 for resisting arrest the State must prove that the Defendant
6 beyond a reasonable doubt that the Defendant knowingly and
7 wilfully resisted in any manner a lawful arrest by clearly
8 identifiable law enforcement officers.

9 Please listen carefully as the witnesses inside the
10 Dollar General on April 14th, 2013 testify, including Sharon
11 Taylor, and tell you how the Defendant robbed the store by
12 holding Sharon on the ground at knife-point. Listen to Tom
13 Nash as he describes his helplessness as the woman he loves
14 was held captive by a man who repeatedly threatened to kill
15 her and who had the means and ability to do so.

16 Also, please listen to Deputy Emily as he describes his
17 encounter with the Defendant at the front door of the store
18 and the subsequent pursuit that ended in the Defendant's
19 capture. Finally, listen to Deputies May and Giovanni as
20 they testify to the struggle that they had with the
21 Defendant as they attempted first to disarm him and then to
22 take him into custody.

23 At the conclusion of the evidence, ladies and
24 gentlemen, I will ask you to find the Defendant, James
25 Bailey, guilty of armed robbery, guilty of kidnapping,

OPENING STATEMENTS - MR. CULBERTSON

52

1 guilty of possessing a weapon during the commission of a
2 violent crime and guilty of resisting arrest. Thank you.

3 **THE COURT:** All right. Mr. Culbertson.

4 **MR. CULBERTSON:** Thank you, Your Honor. May it please
5 the Court.

6 **THE COURT:** Yes, sir.

7 **MR. CULBERTSON:** Mr. Fretwell.

8 **MR. FRETWELL:** Yes, sir.

9 **MR. CULBERTSON:** Ladies and gentlemen, my name is
10 Symmes Culbertson. I'm an attorney here in Greenville. And
11 I represent Mr. Bailey sitting over there, James Bailey.

12 I was sitting there listening to the solicitor's
13 presentation, his opening statement to you. Hopefully I
14 won't go quite as long. I might. Don't hold it against me.

15 But as I was listening to it I was reminded of the
16 words of Sam Ervin, who used to be Speaker of the House, the
17 United States House up in congress, Washington, especially
18 during the Watergate trials, which he preceded over. He
19 used to refer to himself as this old country boy or this
20 little backwoods country boy from North Carolina.

21 And at times I feel kind of that same way, especially
22 when I sit here with all the stuff that the State has to
23 show, and all the video stuff they have to show, and all
24 this production of technology that they're going to use to
25 present their case to you. I'm just some poor little

OPENING STATEMENTS - MR. CULBERTSON

53

1 country lawyer trying to represent my client.

2 In that regard I will tell you that I've always been
3 from Greenville. Grew up here, was born here. Plan to
4 always live here. My client, Mr. Bailey, is from
5 Greenville. Well, not really from Greenville. Originally
6 from the Spartanburg area, but he and his family, his
7 brother sitting back there, his mother would be here, but
8 she's sick, they're all from Greenville now. They all live
9 around here. Have their entire life. I just wanted you
10 guys to know that. Poor, simple, country folks from
11 Greenville, South Carolina, we don't have all this
12 technology.

13 Mr. Bailey has been accused of a crime. And the
14 State's going to put on this show about how they're going to
15 prove their crime -- that he committed this crime. And I
16 urge you to listen to all the folks who get up here and
17 raise their hand and testify to you about what they saw,
18 what happened, what they experienced, what they know.
19 Listen to that. That's very important.

20 But as you listen to that, like the Judge said, weigh
21 their credibility. Weigh the viewpoint in which they might
22 be telling you that. Or weigh why they might be telling it
23 to you in that manner that they're telling it to you. All
24 that's important for you guys when you go back there to
25 start trying to make a decision.

OPENING STATEMENTS - MR. CULBERTSON

54

1 To the extent you do that, I also am going to urge you
2 to look at all this technology that the State's going to put
3 up. Look at the videotape that they're going to play for
4 you and ask those same questions to the issues that pop up
5 in the videotape. Why did that happen? Why did he do that?
6 Why did she say -- ask all those questions because that's
7 all important as to the credibility and believability of
8 what the people tell you from the witness stand that took
9 place. Merge them all together. Make your own decision
10 based on what you see, what you experience and what you
11 believe the truth to be.

12 Your Honor told you a little bit about it's the State's
13 burden to prove all this. With all their technology and all
14 their showoffs, it's their burden to prove that. Mr. Bailey
15 is an innocent man. He sits over there right now and will
16 throughout this trial being an innocent man. Only until you
17 folks decide otherwise, he'll continue being that, an
18 innocent man.

19 Remember that when you go back, listening to the
20 evidence and start deliberating amongst yourself. And
21 remember also, the State, as the Judge told you, has the
22 burden of proving otherwise, that they have the burden of
23 showing to you or proving to you that he's no longer an
24 innocent man, that he did these things that they say he did.
25 That's a heavy burden to lift.

OPENING STATEMENTS - MR. CULBERTSON

55

1 It sounds simple, sounds easy. It's not. Realize that ,
2 they have the task to do, they have a burden to overcome. I
3 urge you to make them overcome that burden.

4 I've already mentioned to you a little bit about
5 credibility, believability of the witnesses that might
6 testify. And I've already mentioned to you that in addition
7 to what you hear, who you hear saying it, what you see as
8 they tell you, to also look at the videotape and apply that
9 same criticism, that same thought process in your head about
10 what are they really showing, why are you showing me this,
11 what is actually there? Apply that to all the video you may
12 see in this case and compare it to what you'll actually
13 hear. I dare say there might be some discrepancy there.

14 And this conversation the solicitor was talking to you
15 earlier about, fear, intrepidation, and running around and
16 everybody nervous and scared, look at the video. Tell me
17 where that's exhibited on the video. Tell me about this
18 knife wielding, cash flashing gentleman who's in the store.
19 Where's that on the video? Where's that on the video?

20 One last thing and then I'm going to sit down. His
21 Honor and oftentimes folks start talking, witnesses start
22 talking, police officers are talking, lawyers start talking,
23 anybody starts talking, my children start talking, they may
24 say something not really what they meant to say. Christmas
25 is tomorrow. Christmas is not until December.

OPENING STATEMENTS - MR. CULBERTSON

56

1 It may feel sitting up here sometimes that Christmas
2 will never get here. I know on the elevator I joke all the
3 time that they're slow as Christmas and everybody knows what
4 I'm talking about. Sometimes the judicial process takes a
5 little bit of time. And I apologize for that.

6 It's not my intention to make anybody miss Christmas or
7 miss anything for that -- miss dinner tonight. It just
8 takes a while. And I appreciate y'all being here, sharing
9 your time with us. And we could not do this without y'all.
10 So thank you.

11 But what I really wanted to point out was His Honor a
12 few minutes ago, he probably doesn't even remember having
13 said it this way, he's made the comment that there's really
14 four cases in one. And that comment made me a little
15 nervous.

16 And it made me nervous for this reason. And I think he
17 may clean it up, if not today, sometime during the course of
18 this case. That he did not mean to imply simply because you
19 reach a certain decision on a verdict in one case that you
20 have to reach that same verdict, that same decision in any
21 other cases or any other charges you'll hear today.

22 There are four separate charges. All four of them can
23 have two potential verdicts. Not one verdict fits all.
24 Four cases, two verdicts, possibly a total of eight
25 different verdicts are possible in this case. It's not four

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

57

1 cases in one. It's four cases.

2 And you as the jury is charged with the responsibility
3 of making an independent decision in all four of those
4 cases. I just want you to keep that thought in mind. That
5 having been said, I'll shut up. I'll sit down. Thank
6 y'all.

7 **THE COURT:** All right. Solicitor, your first witness,
8 please, sir.

9 **MR. FRETWELL:** Your Honor, the State would call Tom
10 Nash.

11 **THE COURT:** All right, sir. Please come around to be
12 sworn, sir.

13 **Tom Nash,** being duly
14 sworn testified as follows;

15 **MADAME CLERK:** Thank you. Please be seated. Would you
16 please state your name for the record.

17 **MR. NASH:** Tom Nash.

18 **MADAME CLERK:** Thank you.

19 **THE COURT:** Go ahead, solicitor.

20 **MR. FRETWELL:** May it please the Court, Your Honor.

21 **THE COURT:** Yes, sir.

22 **Direct Examination by Mr. Fretwell:**

23 Q. Mr. Nash, where do you live?

24 A. In Travelers Rest, South Carolina.

25 Q. And that's in Greenville County?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

58

1 A. Yes, sir, it is.

2 Q. How long have you lived in Greenville County?

3 A. Now going on thirty-five years, I'd say.

4 Q. Okay. Tell us about your family.

5 A. My family is quite large. Between my baby-doll back
6 there and myself, we have five children and sixteen
7 grandchildren.

8 Q. Okay. And by your baby-doll, are you talking about
9 this lady sitting right here?

10 A. Sharon Taylor, yes.

11 Q. And what is her relationship to you, sir?

12 A. She is my confidant. She is my everything. She's my
13 girlfriend.

14 Q. Okay. All right. And you said between the two of you
15 you have how many grandchildren?

16 A. Sixteen.

17 Q. Tell us about your education.

18 A. Education goes up to a couple of years of college. I
19 didn't finish enough of it, but enjoyed all of it.

20 Q. Okay. And did you serve in any of the branches ---

21 A. Yes, sir.

22 Q. --- of the military? What branch?

23 A. USMC. I was in the Marine Corps, sir.

24 Q. In the Marine Corps?

25 A. Yes, sir.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

59

1 Q. Okay. And after that point what did you do as a
2 vocation or as in employment?

3 A. Kind of scattered myself around to many things to learn
4 as much as I could. Went into college. I came out from
5 that and went into banking. And then I decided I wanted to
6 be in business for myself. So started my own thing of
7 electrical and construction business for many years until
8 finally I just absolved it with another company buying part
9 of it and decided to retire.

10 Q. And what prompted you to retire?

11 A. A lot of it was my wife, who had deceased several years
12 ago and everything and all. It was just finally to where I
13 needed to spend the time around her. And at which time I
14 made that decision to do such.

15 Q. If you don't mind me asking, how long were you married
16 to your wife?

17 A. Thirty years.

18 Q. Okay. And what do you do with your time now, sir?

19 A. I spend it doing some electrical work, spend it with my
20 one son that has a garage building engines and such. Spend
21 it around with my children and grandchildren and, of course,
22 my sweetheart back there on our little farm up there.

23 Q. Let me take you to April 14th of 2013.

24 A. Yes, sir.

25 Q. In that evening can you tell the members of the jury

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

60

1 what was going on in your life on that particular evening.

2 A. A little disturbed because she was supposed to be on
3 vacation.

4 Q. I'm going to stop you for just a second.

5 A. Certainly.

6 Q. Who are you talking about when you say she?

7 A. That was Ms. Sharon Taylor.

8 Q. Okay. All right.

9 A. And we were supposed to be spending two or three days,
10 finally, together. And she received a call to go back to
11 her store and, which I wasn't privy to, but which I went
12 with her because it was late in the evening at that time.

13 Went to the store. And from there she took over her
14 duties, and I just kind of more or less was a hang-arounder
15 of sorts to take her back home when the time came for her to
16 close the store up.

17 Q. All right. And let's talk about the closing of the
18 store. Do you recall at that time what time the Dollar
19 General would close?

20 A. 9:00 exactly.

21 Q. All right. Now shortly before that time what were you
22 doing specifically?

23 A. A few minutes prior to that I basically would go, when
24 I was there to kind of watch things as an unofficial guest
25 of the place, I would watch people, see what they were doing

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

61

1 coming in and out.

2 And there was a lady there that had several bags.

3 Which I knew it was very dark, very dangerous area. And I
4 took her with her bags out the door, knowing it was at that
5 approach time of 9:00. They could lock the doors, I would
6 be out while they progressed to close down the store.

7 Q. All right. And did you return to the front of the
8 store after you helped this lady?

9 A. I did. I returned there to the front at which time the
10 saleslady in there opened the door immediately and made a
11 statement to me that Ms. Sharon Taylor was -- said, she,
12 Sharon is in a disagreement back there or a fight, rather,
13 with a customer. And I said, where? And I left from there
14 and went to the site of what was going on.

15 Q. Okay. And just to be clear, is that Ms. Karen
16 Nartowicz that's sitting right ---

17 A. That is.

18 Q. Okay. So she came out and talked to you. What did you
19 do at that point?

20 A. I came through the door immediately and proceeded to
21 come down the aisle-way to the back area where I observed
22 Ms. Sharon Taylor on the floor being huddled up by the
23 Defendant over here. My first response, I thought he was
24 trying to rape her. She -- he had her in a fetal position
25 with her hair pulled back with her neck exposed.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

62

1 He had his arm wrapped around her belly at which point
2 I didn't know until I got exactly within just a couple of
3 feet. And my motions were to do something then.

4 And he came up ---

5 Q. They're actually lying on the floor?

6 A. Yes, sir. He is -- he is all into the side of her in a
7 fetal position accompanying her with his arm, his right arm
8 around at her belly level, her lower belly -- of her
9 abdomen. He had his left hand back in behind here, which he
10 was pulling her head backwards. And at that time when he
11 saw me closing in and I made some choice statements to him,
12 then he came up with a knife to her throat.

13 Q. What was Sharon's condition at that point?

14 A. She was extremely distraught. Extremely. Which, you
15 know, put even more of a task in front of me. And she was
16 -- this was not a human being, this was somebody I love.
17 And I had to try to make a decision as best I could.

18 She had tried to grab a can goods ---

19 **MR. CULBERTSON:** I object, Your Honor.

20 **THE COURT:** On what grounds?

21 **MR. CULBERTSON:** Well, to start with hearsay. He's
22 about to tell me what somebody ---

23 **THE COURT:** Well, I don't believe it to be hearsay
24 unless -- why don't you rephrase your question, but I
25 thought he was going to describe something he was seeing in

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

63

1 his presence. But why don't you ---

2 A. I observed ---

3 **THE COURT:** Sir.

4 A. I observed.

5 **THE COURT:** Sir.

6 **MR. FRETWELL:** Just a second, Mr. Nash. I'd be happy
7 to, Your Honor.

8 **THE COURT:** Solicitor, you rephrase your question.
9 Your objection is overruled. Thank you.

10 **MR. CULBERTSON:** Yes, sir. Thank you, sir.

11 Q. What, if anything, did you see Sharon do at that point?

12 A. I observed her grab a large can of ravioli off from the
13 bottom of the shelf. She then attempted to try to hit him
14 and strike him upside the head, which I could tell was as
15 much aggravation as possible to him. And I cautioned her to
16 not -- to stop, you know, to just cease and desist right
17 then, and which she did.

18 And he kept relenting the whole time that he was going
19 to kill her. There was nothing else that I could see in his
20 eyes, his face, his actions or anything else that delineated
21 in any sort of way from the fact that he was meaning what he
22 said he was going to do.

23 Q. Was there anything that you told police or told me that
24 the Defendant did with the knife that gave you some extra
25 concern about Sharon's safety?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

64

1 A. When I saw the blood that came from her neck area and
2 the pressure that was being pushed in on her neck, I knew --
3 I knew this man and the increase in times he kept telling me
4 and trying to get what he wanted out of him. All he kept
5 saying was he had nothing to lose, he was going to kill her.

6 Q. What did you do at that point?

7 A. After seeing that that situation was one to where I
8 couldn't do anything physically, and I was going to have to
9 try to do this thing more mentally than all, then I kept
10 trying to get to him to find out what he really wanted.

11 Q. Right. And did you find out what he wanted?

12 A. He wanted some money.

13 Q. Okay.

14 A. He wanted every bit of the money. And I told him, I
15 said, okay. And he asked her for money. She was in no
16 position. She didn't have anything with her. And asked me
17 for money, which, unfortunately, I didn't have. And then I
18 told him that I'm sorry, you know, I just don't have any.

19 I tried to get him to come up from the floor from her
20 by telling him the police were on their way. And anyway, he
21 wasn't budging. He did offer an exchange between me
22 being on the floor and her rising, but I felt like I had
23 more control over the situation myself at that time and that
24 if it was a promise of something coming to him that maybe I
25 could extend her life.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

65

1 Q. What did you do about finding some money?

2 A. I went to the cashier.

3 Q. All right. And what -- and were you able to get any
4 money?

5 A. Yes, I was. Karen got the cash register open. I
6 reached in there and purposefully grabbed twenty-two dollars
7 because I wanted something that would kind of rile him
8 quickly and be low in value to take back to try to get some
9 kind of satisfaction.

10 She then handed a phone to me, which was the 911
11 operator. I made it imperative to her that this was a
12 really bad situation and that, you know, this man had a
13 knife and he was going to kill her, needed some help. And
14 she assured me that help was on the way.

15 Gave the phone back to the cashier. I got the twenty-
16 two dollars, left, went back down, rolled it up, handed it
17 out with my left hand in hopes that he would, perhaps, try
18 to take the knife up to grab it, but he'd obviously knew not
19 to do that.

20 And he got the money away from me, counted it, said
21 it's not but twenty-two dollars here. And I told him, I
22 said, man, this is right at closing. They've already
23 deposited their money. I said, you need to get yourself out
24 of here. I said, the cops are right on their way.

25 So he told her to be still, not to get up. Told me to

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

66

1 back up. And he got up. He came straight up the aisle that
2 he was coming from. I went around the other aisle to kind
3 of make a path in case -- 'cause I did not know where Karen
4 was at at the time, and met at the headway area at the front
5 of the store.

6 He saw Karen back over toward the clothing area. And
7 there he made the statements, I see you on the phone over
8 there. And he made like a gesture to go toward that way.
9 And I said, nah, don't need to do this, you need to get on
10 out of the store, man.

11 Stepped out the door. I held it open for him. He kept
12 the knife tucked down toward his belly area the whole time.
13 And when he got outside the door, I looked and I said, it's
14 Peter, isn't it? And he said, what? And he turned around
15 and what it was was I had seen the police car in the
16 reflection of the bank building across the street. And I
17 was trying to get him turned toward the cops. And he saw
18 them at that time when he did turn and he took off. And I
19 went back inside and secured the door and went back to
20 Sharon.

21 Q. Was there any particular reason you called him that
22 name or used that name?

23 A. Well, he had a black hat with a P on it. And I was
24 trying to think of something to get him to turn toward the
25 police. I thought maybe something may happen to make things

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

67

1 stop right then. A lot of things go through your mind. And
2 that's the reason why.

3 Q. All right. I'm going to show you what has been marked
4 State's exhibit 1 and exhibit 2. And I'd like you to look
5 at the box, State's exhibit 1, and tell me, first of all, if
6 it's in a sealed condition. Take a minute to check it.

7 A. Yes, sir.

8 Q. Okay. If we can get some scissors, I'm going to ask
9 you to cut open one of the sides of the box, and outside the
10 presence of the jury, in your lap, take a look at what's
11 located in that box and tell me if you recognize it.

12 A. Somebody wraps good Christmas presents.

13 Q. I'll just remind you to do that in your lap. In your
14 lap, sir, looking at it.

15 A. Yes, sir.

16 Q. You recognize the item?

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. It's a Kershaw drop point knife, single blade, lock
20 opening.

21 Q. Okay. Keeping it in your lap, this is not in evidence
22 at this point, is there -- what about the knife makes you
23 recognize it?

24 A. One is the drop point knife from here, the locking
25 section that's up above here on the black tier and the

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

68

1 enveloped section that's on this lock in right here that
2 locks and holds the bolts together.

3 Q. All right. If you'd take that box back into your lap,
4 put the knife back in the box.

5 A. Yes, sir.

6 Q. And where do you recognize that knife from, sir?

7 A. From the night of the attack on Ms. Sharon Taylor at
8 Dollar General Store.

9 Q. Let me direct your attention now to State's exhibit 2.
10 And I'll ask you if that is the denominations of money that
11 you provided to the individual who was attacking your
12 girlfriend ---

13 A. Yes, sir.

14 Q. --- that evening?

15 A. It is.

16 Q. Okay. Let me show you now State's exhibit 3 and
17 State's exhibit 4. I'm showing you State's exhibit 3 and
18 State's exhibit 4. First of all with State's exhibit 3,
19 indicated as a 911 recording, do you recognize that disk?

20 A. Yes, sir, I do.

21 Q. And why do you recognize that disk?

22 A. It has my initials on it here, sir.

23 Q. So you've listened to that ---

24 A. Yes, sir.

25 Q. --- recording?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

69

1 A. Yes, sir, I have.

2 Q. And I think you've testified that for a portion of time
3 you were on the phone with the 911 dispatcher, is that
4 correct?

5 A. Yes, I was.

6 Q. Have you listened to that portion of the 911 call where
7 you're talking with the dispatcher and is it an accurate
8 reflection of the conversation you had with the 911
9 dispatcher?

10 A. It is.

11 Q. All right. Let me now turn your attention to State's
12 exhibit 4 identified as a surveillance video from Dollar
13 General. Do you recognize that disk, sir?

14 A. Yes, sir, I do.

15 Q. Did you also initial that disk?

16 A. I did.

17 Q. Okay. And have you viewed, in particular, the first,
18 second and nine segments of that disk?

19 A. I have.

20 Q. All right. And are -- do those segments accurately
21 reflect the events of the -- on the evening on or about 9:00
22 pm on April the 14th of 2013?

23 A. They do, sir.

24 Q. All right.

25 **MR. FRETWELL:** State's exhibit 4 -- Your Honor, at this

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

70

1 time, for the limited purpose of exhibiting what the witness
2 has described as an accurate reflection of the events of the
3 camera angles one, two and nine on this surveillance video,
4 I'd ask that this item be moved into evidence for that
5 limited purpose at this time.

6 **THE COURT:** Any objection to that from the Defense?

7 **MR. CULBERTSON:** Your Honor, if it's my correct
8 understanding that they intend at this time to only move
9 sections one, two and nine into evidence, am I correct ---

10 **THE COURT:** Okay. What you want to do is, and correct
11 me if I'm wrong, solicitor, you want to play sections one,
12 two and nine for the jury?

13 **MR. FRETWELL:** That's correct, Your Honor.

14 **THE COURT:** All right. So is there any objection to
15 those portions of the disk being entered into evidence and
16 played to the jury?

17 **MR. CULBERTSON:** My concern, Your Honor, is that
18 assuming at some point this disk is going to go back to the
19 jury for them to review, if they so choose, ---

20 **THE COURT:** Well, ---

21 **MR. CULBERTSON:** --- I'm just concerned about how ---

22 **THE COURT:** If there's more -- if there's multiple
23 segments on it and the whole disk is not in evidence, then
24 the jury'll have to -- would have to come back to the jury
25 room, I mean, come back to the courtroom to see the segments

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

71

1 that would be played.

2 **MR. CULBERTSON:** And that's my concern, Your Honor. I
3 don't want to admit -- I don't want to concede to the whole
4 disk ---

5 **THE COURT:** I appreciate that. So all that's being
6 offered into evidence is segments one, two and nine,
7 correct, solicitor?

8 **MR. FRETWELL:** That's correct.

9 **THE COURT:** And that's all that would be played for or
10 the jury would be allowed to see. So there's no objection
11 ---

12 **MR. CULBERTSON:** I have no ---

13 **THE COURT:** --- to that?

14 **MR. CULBERTSON:** I have no objection to that given the
15 technological ability to only allow access to those for the
16 jury.

17 **THE COURT:** Very good. All right. So sections one,
18 two and nine are in evidence and may be published to the
19 jury if you so choose.

20 **MR. FRETWELL:** Thank you, Judge.

21 (Whereupon State's exhibit 4, sections one, two and
22 nine, was admitted into evidence)

23 Q. Mr. Nash, could you tell the jury what the physical
24 description you gave to the police about the suspect that
25 attacked your -- your girlfriend that evening?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

72

1 A. At that time my concentration -- I had seen this
2 gentleman down the dog food aisle as I had stood to the
3 front before I went outside with the lady. Very briefly I
4 saw him in the dog food area.

5 Upon the attack that came upon Ms. Taylor, myself, the
6 way I react things, I react on eyes quite well, facial
7 expressions, how intent somebody is on what they're going to
8 do. That's what I locked in on.

9 Physical appearances, I knew he had a white shirt. It
10 was rather dirty. His beige shoes and stuff, his walk
11 mannerisms, but more intently I was concentrated on his arm
12 movements and his face. He was a shorter man than I was,
13 you know, but that, you know, as far as the face log-in,
14 that was my primary goal and where I went to on that.

15 Q. And you mentioned his shirt being white and you said a
16 little bit -- it was dirty?

17 A. Yes, sir. It appeared to have some kind of -- not real
18 blotchy, but somewhat appearance of some dirt on it.

19 Q. Okay. And you said that he had some boots or shoes?

20 A. Yeah, they were kind of like a high top boots that I
21 remember and stuff, everything on at the time, yes, sir.

22 Q. All right. At this time I would ask if you recognize
23 the individual who attacked your girlfriend, Sharon Taylor?

24 A. Yes, sir, I do.

25 Q. Can you point him out to the jury?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

73

1 A. The gentleman right here in the blue shirt.

2 (Whereupon the witness pointed to the Defendant)

3 **MR. FRETWELL:** Let the record reflect, Your Honor, that
4 the witness has identified the Defendant, ---

5 **THE COURT:** Yes, sir.

6 **MR. FRETWELL:** --- James Bailey.

7 Q. All right. Mr. Nash, let me show you what's been
8 marked as State's exhibit 5. Do you recognize this item?

9 A. Yes, sir, I do.

10 Q. And what is State's exhibit 5?

11 A. That by all appearances and everything, it seems to be
12 the exact hat that the Defendant had on on that night in
13 question.

14 Q. And what, if anything, did you notice about what was on
15 the Defendant's -- like on his hands?

16 A. Gloves.

17 Q. Okay. Let me show you what's been marked as State's
18 exhibit 6. Are State's exhibit 6 consistent with the gloves
19 that you recall the Defendant wearing that evening?

20 A. Yes, sir.

21 Q. And finally, let me show you State's exhibit 7. I'll
22 just ask you if State's exhibit 7 is consistent with the
23 shoes you saw him wearing that evening?

24 A. It appears to be the same type, sir. Same color. Same
25 format.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

74

1 Q. All right. At this time I want to show you what I've
2 marked as State's exhibit 8 through 13. Look at State's 8
3 through 13 and tell me if you recognize what's in those
4 photographs.

5 A. Okay. This is the 10169 store on the entrance section
6 to the right as you enter.

7 Q. Is that an accurate reflection of the interior of that
8 store?

9 A. Yes, sir, it most certainly is, ---

10 Q. And that's ---

11 A. --- ceiling and all.

12 **THE COURT:** Could you identify which exhibit that is,
13 please, sir?

14 A. Yes, sir. As you come in through the entrance, this
15 will be to the right here. Over here is the underwear
16 section and such as that. It goes down. Over here is the
17 card section. Behind that is the party goods, sir.

18 Q. Mr. Nash, ---

19 **THE COURT:** And up at the top right, what is the
20 number?

21 A. This would be State exhibit 8.

22 **THE COURT:** All right. Thank you, sir.

23 A. Yes, sir.

24 Q. And look at the rest of the photographs and in total do
25 they accurately reflect the interior of that store on that

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

75

1 evening?

2 A. Yes, sir. State exhibit 9 is a straight forthcoming
3 all the way down from the front door. State exhibit 10 is a
4 straight from the door adhering to the cash wrap. State
5 exhibit 11 is coming from the front door to the left toward
6 the manager's office. State exhibit 12 is along the vitamin
7 aisle to the breakroom. And State exhibit 13 is a frontal
8 shot of the exterior of the store.

9 Q. And do those all accurately reflect the interior of the
10 residence -- of the business on that evening?

11 A. Yes, sir, the 10169 store. Yes, sir, it is.

12 MR. FRETWELL: Your Honor, at this time the State moves
13 exhibits 8 through 13 into evidence.

14 THE COURT: Any objection?

15 MR. CULBERTSON: No objection. No, sir.

16 THE COURT: All right. 8 through 13 are in evidence
17 without objection. You may proceed.

18 (Whereupon State's exhibits 8 - 13 were admitted into
19 evidence)

20 MR. FRETWELL: And, Your Honor, we'd like to publish
21 the ---

22 THE COURT: Any objection to publication?

23 MR. CULBERTSON: On ---

24 THE COURT: All right, sir.

25 MR. CULBERTSON: --- 8 through 13 ---

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

76

1 **THE COURT:** 8 through 13.

2 **MR. CULBERTSON:** No objection.

3 **THE COURT:** All right, sir. So you may publish them.

4 **MR. FRETWELL:** Thank you, Your Honor.

5 Q. Mr. Nash, I'm going to ask you to step around, out of
6 the seat, and come down here.

7 (Whereupon the witness left the witness stand)

8 Q. Just to give the jury a little bit of context for this
9 surveillance video, we use these pictures. I'm going to
10 have you describe the store.

11 **THE COURT:** Can you bring the lights down a little bit,
12 ma'am. The other one. The next one.

13 **MR. FRETWELL:** Actually, Ms. Sims, could you turn that
14 one light back on -- off or on and I'm going to turn this
15 lamp off. I think we can see a little bit clearer if that
16 -- yeah, right here. There we go.

17 Q. Mr. Nash, using your pointer, can you just kind of
18 orient the jury as to what we're seeing in that particular
19 picture?

20 A. Yeah. If you come in from the -- right in this area
21 here, this will be your shopping cart area. Over in this
22 area is your underwear section. This wall goes straight
23 down, all the way this side. This, of course, right in here
24 is your cards and stuff like that and your party goods as
25 you can see from behind there.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

77

1 Q. And where's the door?

2 A. The door would be in this general area right in here.

3 You enter in, get your buggy and go straight to here or cut
4 right into here and go to this section just straight down
5 through the store.

6 Q. All right. And the cash registers are where?

7 A. They'll be back over in this area right here, sir.

8 Q. All right. I'm going to show you State's exhibit 9.

9 A. Okay. This comes in from where we were at a while ago
10 at the front door. And over here is the roses. And right
11 in this area was the shopping carts. This goes straight
12 down -- this goes straight down the center of the store
13 here. Over to this side in this general area is the check-
14 out section all right here, either this side or this side
15 right here.

16 Q. And you mentioned in your testimony that you saw the
17 Defendant in the pet food area. Can you show the jury ---

18 A. Yeah. This'll be back in the general area going right
19 through right in here. You'll go over to the right. And I
20 was back in this section right here when I saw him at that
21 time.

22 Q. All right. Now State's exhibit 10.

23 A. Okay. Now we're standing at the front door, which
24 would be here coming in. This is the cash wrap, right side
25 and left side of the cash warp.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

78

1 Going to your left right in here goes right back to
2 come in into the breakroom and into the manager's office.
3 This right side, if you come in right here, was where I took
4 my trail going back and into the next aisle back down this
5 way where the altercation was.

6 Q. And as best you can with this particular picture, can
7 you show the jury in the general direction of where Sharon
8 was being held on the floor?

9 A. It's on down. If you were to go, not in this
10 particular aisle, this one right over to the next one and
11 you went straight down, it stops with another aisle starting
12 there. There's can goods to the left side and your bakery
13 goods, sugars, salts, such as that, that's where it would
14 have been at, way back in here in this area.

15 Q. And State's 11.

16 A. Okay. This goes back from the front door, turns to the
17 left. This general area is going to -- to the left here
18 will go back to the breakroom. And as you can see this
19 mirror -- one way mirror glass, right here is the general
20 manager's office. You go down this aisle right in here, and
21 straight on down is where the assault and everything and all
22 was happening at.

23 Q. State's 12.

24 A. Okay. As proceeded before a while ago, this goes into
25 the breakroom area right here. And then you cut back inside

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

79

1 here. And there's another door area that goes to the
2 manager's office.

3 Q. All right. And finally State's 13.

4 A. Okay. As we started at the very first, this is our
5 front door entrance there. To the right here is a shopping
6 cart. Going back to the left right in here is the cashier
7 area. And then going back into the side there, comes back
8 around to the breakroom and into the manager's office.

9 Q. All right. I'm going to have you actually stay right
10 there because I'm going to play at this time ---

11 **MR. FRETWELL:** Your Honor, permission to publish
12 State's exhibit, I believe it's 4. We're going to play
13 tracks one, two and nine. And, Ms. Sims, if you would cut
14 that light off. I think that actually might help a little
15 bit on this. Thank you.

16 Q. Mr. Nash, there's no audio to this surveillance. So at
17 any time, if you see something that's happening on the
18 screen that you could explain or ---

19 A. All right.

20 **MR. CULBERTSON:** I'm going to object to that, Your
21 Honor.

22 **THE COURT:** I think he needs to respond to questions,
23 solicitor.

24 **MR. FRETWELL:** All right.

25 **THE COURT:** So if you have questions, he can respond.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

80

1 Thank you.

2 MR. CULBERTSON: Thank you, sir.

3 (Whereupon the video was played for the jury)

4 Q. Do you recognize the individual outside the door at
5 this point, sir?

6 A. I could recognize by the hat and by the shoes.

7 Q. Okay.

8 A. The build of the character. The jacket, did not.

9 Q. Okay. And who do you believe that individual to be?

10 A. I believe it to be the Defendant, Mr. Bailey.

11 Q. You're saying that when you saw him in the store he did
12 not have a jacket on?

13 A. He did not have a jacket on, no, sir.

14 Q. Is this you, Mr. Nash?

15 A. Yes, it is.

16 Q. Okay. And the door is, obviously, unlocked at this
17 point?

18 A. Yes, sir.

19 Q. Do you remember what time they locked the door to the
20 store?

21 A. 9:00 was the proper time to -- anywhere to a variance
22 of a few seconds either way at any time that I ever saw.

23 Q. And who is this?

24 A. That is Ms. Taylor.

25 Q. Okay. That's Sharon?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

81

1 A. Yes, it is. She's locking the door for the 9:00 call-
2 in.

3 Q. And what are you doing at this point?

4 A. Unlocking it for one of the customers there.

5 Q. Now, what are you doing at this point, sir?

6 A. This is the lady with the things of purchases she made.

7 And I'm escorting her outside. It was dark. It was late.

8 Closed up. And I needed to evacuate so that Ms. Taylor

9 could make her final countdown of the business and close the
10 store good.

11 Q. And during that time what would you typically do when
12 she was closing down the store?

13 A. I would be outside and more or less just kind of
14 keeping a visual until she came outside.

15 Q. Mr. Nash, I turned around a moment ago, and I think
16 that's the big point I was going to ask you, have you seen
17 the Defendant enter the store at this point?

18 A. Yes, sir, I have.

19 Q. And what's -- can you describe what's going on in the
20 video right now?

21 A. Right now she's informed me that she's having a fight
22 that's been put upon her by a customer, Ms. Taylor, and
23 instructing me as I asked where it was at, and I'd gone to
24 it.

25 Q. And that is?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

82

1 A. That is Karen there, yeah, the cashier.

2 Q. The lights just kind of dimmed on there. Do you know
3 what that is?

4 A. Yes, sir. The company has a cool-down of where they
5 dim out some of the lights for a lifesaving thing or a
6 lightsaving operation to be a few minutes after closing and
7 stuff.

8 Q. So we're now after closing, is that correct?

9 A. Yes, sir, most definitely.

10 Q. And you are doing what at this point?

11 A. At this time I have come now from the back. I have
12 been handed the phone by Karen. I am on the phone with 911.
13 I'm looking outside the door as I walk to see if I see
14 anybody with blue lights or anything on it, but nothing at
15 that time and trying as best I can to assimilate what
16 passage or thing I need to get done. And then I ---

17 Q. Is this the point which you get the money ---

18 A. Yes, sir, it is.

19 Q. Okay.

20 A. I've handed the phone back to Karen. She's already now
21 opened up the till, giving me time to get the money out. I
22 had taken the money and gone back to the site of the
23 assault.

24 Q. Is that the individual you described earlier?

25 A. Yes, sir. And I get him to right about there and I ask

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

83

1 him the question, it's Peter, isn't it, to get him to turn
2 to the police. I had seen them back up on this side here.

3 There was a bank across the road. And I had seen a
4 reflection in the glass over there of a police officer back
5 down here. And I was trying to get him turned at that time
6 toward that police officer of which he was already on it.

7 Q. And did you observe the ---

8 A. The chase?

9 Q. --- the chase?

10 A. Yes, I did.

11 Q. Okay. All right. Mr. Nash, if you'll go back and --
12 I'm sorry. We have two more clips. I'm going to show you
13 now the second camera angle.

14 A. All right, sir.

15 Q. This is the -- what area of the store?

16 A. This is the cash wrap, cashier's section, which you can
17 see by Sharon going into her area there.

18 Q. Now, Mr. Nash, I don't think I've ever -- I'm not
19 familiar with the word cash wrap. What are you calling ---

20 A. Being that it wraps basically around the cashier inside
21 here. You've got a cashier here and a cash register section
22 that's here that is a register on both sides and stuff and
23 everything. They use the turn-tables for the bags and such
24 as that in there.

25 Q. So you're calling that whole section the cash wrap ---

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

84

1 A. Yes, sir. From here around to here.

2 Q. All right. From this angle and where this camera is
3 faced can you show the members of the jury where this attack
4 occurred?

5 A. Okay. We're going to go back down this way and over
6 down this aisle over here. It'd be back up on this side
7 right in here.

8 Q. Okay. And can you show the members of the jury where
9 the pet food area is?

10 A. It's way back up here on this other side. It'll be
11 back down and over this way.

12 Q. Okay. And this is basically a camera that's ---

13 A. It is a fixed selective camera that is right next to
14 the front door up overhead.

15 Q. Okay. Can you see the back aisle of the store in this
16 particular camera?

17 A. No, sir, you cannot. There is -- there's another
18 camera that is in the back section back there that shows --
19 they've got spotty cameras all over the -- in different
20 areas of this store for different security reasons, both for
21 customers and store as well.

22 Q. Do you know what Sharon is doing at this point?

23 A. She's closing ---

24 **MR. CULBERTSON:** I object ---

25 A. --- down the register ---

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

85

1 **MR. CULBERTSON:** I object to the form of that question.

2 It calls for speculation on his part.

3 **THE COURT:** I do not believe so. I'm going to allow
4 the question to be answered. Go ahead, sir.

5 A. She is closing down the registers for the night on that
6 side. It was a -- it's a progress that I've watched her
7 many times do.

8 Q. Does this camera seem to be showing the activities that
9 the other camera was showing just from a different angle at
10 the same time, ---

11 A. Yes, sir.

12 Q. --- or is it a different time?

13 A. It's at the same time. It's just different, you know,
14 from this legend of looks and stuff.

15 Q. Who do you see over to the right on that?

16 A. That would be Mr. Bailey there, the Defendant.

17 Q. Is that the general ---

18 A. Yes, sir.

19 Q. --- area where you saw him?

20 A. Yes, sir.

21 Q. And what else is in that general area of the store?

22 A. That would be -- from where he's at right there, goes
23 down to the clothing area and then goes down into the area
24 of the pet food and such in that area.

25 Q. Okay. Mr. Nash, when you use that red pointer and it

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

86

1 goes off the screen, not all the jurors can see that. So if

2 ---

3 A. I'm sorry.

4 Q. --- you'd just keep it -- that's all right. Just keep
5 it on the screen.

6 A. All right.

7 Q. I know this seems like a long time, but do you know how
8 long from the time you observed the Defendant walk into the
9 store til the Defendant left the store? Do you know how
10 long of time that was?

11 A. Best guess is until -- he'd only come in just a minute
12 or two before closing the store.

13 Q. Okay.

14 A. So the whole thing, subjectively, didn't -- didn't
15 occur but just a few minutes, really. It was just very
16 quick.

17 Q. Do you see the lady that you helped out?

18 A. Yes, sir. If you'll notice I had -- from right here I
19 had turned and came over toward ---

20 Q. Mr. Nash, ---

21 A. --- this area ---

22 Q. Okay. Mr. Nash, keep that red dot on the screen.
23 Thank you.

24 A. And I had come toward this area. I had seen the
25 Defendant down at the pet aisle. And then I proceeded and

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

87

1 came back up to the right side up in here and came back up
2 and around. At the time he was pulling on a pet bag of dog
3 food or something at that time or cat food. I can't
4 remember exactly which to be quite honest. I didn't really
5 give it a second thought. Wish I had.

6 Q. And do -- back to the question, do you see the lady
7 that you had helped outside with the bags of merchandise?

8 A. Yes, sir.

9 Q. Okay. When she comes back into focus, if you'd just
10 point her out.

11 A. Right there she is now. This is the lady that I had
12 helped out with her bags and stuff and everything.

13 Q. Okay. Do you recall at that time how many other
14 individuals besides the two employees we see here, you and
15 this lady, do you know if any other people were in the store
16 at that point?

17 A. At that progress I thought there was the gentleman in
18 there, being Mr. Bailey, but I thought he was proceeding to
19 come back out and up and out of the building.

20 Q. Were you aware of anybody else being in the store
21 besides Mr. Bailey?

22 A. Was not.

23 Q. Okay. Is that the individual that you saw ---

24 A. Yes, sir. Yes, sir, it is.

25 Q. All right. Is that -- dimming of the lights, is that

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

88

1 ---

2 A. Yes, sir.

3 Q. And what are you doing at this point?

4 A. Come back around here to get with her to get over to
5 the register. She hands me the phone. And then I am
6 talking with 911 operator toward the front door section,
7 look outside, telling her to get the drawer open.

8 Q. Do you recall how Karen appeared to be at that time?

9 A. Highly excited, very nervous for not only Sharon's
10 well-being, but also for her own. She didn't know what she
11 was facing.

12 Q. How about yourself? How were you feeling at this
13 point?

14 A. Extremely stressed, not knowing how this thing was
15 going to end, threatened in so many different ways. It's an
16 indescribable feeling. You try your best to try to help
17 anyone that's in trouble, but when it's somebody you love,
18 it's totally different.

19 Q. Now, you just appeared in the view.

20 A. Yes, sir.

21 Q. Has the Defendant left the store at this point?

22 A. Yes, he has.

23 Q. Can you show the jury the way that the Defendant left
24 the store?

25 A. Okay. He had come out from this side. I came out

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

89

1 following from this side. He went from here and out the
2 front door with me toward this side at that time.

3 Q. And what were you returning back there to do?

4 A. To see -- to see how Sharon Taylor was.

5 Q. And did you and Sharon then come back up to the front?

6 A. Yes, we did.

7 Q. All right. The Defendant does not re-enter the store
8 at any time after he leaves, is that correct?

9 A. No, sir, he did not.

10 Q. All right.

11 **MR. FRETWELL:** If we can stop the video.

12 Q. And, Mr. Nash, if you'll briefly re-take your seat.

13 (Whereupon the witness went back to the witness stand)

14 Q. Mr. Nash, would you tell the jury, what concern did you
15 have when you were back there and you saw Sharon on the
16 ground, what concern specifically did you have that caused
17 you to go and get the money from the cash register?

18 A. I thought she was going to die.

19 Q. Is there any question about that in your mind?

20 A. No.

21 Q. Please answer any questions that Mr. Symmes Culbertson
22 may have.

23 **THE COURT:** Cross examination.

24 **MR. CULBERTSON:** Thank you, sir. Thank you, Mr.
25 Fretwell.

TOM NASH - CROSS EXAMINATION BY MR. CULBERTSON

90

1 Cross Examination by Mr. Culbertson:

2 Q. Mr. Nash, I'll try not to keep us here all night. So a
3 couple of quick questions I'll have. Number one, how long
4 -- how long did you actually spend in the Marine Corps?

5 A. Thirteen months.

6 Q. All right. And during that thirteen month time in the
7 Marine Corps did you learn about closed arm combat, or hand-
8 to-hand combat or any sort of classes along those lines?

9 A. I taught it, sir.

10 Q. You taught it?

11 A. I did.

12 Q. So you taught it for less, I mean, obviously, being in
13 the Marine Corps for thirteen months you didn't teach the
14 classes for that long.

15 A. I only taught it for four months of the thing, sir.

16 Q. Okay. Thank you, sir. Now, Mr. Nash, a couple of
17 things you mentioned I want to kind of clean up. You
18 mentioned that when my client, Mr. Bailey, came in the store
19 your attention was drawn to him. And specifically you were
20 looking at his eyes is, I think, what you said you look at
21 when somebody comes near you. You look at their eyes and
22 get an idea about what their intentions might be. Do you
23 recall saying that?

24 A. I do recall saying that.

25 Q. All right. Did you do that with my client, Mr. Bailey?

TOM NASH - CROSS EXAMINATION BY MR. CULBERTSON

91

1 A. Not upon entering the store.

2 Q. All right. At some point when he was in there did he
3 turn in such a way or did something that made you look at
4 him in that manner?

5 A. Only when he was on the floor.

6 Q. Only when he was on the floor?

7 A. Only on the floor.

8 Q. Okay. Okay. You would agree with me, I think, I hope,
9 we'll see, that in this video we watched I counted right
10 around the store closing, door locking time, I counted five
11 people that came in the store. There was one white male,
12 one white female, another white male, black male and a black
13 female. Do you recall seeing that on the video we just
14 watched?

15 A. My purpose of looking at the video was to see this
16 gentleman there seated beside you, Mr. Bailey. That was ---

17 Q. I understand that's your purpose here today.

18 A. Yes, sir.

19 Q. That wasn't my question.

20 A. I know what your ---

21 Q. My question was ---

22 A. --- question was.

23 Q. --- did you see one white male, one white female,
24 another white male, a black male and a black female come
25 into the store on that video we just watched?

TOM NASH - CROSS EXAMINATION BY MR. CULBERTSON

92

1 A. I saw some of what you saw.

2 Q. All right. And did you see on that video we just
3 watched one white male leave, another white male leave, a
4 black female leave and another white female leave before my
5 client, Mr. Bailey, left the store? Do you recall seeing
6 that on the video?

7 A. I want to say I saw some of it, but I didn't see them
8 all.

9 Q. Okay. And you'll agree that what we also saw on that
10 video was you unlocking the door to let people out and in?

11 A. Correct.

12 Q. Including my client, is that correct?

13 A. That's correct.

14 Q. Okay. And in addition to those five people I just
15 talked about coming in and out of the store, inside the
16 store was yourself and two other employees of the store?

17 A. Karen and Ms. Taylor.

18 Q. All right. That's two other employees of the store?

19 A. I'm not an employee.

20 Q. Two employees of the store were ---

21 A. Two employees ---

22 Q. --- in there?

23 A. --- of Dollar General.

24 Q. You were in there?

25 A. Yes, sir.

TOM NASH - CROSS EXAMINATION BY MR. CULBERTSON

93

1 Q. And these five other people came and went on that video
2 we just watched?

3 A. Okay.

4 Q. Is that correct?

5 A. I don't know, sir.

6 Q. You weren't sitting here watching it with the little
7 pointer ---

8 A. I'm not counting the other people. I'm counting one
9 gentleman I'm looking for, sir.

10 Q. Okay. One person and one person only that you're
11 concerned about today. It doesn't matter to you what
12 anybody else may or may not have done.

13 **MR. FRETWELL:** Objection, Your Honor. It's
14 argumentative.

15 **THE COURT:** I'm going to allow the question.

16 **MR. FRETWELL:** Thank you, sir.

17 **MR. CULBERTSON:** I'll withdraw it, Your Honor. I'm
18 done.

19 **THE COURT:** Redirect, solicitor?

20 **MR. FRETWELL:** No, Your Honor. No questions further.

21 **THE COURT:** Very good, sir. You may step down. Thank
22 you very much. All right.

23 Ladies and gentlemen, we are going to conclude for the
24 evening. I'm going to ask that you be back tomorrow
25 morning. I'd like to start tomorrow morning at 9:30. So if

1 you'll -- Madame Bailiff will give you some instructions
2 about coming back and where to assemble so that you can be
3 in the jury room so that we can come into the courtroom at
4 9:30. So they might have you there a little bit earlier so
5 that they can make sure that y'all are present.

6 Now, when you go home, you see your husband, wife,
7 girlfriend, boyfriend, person down the street, they happen
8 to know you're on a jury or on the jury panel, that's fine,
9 but you can't talk about it with them. I told you I don't
10 want y'all discussing this case until the very end when I
11 give it to you for your deliberations and your unanimous
12 decision. So please don't talk about it. Don't allow
13 anybody to talk to you about it.

14 And remember, you are not researchers. You are not
15 investigators. You may not look up anything on the internet
16 or do any kind of research on your own. You will decide
17 this case solely and completely on the facts and evidence
18 you hear in the courtroom and the law that the Court
19 provides to you.

20 So with that, you're now excused. See you back
21 tomorrow morning, 9:30. Thank you very much. Everyone else
22 remain seated while the jury retires, please.

23 (Whereupon the jury exited the courtroom at 5:20 pm)

24 **THE COURT:** All right. Solicitor, anything further at
25 this point in time?

1 **MR. FRETWELL:** Judge, I think -- I don't know when you
2 want to take this up, but we can certainly take it up
3 tomorrow. But I know that when we were in chambers we
4 discussed the possible Jackson v. Denno ---

5 **THE COURT:** Yes, sir.

6 **MR. FRETWELL:** --- and introduction of the Defendant's
7 statement in this case. If indeed I want to introduce that
8 statement at some point we would need to have some
9 discussion about to what extent, which version of the
10 redaction would come in.

11 **THE COURT:** Well, I guess I want you to make your
12 decision if you're going to do it.

13 **MR. FRETWELL:** Yes, sir.

14 **THE COURT:** All right? So how about tomorrow morning
15 when we're here and 9:15 you tell the Court, yes, I'm going
16 to or, no, I'm not. One of the two.

17 **MR. FRETWELL:** Yes, sir.

18 **THE COURT:** All right? And then we'll decide what
19 we're going to do, all right?

20 **MR. FRETWELL:** Yes, sir. Thank you, sir.

21 **THE COURT:** All right.

22 **MR. CULBERTSON:** Thank you, sir.

23 **THE COURT:** All right. Anything, Mr. Culbertson?

24 **MR. CULBERTSON:** Your Honor, just for -- I was unclear
25 as to when you wanted me and/or us or everybody back in this

1 courtroom.

2 **THE COURT:** 9:15.

3 **MR. CULBERTSON:** Thank you, sir.

4 **THE COURT:** Thank you very much. See y'all in the
5 morning. Appreciate it.

6 (Hearing Ended at 5:22 pm)

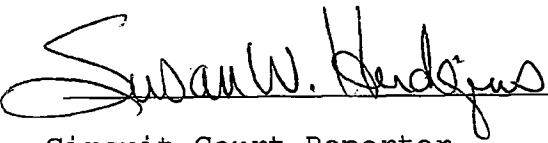
7 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th day of October 2014.

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

January 2, 2015


Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENRAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 James Eddie Bailey,) 2013-GS-23-9292
6 Defendant.) October 9 - 10, 2014
7 Greenville, South Carolina

8
9
10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, JUDGE; and a jury
12
13

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

15 ALLEN FRETWELLL, ESQUIRE
16 Attorney for the State

17 SYMMES WATKINS CULBERTSON, SR., ESQUIRE
18 Attorney for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

INDEX

<u>WITNESSES</u>	<u>PAGE</u>
KAREN NARTOWICZ (SW)	
Direct examination by Mr. Fretwell	7
SHARON TAYLOR (SW)	
Direct examination by Mr. Fretwell	11
Cross-examination by Mr. Culbertson	40
Redirect examination by Mr. Fretwell	47
NATHANIEL BRUCE EMILY (SW)	
Direct examination by Mr. Fretwell	51
Cross-examination by Mr. Culbertson	76
MICHAEL JOSEPH GIOVANNI (SW)	
Direct examination by Mr. Fretwell	83
Cross-examination by Mr. Culbertson	101
MATTHEW TYLER MAY (SW)	
Direct examination by Mr. Fretwell	108
Cross-examination by Mr. Culbertson	110
Redirect examination by Mr. Fretwell	127
CIERA RENEE HILTON (SW)	
Direct examination by Mr. Fretwell	128
Cross-examination by Mr. Culbertson	135

1	Closing arguments	157
2	Jury charge	180
3	Verdict	202
4	Sentence	207
5	Certificate	215
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2	S-1	silver knife		135
3	S-2	U.S. currency		118
4	S-3	9-1-1 recording		20
5	S-4	surveillance video		24
6	S-5	Baseball hat		95
7	S-6	Gloves		95
8	S-7	Tan boots		68
9	S-8	Photograph		
10	S-9	Photograph		
11	S-10	Photograph		
12	S-11	Photograph		
13	S-12	Photograph		
14	S-13	Photograph		
15	S-14	Photograph		27
16	S-15	Photograph		27
17	S-16	Photograph		27
18	S-17	Photograph		27
19	S-18	Photograph		27
20	S-19	Photograph		27
21	S-20	Photograph		27
22	S-21	Map		62
23	S-22	Pants		68
24	S-23	Video		67
25				

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-24	Photograph		70
4	S-25	Photograph		70
5	S-26	Photograph		70
6	S-27	Photograph		70
7	S-28	Photograph		70
8	S-29	Photograph		71
9	S-30	Photograph		71
10	S-31	Piece of black cloth		99
11	S-32	U.S. currency		118
12	S-33	South Carolina identification card		119

13

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Competency to stand trial evaluation		
C-2	Question from the jury		193
C-3	Question from the jury		193
C-4	Question from the jury		201
C-5	Question from the jury		201
C-6	Notice of intent		208
C-7	Affidavit		208
C-8	Affidavit		208
C-9	Copies of indictments and sentences		209

Karen Nartowicz
Direct examination by Mr. Fretwell

1 (Proceedings October 9, 2014)

2 (The following takes place outside the presence of
3 the jury.)

4 THE COURT: All right. Solicitor, is the state ready
5 to proceed?

6 MR. FRETWELL: Yes, Your Honor.

7 THE COURT: And the defense?

8 MR. CULBERTSON: Yes, Your Honor.

9 THE COURT: All right. Very good.
10 Ask the jury to come in, please, ma'am.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Solicitor, your next witness,
14 please.

15 MR. FRETWELL: May it please Court, Your Honor. The
16 state would call Karen Nartowicz.

17 KAREN NARTOWICZ, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Please state your name for the record.

20 THE WITNESS: Karen Nartowicz.

21 MR. FRETWELL: May it please the Court.

22 THE COURT: Yeah. Just one thing.

23 Madam forelady, y'all had sent a note about taking
24 notes.

25 First, we've already started the trial, so we're not

Karen Nartowicz
Direct examination by Mr. Fretwell

1 going to do that since we've already commenced the trial.

2 Also, this is not an exceptionally long trial. I
3 don't know that it would apply to y'all, but sometimes we
4 find jurors when they are taking notes, they concentrate on
5 what they're writing down and they just tune out the next
6 questions and answers that are given by the witness.

7 So, we normally don't allow the taking of notes unless
8 it's going to be an exceptionally long trial, which this
9 one is not going to be.

10 All right. Thank y'all very much.

11 THE FOREPERSON: Thank you, Judge.

12 THE COURT: All right. Go ahead, Solicitor.

13 MR. FRETWELL: May it please the Court, Your Honor.

14 DIRECT EXAMINATION BY MR. FRETWELL

15 Q Ms. Nartowicz, you live in Greenville now?

16 A Yes.

17 Q How long have you lived in Greenville?

18 A Since January of 2013.

19 Q Okay. And are you currently employed?

20 A No.

21 Q Okay. Were you employed in April of 2013 at the
22 Dollar General on Poinsett Highway?

23 A Yes.

24 Q And you were working there as a cashier?

25 A Yes.

Karen Nartowicz
Direct examination by Mr. Fretwell

- 1 Q Do you recall who was the manager on the evening of
2 April 14th of 2013?
- 3 A Sharon Taylor.
- 4 Q Okay. And that's the lady seated right back here?
- 5 A Yes.
- 6 Q Okay. At some point that evening, ma'am, did you make
7 a call to 9-1-1 shortly before or after closing time?
- 8 A Yes.
- 9 Q Okay. Let me show you what's been marked as State's
10 Exhibit 3. And I'll ask if you recognize this.
- 11 A Yes.
- 12 Q And how do you recognize it, ma'am?
- 13 A It has my initials on it.
- 14 Q Okay. And you see those initials there?
- 15 A Yes.
- 16 Q Okay. Have you listened to the portion of this 9-1-1
17 call where you talk to the 9-1-1 dispatcher?
- 18 A Yes.
- 19 Q Does that portion of the call accurately reflect the
20 conversation you had with that dispatcher?
- 21 A Yes.
- 22 Q Other than what's on this 9-1-1 call, do you have any
23 other recollection of what happened that evening?
- 24 A Basically, it was like he came in around 9:00. There
25 was a few other people in the store, but he loitered around

Karen Nartowicz
Direct examination by Mr. Fretwell

1 until the rest of the people, customers in the store, left.

2 Q And at the point at which you called 9-1-1, is the
3 rest of what happened -- are you basically narrating that
4 on the 9-1-1 call?

5 A I'm sorry?

6 Q Are you basically telling the dispatcher what's
7 happening on the 9-1-1 call?

8 A Yes, yes. He was already two aisles down, you know,
9 with her on the floor.

10 Q Okay. All right. And did you stay on the phone with
11 the 9-1-1 call -- operator until police arrived?

12 A Yes.

13 Q Okay. Ma'am, please answer any questions that Mr.
14 Culbertson has for you, ma'am.

15 THE COURT: Mr. Culbertson, cross-examination.

16 MR. CULBERTSON: No, thanks. I don't have any
17 questions.

18 THE COURT: Thank very much.

19 Do you wish the witness to be excused?

20 MR. FRETWELL: I do, Your Honor. She's asked that she
21 be excused.

22 THE COURT: Any objection?

23 MR. CULBERTSON: No objection.

24 THE COURT: All right. Ma'am, you're released from
25 your subpoena. You may go back to your regular duties.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Thank you.

2 THE WITNESS: Thank you.

3 (Whereupon, the witness was excused.)

4 MR. FRETWELL: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. FRETWELL: The state would call Sharon Taylor.

7 THE COURT: If you would, come forward, please, ma'am.

8 SHARON TAYLOR, having been
9 first duly sworn, testified as follows:

10 THE CLERK: Would you please state your name for the
11 record?

12 THE WITNESS: Sharon Taylor.

13 THE COURT: Go ahead, Solicitor.

14 MR. FRETWELL: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION BY MR. FRETWELL

17 Q Ms. Taylor, do you live in Greenville?

18 A Yes, sir.

19 Q Okay. And what part of Greenville do you live in?

20 A Travelers Rest.

21 Q How long have you lived in Travelers Rest?

22 A Pretty much all of my life.

23 Q And tell me about -- tell the jury about your family.

24 A Between Tom and I we have five children, 16
25 grandchildren ranging from the ages of 21 months to 17

Sharon Taylor
Direct examination by Mr. Fretwell

1 years old.

2 Q And those are your grandchildren?

3 A Yes.

4 Q Okay. And tell us about, a little bit about, your
5 education.

6 A I graduated from Travelers Rest High School. No
7 college. Just high school diploma.

8 Q And what did you do upon graduating from Travelers
9 Rest High School?

10 A I got married and went into fast food management.

11 Q Okay. And is that what you basically have been doing
12 since you graduated from high school?

13 A I did 24 years of fast food management, and then I
14 went into retail for various companies.

15 Q All right. And how long were -- what stores were you
16 working at when you managed a fast food restaurant?

17 A Hardee's.

18 Q And do you know about approximately how long you
19 managed the Hardee's?

20 A Twenty-four and a half years.

21 Q And how long have you been with the Dollar General
22 retail stores?

23 A Altogether ten years. I worked five years and quit
24 for a little while and went back, and I'm finishing up my
25 fifth year this June.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q Okay. And let me take you back to April 14th of 2013.

2 Okay. At that time were you employed as a manager by

3 Dollar General?

4 A Yes.

5 Q And what was your store location that particular

6 evening?

7 A 114 Poinsett Highway.

8 Q Okay. And can you tell me that evening what caused

9 you to be -- were you scheduled to work that day?

10 A No, sir.

11 Q Or do you recall why you were working that evening?

12 A I was supposed to be on a 3-day vacation. I got a
13 call from my boss who said that a manager that was supposed
14 to be on duty that night at my store was flipping out and
15 saying that she had to quit, she couldn't wait, she had to
16 go right then.

17 That was like maybe 6:30 or something till 7:00. And
18 he asked me could I come off my vacation and go to my
19 store. And I told him yes.

20 Q Okay. And have you watched any of the -- the video in
21 this case from -- from the surveillance video?

22 A Yes.

23 Q How you're addressed, is that normally how you would
24 be addressed if you were managing the store?

25 A No, sir. Usually I would be addressed in all black.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q Okay. So you had come in just for the latter part of
2 that evening, is that right?

3 A Yes.

4 Q Okay. How did you get there?

5 A My boyfriend Tom took me.

6 Q Okay. And what was your understanding about how you
7 would get home that evening?

8 A He would wait for me, because we lived all the way in
9 Travelers Rest. And since we were out and I wasn't
10 supposed to be there, he just stayed with me that evening.

11 Q Okay. Around closing time, tell the jury what you
12 recall with respect to your closing duties and closing that
13 store that particular night.

14 A That evening about five minutes until 9:00 I had asked
15 Karen were they still people in the store. I had noticed
16 some come in. And I was just trying to make sure how many
17 I still had. And she said there was still a few people in
18 the store.

19 Q Okay. And so what did you do at that point?

20 A I began to walk the store, and I noticed that there
21 was a couple of people. There was a white lady down an
22 aisle with her hands extremely full, and Mr. Bailey was
23 beyond her on the dog food aisle.

24 Q Okay. And you're indicating the defendant,
25 Mr. Bailey. Do you recognize him?

Sharon Taylor
Direct examination by Mr. Fretwell

1 A Yes.

2 Q Okay. Before you saw him in the store that evening
3 did you know Mr. Bailey?

4 A No.

5 Q Okay. Had you seen him before?

6 A Not that I recollect, no.

7 Q Okay. All right. So did you have any encounter with
8 Mr. Bailey in the store referencing what you were just
9 talking about?

10 A The only -- that I had with him prior to was he had
11 told Karen when he came in that he was looking for dog
12 food.

13 Tom and I had walked toward that area. He actually
14 was holding a bag of dog food or cat food. I'm not sure
15 which.

16 I went back to the front, and as I went back to the
17 front I walked across toward my office and I noticed
18 Mr. Bailey in the back corner. And I thought that it was
19 kind of odd since she said he told her he was just getting
20 dog food that he was over in the corner.

21 And I hollered back and asked him can I help you find
22 anything else, and he said, no, I've got everything. And
23 at that point I just turned around and went back. I went
24 into the office for a few moments and came back out.

25 Q At the point where you saw him on the back aisle of

Sharon Taylor
Direct examination by Mr. Fretwell

1 the store, did he have any dog food in his hands at that
2 time?

3 A No.

4 Q Okay. All right. So you said you went back to the
5 office. At that point what were -- what happened?

6 A At that point I came back out of the office and walked
7 to the front register. And as I walked there he was
8 walking up to the register setting the dog food on the
9 counter.

10 So I realized that my handheld was still laying
11 between the registers. So I picked it up, and I took it
12 into the office and put it on the cradle.

13 As I was making exit out of the office I heard
14 Mr. Bailey asking Karen where the other lady was. She told
15 him I was busy, could she help him. And he said no, I need
16 the other lady.

17 At that time I was already out of the office, and I
18 said I'm right here, what can I do for you.

19 Mr. Bailey at that time said he needed some chips and
20 snacks. And I said, sir, they're right there. He said
21 show me. I started to feel very uncomfortable about this
22 situation because they were right there, where as close as
23 that table.

24 At that point he took a step forward, and he said, "I
25 said show me." So not wanting to be in front of him, I

Sharon Taylor
Direct examination by Mr. Fretwell

1 hung behind him, at which point he grabbed me by the back
2 of the hair and stuck a knife in my side, drug me to the
3 back hall, threw me on the floor and told me you need to
4 understand this is a robbery and I'll kill you. He said I
5 don't care if I die but I am going to kill you. And he
6 just kept repeating over and over that he would kill me.

7 At some point it seemed like it was forever. I heard
8 Tom's voice tell him in some choice words to get up off of
9 me, at which point he took the knife from my side and put
10 it up to my throat, and he pushed in on my throat. So I
11 still have damage on my throat.

12 And he just kept saying he was going to kill me. And
13 he told Tom he wanted some money. And Tom said I don't
14 have any money, and he told me you give me some money. And
15 I said I don't have any money back here.

16 He asked where the safe was. Tom told him, man,
17 there's no money in the safe at night, they don't keep
18 money here, it's all gone, the only money is in the
19 register.

20 And at that point he told Tom to go to the register
21 and get him some money. And he said you better come back.
22 And he took the knife, and he started to cut me across the
23 throat. And he said if you don't come back in just a few
24 minutes I will kill her.

25 So Tom went to the front to get the money. And the

Sharon Taylor
Direct examination by Mr. Fretwell

1 whole time he was up there getting money Mr. Bailey was
2 repeatedly telling me that he was going to kill me. He
3 said don't think I won't, I won't think twice about killing
4 you, I will kill you.

5 So then Tom came back with the money and told him,
6 man, you don't want it to go down like this, you need to
7 leave, the police are coming.

8 Mr. Bailey finally got up and went toward the front.
9 And he told me to stay there, so I stayed for a few
10 minutes. And then I got up and made my way to the front.

11 As I went to the front Karen handed me the phone.
12 Dispatch was on the phone and asked me was I okay, and I
13 told them, no, I was not okay.

14 And then Tom had come in and was holding me. And we
15 went to the door to make sure that he was out of sight, and
16 I couldn't see him any more.

17 A few minutes later an ambulance came and put me in
18 the ambulance to check me out. They were going to take me
19 to the hospital, but I had learned that Bailey was on his
20 way, and I wouldn't go until the next day because I was so
21 afraid that when I got to the hospital I'd see him, and I
22 didn't want to see him any more.

23 Q Ms. Taylor, would you like a break for just a minute?

24 A Please.

25 MR. FRETWELL: Your Honor, may we request a brief

Sharon Taylor
Direct examination by Mr. Fretwell

1 recess?

2 THE COURT: We'll just stay her and let her regain her
3 composure.

4 (Pause.)

5 A Okay.

6 Q Ms. Taylor, are you okay?

7 A Uh-huh.

8 Q Ms. Taylor, I'm going to take you back for just a
9 minute and ask you at some point did you try to grab some
10 piece of merchandise from the store.

11 A I did at one point. There was some cans of Ravioli
12 that were maybe about that big. And I thought if I could
13 just get my hands on one of those maybe I can hit him in
14 the head or something.

15 Tom was telling me, baby, don't because he was afraid
16 if I hit him and it wasn't hard enough that he would have
17 put the knife on through my throat.

18 Q Ms. Taylor, you've testified about Tom going up to the
19 front and coming back. Do you have a memory of seeing Tom
20 hand him some money?

21 A Yes.

22 Q Okay. Do you recall or remember how much money that
23 was?

24 A It was \$22 exactly.

25 Q Is that something that Tom said at the time, or did

Sharon Taylor
Direct examination by Mr. Fretwell

1 you find that out later?

2 A No. I found that out later.

3 Q Ms. Taylor, I'm going to show you what's been marked
4 as State's Exhibit 3. I'll ask you if you recognize this
5 item that's been described as a 9-1-1 call.

6 A Yes.

7 Q Okay. How do you recognize it, ma'am?

8 A That's my initials right there.

9 Q Have you listened to this recording?

10 A Yes.

11 Q And does that section of the recording where you're
12 speaking with the 9-1-1 dispatcher, does it accurately
13 reflect the conversation you had with that dispatcher that
14 day?

15 A Yes.

16 Q Thank you.

17 MR. FRETWELL: Your Honor, at this time the state
18 would move State's Exhibit 3 into evidence.

19 THE COURT: Any objection to State's 3?

20 MR. CULBERTSON: No objection, Your Honor.

21 THE COURT: All right, sir. It's in evidence without
22 objection.

23 (9-1-1 recording marked State's Exhibit No. 3.)

24 Q Ms. Taylor --

25 A Yes, sir.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q -- as the manager of the Dollar General there on
2 Poinsett Highway did you have access to the video
3 surveillance equipment that you used in the store?

4 A Yes.

5 Q Okay. And from time to time if there were a theft or
6 something that would occur in the store, was it your
7 responsibility to review that tape and to take part of that
8 tape and burn it to some sort of a disc for law
9 enforcement?

10 A Yes.

11 Q And that particular evening did you at some point
12 after that evening take a camera-angles from the
13 surveillance video in the Dollar General and burn that to a
14 disc for law enforcement?

15 A Yes.

16 Q I'm going show you what's been marked as State's
17 Exhibit 4 and ask you if you recognize that item.

18 A Yes.

19 Q Okay. Have you watched all the video clips on that
20 particular item?

21 A Yes.

22 Q Are those the video clips that you took from the
23 surveillance video at the store and provided to law
24 enforcement?

25 A Yes.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q How did you determine what video clips you were going
2 to provide to law enforcement?

3 A I just started it at the time that I thought was
4 appropriate before we actually closed and then just let it
5 go until I thought it was over.

6 Q Okay. And the camera angles on this particular disc,
7 are they all of the camera angles that you had in the
8 store?

9 A Yes.

10 Q Did you have camera angles that covered every part of
11 the store?

12 A No.

13 Q Okay. All right.

14 MR. FRETWELL: Your Honor, at this time the state
15 would move State's Exhibit 4 into evidence on an unlimited
16 basis.

17 THE COURT: All right. Is there any objection to
18 State's 4 going into evidence?

19 MR. CULBERTSON: Your Honor, previously we had
20 consented to portions of that tape coming in.

21 THE COURT: Based upon the testimony at that point in
22 time -- and correct me if I'm wrong, Solicitor -- but
23 basically what is on that tape is what you described
24 earlier. There is nothing else.

25 MR. FRETWELL: Your Honor, on that tape are the three

Sharon Taylor
Direct examination by Mr. Fretwell

1 camera angles that the Court permitted into evidence
2 earlier when I introduced the exhibit for a limited basis
3 without objection from the defense.

4 I am now seeking to admit the disc with all of the
5 camera angles on it into evidence on an unlimited basis.

6 THE COURT: Could you cover that just a little bit
7 more with the witness then as to -- in addition to those
8 what else might be on that disc?

9 MR. FRETWELL: Certainly, Your Honor.

10 Q Ms. Taylor --

11 A Yes.

12 Q -- you described that you went back to the time period
13 that you believed was shortly before close and you let the
14 camera angles run. Were you watching the video when you
15 were -- when you were burning it down to a disc?

16 A No.

17 Q Okay. Have you viewed it since?

18 A Yes.

19 Q In your opinion does it reflect all of the times on
20 these particular camera angles that you had in the store
21 where you could see at some point Mr. Bailey, the
22 defendant, in the store?

23 A Yes.

24 Q Okay. Are there some camera angles that do not show
25 Mr. Bailey --

Sharon Taylor
Direct examination by Mr. Fretwell

1 A Yes.

2 Q -- during that same time period?

3 A Yes.

4 Q Okay. And you have no exterior cameras at the store
5 at that time.

6 A No.

7 Q Okay.

8 MR. FRETWELL: Your Honor, at this time I would renew
9 my request to submit this item into evidence.

10 THE COURT: Very good. Thank you very much.
11 Objection?

12 MR. CULBERTSON: No, sir.

13 THE COURT: In evidence without objection.

14 (Surveillance video marked State's Exhibit No. 4.)

15 THE COURT: You may proceed.

16 Q Ms. Taylor, you already referenced Mr. Bailey. The
17 individual that attacked you on April 14th of 2013 --

18 A Yes.

19 Q -- is he in this courtroom?

20 A Yes.

21 Q Okay. Will you please identify him by pointing to him
22 for the Court?

23 A That's him.

24 MR. FRETWELL: Your Honor, I would ask that the record
25 reflect that the defendant's been identified by the

Sharon Taylor
Direct examination by Mr. Fretwell

1 witness.

2 THE COURT: So noted.

3 Q Ms. Taylor, is there any doubt in your mind the
4 individual seated at that table is the man that attacked
5 you in the store that evening?

6 A That's him.

7 Q Is there any doubt in your mind that he threatened to
8 take your life?

9 A There's not a doubt in my mind.

10 Q At any point after he grabbed you until he got up off
11 of you were you free to leave or were you able to leave
12 from where he had you?

13 A No, and he had me pinned down and he was on top of me.
14 I couldn't hardly move. It took a lot of work just to get
15 my arm loose to get that can.

16 Q All right. In just a minute, Ms. Taylor, I'm going
17 to -- I'm going to show you a few of the camera angles
18 perhaps that we haven't seen already. And I'm going to ask
19 you -- I'm going to probably either have you step down, or
20 if you're able to do it from where you're seated look, at
21 these camera angles. And I am going to ask you some
22 questions about what's being shown on them.

23 Before I do that and while that's being set up I want
24 to show you what's been marked as State's Exhibits 14
25 through 20.

Sharon Taylor
Direct examination by Mr. Fretwell

1 At some point that evening did -- did a forensics
2 officer come in and take pictures of you and your injuries?

3 A Yes.

4 Q And have you viewed the pictures of your injuries?

5 A Yes.

6 Q Ma'am, I am going to show you what's been marked as
7 State's Exhibits 14 through 20. I'm going to ask you to
8 look at these and then by exhibit number -- and just take
9 your time. Okay, ma'am? Just by exhibit number, if you
10 would, tell us what the picture depicts.

11 A This is State's Exhibit 14. The rows -- it shows
12 where he had likely cut my throat.

13 MR. CULBERTSON: I object, Your Honor.

14 THE COURT: All right. First, Solicitor, you'll need
15 to have her look at the photographs and identify them.

16 MR. FRETWELL: Certainly, sure. I'll do that, Judge.

17 Q I want you to look at each one of them individually.
18 And I'm going to ask you about each one of them, if they
19 accurately reflect the injuries that you had that evening.

20 MR. CULBERTSON: And, Your Honor, I'm going to object
21 to that question also.

22 THE COURT: I overrule. I think it's a proper
23 question.

24 Q Do they accurately reflect the injuries that you had
25 that evening?

Sharon Taylor
Direct examination by Mr. Fretwell

1 MR. FRETWELL: Okay. Your Honor --

2 THE COURT: I'm sorry, ma'am. I appreciate it, but
3 you have to answer out loud for the record.

4 A Yes.

5 THE COURT: Thank you, ma'am.

6 MR. FRETWELL: Thank you, Your Honor.

7 Your Honor, at this time the state would move items --

8 THE COURT: I think you said 14 through 20.

9 MR. FRETWELL: Yes, Your Honor, 14 through 20 into
10 evidence.

11 THE COURT: Objection?

12 MR. CULBERTSON: Yes, sir.

13 THE COURT: All right. Y'all come over here and talk
14 to me for just one second.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 THE COURT: Yes, sir. You -- note your objection.
18 I'm going to allow 14 through 20 in evidence over the
19 objection of the defense.

20 (Photographs marked State's Exhibits No. 14 through
21 20.)

22 THE COURT: You may proceed, Solicitor.

23 MR. FRETWELL: Thank you, Judge.

24 Q Ms. Taylor, again I'm going to ask you to go picture
25 by picture, and I'm going to specifically ask you to tell

Sharon Taylor
Direct examination by Mr. Fretwell

1 the Court what's shown on the picture and specifically with
2 attention to the injuries that you -- that you incurred
3 that night.

4 Okay. So start with State's Exhibit 14 and go through
5 them one by one please, ma'am.

6 A Okay. State's Exhibit 14 shows kind of a full body
7 with the redness on my throat.

8 State's 15 is a closer-up of the redness of the cut on
9 my throat.

10 Q Let me stop you for just a second. State's 14 and 15,
11 the injuries that you're describing to your throat, what
12 was the source of the cause of those injuries, ma'am?

13 A The knife that Mr. Bailey had.

14 Q Okay.

15 A State's 16 is a closeup of where he had started to cut
16 across my throat; 17 is a picture of my thumbnail where
17 the -- where the knife went in and my thumb was bleeding.

18 Q Okay. Let me stop you for just a second.

19 would you tell me if you can recall how your thumbnail
20 got injured?

21 A I think that's when he was trying to put it in my side
22 that I put my hand around to try to stop it.

23 This is a closeup of my thumbnail where it was
24 bleeding and the place in my side where he had the knife.
25 And this is a closer-up of where he had the knife in my

Sharon Taylor
Direct examination by Mr. Fretwell

1 side.

2 Q And I -- and I haven't been doing this, and I'm so
3 sorry. Let me just very quickly. The one you just
4 referenced was State's Exhibit 19?

5 A 18 and 19.

6 Q I'm sorry. 19 and 18 are both the injuries to your
7 side.

8 A The side. And then 20.

9 Q Let me go back for just a second for the court
10 reporter. And is 17 the nail that you were referring to?

11 A Yes.

12 Q Thank you, ma'am.

13 A And then 20 is a closeup of my side --

14 Q Thank you.

15 A -- where he was holding.

16 MR. FRETWELL: Your Honor, at this time I would
17 request permission to publish these to the jury.

18 THE COURT: You may so publish.

19 Q All right. Ms. Taylor, are you able to see
20 comfortably from that position and be able to point things
21 out if I hand you a little, a little red-light pointer?

22 A No. It's too --

23 Q Would you mind coming down here?

24 (Whereupon, the witness left the stand.)

25 Q If you could, come right over here. And speak up so

Sharon Taylor
Direct examination by Mr. Fretwell

1 to make sure the court reporter can hear you. Are you okay
2 to stand here?

3 All right. What I'd like for you to do at this time,
4 Ms. Taylor, is as this -- let me start the video. And I'm
5 going to ask you.

6 (Whereupon, the video was started.)

7 Q What camera angle are we looking at in this particular
8 frame?

9 A Okay. That's just beyond the register where --

10 MR. FRETWELL: Pause it for just a second.

11 Q Did you get that to work? Do you understand you just
12 push that little button down?

13 A Yeah.

14 Q Thank you very much.

15 A If you -- if you leave this area right here and go
16 straight here, you turn left right here. The office is --
17 the break room is here and the office is behind it. Karen
18 just entered the break room and came --

19 Q So the break room is actually before the office, is
20 that correct?

21 A Yes.

22 Q And did we see a picture of the office yesterday?
23 Does it have a 1-way glass or mirror?

24 A Yes.

25 Q Where is that located on --

Sharon Taylor
Direct examination by Mr. Fretwell

1 A It's back on this side over here.

2 Q Okay. And the register, as you said, basically --

3 A They're over this way.

4 Q Okay. All right. Is this the area where you first or
5 where you finally encountered Mr. Bailey that particular
6 evening?

7 A Yes. It would be right here.

8 Q Right.

9 A This.

10 Q And that is -- who just walked by there?

11 A That is Tom Nash.

12 Q All right. Do you recall what he was doing at that
13 point?

14 A He was playing with his phone and phone charger.

15 Q Okay.

16 A And we were trying to figure out if his phone was
17 still charged enough, because at that point mine was down,
18 and that was the only one that we had between us.

19 Q Okay. You say your phone was where that point?

20 A I had dropped my phone in the toilet that morning.

21 Q So the phone that you had, that Mr. Nash had, he has
22 it with him in that -- in that?

23 A Yes.

24 Q Okay. All right. Is this lady a customer or an
25 employee of the store?

Sharon Taylor
Direct examination by Mr. Fretwell

- 1 A She is a customer.
- 2 Q The risk of being tedious, the front of the store is
- 3 where, ma'am?
- 4 A I'm sorry?
- 5 Q The front of the store is located --
- 6 A Is back this way like the lady just went.
- 7 Q Okay. And the back of the store, is that down this
- 8 aisle?
- 9 A It's down this way.
- 10 Q And that individual that just walked through is?
- 11 A Is James Bailey.
- 12 Q What just happened there?
- 13 A This is where I had came out of the office, and he had
- 14 been asking Karen where the other lady was. And he wanted
- 15 the chips and snacks, and they're just beyond right here.
- 16 And this is where he grabbed me by the back of my hair and
- 17 drug me to the back.
- 18 Q So it's on that aisle there that you went down --
- 19 A Yes.
- 20 Q -- and he attacked you. And who is that?
- 21 A That was James Bailey when he had got up off of me and
- 22 was leaving.
- 23 Q All right. Were you in a position to see his
- 24 direction when he left?
- 25 A No.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q Ms. Taylor, I'm going to now show you another camera
2 angle.

3 (Pause.)

4 Q Okay. Ms. Taylor, on this camera angle can you tell
5 us what we're looking at, what part of the store? And help
6 us orient to where we're seeing.

7 A Okay. This is the break-room door right here. If you
8 come across right here, this was the aisle where he took me
9 down the other aisle.

10 (Pause.)

11 Q Ms. Taylor, that aisle that you pointed out in the
12 other camera angle, is that the aisle we see in the middle
13 right there?

14 A Yes.

15 Q So it's -- is it separated, I guess, by some sort of
16 an alley there?

17 A It's separated by two alleys. It comes -- this -- it
18 separates here, and then it comes down, and it separates
19 again. And then there's another aisle to the back.

20 Q Is it possible for you to show us, at least maybe on
21 the corners of this particular angle, where you saw
22 Mr. Bailey earlier where you were concerned about he didn't
23 have anything in his hands or you wanted to help him or
24 something?

25 A Okay. He had said dog food, which was on the other

Sharon Taylor
Direct examination by Mr. Fretwell

1 side of the store.

2 Once when I was headed for the office he was on this
3 back aisle all the way back, which you cross here. Then
4 you come down and you cross again. And he was in the very
5 back corner where the exit door was.

6 Q Okay.

7 A He had nothing in his hands. So I asked him was they
8 something else that he needed, and he said no, he had
9 everything.

10 Q So this is on the same side or the opposite side of
11 the store as the pet food?

12 A This is the opposite side of the store.

13 Q Ms. Taylor, when you saw him in the back of the store
14 and he didn't have anything in his hand -- I'm talking
15 about the defendant, Mr. Bailey -- did you later see him
16 before he asked you to come back to show him some snacks?

17 A No, I did not. After he said that he didn't need --
18 that he had everything, I went on about my business.

19 Q And where -- where is Tom headed? Is that --

20 A This is after he had me penned on the floor and Karen
21 had gotten Tom. And he is coming to where I was at.

22 Q So when we saw you walking down the aisle with him,
23 that's when you were heading back to the --

24 A When we passed this area right here is where he
25 grabbed me. And it wasn't on camera.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q The lights have dimmed. Is that something that
2 happens automatically, or did somebody have to do that?

3 A No. They automatically went off. Part of the lights
4 went off at a certain time after close.

5 Q And what is -- what is Tom doing at that point?

6 A He is bringing the money back to Mr. Bailey.

7 Q All right. Ms. Taylor, during your contact with
8 Mr. Bailey do you recall whether or not he was wearing
9 anything on his hands?

10 A He had black gloves on. This is after Tom had got him
11 out the door and came back to make sure I was okay.

12 Q Is that the point at which you got on the phone?

13 A Phone with dispatch.

14 Q Ms. Taylor, I'm going to show you. I have two more
15 angles to show you. I'm going to show you now camera angle
16 8. And I once again -- I'll once again ask you if you can
17 orient the jury as to where we are, what part of the store
18 we're seeing?

19 A This is the very back aisle in the store.

20 Q And if you can, also show us where the pet food is,
21 where you saw --

22 A The pet food is this aisle right here.

23 Q And where you saw Mr. Bailey later on in the back of
24 the store.

25 A He is right here, and that is the last aisle on that

Sharon Taylor
Direct examination by Mr. Fretwell

1 side of the store. The exit door is right there.

2 Q Ms. Taylor, looking at his hands, can you tell what
3 the defendant has in his hands at that point?

4 A He has the black gloves in his hands.

5 Q Can you tell what he has in his right hand?

6 A It looks like the black glove.

7 Q And now what is in his left hand?

8 A The black gloves.

9 Q Ms. Taylor, using your pointer can you show the jury
10 where the location in the store was that you were when you
11 were attacked?

12 A It's up this aisle that's right here.

13 Q Were you -- were you on the ground in that area?

14 A We were about this far back on the floor.

15 Q Okay. And I'll ask you again. Is there any camera
16 angle from the surveillance feed in that store that covers
17 that particular aisle?

18 A No.

19 Q When you encountered Mr. Bailey before you walked down
20 the aisle with him, from what area of the store was he
21 coming?

22 A The front.

23 Q The front.

24 A This is the back area. That's where he was when I
25 asked him could I help him find something else.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q And do you know what's in his left hand there?

2 A I do not.

3 Q Do you know if that store at that time sold any canned
4 dog food or pet food?

5 A Yes. We did. All of this right here that you see
6 here is canned cat food and dog food.

7 Q And the dimming of the lights we just saw, is that the
8 same thing we have seen on the other camera angles from
9 matching the timeline?

10 A Yes.

11 Q Okay. I've got one final thing to show you. Are you
12 okay to continue with that?

13 A Uh-huh.

14 Q All right. No. 9. Ms. Taylor, can you tell us what
15 we're seeing right here?

16 A This is the actual front of the store. If you come
17 just to this side right here, the office cuts off to the
18 left. This aisle right here is the aisle we went down.

19 Q I know these angles are hard to tell from here, but is
20 there a way that you can tell where, on which side of the
21 store, this is? This is on the -- if you walked in the
22 front door, it's on the left side of the store, or the
23 right side?

24 A If you go in the front door this is the left side of
25 the store.

Sharon Taylor
Direct examination by Mr. Fretwell

1 Q Okay. Can you tell what the defendant has in his
2 hands at that point?

3 A There's three cans of dog food.

4 Q And was he walking in the direction of the registers?

5 A He was headed for the register at that time.

6 Q And is that him walking down the aisle on the
7 left-hand side? Is that the aisle you went down?

8 A Yes.

9 Q Tom is walking back. Is that the first time Tom comes
10 back?

11 A That's the first time Tom comes, when Karen told him
12 that he had me on the floor.

13 Q Notice the lights are dimming.

14 A Yes. This is Tom coming to get the money, and that
15 was when Mr. Bailey was leaving the store.

16 Q Ms. Taylor, did Mr. Bailey, the defendant -- did he
17 reenter the store once he left?

18 A No.

19 Q Okay. Ms. Taylor, if you will, return to your seat.
20 Let me get this.

21 (Whereupon, the witness returned to the stand.)

22 MR. FRETWELL: Your Honor, at this time the state
23 would request permission to publish State's Exhibit 3.

24 THE COURT: You may do so.

25 (Whereupon, State's Exhibit 3 was played for the

Sharon Taylor
Direct examination by Mr. Fretwell

1 jury.)

2 Q Ms. Taylor --

3 A Yes.

4 Q -- is there any doubt in your mind the individual
5 seated at the defense table is the individual who attacked
6 you?

7 A There is not any doubt in my mind.

8 Q Is there any doubt in your mind that this individual
9 threatened to kill you?

10 A He was going to kill me.

11 Q And did you see Tom, your boyfriend, give him money
12 from -- from the register that day?

13 A Yes.

14 Q And what do you believe would have happened if Tom had
15 not been there?

16 A I believe I would have died.

17 MR. CULBERTSON: Objection.

18 THE COURT: Sustain, sustained. Calls for
19 speculation. Sustained.

20 Q What did you believe might happen to you or what did
21 you believe was going to happen to you at that time?

22 A I believe he was going to kill me.

23 MR. CULBERTSON: Your Honor, I -- I object to that
24 also.

25 THE COURT: I'm going to allow her to give her

Sharon Taylor
Cross-examination by Mr. Culbertson

1 impression and her statement as to how she was feeling at
2 the time. I will. I'll allow that.

3 A I fully believed with all my heart that that man was
4 going to kill me.

5 Q Ms. Taylor, answer any questions that the defense may
6 have.

7 THE COURT: Cross-examination.

8 MR. CULBERTSON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CULBERTSON

11 Q Are you okay? Ms. Taylor, do me a favor, please. I
12 know we've seen these videos all day, plus yesterday.

13 Can you -- in looking at the courtroom we're in now is
14 the Dollar General store that you were the manager of, is it
15 about this size or about a little bigger than this courtroom
16 or a little smaller than this courtroom?

17 A It's bigger.

18 Q It's bigger than this courtroom. And on this video
19 we've seen now a couple of times there are aisles set up in
20 the store, is that correct?

21 A That's correct.

22 Q How many aisles are in the store?

23 A I'm not exactly sure how many we had.

24 Q Okay. The aisles have all of the merchandise for
25 sale. There is an area at the front of the store where the

Sharon Taylor
Cross-examination by Mr. Culbertson

1 cashiers are where you check out and pay for your stuff.

2 A Yes.

3 Q And then towards the back of the store is where the
4 break room and the office is, is that correct?

5 A No, sir.

6 Q All right. Where are the break room and the office?

7 A The break room and the office is to the left of the
8 front of the store.

9 Q If I'm standing at the front of the store and I'm
10 looking toward the back of the store, would the break room
11 be on my left or my right?

12 A It'd be on the left. It would be your --

13 Q It'd be on my left.

14 A Yes.

15 Q Sorry. Just so I'm clear. If I come in the front
16 door and I'm walking down one of the aisles and I want to
17 go to the break room, I would turn left.

18 A Yes.

19 Q That's where your office is.

20 A Yes.

21 Q That's where the break room is.

22 A Yes.

23 Q They're not connected. They're just near one another.

24 A No. They are connected.

25 Q Okay. The store closes about 9:00 o'clock at night,

Sharon Taylor
Cross-examination by Mr. Culbertson

1 is that correct?

2 A Exactly 9:00 o'clock.

3 Q Exactly 9:00 o'clock.

4 A Yes, sir.

5 Q And the night in question you were working. You'd
6 been called in to come close up and do some other stuff, is
7 that correct?

8 A Yes.

9 Q Somebody else had gone on vacation and you were trying
10 to cover for them.

11 A No. I was on vacation.

12 Q You were on vacation. I'm sorry. You came back from
13 vacation to close up the store.

14 A Yes.

15 Q Tom came with you.

16 A Yes.

17 Q Karen was at the store working.

18 A Yes.

19 Q Prior to your arrival was Karen the only employee at
20 the store?

21 A When the manager that quit left Karen was in the store
22 alone, yes.

23 Q Do you know about what time it was the other -- the
24 manager that quit, do you know about what time it was that
25 manager --

Sharon Taylor
Cross-examination by Mr. Culbertson

1 A I remember receiving the call from my boss man toward
2 6:00 or 6:30.

3 Q So Karen had been there a couple of hours before you
4 showed up.

5 A No, sir.

6 Q Okay.

7 A She had just left.

8 Q Now, Karen had been at the store for a few hours
9 before you showed up?

10 A Yes. She had went in I think at 4:00 that day.

11 Q Okay. All right. We've watched videos of the store
12 and the events that took place.

13 A Yes.

14 Q Am I correct in my assumption that there are about
15 four or five people in the store shopping that are depicted
16 on these videos?

17 A Near, close, yes.

18 Q About four or five, is that correct?

19 A There was two white males, a white female and a black
20 male.

21 Q Okay. And two white males, a white female, a black
22 male and a black female, is that correct?

23 A That's correct.

24 Q And we've seen all of that on this video.

25 A Yes.

Sharon Taylor
Cross-examination by Mr. Culbertson

1 Q And on this video we see those five individuals come
2 into the store. And then after a fashion, after a time of
3 shopping or what not, you see those people leaving the
4 store.

5 A Yes.

6 Q Is that -- okay. Did you recognize any of those
7 people had previously -- having been in the store?

8 A Yes.

9 Q All right. Recognize all of them?

10 A No.

11 Q There was a couple of them you didn't -- hadn't seen
12 before.

13 A There was a couple of them that I don't remember
14 seeing, yes.

15 Q Okay. All right. Ms. Taylor, there is a point in
16 watching this video where my client, Mr. Bailey, walks up
17 to the cash register, put some items on the cash register.

18 A Yes.

19 Q Do you recall seeing that?

20 A Yes.

21 Q And there's a point on the video that you pointed out
22 in which you said you were being attacked on a certain
23 aisle. And on that same aisle Tom and Karen and everybody
24 else was still walking up and down that aisle or standing
25 at the front of that aisle. Do you remember seeing that?

Sharon Taylor
Cross-examination by Mr. Culbertson

1 A I don't remember Tom coming to that aisle until I was
2 on the floor.

3 Q Okay. I understand. I understand that's what you're
4 saying.

5 My question was when you pointed out -- when
6 Mr. Fretwell gave that little red pointer thing and said is
7 this the aisle where it took place, you indicated yes.

8 My question is on that same video there are images of
9 Tom and Karen and other people walking up and down that
10 aisle.

11 A Not that aisle, no, sir.

12 Q Not that aisle.

13 A No, sir.

14 Q Okay. Okay. You don't recall anybody else walking up
15 and down that aisle after this event supposedly took place.

16 A After the attack there was --

17 Q During the attack.

18 A During the attack nobody was on that aisle. We were
19 closed, and there was nobody on that aisle but he and I
20 until Tom brought him the money.

21 Q Okay.

22 A Or until Tom came back there to tell him to get up off
23 of me, and went back to get the money and came back.

24 Q Okay. And -- and I hate to get back to this. I don't
25 want to belabor this too much. But would you say that the

Sharon Taylor
Cross-examination by Mr. Culbertson

- 1 Dollar General store is about twice the size of this
2 courtroom?
- 3 A Maybe.
- 4 Q Maybe not quite twice as big?
- 5 A I would say that it was twice this big.
- 6 Q Twice. As the courtroom we're in now.
- 7 A Yes.
- 8 Q Are you still working at the Dollar General store?
- 9 A I am still working for Dollar General, but I am no
10 longer at that store.
- 11 Q Not at that store.
- 12 A No.
- 13 Q Okay. And the night of this video, how long had you
14 been working in that store?
- 15 A Four years.
- 16 Q And in those four years had there been a previous
17 robbery at that store?
- 18 A Yes.
- 19 Q Were you present during that previous robbery?
- 20 A Yes.
- 21 Q Has there been one since then?
- 22 A No.
- 23 Q Ms. Taylor, thank you, ma'am.
- 24 A Thank you.
- 25 THE COURT: Any redirect?

Sharon Taylor
Redirect examination by Mr. Fretwell

1 MR. FRETWELL: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FRETWELL

4 Q Ms. Taylor, over the course of the time that you were
5 at that store were those aisles -- did those aisles stay
6 the same, or were they reconfigured from time to time?

7 A As long as I was at that store most of the aisles
8 stayed the same. There was two we referred to as seasonal
9 aisles that changed from time to time, yes.

10 Q And do you know -- how long did you stay at that store
11 after this event?

12 A One year.

13 Q And do you know, were there changes made in the store
14 after that incident?

15 A No.

16 Q Okay. What about with respect to camera surveillance?
17 Were additional cameras added --

18 A Yes.

19 Q -- after that, this incident?

20 A After this incident the store began to close at
21 7:00 o'clock, and also there were outside cameras added,
22 and two more added on the inside.

23 Q And with respect to that let me ask you.

24 MR. CULBERTSON: Your Honor, I should have entered
25 earlier. It's getting a little beyond the scope.

Sharon Taylor
Redirect examination by Mr. Fretwell

1 THE COURT: I don't see this to be redirect, Counsel.

2 MR. FRETWELL: All right, sir. He asked her about the
3 store's --

4 THE COURT: I'd appreciate that, but we're not talking
5 about the aisles. We're talking about the cameras.

6 MR. FRETWELL: Yes, sir.

7 THE COURT: I don't see that to be redirect.

8 BY MR. FRETWELL

9 Q Can you give us a timeframe from when you got a call
10 that day about the manager being gone and how long the
11 manager had been gone until you arrived at the store?

12 A When my boss man called me, if I recollect, it was
13 right around 6:30. I told him it would take me a few
14 moments to get there.

15 When I got there Karen was locked in the store alone,
16 and the manager had been gone for just a little bit.

17 Q And what is -- Mr. Culbertson asked you about locking
18 the doors. What kind of policy does your store have about
19 closing and locking doors?

20 A Our store has a strict policy. We do not close until
21 whatever time that store is directed to close. We close on
22 the dot.

23 Q And the purpose of locking the doors is what?

24 A To stop customers from coming in to get what's in the
25 store out and to get done and go home.

Sharon Taylor
Redirect examination by Mr. Fretwell

1 Q And is -- is there some sort of a little thing you
2 turn to be able to open the door from the inside to let
3 people out?

4 A Yes.

5 Q And Mr. Culbertson was asking you about an aisle where
6 Tom and other people were walking. At that vantage point
7 where you could see Tom walking back and you mentioned
8 something about his cell phone, where is that in the store?

9 A That is in front of the store. We were located in
10 front of the store just outside the break-room door.

11 Q Okay. And that break room, you said, was connected to
12 the office.

13 A It is connected. When you walk into the break room,
14 the office door is in the break room. You go straight into
15 the office.

16 Q So you can go into the break room and not the office.

17 A Yes.

18 Q But you have to go through the break room.

19 A You have to go through the break room to get to the
20 office.

21 MR. FRETWELL: No further questions, Your Honor.

22 THE COURT: Anything on those questions,
23 Mr. Culbertson?

24 MR. CULBERTSON: No, sir.

25 THE COURT: You may step down, ma'am.

1 All right. Ladies and gentlemen, we're going to take
2 a short break.

3 If you will go to your jury room, we'll resume in
4 about ten minutes or so. All right. Thank you very much.

5 Everyone else remain seated while the jury retires.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. We'll take a short break,
9 about ten minutes. Thank you.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Solicitor, are you ready for
12 the jury to come back in?

13 MR. FRETWELL: Yes, Your Honor.

14 THE COURT: And defense?

15 MR. CULBERTSON: Sorry. Yes, sir.

16 THE COURT: All right. Very good.

17 Ask the jury to come in, please, ma'am.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: All right. Solicitor, your next witness,
21 please, sir.

22 MR. FRETWELL: May it please the Court, Your Honor.

23 The state would call Master Deputy Nathaniel Bruce
24 Emily.

25 THE COURT: Please come around and be sworn, sir.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 NATHANIEL BRUCE EMILY, having
2 been first duly sworn, testified as follows:

3 THE CLERK: Please state your name for the record.

4 THE WITNESS: Nathaniel Bruce Emily.

5 MR. FRETWELL: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION BY MR. FRETWELL

8 Q Master Deputy Emily, how long have you been with the
9 Greenville County Sheriff's Office?

10 A With Greenville County since January of '09.

11 Q So about how many years?

12 A Almost six.

13 Q Okay. And how many total years do you have in law
14 enforcement?

15 A Twenty-two, sir.

16 Q And what is your current position and responsibilities
17 with the Greenville County Sheriff's Office?

18 A I'm a master deputy for the west district's area,
19 seven and eight, in the uniform patrol division.

20 Q And can you tell me what the difference is between a
21 master deputy and a regular deputy?

22 A Master deputy is based on experience and training, and
23 it's just the step up, just below supervisor. I assist in
24 supervisory duties under the sergeant.

25 Q All right. Let me take you to April 14th of 2013.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Yes, sir.

2 Q Approximately 9:00 p.m. Can you tell me if you
3 responded to the Dollar General on -- at 114 Poinsett
4 Highway in Greenville?

5 A Yes, sir. I did.

6 Q And is that store location, is that within Greenville
7 County?

8 A Yes, it is.

9 Q And that is your jurisdiction, is that correct?

10 A Yes, sir.

11 Q All right. Can you tell -- tell the jury why you
12 responded to that location?

13 A I was on patrol in the area of West Blue Ridge and
14 Cedar Lane when I heard the -- what we call alert tones --
15 go out.

16 That means it lets the officer know over the radio
17 that there's an in-progress call, an emergency call coming
18 in that's fixing to be given out.

19 When they advised that there was an armed robbery in
20 progress I was not far from it and did a U-turn in the
21 road. I activated my emergency equipment and proceeded to
22 the Dollar General on Poinsett.

23 Q For those individuals that might not be familiar with
24 that particular area, can you give an estimation of about
25 how far away you were from the Dollar General when you

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 received that call and turned around?

2 A Maybe 2 miles at the most.

3 Q All right. And when you turned around, how did you
4 proceed to the Dollar General?

5 A Like I said, I was at the intersection of Cedar Lane
6 and West Blue Ridge. So I turned around and activated my
7 lights.

8 The -- that would be Cedar Lane, 183, coming into the
9 city over the Pete Hollis Bridge, left on Shaw street
10 through one intersection to the top of the hill, which
11 would be Rutherford Street, I believe, where Rutherford
12 Road crosses and Poinsett is. It's -- and then that is on
13 the intersection, is on the corner.

14 Q And you said that you activated your emergency
15 equipment, is that correct?

16 A That is.

17 Q Okay. And what do you consider your emergency
18 equipment?

19 A All -- all blue lights and sirens.

20 Q Okay. And when you do that does anything happen
21 automatically when you do that?

22 A Yes, sir. When I -- when you hit the primary blue
23 lights the -- it activates the in-car camera.

24 Q Okay. And your car was equipped with an in-car
25 camera?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Yes, sir, it was.

2 Q All right. Do you remember or recall how long it took
3 you to get to the Dollar General from the time you received
4 the call?

5 A It was quick. I -- maybe 30 or 45 seconds, or maybe a
6 minute. It wasn't -- it wasn't long. I was going pretty
7 fast.

8 Q All right. Tell the -- tell the jury what happened
9 when you pulled up into the area of the Dollar General and
10 what information you had.

11 A Like I said, when -- when I approached the -- coming
12 up Shaw Street towards the main intersection of Poinsett.
13 Once you're in the intersection you would have to turn
14 left. It's the first business on the corner.

15 So about half way up Shaw Street I turned my siren off
16 and left my blue lights running to clear the last
17 intersection. Once I cleared the last intersection I
18 turned my blue lights off and pulled my car where the front
19 of my car would be facing the front of the store, advised
20 dispatch on the radio that I was on the scene and
21 started --

22 Q Just a second.

23 A Okay. I'm sorry.

24 Q What information did you possess at the time that you
25 arrived with respect to what was going on with the store

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 and any kind of suspect information?

2 A If I remember correctly, like I said, the dispatch was
3 that there was an armed robbery in progress, a black male
4 was in the store armed and had -- was wearing a white
5 t-shirt and dark pants, is the way it was dispatched.
6 That's the information I had.

7 There was other employees in the store, but I don't
8 recall if that was dispatched as to how many people were
9 actually in the store other than the suspect.

10 Q Do you know whether or not you had any information on
11 what kind of weapon was being used?

12 A A knife, sir.

13 Q Okay. All right. So upon arrival you said -- you've
14 indicated you turned your -- your lights off.

15 A Yes, sir.

16 Q Your siren and your lights or just your --

17 A The siren was deactivated, like I said, about half way
18 up Shaw Street. And then the lights, after I cleared the
19 last intersection I turned them off.

20 Q Okay. And you said you got out of the vehicle and you
21 were talking to dispatch. How did you approach the Dollar
22 General?

23 A I just -- I advised dispatch. As I turned the corner
24 it looked dark. I remember asking to confirm, because it
25 looked like the stores were closed there. It was dark on

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 the corner.

2 And as I parked and got out of my vehicle, as soon as
3 I closed my -- my door I picked up the front door of the
4 business, and I saw Mr. Nash and Mr. Bailey standing at the
5 front door of the business.

6 I drew my side arm and yelled for -- I -- just put
7 your hands up, put your hands up. Mr. Bailey looked once
8 at me, made a right and started to run towards the corner
9 of the building.

10 Q What, if anything, did you notice about the way in
11 which this individual was dressed?

12 A The first thing I noticed it was -- the match on the
13 description, it was white t-shirt and dark pants.

14 There's a -- a light just above the outside of the
15 front door of the store, and it's like it was in a
16 spotlight. Where I was still -- my car was parked and
17 where I was approaching from was dark, but there was a
18 spotlight on above the door of the business that
19 illuminated it real bright.

20 Q I'm going to show you what's been entered into
21 evidence as State's Exhibit 13. Can you find that
22 spotlight on there?

23 A Yes, sir. It's right here.

24 Q Would you step down and show the members of the jury
25 where on that picture that was lighting, what you're

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 referring to?

2 (Whereupon, the witness left the stand.)

3 A There's a floodlight --

4 THE COURT: You have to stay outside that.

5 A I realized I crossed the threshold there. There's a
6 spotlight right there above the door.

7 Q And if you just come down here and show the -- this
8 part of the jury.

9 (Whereupon, the witness complied.)

10 Q You can take your seat, sir.

11 (Whereupon, the witness returned to the stand.)

12 THE COURT: Just put it right there on the table.

13 Thank you, sir.

14 Q In addition to the clothing description that you've
15 given us, what, if anything, did you notice about the
16 individual when he came out?

17 A The first thing I noticed is that it appeared he had a
18 knife in his left hand. I saw a shiny object, pointed
19 object, from his left hand.

20 In my experience and training the greatest threat from
21 an unknown situation is the hands. We're trained, and we
22 train our new officers always look at the hands first.
23 That's why you'll hear over and over. Any time you hear
24 anything with law enforcement it's show me your hands, let
25 me see your hands and put your hands up. That's where the

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 threat to our well being comes from. So I immediately look
2 to the hands.

3 Like I said when I -- when I'm looking I was
4 approximately 20 feet away, maybe 20 or 25 feet away, from
5 this individual.

6 The door opens, and he's standing in the doorway. One
7 hand is down here where I see a sharp -- like I said, a
8 sharp silver object in his hand. And the right hand is
9 clinched up pushing the door open with -- with the arm.

10 Q What, if anything, do you see in that hand?

11 A It was wadded up and looked like it might -- might
12 have had paper or possibly money curled up in it. Both
13 hands were gloved.

14 Q And you've testified that you told the individual put
15 his hands up --

16 A I did.

17 Q -- or stop or something like that, and he took off.

18 A I said twice to -- for him to put his hands up, put
19 your hands up. As he started running I yelled stop and
20 continued to yell stopped as I was transmitting that I was
21 in foot pursuit of that subject.

22 Q And that particular business, the Dollar General
23 there, when you pulled your patrol car in, is there any
24 business between your patrol car and the Dollar General?

25 A It's a -- it's a bar on the corner.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Q Okay. So there's actually two businesses there, and
2 the Dollar General was the one further away from --

3 A Right.

4 Q Okay.

5 A I just pulled up on the sidewalk.

6 Q What happened after you turned the corner of the
7 business in pursuit?

8 A Like I said, once I challenged the suspect I started
9 calling on the radio giving them a description that I was
10 in foot pursuit of a black male wearing camo pants.

11 I was moving around the corner of the building towards
12 Rutherford Road through the parking lot.

13 I think the next thing I would have said was that
14 we're turning left on Rutherford, because we went through
15 the parking lot. I'm approximately 30 to 40 feet behind
16 him not gaining any ground, but I really wasn't losing any
17 either. I was keeping pace with him.

18 We got to the -- the end of the parking lot where
19 Rutherford Road is, and we turned up Rutherford Road. We
20 turned left down Second Street heading back towards
21 Poinsett, and I let the units responding know that we were
22 headed back towards Poinsett.

23 As we came down Second Street there's a fence that
24 runs all the way down the right side of Second Street,
25 because there's a Poinsett Tire, is there. And there's a

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 fence all the way down.

2 So when we got to the end of that fence Mr. Bailey
3 took a right around the fence and started diagonally across
4 Poinsett Tire. And I was still chasing him then.

5 About midway through the parking lot I observed two
6 patrol cars that were responding coming down Poinsett,
7 which would have been to my left. I remember all I could
8 say was I need help back here, because I saw my -- my, you
9 know, my responding unit was going by me.

10 We continued to run across the parking lot, and I was
11 starting to lose a little ground, but I still was probably
12 60 to 50 feet behind him.

13 I saw the two cars coming back into my field of vision
14 and turn on Mahon Street.

15 At that time I brought my flashlight up and
16 illuminated Mr. Bailey who was still right in front of me.
17 I believe Mr. Giovanni, Deputy Giovanni, was first coming
18 around and pulled into the parking lot. And I heard him
19 yell at Bailey. And May came in the parking lot and yelled
20 at him. And I quit running at that time. I continued to
21 proceed, but that was a pretty good stretch for me to run.

22 Q Just out of curiosity, how old are you, sir?

23 A I'm 50 years old, sir.

24 Q Let me show you what's been marked as State's
25 Exhibit 21.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Yes, sir.

2 Q This is identified as a map, is that right?

3 A Yes, sir.

4 Q Does this map -- first of all, accurate -- are you
5 familiar with the area?

6 A Oh, yes, sir.

7 Q Give me just a second to finish my question.

8 A Okay. Sorry.

9 Q Are you familiar with the area displayed on the map?

10 A Yes, I am.

11 Q And does that map accurately reflect that area?

12 A Yes, it does.

13 Q Okay. Is the Dollar General located on this map?

14 A Yes, sir, it is.

15 Q Is all of your pursuit area located on this map?

16 A Yes, it is.

17 Q And would this map assist you in explaining to the
18 jury the route of that pursuit?

19 A Absolutely.

20 Q Okay.

21 MR. FRETWELL: At this time, Your Honor, the state
22 would move State's Exhibit 21 into evidence.

23 THE COURT: Any objection?

24 MR. CULBERTSON: No objection.

25 THE COURT: In evidence without objection.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 (Map marked State's Exhibit No. 21.)

2 Q Deputy May, if you'll step down for just a moment.

3 A Me?

4 Q Yes, sir. I'm sorry. Deputy Emily, if you'll step
5 down, please, sir.

6 (Whereupon, the witness left the stand.)

7 Q And I'm going to hand you this pointer here.

8 A Okay.

9 Q Making sure you keep your voice up nice and loud so
10 the court reporter can hear you. If you'll just take the
11 jury through the -- the pursuit that you just described.

12 A All right. As I said before, when I'm responding just
13 to orientate you to this map, this is Shaw Street that I
14 referred to earlier. Down here would be Pete Hollis
15 Bridge, and then Cedar Lane Road, which is Highway 183,
16 would be this way.

17 So my approach came down 183 across Pete Hollis Bridge
18 and then up Shaw.

19 I discontinued my siren at about this area back here,
20 and I had to clear this one last intersection right here.
21 Once I cleared that intersection I turned my lights off and
22 pulled my car to this point right here on the sidewalk.

23 The Dollar General entrance is right here. Sorry.
24 Right there. So I was parked here with my car facing the
25 door. And that's the entrance to the store right here.

Nathanie] Bruce Emily
Direct examination by Mr. Fretwell

1 Q Deputy, if you will, take one step back --

2 A All right.

3 Q -- so all of the jurors can --

4 A I'm sorry.

5 Q You can point to that from a distance.

6 A Can I stand right here?

7 Q Yes, sir.

8 A Okay. All right. Once -- like I said, once I
9 challenged the suspect at the front door here, we
10 immediately turned around this corner, proceeded through
11 the parking lot to this exit right here onto Rutherford
12 Road. We ran up Rutherford Road to Second Street and
13 turned left down Second Street this way.

14 And, as I said, the Poinsett Tire is this building
15 right here. This fence runs all the way almost to the
16 road, and there's a sign right here. So we had to run all
17 the way down the street, go around there and then start
18 back across the parking lot.

19 When I observed Master Deputy Giovanni and Deputy May,
20 Master Deputy May -- I'm sorry -- approaching I was about
21 right here at this location. And Mr. Bailey would have
22 been about that far ahead of me.

23 As we approached this street right here Mr. Bailey was
24 right at the edge of this street. I would have been about
25 right here. Mr. Giovanni turned and -- I'm sorry -- Master

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Deputy Giovanni and Master Deputy May turned the corner.

2 I lit him up with my flashlight. And this is the back
3 of a church, this church right here. All right. Mr. --
4 May and Giovanni both pulled into this area where -- about
5 that white van is shown parked on the area and challenged
6 Mr. Bailey.

7 At that point I quit running over about right here and
8 walked the rest of the way. When I arrived up at this area
9 right here they had him in custody.

10 Q Were you able to observe him at that time?

11 A I did.

12 Q All right. If you will, have a seat back on the
13 witness stand.

14 (Whereupon, the witness returned to the stand.)

15 Q We were talking about your opportunity to see the
16 individual at that time. And could you identify that
17 individual as being in the courtroom today?

18 A Yes, sir.

19 Q Would you please do so?

20 A It's Mr. Bailey right there in the blue shirt.

21 MR. FRETWELL: Your Honor, let the record reflect that
22 the witness has identified the defendant.

23 THE COURT: So noted.

24 Q Is there any doubt in your mind that that individual
25 is the individual that you chased from the Dollar General?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A None.

2 Q Is there any doubt in your mind that that is the
3 individual who was taken into custody by Master Deputy May
4 and Master Deputy Giovanni behind the church?

5 A No doubt at all.

6 Q All right. I want to show you now what's been marked
7 as State's Exhibit 23. I'm going to show you what's been
8 marked as State's Exhibit 23, and I'll ask what is this
9 disc and do you recognize it now.

10 A It's the in-car -- it's a copy, a D.V.D. copy, of the
11 in-car video from my unit that I was operating that day.

12 Q Okay. And have you viewed this copy of your in-car
13 video?

14 A I have, sir.

15 Q Does it accurately reflect the -- what was shown out
16 the front of your windshield from the time you activated
17 your emergency equipment until the time that you pulled up
18 outside the Dollar General and the bar there on the
19 Poinsett Highway?

20 A Yes, sir.

21 Q All right. Is a microphone also activated at the time
22 that the -- the camera is activated?

23 A Yes, sir. It's a body mic that is worn on my belt
24 right beside my spare-taser cartridge.

25 Q Okay. Does that body mic -- does it have a range or

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 is it --

2 A At best maybe a hundred yards. It goes out pretty
3 quick.

4 There's a -- there's a base for the mic that sets. I
5 have mine mounted on the dashboard of the like in-car radio
6 stereo, AM/FM, would be, which gives it a little bit more
7 range. The antenna sticks up just about that much above
8 the dash. But once you get, like I said, 75 or 100 yards
9 away from the car it's gone. It can't pick it up. It's a
10 very small device.

11 Q And in your viewing of this copy of your video, does
12 the car move at all after you pull it up and park it?

13 A No, sir.

14 Q And you said very -- very soon afterwards you lose the
15 microphone, is that correct?

16 A Correct, sir.

17 Q Okay. And I think you said you recognized the item
18 but you didn't say how. Would you say that you -- how you
19 recognized?

20 A It has my initials on it as being the one that I
21 viewed.

22 Q All right.

23 MR. FRETWELL: Your Honor, at this time the state
24 would move State's Exhibit 23 into evidence.

25 MR. CULBERTSON: No objection.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 THE COURT: It's in evidence without objection.

2 (Video marked State's Exhibit No. 23.)

3 Q All right. I also want to show you what's been marked
4 as State's Exhibits 7 and 22. And I'll ask if you
5 recognize those items.

6 A I do, sir.

7 Q And what is -- let's start with State's Exhibit 7.
8 What is State's Exhibit 7?

9 A Just a second. I'm sorry. State's Exhibit 7 is a --

10 Q Just a second.

11 A I'm sorry.

12 Q They're not in evidence, so.

13 A A tan pair of boots.

14 Q Okay. Do you recognize those boots?

15 A I do.

16 Q All right. And where do you recognize those boots
17 from?

18 A As the ones that Mr. Bailey was wearing the night he
19 was arrested and the same ones I had took out of his
20 property from the jail.

21 Q Okay. And what do you see in State's Exhibit 22?

22 A Camo pair of pants.

23 Q Do you recognize those pants?

24 A Yes, I do.

25 Q And where do you recognize those pants?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Those were the pants that Mr. Bailey was wearing the
2 night that I arrested him and also the same ones that were
3 taken out of his property, removed by me from his property,
4 at the jail.

5 Q And you brought them here to court.

6 A I did.

7 MR. FRETWELL: Your Honor, at this time the state
8 would move State's 7 and 22 into evidence.

9 THE COURT: Any objection?

10 MR. CULBERTSON: No, sir. No objection.

11 THE COURT: Very good. It's in evidence without
12 objection.

13 (Tan boots marked State's Exhibit No. 7; pants marked
14 State's Exhibit No. 22.)

15 MR. FRETWELL: Your Honor, at this time the state
16 would request permission to publish State's Exhibit 23, the
17 video.

18 THE COURT: You may do so.

19 (Whereupon, the video was played for the jury.)

20 Q Now that there's no sound, does the sound come back on
21 before you --

22 (Whereupon, the video was played for the jury.)

23 Q Okay. Now, do you recall whether there is additional
24 audio on this tape until such time as you walk all the way
25 back to your car and get in your car after the arrest and

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 everything is --

2 A There's no more audio on the tape until I'm walking
3 back, and that's after Mr. Bailey's in custody. And I
4 walked back to my car to assist the officers taking
5 statements inside of the store.

6 Q And in viewing this video do you know if the
7 defendant, Mr. Bailey, is shown on this angle at all after
8 this point?

9 A After this point?

10 Q Yes, sir.

11 A No, sir.

12 Q Yes.

13 MR. FRETWELL: Turn the camera angle off at this
14 point.

15 Q Let me now show you -- let me show you what's been
16 marked as State's 24 through 28. And I'll ask if you are
17 familiar with what is depicted in these pictures.

18 A Yes, sir, I am.

19 Q And what is -- what is depicted in those pictures?

20 A This is the spot where we took Mr. Bailey into
21 custody.

22 MR. CULBERTSON: Your Honor --

23 Q Just a second.

24 MR. CULBERTSON: -- could I have him tell me which one
25 he's referring to?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 MR. FRETWELL: Judge, before he does that I'm going to
2 ask the witness if they accurately reflect.

3 THE COURT: Okay. Go and do that.

4 Q Do these pictures accurately reflect the scene where
5 the defendant was taken into custody on the evening of
6 April 14th of 2013?

7 A Yes, sir.

8 Q All of them.

9 A Yes, sir.

10 Q Okay.

11 MR. FRETWELL: At this time, Your Honor, the state
12 would move State's 24 through 28 into evidence.

13 THE COURT: Any objection?

14 MR. CULBERTSON: No, sir.

15 THE COURT: All right. They're in evidence without
16 objection.

17 (Photographs marked State's Exhibits Nos. 24 through
18 28.)

19 Q Now, I'm also going to show you State's 29 and 30.
20 And I'll ask you if you recognize what is shown in those
21 two pictures.

22 A Yes, sir, I do.

23 Q Okay. And sitting here today looking at the
24 defendant, how has -- how is he different in his appearance
25 than he was the night that you were there participating in

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 his arrest?

2 A The goatee, the facial hair.

3 Q He has it today.

4 A He has it today.

5 Q He didn't have it then.

6 A No, sir.

7 Q All right. Do you -- what are -- do those two
8 pictures, 29 and 30, do they accurately reflect pictures of
9 the defendant that were taken that night?

10 A Yes.

11 Q Okay.

12 MR. FRETWELL: Your Honor, at this time the state
13 would move State's Exhibit 29 and 30 into evidence.

14 THE COURT: Any objection?

15 MR. CULBERTSON: No, sir.

16 THE COURT: They're in evidence without objection.

17 (Photographs marked State's Exhibits Nos. 29 and 30.)

18 Q Now, starting with State's 24 --

19 A Yes, sir.

20 Q -- are all of those pictures of the scene where the
21 incident -- where the arrest took place?

22 A Yes, they are.

23 Q And you've already indicated that 29 and 30 are
24 pictures of the defendant, is that correct?

25 A That is correct.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Q Hand them to me.

2 MR. FRETWELL: Your Honor, permission to publish them
3 at this time.

4 THE COURT: You may do so.

5 Q Deputy Emily, I'm going to have you step back around.
6 I think it's a little easier for you to point if you're
7 standing out here.

8 (Whereupon, the witness left the stand.)

9 Q First of all, I'm going to show you what's been
10 marked -- can you show -- or you tell the members of the
11 jury. What do we see in this particular picture?

12 A This is the suspect's property that was left on the
13 ground from where we arrested him. The church is this way.
14 This is an alleyway between the church and the building
15 back here.

16 Q And what's at the top right kind of?

17 A Here?

18 Q No, no. That next to it.

19 A I'm -- I don't know what you are referring to, the --

20 Q The patrol car.

21 A Yes. Patrol car.

22 Q Is that your patrol car, or is that somebody else's?

23 A No, sir, that is not my patrol car.

24 Q And what's on top of the patrol car?

25 A Blue lights.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Q Yes. Let me show you now -- all right. And this is
2 State's Exhibit 25 if you can orient us to where the church
3 is.

4 A This is the opposite view from -- the first picture
5 you would have been looking from like you were standing
6 right here. So the church is on this side. That's the
7 side of the building of the church, the railing to the
8 building that was here and another building that's on
9 Poinsett. This is Poinsett out here.

10 Q All right. And now I want to show you 26.

11 A In the -- that would have been that same post I just
12 pointed to that's on the building there. The church would
13 be on this side, and that's the property from where we
14 arrested him right there.

15 Q Okay. And what specifically is that over on the right
16 side?

17 A That's the -- the knife open, what we believe to have
18 possibly been a mask, his hat and the property that was the
19 contents of his pockets.

20 Q And now State's 27.

21 A The closeup photograph of the same knife laying on the
22 ground.

23 Q Twenty-eight.

24 A Closeup photograph of what we believe to be possibly a
25 mask.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 MR. CULBERTSON: I object to the characterization of
2 the item in the photograph.

3 A I don't know what that is.

4 THE COURT: Just a second, gentlemen -- gentlemen.

5 THE WITNESS: I'm sorry.

6 THE COURT: I sustain the objection.

7 And, solicitor, you just be more specific in your
8 questions.

9 MR. FRETWELL: Absolutely.

10 THE COURT: Thank you, sir.

11 MR. FRETWELL: Thank you.

12 Q All right. Let's move on to 29.

13 A That's Mr. Bailey right after he was arrested
14 handcuffed on a small brick wall at the rear of the church
15 building.

16 Q Okay. And finally State's 30.

17 A Again, the back of Mr. Bailey on the brick wall, the
18 camo pants, white shirt, gloves. Sitting on the wall
19 handcuffed.

20 Q All right. If you can, retake your seat.

21 (Whereupon, the witness returned to the stand.)

22 Q Once you -- once the defendant was taken into custody,
23 Deputy Emily, what did you do at that point?

24 A When I could start breathing again I walked back to my
25 car.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Q And what else do you recall from that evening?

2 A Like I said, I walked back to my car. After the
3 E.M.S. cleared me and checked me out, I walked back to my
4 car.

5 I went inside of the store to get a feel for the
6 inside of the store and the scene itself, because I was
7 going to be responsible for doing the primary incident
8 report for it because I was the first officer on the
9 scene -- and helping take statements and observing the
10 injuries and checking on the victims that were in the
11 store.

12 Q All right. At some point -- who secured the warrants
13 for the defendant's arrest?

14 A I did, sir.

15 Q All right. And do you know who served those warrants
16 on the defendant?

17 A I believe it was Master Deputy May or Master Deputy
18 Giovanni. They were -- he had to go to the hospital.

19 I went to the judge's office and started working on
20 the warrants while they transported him to the hospital. I
21 don't recall exactly who signed service on the warrant.

22 Q Do you know if one went to the hospital and one went
23 to the detention center? Is that -- do you know?

24 A I don't recall. I was tied up with the warrants.

25 Q Please answer any questions that Mr. Culbertson may

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 have.

2 THE COURT: Cross-examination.

3 MR. CULBERTSON: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MR. CULBERTSON

6 Q Glad you don't have to do all of that running any
7 more.

8 Detective Emily, a couple of things I want to go over
9 from your testimony today and what's in some of your
10 reports.

11 As I understand it you were -- you were effectively the
12 first officer at the scene.

13 A I was.

14 Q And we heard you coming up Cedar Lane Road off
15 Whitehorse doing that whole thing. Took you a little bit
16 of time to get there, just a short period of time given the
17 distance you were away.

18 And in that period of time, what started you on that
19 journey to the Dollar General store was a report that you
20 received over dispatch telling you that there was a robbery
21 in progress at that Dollar General store, is that correct?

22 A Correct.

23 Q And you get there, pull up in front of the Dollar
24 General store. That's on that video. And as you pull up
25 you see Mr. Nash and Mr. Bailey on the inside of the store,

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 is that correct?

2 A The door was open.

3 Q The door was open.

4 A They were in the doorway, sir.

5 Q So they were -- they were coming out the door as you
6 pulled up.

7 A Yes.

8 Q I'm just trying to get --

9 A Yes.

10 Q As you pull up are your blue lights flashing?

11 A No.

12 Q You've turned the blue lights off.

13 A After I came through the intersection.

14 Q And I understand that. My -- I'm going to get to the
15 rest of it in just a second, but right now my question is
16 earlier I thought you said that the car automatically would
17 turn the blue lights on, in-car camera comes on, is that
18 correct?

19 A Yes.

20 Q You turn the blue lights off, why's the camera still
21 rolling?

22 A It stays on until the deputy turns it off inside.

23 Q Okay. So it's not just a matter of turning the blue
24 lights off, you shut it off.

25 A No, sir.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

- 1 Q Once on, it stays on.
- 2 A Auto on and manual off.
- 3 Q Okay. So the blue lights are off, the camera's
- 4 rolling. You pull up in front of the store, see two
- 5 gentlemen walking out the door and you hop out of your car.
- 6 A Yes.
- 7 Q Okay. As you hop out of your car you pull out your
- 8 service revolver.
- 9 A Correct.
- 10 Q Is that what you did?
- 11 A Yes.
- 12 Q Okay. And you pointed it at the two men coming out
- 13 the door and said put your hands up.
- 14 A Correct.
- 15 Q Why?
- 16 A It's an armed robbery in progress.
- 17 Q How did you know it was them?
- 18 A At that moment, technically, he was matching the
- 19 description.
- 20 Q You didn't. You didn't know.
- 21 MR. FRETWELL: Is that a question?
- 22 MR. CULBERTSON: That was a question.
- 23 A I knew that I was encountering a person matching the
- 24 description that was given to me by dispatch.
- 25 Q Okay. One of the gentlemen as you hop out of the car

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 and point a gun at him, say put your hands up not knowing
2 who they are, knowing anything really about it other than
3 what you have heard, he runs around the corner of the
4 building.

5 MR. FRETWELL: Objection, Your Honor, to the compound
6 nature of the question. If he has a question --

7 THE COURT: I appreciate it. He can -- if he can
8 answer the question, he can answer it. If he can't, he can
9 say he doesn't understand it or can't answer it.

10 Keep going.

11 Q He runs around the corner of the building.

12 A Yes.

13 Q One of the gentlemen coming out of the store, as point
14 you point at him, he runs around the corner of the
15 building.

16 A Correct.

17 Q And you take off after him.

18 A Correct.

19 Q And I apologize for doing this, but y'all run a pretty
20 good marathon all over that area of town.

21 A A pretty good stretch.

22 Q A pretty good stretch. One of the guys is wearing
23 these boots that belong to Mr. Bailey. He's wearing these
24 boots.

25 A Yes.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 Q You have your gun out running after him, or have you
2 holstered your gun?

3 A I holstered when I started running.

4 Q Okay. At any point in time did you pull out your
5 taser?

6 A No.

7 Q You never had anything to do with tasing Mr. Bailey.

8 A No.

9 Q Detective Emily, I'm curious about this. Your
10 testimony earlier said that when you pulled up in front of
11 the store with the lights and camera -- lights off with the
12 camera running -- that you saw a gentleman coming out with
13 a knife in his left hand and a wad of what ultimately
14 decided was cash in his right hand.

15 A Correct.

16 Q All right. Are you aware that previously in one of
17 your reports you had indicated just the opposite?

18 A Yes, sir, I am.

19 Q Okay. In that report that you wrote the night of the
20 event you said the suspect had the knife in his right hand
21 and a wad of cash in his left hand.

22 A I can explain that.

23 Q I'm going to let you do that in just a second.

24 A Okay.

25 Q This case -- this chase begins.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 A Yes.

2 Q And when you ultimately -- Mr. Bailey's ultimately
3 placed under arrest.

4 A Yes.

5 Q Where is the cash located?

6 A I don't know.

7 Q Where is the knife located?

8 A As I said before, sir, I don't know. I wasn't --

9 Q You weren't the person there.

10 A I wasn't the person that actually arrested him, sir.

11 Q All right. You wanted to explain something a second
12 ago. I'm sorry.

13 A Yes. I can.

14 Q Please.

15 A I know this about myself, and I had to explain it
16 before. It's a threat assessment. When I'm looking at you
17 and I do a threat assessment, do I have a threat on my
18 right or on my left.

19 When I look at somebody the threat if it's in your
20 left hand, it's going to be my right. I know this about
21 myself. I try to keep from doing it, but because I've done
22 it so long it's where does that threat come from, and right
23 or left. So it was on my right. The knife, my threat, was
24 on my right, which would have been his left hand.

25 Q Okay.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 A Okay.

2 Q You've been a police officer how long?

3 A Twenty-two years, sir.

4 Q How often are you in stressful situations?

5 A Every day, sir.

6 Q And how often do you have to write reports about those
7 stressful situations?

8 A Multiple times a day, sir.

9 Q So you should be familiar with the ability to
10 distinguish left from right in writing those reports.

11 A You're right.

12 Q Okay. Thank you, sir.

13 THE COURT: Redirect?

14 MR. FRETWELL: No, Your Honor.

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

16 Solicitor and Mr. Culbertson, y'all come over here and
17 talk to me just a second.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Your next witness, please.

21 MR. FRETWELL: The state would call Master Deputy
22 Giovanni.

23 THE COURT: Please come around and be sworn, sir.
24
25

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 MICHAEL JOSEPH GIOVANNI,
2 having been first duly sworn, testified as follows:

3 THE CLERK: Please state your name for the record.

4 THE WITNESS: Michael Joseph Giovanni.

5 DIRECT EXAMINATION BY MR. FRETWELL

6 Q Master Deputy Giovanni, how long have you been
7 employed with the Greenville County Sheriff's Office?

8 A Since January of 2008.

9 Q How many total years do you have in law enforcement?

10 A This coming January it'll be ten years total.

11 Q And you are the same rank as Master Deputy Emily, is
12 that correct?

13 A I am.

14 Q Same job description and same responsibilities?

15 A Yes, sir. I just am on a different platoon.

16 Q All right. Let me take you to April 14th of 2013
17 shortly after 9:00 p.m. Did you respond to the Dollar
18 General on Poinsett Highway that evening?

19 A I did.

20 Q And for what reason?

21 A Dispatch had given out a BOLO and then an actual call
22 that an armed robbery was in progress at that location.

23 Q What other information, specific information, did you
24 have prior to arriving on the scene?

25 A As I was still responding driving to the scene,

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 dispatch had come back over that a black male was inside
2 the store. And then there was another radio transmission
3 that said that the defendant had or the suspect had a knife
4 to the manager's throat.

5 Q And anything else about what -- why he was doing that,
6 why there was --

7 A Demand. He was demanding money.

8 Q Demanding money. All right. Who was the first to
9 arrive on the scene?

10 A Master Deputy Emily was the first.

11 Q All right. Did you learn any information from him
12 before you arrived on the scene?

13 A He said that he was on scene, and there was a few
14 moments of radio silence, and then he came back over and
15 announced that he was chasing the subject on foot.

16 He did call out that it was a black male, white --
17 white shirt, dark pants, and he was running in the
18 direction of Rutherford Road.

19 Q Is that the area in which you proceeded?

20 A It is.

21 Q Okay. And then did you deviate from that path?

22 A Well, actually I responded in essentially the same
23 approach as Master Deputy Emily did. I came down Poin --
24 Cedar Lane Road and made a left onto Shaw Street. I
25 crossed over Poinsett Highway when he said that he was

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 going to -- you know, running in the direction of
2 Rutherford.

3 By the time that radio communication come out I was
4 already half way up Shaw Street, and so I crossed over
5 Poinsett Highway. And when he said he was running back in
6 the direction of Poinsett, I turned left on the first road
7 that was -- it's right behind the Dollar General store --
8 and came back out on Poinsett Highway.

9 When I came back out on Poinsett, that's when I saw
10 Master Deputy Emily in the parking lot of the tire shop,
11 and he was pointing and flashing his flashlight in the
12 direction of the church.

13 Q Let me stop you just a second and back up.

14 Master Deputy Emily testified that he has a camera in
15 his car that turns on when he turns on his blue lights.

16 A Yes.

17 Q Do you have that kind of camera, or actually did you
18 at the time?

19 A I did.

20 Q You did?

21 A Yes.

22 Q Was it functioning at the time?

23 A It was.

24 Q Did you have any kind of recording of this particular
25 incident?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 A Just -- just my driving to the scene.

2 Q Okay. And where is that?

3 A Typically, in a situation like that where the video
4 shows nothing beyond us driving to the scene, we don't save
5 those videos unless there's some evidentiary value to it.

6 Q Did you review that video?

7 A We did.

8 Q Did you see anything of evidentiary value on that
9 video?

10 A Nothing other than my driving to the scene, no.

11 Q So you did not preserve that video and turn it into P
12 and E.

13 A No.

14 Q Do you recall if the defendant, the man you arrested,
15 was on that video at any time?

16 A He was not.

17 Q Let me now direct you to State's Exhibit 14. If you
18 can, just step down for just a second.

19 A Okay.

20 (Whereupon, the witness left the stand.)

21 Q And show the members of the jury how you entered and
22 where you came into contact with the individual that Master
23 Deputy Emily was --

24 A I approached the scene in the same manner that Master
25 Deputy Emily testified to. I came down Shaw Street here,

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 crossed over Poinsett Highway when he announced by radio
2 that was he chasing the subject in that direction of
3 Rutherford Road.

4 I came up Rutherford Road and was probably right in
5 this area when Master Deputy Emily announced by radio that
6 he was chasing him back in the direction of Poinsett.

7 I made a turn, a left turn, here onto this street and
8 approached this corner. And when I made the right turn
9 back on Poinsett I could see Master Deputy Emily about
10 midway through this parking lot, and I did see the suspect
11 about right here at the corner of this church.

12 Q And you -- and he is straight in front of you, or is
13 he off to the right?

14 A He was off to the right.

15 Q Okay. And your car at that point was driving down
16 Poinsett?

17 A My car at that point was driving -- you see where
18 these vehicles are on this map. I was driving that
19 direction straight ahead.

20 Q Okay. What happened when you -- did you pull onto
21 Mahon Street?

22 A I did. I made a right turn here onto Mahon. And at
23 this point the suspect had already gotten behind the church
24 and was out of my view for just a few seconds.

25 I turned into the back of the parking lot here, and I

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 parked. I stopped at an angle this way and jumped out of
2 my vehicle. My car was parked in such a way that the
3 windshield was towards this corner of the parking lot here
4 in the back. And I exited my patrol car and ran after the
5 suspect at that point.

6 Q And you said that you lost track of him for a few
7 seconds. Did you get a good look at the clothing
8 description before you lost track of him?

9 A When I -- when I saw him going around the back side of
10 the church here he'd already crossed the road. I could
11 tell that he had a white shirt on and that he was a black
12 male and he was wearing dark pants, but I couldn't tell
13 anything else about him at that point.

14 Q Okay. And did you encounter him again behind the
15 church?

16 A Yes. When I actually exited my patrol vehicle I could
17 see him walking essentially in this direction. It was a
18 fast walk, but he wasn't running at that point any more.

19 Q Okay. And what happened at that point?

20 A As I got out of my car and approached him, I yelled at
21 him, sheriff's office, stop. He continued to walk away.
22 He did turn and look at me briefly and continued to walk.
23 And I was not aware of the fact that -- you know, whether
24 or not he was still armed, had no idea what he had on him.

25 Q Could you see his hands at that point?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 A I could not. They were in front of him and he was
2 walking away from me.

3 Q And so what did you do at that point?

4 A I announced. I told him to stop again, and he
5 continued to walk away from me. And at that point I
6 deployed my department-issued taser. And I did tase the
7 defendant, and he fell to the ground.

8 Q At the time at which you told him to stop were you
9 dressed much like you're dressed today?

10 A Yes.

11 Q Minus the top.

12 A Yes.

13 Q Okay. And your patrol vehicle that you pulled in
14 there, is that a marked patrol vehicle?

15 A It is.

16 Q And it had blue lights?

17 A It did.

18 Q And those blue lights were activated.

19 A Yes.

20 Q Did you have -- do you remember if you had your siren
21 on?

22 A I had my siren on as I approached, but once I got into
23 the area I turned it off. It's pretty hard to hear the
24 radio when the sirens are on.

25 Q All right. So you indicated that you deployed your

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 taser. what happened then?

2 A The defendant fell to the ground. I moved in closer
3 to him, and I placed my taser on the back of his leg pretty
4 low, close town to his leg, to his foot.

5 And Master Deputy May was running behind me. He ran
6 up as well. And once the taser cycle stopped, which is a
7 5-second cycle, we made an attempt to take custody of him.

8 Q Now, why did you apply the taser to his leg?

9 A Because he was still trying to move.

10 Q Could you see his hands at that point?

11 A No. He had them underneath him.

12 Q Okay. All right. Now, the individual that you saw
13 there that you attempted to take into custody, is he in the
14 courtroom?

15 A He is.

16 Q Could you please identify him?

17 A Yes. The defendant sitting here in the blue shirt.

18 Q All right. At that point you said Deputy May arrived.
19 was he dressed similarly to you?

20 A Yes.

21 Q All right. And tell the jury how you were able to
22 process -- you went to try to take the defendant into
23 custody.

24 A Well, I was on the defendant's right side. I lowered
25 down, and I had my knees across his buttocks and his leg,

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 the upper part of his thigh, on the right side. I took my
2 taser and placed it in my left hand and tried to pull his
3 arm out from underneath him with my right hand.

4 Q Wait a minute. Why were you trying to pull his arm
5 out?

6 A Trying to secure him, trying to get handcuffs on him.

7 Q All right.

8 THE COURT: Solicitor, is there any reason for the
9 deputy to --

10 MR. FRETWELL: No, sir. I apologize.

11 THE COURT: That's right. Just resume the witness
12 stand. Thank you.

13 (Whereupon, the witness returned to the stand.)

14 MR. FRETWELL: Tunnel vision, Your Honor.

15 THE COURT: That's all right.

16 Q You said you were trying to pull his hand out to
17 secure in the handcuffs. Was that something that he was
18 allowing you to do, or not?

19 A No. He was actively resisting.

20 Q And, Deputy Giovanni, could you either move a little
21 bit closer to the microphone or speak up just a little bit?

22 A Uh-huh.

23 Q All right. So at that point you're working on his
24 right hand. What is Deputy May doing?

25 A Deputy May was trying to get his other hand out from

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 under him, his left hand.

2 Q Okay. And what happened after that?

3 A We continued to struggle with him for a few moments.

4 Again, I was -- I was holding my taser in my left hand, so

5 I only had the use of one side. The taser probes were

6 still attached to the defendant. And I was getting ready

7 to tase him again because he was not complying with our

8 commands to put his hands behind his back.

9 Q Well, speaking of that, just a second, what kind of
10 commands were you giving the defendant? What were you
11 telling him?

12 A We were just yelling, yelling at him, to put his hands
13 behind his back and stop resisting. And he -- he would not
14 allow his hands to be pulled out from under him.

15 Q Okay. And at some point did you become aware of a
16 weapon?

17 A Yes.

18 Q Okay. Tell us about that.

19 A Deputy May continued to struggle with his left side.
20 Eventually, he was able to get his hand out from underneath
21 him. And when he pulled his hand out from underneath him
22 the defendant was still holding the knife, and Deputy May
23 was able to get that knife away from him, and he threw it
24 out about 10 feet away from where we were at.

25 Q Let me. Did you get a chance to look at the knife as

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 it was on the ground?

2 A I did.

3 Q And let me show you what's been marked as State's
4 Exhibit 1. I'll ask you to take a look at that and tell me
5 whether or not you recognize that, that object.

6 A I do.

7 Q Okay. And what is that object?

8 A The pocketknife with the closeable blade.

9 Q Okay. And when you saw -- when you observed the knife
10 that night was the knife or open was it closed?

11 A It was open.

12 Q All right. After that point did -- did -- what did
13 Deputy Emily -- did he arrive at some point?

14 A He arrived right after we had finally secured the
15 suspect.

16 Q And then at some point did you call for an
17 ambulance --

18 A I did.

19 Q -- to come and look after the defendant?

20 A I did.

21 Q And do you know whether or not the items that he had
22 there on the ground, were they -- those were photographed,
23 and you've seen those pictures, is that right?

24 A I have.

25 Q Okay. And do you recognize those pictures that were

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 shown earlier?

2 A I do.

3 Q All right. That area of the map that you showed us
4 right behind the church, in that general area, is that also
5 within Greenville County?

6 A It is.

7 Q I'm going to show you a couple of items marked
8 State's 5 and 6. Do you recognize those items, sir?

9 A I do.

10 Q And is Item 1, is that depicted in State's Exhibit 27?

11 A It is, yes, sir.

12 Q Is it the same knife?

13 A It is.

14 Q All right. And the gloves that you see there, State's
15 Exhibit 6, are those the gloves that were taken off the
16 defendant?

17 A They are, yes, sir. I took that photograph.

18 Q All right. Let me also show you what's marked as
19 State's Exhibit 31.

20 Before I ask you to look at that with respect to -- you
21 said the photograph you took of State's Exhibit 6 and
22 State's Exhibit 5, the hat...

23 MR. FRETWELL: At this time, Your Honor, I'd move both
24 of those items into evidence.

25 THE COURT: Any objection?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 MR. CULBERTSON: No objection, Your Honor.

2 THE COURT: They are in evidence without objection.

3 (Baseball hat marked State's Exhibit No. 5; gloves
4 marked State's Exhibit No. 6.)

5 Q If you'll take a look there at State's Exhibit 31 --
6 and before you open that, is that in a sealed condition?

7 A It is.

8 Q Okay. Go ahead and open it. Do you recognize that
9 object?

10 A I do.

11 Q And what is that object?

12 A It's a piece of fabric with a part of a plastic bag
13 tied to it.

14 Q Okay. And is that depicted in State's Exhibit 28?

15 A It is.

16 Q Is it in the same condition as it was when it was
17 retrieved from the area in the possession of the defendant?

18 A It is.

19 Q Was it in the possession of the defendant?

20 A It was.

21 MR. FRETWELL: Your Honor, at this time the state
22 moves State's Exhibit 31 into evidence.

23 THE COURT: Any objection?

24 MR. CULBERTSON: Yes, sir.

25 THE COURT: All right. Do you wish to be heard at

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 this point in time?

2 MR. CULBERTSON: I'd rather do it a --

3 THE COURT: Yes, sir.

4 All right. Ladies and gentlemen, Foreman -- Foreman,
5 y'all go to the jury just for a little bit, please. Thank
6 you.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: All right. Mr. Culbertson, I'll be glad
10 to hear from you, sir.

11 MR. CULBERTSON: Yes, sir, Your Honor.

12 Other than a piece of black cloth, I don't know what
13 it is, nor do I know how it's related to my client. And I
14 don't know whether they took it off -- I haven't heard
15 anything they took it off of him, haven't heard anything --
16 his name's on it. I don't know how there's any connection
17 between that piece of black cloth, for whatever reason, and
18 how it actually related to my client.

19 THE COURT: All right, sir. Well, he did say it was
20 in the possession of the defendant.

21 But, Solicitor, if you just will cover that a little
22 bit more fully if you would.

23 MR. FRETWELL: Thank you, Your Honor.

24 BY MR. FRETWELL

25 Q Deputy Giovanni, do you know where that black fabric

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 with the yellow plastic that's tied to it -- do you know
2 where it came from on the defendant?

3 A It was in one of his pockets, but I don't remember
4 which one.

5 Q Okay. Do you recall who actually pulled it out of his
6 pockets?

7 A I don't. Myself and Master Deputy May both were --
8 were taking items, all of the items, out of the defendant's
9 pockets that he had on him.

10 Q Were all of the items that were pulled out of his
11 pockets, were they placed right there beside him on the
12 ground?

13 A Yes. That's what that photograph shows.

14 Q And is there any doubt in your mind that that is an
15 object that came out of one of the defendant's pockets?

16 A None.

17 Q Is it unique in its appearance?

18 A It is.

19 Q And could you tell the Court how it's unique?

20 A It's fashioned in a manner that it looks like it would
21 be used to cover your face.

22 Q Okay.

23 MR. CULBERTSON: And I object.

24 THE COURT: Well, I appreciate that. The jury's not
25 here, and I'm going to allow that question.

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 All right. We're not going to speculate that in front
2 of the jury, Solicitor, but I'm allowing it now.

3 MR. FRETWELL: Yes, sir. I just wanted to --

4 THE COURT: I appreciate that.

5 MR. FRETWELL: Yes, sir, and --

6 THE COURT: I'm going to allow State's Exhibit 31 into
7 evidence over the objection of the defense.

8 MR. CULBERTSON: Yes, sir.

9 THE COURT: All right. Ask the jury to come back in,
10 please, ma'am.

11 MR. FRETWELL: I'm just about done with my
12 examination, Your Honor.

13 THE COURT: That's great. Thank you.

14 MR. FRETWELL: I just want to make sure the witness is
15 clear he's not to describe the piece of fabric as a mask in
16 front of the jury. Is that correct?

17 THE COURT: That's -- I think he was clear about that.
18 Go ahead.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. Solicitor, you may continue,
22 sir.

23 MR. FRETWELL: Thank you, Your Honor.

24 THE COURT: And just for the record, the State's 31 is
25 in evidence over the objection of the defense. You may

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 proceed.

2 MR. FRETWELL: Thank you, Judge.

3 (Piece of black cloth marked State's Exhibit No. 31.)

4 Q And just to back just up a little bit, when you were
5 able to get the defendant into custody did you take items
6 of evidence off of him? Did you take personal items off of
7 his person?

8 A We did.

9 Q Okay. Where were they located?

10 A They were in his pockets.

11 Q Okay. And obviously this hat, is that hat what he was
12 wearing?

13 A The hat was on his head, yes.

14 Q And then these that have been marked as State's
15 Exhibit 7. Do you recognize those?

16 A I do.

17 Q And what are those?

18 A Those are his boots.

19 Q Okay. And State's Exhibit 22.

20 A Camouflage pants.

21 Q And, Deputy, make sure you keep your voice up nice and
22 loud so the jury can hear you.

23 The -- the item that you just identified as a piece of
24 black cloth, did that -- is that something that was in his
25 hands or in his pockets or where?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 A It was in a pocket.

2 Q And when the items were taken out of his pockets where
3 were they placed?

4 A They were placed in that small pile there on the
5 ground beside him.

6 Q Okay. And that's what's shown in pictures 24, 25, 26,
7 27, 28, is that correct? Are those items shown in those
8 pictures?

9 A Yes, sir.

10 Q Okay. And those -- it's your testimony that those
11 items came from the defendant.

12 A They did.

13 Q And is State's 29, is that a picture of the defendant?

14 A It is.

15 Q Did you say that you took that picture?

16 A I did take that picture.

17 Q You did take that picture and this other picture, is
18 that correct?

19 A Yes.

20 Q After the defendant was arrested did -- the testimony
21 is that he went to the hospital. Do you know -- did you go
22 to the hospital with him or did Deputy May go with him?

23 A Master Deputy May went to the hospital with him.

24 Q Where did you go?

25 A I remained at the scene.

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

1 Q Okay. Eventually, did you respond to the law
2 enforcement center?

3 A I did.

4 Q For what purpose?

5 A I responded there and signed service on the warrants
6 for Master Deputy Emily.

7 Q Okay. On the defendant?

8 A Yes.

9 Q Okay. Answer any questions, please, that Mr.
10 Culbertson may have.

11 THE COURT: Cross-examination.

12 MR. CULBERTSON: Thank you.

13 CROSS-EXAMINATION

14 BY MR. CULBERTSON

15 Q How are you doing today?

16 A Fine.

17 Q Officer Giovanni, as I understand it -- and I probably
18 have this turned -- correct it so you can see. I want to
19 make reference to this exhibit that's been marked State's
20 Exhibit No. 21, which is kind of an overview photograph of
21 the area in question that night.

22 A Yes, sir.

23 Q Would you agree with that?

24 A Yes, sir.

25 Q And you had previously heard testimony and also

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

1 testified yourself about what your actions and some of
2 other the officers' actions were in regard to this
3 photograph, correct?

4 A Yes, sir.

5 Q Specifically, who pulled up where, who came from which
6 direction, how they got to the incident location. All
7 right. Do you remember that?

8 A Yes, sir.

9 Q And you heard Officer Emily talk about he pulled up in
10 front of the Dollar General store here on Rutherford.

11 A Yes, sir.

12 Q He had his blue lights on, and his camera was
13 activated, correct?

14 A Yes, sir.

15 Q And we saw part of that video.

16 A Yes.

17 Q You were here when they played that.

18 A Uh-huh.

19 Q You testified that you came not from the same
20 direction Officer Emily came from but from a different
21 direction and arrived shortly after he did, correct?

22 A No.

23 Q How long after?

24 A I testified that I came in the same direction that
25 Deputy Emily did up Shaw Street.

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

1 Q Okay. I misunderstood. But, in any event, you did
2 not pull in front of the Dollar General store.

3 A I did not.

4 Q You went actually down Rutherford Road up to Mahon
5 Street.

6 A No. One street back.

7 Q First Street.

8 A Yes.

9 Q You heard Officer Emily testify -- and I assume this
10 is correct for you also -- that when you turned your blue
11 lights on you're in a car that automatically activates the
12 in-car camera.

13 A Yes, sir.

14 Q And that's what happened in the car you were driving.

15 A Yes, sir.

16 Q You turned the blue lights on. The camera comes on.

17 A The camera comes on, yes.

18 Q And the camera in your car had a video recording of
19 you coming down Rutherford Road, pulling up, turning on
20 First Street, driving back through here to some of these
21 parking lots until you eventually stopped back here in this
22 parking lot off Mahon Street behind the church.

23 A Yes, sir.

24 Q And, in fact, Deputy, I think -- and correct me if I'm
25 wrong -- there was actually a photograph -- sounded a

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

1 little bit like "My Cousin Vinny" -- but there's testimony
2 about were those blue lights on top of the car.

3 A Yes.

4 Q And we heard the testimony those are blue lights. You
5 heard that.

6 A They are.

7 Q All right. In that photograph with the blue lights on
8 top of the police car, that's your police car, correct?

9 A That is my car in that photograph, yes, sir.

10 Q And your blue lights are still on.

11 A Yes.

12 Q And they -- the video would have depicted your entire
13 travel up the road, down First Street, around this way,
14 back to the parking lot off Mahon Street behind the church
15 where your -- your car is photographed in State's Exhibit
16 No. 24.

17 A Yes. That is not the original location my car was
18 parked in. My car was moved there after the defendant had
19 already been transported to illuminate that area of the
20 parking lot for forensics.

21 Q Okay.

22 A That was nearly an hour later.

23 Q Okay. I appreciate that. Thank you, sir.

24 But your -- when I was making reference to the video of
25 the car with the blue lights --

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

- 1 A Yeah.
- 2 Q -- that was your car.
- 3 A It was.
- 4 Q And your blue lights were on.
- 5 A Yes.
- 6 Q And video was on.
- 7 A Yes, sir.
- 8 Q And it depicted this whole thing and showed this area
- 9 back here where my client was apprehended by the police.
- 10 A Yes.
- 11 Q You testified earlier there was no recording of that
- 12 because someone made the decision it had no evidentiary
- 13 value, so you destroyed the tape, is that correct?
- 14 A I turn -- I turned the tape in, and they're destroyed
- 15 after a 90-day period. That's just policy for the
- 16 sheriff's office.
- 17 Q Who made the decision there was no evidentiary value
- 18 in that tape?
- 19 A I looked at it, as well as Sergeant Reinhart.
- 20 Q So you and Sergeant Reinhart are the only two people
- 21 that made the decision that there was no evidentiary value
- 22 on this video back here.
- 23 A Yes, sir.
- 24 Q And so that video is gone.
- 25 A That's true.

Michael Joseph Giovanni
Cross-examination by Mr. Culbertson

1 Q Is that correct?

2 A Yes.

3 Q Although it would have been a video recording of
4 everything that everybody's talked to about during the last
5 day and a half, is that correct?

6 A It would have been a video of an area of trees and an
7 open parking lot. The way my car was parked it did not
8 show anything at all that happened at the scene.

9 Q But we don't know that, do we? We'll never know that.

10 A I know that.

11 Q You and one other officer decided we didn't need to
12 see it, is that correct?

13 A Yes.

14 Q Thank you, sir.

15 THE COURT: Redirect?

16 MR. FRETWELL: No, Your Honor.

17 THE COURT:

18 Very good.

19 You may step down, sir. Thank you very much.

20 All right. Madam forelady, and ladies and gentlemen
21 of the jury, what we're going to do now is we're going to
22 break for lunch at this point in time.

23 I'm going to ask if you could to be back at 1:45, and
24 we'll commence the trial again shortly after that. So
25 1:45 please.

1 with that, you are now excused. Obviously, don't talk
2 about the case. Don't allow anybody to talk to you about
3 it. Thank you.

4 Everyone else remain seated.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: All right. Gentlemen we will be at ease
8 until 1:45. Thank you very much.

9 (Whereupon, a recess was taken.)

10 THE COURT: Solicitor, are you ready for the jury to
11 come in?

12 MR. FRETWELL: Yes, sir.

13 THE COURT: All right. And for the defense,
14 Mr. Culbertson?

15 MR. CULBERTSON: Yes, sir.

16 THE COURT: Very good. Ask the jury to come in,
17 please.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: All right. Solicitor, your next witness,
21 please, sir.

22 MR. FRETWELL: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 MR. FRETWELL: The state would call Master Deputy
25 Matthew May.

Matthew Tyler May
Direct examination by Mr. Fretwell

1 MATTHEW TYLER MAY, having been
2 first duly sworn, testified as follows:

3 THE CLERK: Please state your name for the record.

4 THE WITNESS: Matthew Tyler May.

5 MR. FRETWELL: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION BY MR. FRETWELL

8 Q Master Deputy May, how long have you been employed
9 with the Greenville County Sheriff's Office?

10 A Eight years.

11 Q And how many total years in law enforcement?

12 A Fourteen.

13 Q And you're a master deputy, is that correct?

14 A Yes, sir.

15 Q And so you have the position and the responsibilities
16 of both of these other officers who have testified, is that
17 correct?

18 A Yes, sir.

19 Q Let me take you to April the 14th of 2013 shortly
20 after 9:00 p.m. Did you respond to the area of the Dollar
21 General at 114 Poinsett Highway that evening?

22 A That's correct.

23 Q And for what reason?

24 A We received a call about an armed robbery in progress
25 where the suspect was still inside. They provided us

Matthew Tyler May
Direct examination by Mr. Fretwell

1 information on a description of the suspect and that he was
2 currently holding a knife to the manager's throat.

3 Q Did you have any information on what the suspect --
4 what his goal was, what he wanted or why he was holding the
5 knife to the manager's throat?

6 A Well, being it was called in as an armed robbery, the
7 goal was money.

8 Q All right. And when you received that information did
9 you -- you responded?

10 A I responded lights and sirens.

11 I didn't take the same route that the first two master
12 deputies took. I was right at the entrance of Furman on
13 Poinsett Highway.

14 Q Okay.

15 A So I traveled south on Poinsett Highway. On the
16 video, the first patrol car that passes Master Deputy Bruce
17 Emily's was mine.

18 Q Okay.

19 A And I picked up Master Deputy Giovanni as he cut
20 across Rutherford as Master Deputy Emily was providing the
21 information. So I fell in behind him and pretty much
22 followed him until we made contact with the suspect.

23 Q All right. Let me ask you the same questions I asked
24 Master Deputy Giovanni.

25 When you activate the emergency equipment in your car

Matthew Tyler May
Direct examination by Mr. Fretwell

1 do you have a camera that turns on automatically when you do
2 that?

3 A My vehicle is equipped with the same system, yes, it
4 is.

5 Q All right. Well, can you tell me when you activated
6 on April 14th of 2013, was your camera working properly at
7 that time?

8 A No, sir.

9 Q Okay. How long before that time had your camera not
10 been working properly?

11 A It's really hard to say. At the time I believe I was
12 driving a 2009 Crown Vic.

13 The camera system in that car was around 14 or 15
14 years old. And if you don't -- aren't aware, those systems
15 run still on V.H.S. tape. So, and if you have a V.H.S.
16 system, throw it in the back of a patrol car, bounce it
17 around a couple of times and it just -- mine for that car
18 worked whenever it kind of wanted to.

19 Q And I'm going to ask you what kind of malfunctioning
20 was going on with your camera at that point.

21 A I have no idea -- I have no idea.

22 Q Were you able to generate a video of where your car
23 was going that particular evening?

24 A No, sir. The camera system wasn't operating at all.
25 On mine it would actually indicate that it was recording,

Matthew Tyler May
Direct examination by Mr. Fretwell

1 and then you would go back and the tape was still brand
2 new.

3 Q Okay. All right. That's what I wanted to know.

4 So you -- you said that you followed Master Deputy
5 Giovanni. And tell us -- tell us what you observed as you
6 were following Master Deputy Giovanni.

7 A I was observing the back of his patrol car.

8 Q And when you were in the area of the Dollar General,
9 what did you observe?

10 A Well, part of the confusion, you could see in the
11 video there's kind of patrol cars going all different
12 directions.

13 Q Right.

14 A At the time Master Deputy Emily was assigned to a
15 different part of town. He had just moved over recently.
16 So when he tells us Rutherford, we think we're going up
17 Rutherford. So when I see Master Deputy Giovanni shoot
18 across to Rutherford and he says he's going Rutherford, we
19 go up there and then back to Poinsett. We have to turn
20 back off of Rutherford.

21 So I knew that Michael Giovanni, knowing the area just
22 as well as I did -- I knew he knew where he was going. So
23 there was no reason for us to separate in case we
24 encountered this guy. And then when Master Deputy Emily
25 said he needed help, that actually indicated to me that he

Matthew Tyler May
Direct examination by Mr. Fretwell

1 was fighting the guy. So at this time I really didn't want
2 to get separated from Master Deputy Giovanni.

3 Q Okay. And when was the first time that you noticed
4 somebody that you identified as a suspect in this case?

5 A When we turned off of Mahon back onto Poinsett Highway
6 I did see Master Deputy Emily running through the parking
7 lot of Poinsett Tire. And then obviously he started
8 flashing his flashlight like he indicated. And we could
9 see the guy running toward the church parking lot.

10 When Master Deputy Giovanni pulled in behind the
11 church he kind of pulled off to the right, and I pulled in
12 pretty much parallel with him. And then I witnessed him
13 get out of the car and make verbal contact with the
14 suspect.

15 Q So you actually turned onto Mahon where the church is?

16 A Yes, yeah.

17 Q All right. Tell the jury what happened once you
18 stopped the car. You saw -- you saw the individual. And
19 what did you do at that point when you saw him, and what
20 was he doing?

21 A When I saw the suspect he was still -- before we
22 really got out of the cars he was still kind of jogging
23 through the parking lot.

24 Master Deputy Giovanni got there before I did. So I
25 was several steps behind him, and he's yelling at him to

Matthew Tyler May
Direct examination by Mr. Fretwell

1 stop, show us your hands. And I can't see his hands
2 because he's kind of shuffle-stepping a little bit away
3 from us, and it's dark. And Master Deputy Giovanni is
4 giving him the commands, the typical what we do in a
5 situation like that. And he does it. And I indicate
6 verbally to Master Deputy Giovanni to deploy the taser.
7 And by that time he already had.

8 The suspect falls to the ground, and I run over and I
9 start to try to manipulate the hands, because while they're
10 under that 5-second deployment -- the taser -- you can
11 control them, but you can't move them. So if the arm is
12 stiff, you can hold it there until that cycle runs out.
13 And as soon as it's over you can manipulate that arm to get
14 it in handcuffs.

15 So I get on top of his left side, and I'm waiting for
16 that cycle to run out. When it runs out he starts fighting
17 us again.

18 When I look down at his left hand I still see the
19 fixed-blade knife is open. I indicate that to Master
20 Deputy Giovanni. He's on his right side. I'm on the guy's
21 left side.

22 Me and Master Deputy Giovanni are not small guys, so
23 there's really not much area to work with. And he turns
24 his head to start talking to me. And I'm telling him to
25 let go of the knife, and he's not. So my only option is I

Matthew Tyler May
Direct examination by Mr. Fretwell

1 start striking him in the face.

2 I hit him two or three times. He indicates that he's
3 going to let go of the knife. He lets go of the knife. I
4 don't know what hand I pick it up with, and I toss it.

5 Then Master Deputy Giovanni tells me that he can't get
6 his right arm. So we kind of go back through the same
7 process, because we don't know what else he has.

8 And at the time since I've already saw the knife, I
9 start to think this guy's probably going to try to hurt us
10 and that's just not going to happen. So I strike him in
11 the face two or three more times. And at that time he
12 actually asked me to stop hitting him, and I do, and he
13 gives us the right hand, and we get him in handcuffs.

14 Q So you were able to put him in handcuffs at that
15 point. Is there an area behind that church that is a
16 little bit more lit than where you were?

17 A I think the back of the church had a floodlight. The
18 side that we ended up having contact with was not well lit
19 at all.

20 Q Right. Let me ask you this. Did you at some point
21 either during the struggle with that individual or
22 thereafter, did you get a good look at him?

23 A Once we stood him up.

24 Q Okay. Would you recognize him if you saw him again?

25 A Yeah.

Matthew Tyler May
Direct examination by Mr. Fretwell

1 Q Is he present in the courtroom?

2 A Yes, sir.

3 Q Could you point him out for the Court?

4 MR. FRETWELL: Your Honor, let the record reflect that
5 he's pointed to the defendant.

6 THE COURT: Yes, sir.

7 Q All right. Let me show you what's already been marked
8 as State's Exhibit 1. I'll ask you to take a look at that
9 in your lap and tell me if you recognize that object. In
10 your lap, sir. It's not in evidence yet, so if you could
11 keep it in your lap. Do you recognize that?

12 A Yes, sir.

13 Q And what is that?

14 A It's the pocketknife that the suspect had that night.

15 Q It's a what?

16 A It's the pocketknife that the suspect had that night.

17 Q And I think you indicated earlier that that knife was
18 open when you saw it and it was in his hands, is that
19 correct?

20 THE COURT: You need to answer out loud, sir. I'm
21 sorry.

22 A Yes, sir.

23 Q Okay. All right. I want to also show you -- once
24 you -- once you got the defendant in handcuffs and
25 controlled did you do a search of his person?

Matthew Tyler May
Direct examination by Mr. Fretwell

1 A Yes, sir.

2 Q And is that something that you typically do?

3 A Yes, sir.

4 Q Okay. And why do you do that?

5 A You're either looking for more weapons -- and at this
6 point, you know, we felt confident that probable cause
7 existed for the arrest. So it's a search incident to the
8 arrest. And you're looking for fruits of the crime, means
9 of escape or other weapons.

10 Q Well, let me ask you specifically about fruits of the
11 crime. Were you -- were you aware of how much, if any,
12 money was taken from the Dollar General?

13 A At that time, no.

14 Q Okay. Did you locate an amount of money in --

15 A Yes, sir.

16 Q Okay. Where did you locate it?

17 A Right front pocket.

18 Q Okay. Was the money in something or was it just by
19 itself?

20 A Some of the money was by itself, and then he had some
21 in his wallet.

22 Q Okay. And did you mark those separately?

23 A Yes, sir.

24 Q Okay. Let me -- let me point you to what has been
25 marked as State's Exhibit 2 and State's Exhibit 32. Can

Matthew Tyler May
Direct examination by Mr. Fretwell

1 you tell which ones of -- which of those exhibits were --
2 was the money that you found by itself and which money was
3 found in his wallet?

4 A State's Exhibit 32 was in his wallet.

5 Q Was in his wallet?

6 A Yes.

7 Q Do you know how much is in there?

8 A Looks like a dollar.

9 Q Okay. Did you put that in property and evidence after
10 the fact?

11 A Yes, sir.

12 Q All right. And what about the other exhibit?

13 A This would be the -- State's Exhibit 2 would be what
14 was in his right front pocket.

15 Q And how much money was that?

16 A Looks like \$22.

17 Q Okay. And that was by itself, not in anything, is
18 that correct?

19 A Correct.

20 Q And you put that into property and evidence as well?

21 A Yes, sir.

22 MR. FRETWELL: Your Honor, at this time the state
23 would move both of those exhibits into evidence.

24 THE COURT: Any objection?

25 MR. CULBERTSON: Just unclear. It's 32. And what was

Matthew Tyler May
Direct examination by Mr. Fretwell

1 the other number?

2 MR. FRETWELL: Two and 32.

3 MR. CULBERTSON: No objection, Your Honor.

4 THE COURT: They're in evidence without objection.

5 (U.S. currency marked State's Exhibit No. 2; U.S.
6 currency marked State's Exhibit No. 32.)

7 Q The item that you identified as Exhibit 32 that was in
8 a wallet, was there anything else in that wallet that you
9 located?

10 A A state-issued I.D.

11 Q Okay. I'm going to show you what's been marked as
12 State's Exhibit 33 and ask you if that's the item that you
13 placed into evidence.

14 A Yes, sir.

15 Q That came from the defendant's wallet, is that
16 correct?

17 A Yes, sir.

18 Q All right. Is it in the same condition as it was when
19 you saw it in his wallet?

20 A Yes, sir.

21 Q Okay.

22 MR. FRETWELL: At this time, Your Honor, the state
23 would move State's Exhibit 33 into evidence.

24 THE COURT: Any objection?

25 MR. CULBERTSON: No objection.

Matthew Tyler May
Direct examination by Mr. Fretwell

1 THE COURT: All right. It's in evidence without
2 objection.

3 (South Carolina identification card marked State's
4 Exhibit No. 33.)

5 Q Finally, Deputy May, where -- after the defendant was
6 arrested -- let me just ask you just for sake of clarity.
7 These -- do these pictures -- and I'm referencing State's
8 Exhibits 24 through 30. Are these pictures -- do they
9 represent the area in which you and Deputy Giovanni
10 arrested the defendant?

11 A Yes, sir, they do.

12 Q Do they contain or do they depict items that were
13 taken either off of his person or out of his pockets?

14 A Yes, sir, they do.

15 Q And, finally, is there a picture of the defendant in
16 that -- in that stack?

17 A Yes, sir. It's State's Exhibit 29.

18 Q Okay. And that's the individual that you arrested
19 that night.

20 A Yes, sir.

21 Q Thank you.

22 After the defendant was arrested he was transported to
23 the hospital, is that correct?

24 A Yes, sir.

25 Q Okay. Did you go to the hospital, or did you go to

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 somewhere else?

2 A I went to the hospital.

3 Q Okay. And you remained there in the vicinity of the
4 defendant while he was at the hospital, is that correct?

5 A Until Master Deputy Giovanni showed up with the
6 warrants, yes, sir.

7 Q All right. Please answer any questions that Mr.
8 Culbertson may have of you. Thank you, sir.

9 THE COURT: Cross-examination.

10 MR. CULBERTSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CULBERTSON

13 Q Detective May, how are you today?

14 A I'm good.

15 Q You received a broadcast communication that indicated
16 to you there was something going on at the Dollar General
17 on Rutherford Road. You proceeded like some other folks to
18 that location, is that correct?

19 A Yes, sir.

20 Q You weren't the first officer there.

21 A No, sir.

22 Q In fact, you didn't even stop at the Dollar General.
23 You and some other officers went around the block, so to
24 speak, to locate one of the fellows that had been at the
25 store, is that correct?

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 A Yes, sir.

2 Q You were told over this dispatch that there was a
3 person in the store robbing the store, holding a knife to
4 somebody and demanding money.

5 A Yes, sir.

6 Q Is that what you heard over your radio?

7 A Yes, sir.

8 Q And that -- I hate to say it this way. That's what
9 kind of got you excited, got you nervous, got you concerned
10 and made you want to go over there. Is that fair to say?
11 You were doing your job.

12 A Working that side of town, we all knew Sharon.

13 Q And you expected to find, based on what you had heard
14 you expected to find, somebody there with a knife demanding
15 money from somebody. Is that fair to say?

16 A If I would have gotten there first, yes.

17 Q Okay. In fact, you never saw Mr. Bailey nor anyone
18 else holding a knife on anybody else that night, did you?

19 A Me -- me?

20 Q You.

21 A Schematically saying.

22 Q You didn't see anybody holding a knife to anybody
23 else's throat, Mr. Bailey or anybody else that night.

24 A No, sir, no, sir.

25 Q You didn't see anybody else, Mr. Bailey or anybody,

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 demanding money from somebody else that night.

2 A No, sir.

3 Q You just know what you heard over the radio, correct?

4 A Are we talking about at the beginning, the end or the
5 totality of the circumstances?

6 Q I'm talking about what you heard over the radio.

7 A No.

8 Q That formed the basis for what you thought you were
9 going into.

10 A Right.

11 Q But you never saw any of that.

12 A No.

13 Q And we talked about this -- I talked about this a
14 little bit before, and I'm going to mention to you also.
15 Your blue lights in your car come on, correct? You turn
16 the blue lights on in your car, correct?

17 A Yes, sir.

18 Q You have to say yes or no when I ask you a question.

19 THE COURT: Sir, Mr. Culbertson --

20 MR. CULBERTSON: I'm sorry, sir.

21 THE COURT: -- if you have a problem with the way the
22 witness is answering the question, you direct that to the
23 Court.

24 MR. CULBERTSON: Yes, sir. I apologize.

25 THE COURT: Thank you, sir.

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 MR. CULBERTSON: Sorry.

2 Q As I understand from your testimony earlier, the
3 cameras in your car were not working correctly, is that
4 correct?

5 A Yes, sir.

6 Q And although most of the cars when you turn on blue
7 lights the cameras automatically activate, that was not the
8 case in the car you were driving that night.

9 A That's correct.

10 Q So there is no video from the in-car video.

11 A No, sir.

12 Q From your --

13 A No, sir.

14 Q When -- you testified earlier -- and this is what I'm
15 a little confused about -- that you saw -- you said you saw
16 a knife in Mr. Bailey's hand. Do you recall saying that?

17 A Yes, sir.

18 Q At what point in this chase over the west side of
19 town, east side, whatever side of town that is -- what
20 point during that night did you actually see this knife in
21 his hands?

22 A As -- as soon as -- when he went down -- again, when
23 he was going through the cycle of the taser I got on top of
24 him on his left side trying to control an arm on the left
25 side while Master Deputy Giovanni was controlling the other

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 side.

2 when I looked down I could feel his right arm coming
3 alive again from that cycle. And when I looked down
4 between my knees where his hand was, that's where the knife
5 was, and he was still grasping it.

6 Q Just so I'm clear, I understand, you never saw a knife
7 in Mr. Bailey's hand until after he had been tased and was
8 already on the ground.

9 A That's correct.

10 Q And then you participated --

11 A Yes, sir.

12 Q -- in holding him down on the ground while he was
13 being tased.

14 A That's correct, yes, sir.

15 Q That's when you saw the knife in the hand. At no
16 point prior to that in the store, around the store, even in
17 running, did you see the knife in Mr. Bailey's hand.

18 A That's correct.

19 Q After he's down you -- I'm essentially going to pick
20 on you a little bit. You -- you did a search of his body,
21 his clothes and everything on him, correct?

22 A Me and Master Deputy Giovanni. It was a combined
23 effort, yes.

24 Q Okay. Fair enough -- fair enough. But as part of
25 that combined effort searching him you found some money in

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 his pocket, his front-right pocket, correct?

2 A Yes, sir.

3 Q There was a wallet and some loose cash in that same
4 pocket.

5 A No, sir. His wallet was in his back right pocket.

6 Q I'm sorry. I thought you said earlier you found it in
7 his front pocket.

8 A No. The loose money was in his right-front pocket.

9 Q The loose money --

10 A His I.D. was in his wallet with the other money in his
11 back right pocket.

12 Q Which pocket's his wallet in?

13 A Back right.

14 Q His wallet's in his back right pocket.

15 A Yes, sir.

16 Q And there's some loose money that you find in his
17 front right pocket.

18 A Front, yes, sir.

19 Q So the wallet's in his back pocket. There's a little
20 bit of money in the wallet also, correct?

21 A Yes, sir.

22 Q And money in the right front pocket, wallet in the
23 back right pocket, and a knife in his hand, is that
24 correct? Is that what I understand you to be saying? Is
25 that your testimony?

Matthew Tyler May
Cross-examination by Mr. Culbertson

1 A Are you asking what hand the knife was in?

2 Q Yeah.

3 A Left.

4 Q Okay. So the knife's in his left hand.

5 A The way, he's on his stomach at this point. The
6 knife's gone. He's handcuffed. I'm on his left side.

7 How we do a quick search for weapons at that point --
8 because it's a search incident to arrest, we don't need a
9 search warrant to do this -- we roll them on the side. So
10 when we roll them on a side that gives me access to his
11 right side. When I'm done, we roll him on his right side,
12 and that gives Master Deputy Giovanni access to his left
13 side.

14 Q Okay.

15 A And then we stand him up.

16 Q Okay. Okay. Fair enough.

17 None of that's on the video anywhere.

18 A No, sir.

19 Q Because you're then working and the other officer's
20 got erased. Is that what you heard earlier?

21 A That'd be correct.

22 Q Thank you, sir.

23 THE COURT: Any redirect?

24 MR. FRETWELL: Very briefly Your Honor.

25 THE COURT: Yes, sir.

Matthew Tyler May
Redirect examination by Mr. Fretwell

1 REDIRECT EXAMINATION

2 BY MR. FRETWELL

3 Q With reference, Master Deputy May, to Mr. Culbertson's
4 questions about what information you received from
5 dispatch, on in-progress calls what information do you rely
6 on to make an arrest?

7 A The information from a Class I certified law
8 enforcement officer.

9 Q Okay. Do you -- do you consider the information
10 that's relayed from dispatch as well?

11 A We consider it, but we don't -- we find the facts
12 first.

13 Q Okay.

14 A It's information based on the beginning of an
15 investigation, which is concluded by the probable cause
16 established by a Class I certified law enforcement officer.

17 Q And were sufficient facts related to you either by a
18 Class I certified law enforcement officer or by dispatch to
19 make an arrest in this case?

20 A Yes, sir.

21 Q And did the defendant continue to struggle after you
22 saw the knife?

23 MR. CULBERTSON: I object to that question. It's
24 beyond the scope.

25 THE COURT: I'm going to allow that.

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 A Yes.

2 Q Thank you.

3 MR. FRETWELL: No further questions, Judge.

4 THE COURT: Anything on those particular questions,
5 Mr. Culbertson?

6 MR. CULBERTSON: No, sir.

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

8 You may step down, sir.

9 MR. FRETWELL: May it please the Court, Your Honor.

10 THE COURT: Yes, sir. Next witness.

11 MR. FRETWELL: The state would call Officer Ciera
12 Hilton.

13 CIERA RENEE HILTON, having
14 been first duly sworn, testified as follows:

15 THE CLERK: Please state your name for the record.

16 THE WITNESS: Ciera Renee Hilton.

17 MR. FRETWELL: May it please the Court, Your Honor.

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION BY MR. FRETWELL

20 Q Officer Hilton, where are you currently employed?

21 A I am currently employed at Mauldin Police Department.

22 Q And how long have you been employed at Mauldin Police
23 Department?

24 A About a year.

25 Q Okay. And you're a uniform patrol officer there, is

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 that correct?

2 A I am.

3 Q Where were you employed before joining the Mauldin
4 Police Department?

5 A I was at Greenville County forensics.

6 Q Okay. And what were -- how long were you at
7 Greenville County forensics?

8 A A little over a year.

9 Q And what were your responsibilities at Greenville
10 Forensics?

11 A Essentially for whatever department needed our
12 assistance. We'd come out, photograph, collect evidence,
13 process evidence, just aid whatever agency we could.

14 Q And did you -- were you working in that capacity on
15 April 14th of 2013?

16 A I was.

17 Q And did you respond to the area of the Dollar General
18 on Poinsett Highway near Rutherford Road?

19 A Yes, sir.

20 Q All right. What information did you know before you
21 got there or once you arrived?

22 A Essentially, the way it worked, works with forensics
23 is whatever agency is dispatched would call us at the crime
24 scene office and just tell us basically what type of call
25 we were responding to.

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 So that night I got a call there had been an armed
2 robbery at this location. So essentially that's the
3 information I got. And I responded.

4 Q And once you arrived did you talk with any of the
5 officers on the scene?

6 A Yes. Initially, Sergeant Reinhart was outside of the
7 business. He pointed me into the direction of Master
8 Deputy Giovanni and Master Deputy May. I believe they were
9 still in the alleyway. The suspect was -- or excuse me --
10 the defendant was in the back of one of their cars at that
11 point.

12 Q Did you ever actually run into this individual?

13 A I never have, no, sir.

14 Q So -- so the individual that was the suspect in this
15 particular case when you were arriving, you didn't run into
16 him, you didn't see him, is that --

17 A No, sir. I had no dealings with him at all.

18 Q And what information was related to you -- well, let
19 me ask you this. How do you know how to do your job once
20 you arrive?

21 A How do I know how to do --

22 Q Exactly.

23 A Okay. Basically, just get a rundown of the
24 information that is known, look and see what they need as
25 far as from me, get direction from what they need me to do,

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 and then adjust accordingly.

2 Q Okay. And do you recall what information you knew
3 about what had happened that related to your collection of
4 evidence or your processing of the scene or anything like
5 that?

6 A From what I was told, was that the suspects was seen
7 fleeing from the initial incident location.

8 MR. CULBERTSON: I'm going to object to this, Your
9 Honor.

10 MR. FRETWELL: I'd like to respond.

11 MR. CULBERTSON: Well, maybe he can rephrase the
12 question, but I'm hearing a bunch of what somebody else --

13 THE COURT: I appreciate that, Mr. Culbertson.

14 Let's start off with, solicitor, you rephrasing the
15 question, and then we'll see where it goes from there.

16 Okay. Please, sir.

17 MR. FRETWELL: Yes, sir.

18 Q Do you have to know what's going on at the scene in
19 order to do your job?

20 A Yes.

21 Q Okay. What -- what information did you know or did
22 you learn that impacted how you did your job?

23 A Okay. What I was told was that the person, the
24 defendant, had already been taken into custody after a
25 short foot pursuit, that he was tased, while he was being

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 tased a knife was discovered which was lying on the ground
2 and --

3 Q When you arrived.

4 A When I arrived, yes. The knife was lying on the
5 ground. It was pointed out to me, as well as a small pile
6 of miscellaneous items that had been taken from the
7 defendant's person.

8 Q And what did you understand about how that knife got
9 right there on the ground?

10 A That it was dropped or taken out of his hands after he
11 was tased.

12 Q And what, if anything, did you know about the
13 suspect's hands that it was taken out of? Did you know
14 anything about whether his hands were gloved or ungloved?

15 A Yeah. It was also advised that the suspect had gloves
16 on his hands during the time of the incident.

17 Q And why is that information about whether he had
18 gloves on his hands or not and whether he had possession of
19 the knife or not, why is that important to you as a
20 forensics officer?

21 A Okay. Well, firstly, if you have gloves on your hands
22 that obviously prevents a barrier for leaving any type of
23 latent fingerprints behind, and also as far as if something
24 is taken off of someone's person, you know, it's kind of,
25 you know, it's on your person. It's kind of hard to not

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 say that something's yours.

2 Q And what about with respect to processing of the
3 actual Dollar General? What did you know with respect to
4 the facts that factored into your decision about what you
5 needed to do at the actual building itself?

6 A Okay. So I responded to Master Deputy Giovanni's
7 position originally before I even went inside the Dollar
8 General to see exactly what had happened.

9 So whenever I got done collecting the evidence at the
10 Master Giovanni -- or Master Deputy Giovanni's area I went
11 into the Dollar General, and that's whenever I was actually
12 advised that the defendant never touched any type of till,
13 registers, anything like that; that the money was actually
14 handed to him by a whole different individual.

15 Q Okay. And was it your information that he was or was
16 not gloved -- the suspect in this case -- while leaving the
17 premises of the Dollar General?

18 A I was advised that he was gloved.

19 Q Okay. Would you typically process the scene in that
20 situation and look for latent prints?

21 A No, sir.

22 Q Okay. What are the purpose of dusting for prints in
23 that process?

24 A I don't understand your question.

25 Q Okay. Why -- when you go out to dust for prints, why

Ciera Renee Hilton
Direct examination by Mr. Fretwell

1 are you doing that?

2 A You essentially dust for prints to get identification
3 on someone.

4 Q Okay. That's unknown, is that right?

5 A Yeah, unknown, an unknown person.

6 Q Now, did you -- you said you collected items of
7 evidence. I'm going to refer you to the item that's in
8 front of you.

9 A Uh-huh.

10 Q And also what's in evidence as State's Exhibit 31.
11 Are these two items that you collected?

12 A Yes, sir.

13 Q Now, State's 1 and State's 31 are both opened, is that
14 correct?

15 A Yes, sir.

16 Q State's 1. Did you seal that item when you placed it
17 into property and evidence?

18 A I did.

19 Q Will you look in there and tell the jury if that's the
20 same item that you placed into evidence?

21 A Yes, sir. It is.

22 Q Okay. Is it in the same condition as when you
23 collected it from the scene and then placed it into
24 property and evidence?

25 A When I collected it from the scene the blade was open.

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 It is closed while putting it in the box to prevent anyone
2 from getting injured.

3 Q Other than that is it the same object that you
4 collected?

5 A Yes, sir.

6 MR. FRETWELL: Your Honor, at this time the state
7 would move State's Exhibit 1 into evidence.

8 THE COURT: Any objection to that?

9 MR. CULBERTSON: No objection, Your Honor.

10 THE COURT: All right, sir. It's in evidence without
11 objection.

12 (Silver knife marked State's Exhibit No. 1.)

13 Q Please answer any questions that Mr. Culbertson may
14 have.

15 THE COURT: Cross-examination.

16 MR. CULBERTSON: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. CULBERTSON

19 Q Officer Hilton, how long had you been with Greenville
20 County forensics, the sheriff's department, before you went
21 to Mauldin?

22 A Before I went to Mauldin?

23 Q Yeah.

24 A A little over a year, approximately a year, somewhere
25 around in that range.

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 Q And during that year you were there -- and just so
2 everybody understands, there's the sheriff's office, and
3 then a subsection or subunit or division of that is the
4 forensics area, is that correct?

5 A Yes, sir. It's actually divided. You have Greenville
6 County Sheriff's Office, and you have the Department of
7 Public Safety. Department of Public Safety encompass the
8 forensics. I think the jail is under that as well.

9 Q And as part of your duty as a forensics officer with
10 the Greenville County Sheriff's Office, part of those
11 duties involve the collection and maintenance, securing of
12 evidence collected by officers in the course of their duty.

13 A Yes, sir. That's what --

14 Q Is that --

15 A Yeah. If that's what they ask me to do, I would take,
16 yes, take the evidence.

17 Q You'll get a phone call from some officers, you'll
18 show up at a scene, and they will say we need you to
19 collect that stuff.

20 A Yeah.

21 Q And that's what you did this night.

22 A Yes, sir. That's all I did.

23 Q You had nothing to do with the actual event or chase
24 or running around or tackling or arresting or tasing or
25 any -- you didn't do any of that.

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 A No, sir. I did not.

2 Q You were just there to collect the evidence that was
3 scattered about.

4 A Yes. I was there to collect what I was told to
5 collect.

6 Q Okay. In the general course of your duty as a
7 forensic officer do you do that? I'll give a hypo --

8 A I can't hear you, sir.

9 Q I'm sorry. I said I'm going to give you a little bit
10 of a hypothetical situation.

11 A Okay.

12 Q If an officer is involved in a shooting you're
13 required to respond to that event. You collect the gun or
14 the bullet or whatever was involved in that event, correct?

15 A Yes.

16 Q In this case there was no gun involved.

17 A No, sir.

18 Q So you didn't have to worry about collecting a gun.

19 A No, sir.

20 Q There supposedly was a knife involved, and so you were
21 directed to collect that knife.

22 A Yes, sir.

23 Q Much like an incident that involved an officer
24 shooting. If there's a taser involved do you collect the
25 taser?

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 A It depends on the agency and if they ask to -- for the
2 cartridge to be tased. When I was at forensics that is
3 something that we did not collect. That was up to the
4 department to collect their own taser cartridge, part of
5 their own policy.

6 Q That night you weren't requested to collect any of the
7 taser cartridges or guns, or whatever a taser is. You
8 weren't requested by any of the officers to collect that
9 taser that may have been used that night.

10 A No, sir, because, like I said, that -- we did not --
11 we do not collect taser cartridges, or we didn't at that
12 time.

13 Q You collected that which you were directed to collect
14 by the officers already at the scene.

15 A Yes, sir.

16 Q Part of the evidence in this situation, this case, is
17 some video tapes. Were you directed by the officers to
18 collect those video tapes?

19 A No, sir, because, once again, that's not in our scope.

20 Q It's not in your scope.

21 A No.

22 Q So the question as to who was responsible for those
23 video tapes, the answer to that is not you.

24 A No.

25 Q The officers themselves.

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

- 1 A I typically -- they would collect that kind of stuff,
2 yes, because they are in direct contact with the victims or
3 the complainants.
- 4 Q Or the in-car videos.
- 5 A Yes.
- 6 Q You're not directed to collect those.
- 7 A No, sir.
- 8 Q You have no connection to that whatsoever.
- 9 A No, sir.
- 10 Q The only thing you know is that you were directed by
11 the officers to collect this knife.
- 12 A And I believe it was a piece of black cloth.
- 13 Q Yeah. This piece of black cloth, correct?
- 14 A Yes.
- 15 Q Both of those are what's in front of you right now.
- 16 A Yes, sir.
- 17 Q And your direction as to what to do with these items
18 ended there?
- 19 A Yes.
- 20 Q So after you were told by the officers to collect
21 these items -- my question is this: After you were
22 directed by these officers to collect these items were you
23 directed to do anything else with these items?
- 24 A No.
- 25 Q All right. If there were any fingerprints to be done

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 on these items would someone have directed you to do that
2 or would you as a forensic officer done that on your own?

3 A Typically, if it was a case where the suspect was not
4 known I would have gone ahead and fumed the knife, but
5 since I was advised that the knife was taken off his
6 person, one, and, two, he was wearing gloves, there
7 essentially is no need to fingerprint the knife.

8 Q So you didn't do any fingerprints on the knife, nor
9 were you directed by anybody else to do fingerprints on the
10 knife.

11 A No, sir.

12 Q Likewise, I'm assuming no one directed you to, or did
13 you on your own, do any blood test on this knife.

14 A No, sir.

15 Q There was no D.N.A. collected from this knife.

16 A No, sir.

17 Q Had you been informed that the knife was actually held
18 to somebody's throat and that blood had resulted would you
19 have done a D.N.A. test on the knife?

20 A The D.N.A. testing is a very expensive test. That
21 would have been something that would have been ran up
22 through my immediate supervisor. But since there were
23 witnesses on scene that identified the defendant as to
24 holding the knife to the victim's throat, I did not see
25 where that was, in fact, relative.

Ciera Renee Hilton
Cross-examination by Mr. Culbertson

1 Q You've been here for most of this testimony.

2 A Yes, sir.

3 Q You've heard some testimony about a knife being held
4 to the victim's throat and as a result of that some blood
5 being shed from her throat.

6 A Okay.

7 Q Did you recall hearing that?

8 A I don't know about the blood part, but, yes, the
9 throat, yes.

10 Q Okay. No tests were done on this thing.

11 A No, sir.

12 Q Thank you, ma'am.

13 A You're welcome.

14 THE COURT: Redirect?

15 MR. FRETWELL: No questions, Your Honor.

16 THE COURT: You may step down, ma'am.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Further witnesses from the state?

19 MR. FRETWELL: Your Honor, at this time the state
20 rests.

21 THE COURT: Very good.

22 All right. Mr. Culbertson, there is some matters of
23 law for the Court at this point in time?

24 MR. CULBERTSON: Yes, sir.

25 THE COURT: Very good.

1 All right. Ladies and gentlemen of the jury, if you
2 would, go to the jury room at this point in time while I
3 take up those matters of law. Thank you very much.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: All right. Mr. Culbertson, motions by
7 defense?

8 MR. CULBERTSON: Well, obviously, Your Honor, our
9 first motion is going to be one for a directed verdict.

10 THE COURT: All right, sir. Regarding your motion for
11 a directed verdict, the standard for the Court is that a
12 defendant would be entitled to a directed verdict when the
13 state fails to produce evidence of the offense charged. I
14 am concerned with the existence of evidence. I do not
15 judge its credibility or believability, that being the job
16 of the jury.

17 In deciding whether or not the evidence exists, I've
18 taken into consideration the testimony of the victim in
19 this matter, witnesses to the situation, the officers
20 involved in this matter. And I find that there exists
21 certainly direct evidence and substantial circumstantial
22 evidence reasonably tending to prove the guilt of the
23 defendant of the crime charged, and therefore the case
24 will -- or your motion at this point in time is denied.

25 MR. CULBERTSON: Yes, sir.

James Eddie Bailey (In-camera)
Examination by the Court

1 THE COURT: Further motions by the defense?

2 MR. CULBERTSON: Not at this time, Your Honor.

3 THE COURT: All right, sir. Very good.

4 All right. Mr. Culbertson, have you spoken to your
5 client? Do you --

6 MR. CULBERTSON: Your Honor, my client and I have
7 spoken previously about the need for him to testify in this
8 matter. He has indicated to me that he does not wish to
9 testify.

10 THE COURT: All right. But do you want to -- do you
11 want to take a short break and speak to him one more time,
12 or is he prepared to answer the Court's questions at this
13 time?

14 MR. CULBERTSON: Give me one second, Your Honor.

15 THE COURT: Yes, sir. Please.

16 (Pause.)

17 MR. CULBERTSON: Your Honor, we don't need more time.

18 THE COURT: Very good. All right.

19 All right. If you would then, if you'd stand up,
20 Mr. Bailey, please.

21 And, Madam Clerk, if you would, place him under oath.

22 JAMES EDDIE BAILEY, having
23 been first duly sworn, testified as follows:

24 THE COURT: All right. Mr. Bailey, at this point I'm
25 going to explain to you and talk to you about your

James Eddie Bailey (In-camera)
Examination by the Court

1 constitutional right regarding the -- whether or not you
2 would testify in this particular matter.

3 If at any point in time during our discussion, if you
4 don't understand anything, if you have a question, you're
5 going to need to indicate that to me. You can raise your
6 hand. You can tell your attorney. But we've got to be in
7 agreement that you've got to let me know you've got a
8 question or there's some matter we need to discuss. Are we
9 in agreement there?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. And if you can, if you
12 can speak up just a little bit so that not only do I hear
13 but the court reporter has got to take down your answers.
14 All right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you very much.

17 We've reached the stage in the trial where you can
18 present a defense if you so choose.

19 Now, you are given under the Constitution of the
20 United States certain protections, and one of those is
21 under the 5th Amendment of the Constitution of the United
22 States. And it states in part that no person shall be
23 compelled in any criminal case to be a witness against
24 themselves. That means nobody can make you testify in this
25 case. You obviously can testify if you want to, but nobody

James Eddie Bailey (In-camera)
Examination by the Court

1 can make you testify. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir. Now, regarding this
4 matter, if you testified it'd be subject to the same rules.
5 You've seen all of the other witnesses come up here and
6 testify.

7 You'd be examined or asked questions by your attorney.
8 You would be cross-examined or asked questions by the state
9 as to any matters the Court deemed relevant or proper.

10 Now, solicitor, is there any prior record that you
11 would be asking to examine the defendant about?

12 MR. FRETWELL: Yes, Your Honor.

13 THE COURT: And what might that be, please?

14 MR. FRETWELL: Your Honor, the defendant was released
15 from the Department of Corrections on November the 1st of
16 2012 for 11 felonies and one misdemeanor.

17 THE COURT: All right. Very good.

18 All right. So you understand, Mr. Bailey, that if you
19 decided to testify the state would be allowed to ask you if
20 you had been convicted of these crimes in the past. And if
21 you admitted that, then that would be the end of the
22 discussion. The state couldn't explore it any further as
23 to any of the facts or circumstances surrounding that. Do
24 you understand that?

25 THE DEFENDANT: Yes, sir.

James Eddie Bailey (In-camera)
Examination by the Court

1 THE COURT: Obviously, if you denied it, then they'd
2 be able to more fully explore that. But -- but I do
3 believe it is proper, and proper under our rules, that the
4 state be allowed to bring that to the jury's attention
5 regarding credibility and believability and find that the
6 value of admitting that kind of evidence outweighs any
7 prejudice to you. So I would allow the state to do that.

8 Now, if you decide to testify it's got to be your
9 decision.

10 You can speak to your attorney; you can speak to, you
11 know, a family member if you wanted to; but you understand
12 it's your decision to make. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, sir. Have you understood
15 everything we've talked about?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now, I will tell you if you
18 decide not to testify it will be part of the Court's
19 instructions that the jury will not give that fact any
20 consideration whatsoever. They can't make their decision
21 based upon whether or not you testify. They've got to make
22 their decision based upon the facts and evidence presented
23 in the courtroom, not whether or not you testified. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

James Eddie Bailey (In-camera)
Examination by the Court

1 THE COURT: All right, sir. With that, would you like
2 to ask your attorney any questions or a family member any
3 questions at this point in time?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right, sir. Do you wish to testify in
6 this case?

7 THE DEFENDANT: No, sir.

8 THE COURT: Thank you very much. Have a seat.

9 All right. With that, then, Mr. Culbertson, would the
10 Court be correct in understanding that the defense rests at
11 this point in time?

12 MR. CULBERTSON: Yes, sir.

13 THE COURT: All right. Very good. Would you like to
14 renew your motions for a directed verdict at this point in
15 time?

16 MR. CULBERTSON: Yes, sir, I would.

17 THE COURT: All right, sir. I will tell you when we
18 call the jury back in -- we'll take a short break. But
19 when we call the jury back in I will ask you what is the
20 defense's position, and you can tell me the defense rests,
21 and they understand that, and then we'll proceed on after
22 that.

23 But regarding your motion for a directed verdict, I'm
24 not going to restate that standard, but I do find that
25 there is direct evidence, substantial circumstantial

1 evidence, that has been produced in this case that
2 reasonably tends to prove the guilt of the defendant beyond
3 a reasonable doubt.

4 Again, that's the Court's standard in the
5 directed-verdict standard. That's not the jury standard.
6 There is obviously beyond a reasonable doubt.

7 But I do find the evidence exists and the matter is
8 properly to be considered by the jury. And the motion for
9 a directed verdict is denied.

10 MR. CULBERTSON: Yes, sir.

11 THE COURT: All right. From the state, any matters
12 before we would talk about the charge on the law?

13 MR. FRETWELL: Before the charge, no, Your Honor.

14 THE COURT: All right, sir. And before we talk about
15 the charge, any matters from the defense, Mr. Culbertson?

16 MR. CULBERTSON: No, sir.

17 THE COURT: All right, sir. Just give me one second
18 here.

19 (Pause.)

20 THE COURT: All right. So -- all right. Regarding
21 the Court's charge in this matter, I will talk to the jury
22 about the things that we always normally talk to them
23 about, as I indicated to the jury in the beginning about
24 credibility and believability, their job and duty and
25 responsibility in that regard.

1 I will talk to them briefly about direct and
2 circumstantial evidence. They're, in essence, being --
3 that the law doesn't give any greater weight or value to
4 either direct or circumstantial evidence. But in
5 accordance with the latest decision of our Supreme Court I
6 will state that to the extent that the state relies on any
7 circumstantial evidence those circumstances must be
8 consistent with each other and point conclusively to the
9 guilt of the accused beyond a reasonable doubt.

10 With that, in this matter obviously will talk to the
11 jury about the fact, as I indicated, the defendant didn't
12 testify. I will tell them it's not a factor and can't be
13 considered in their deliberations, they can't talk about it
14 in the jury room. It's not part of this case. And so I'll
15 emphasize that to them.

16 The presumption of innocence. Describe that and
17 explain that to the jury.

18 Reasonable doubt. The kind of doubt that would cause
19 an ordinary reasonable person to hesitate to act.

20 After that, then the Court would go into the four
21 crimes that the state has brought against the defendant,
22 that being armed robbery, kidnapping, and then possession
23 of a weapon during the commission of or attempt to commit a
24 violent crime.

25 I would include in that that the State of South

1 Carolina considers armed robbery and kidnapping to be
2 violent crimes and indicate to them that the defendant
3 would have to be convicted of one of those for the jury to
4 even consider possession of a weapon during the commission
5 of a violent crime and then to -- regarding resisting
6 arrest.

7 Is there anything further that the state would wish
8 the Court to charge the jury in this matter?

9 MR. FRETWELL: Judge, it may very well be in your
10 charge and I just didn't hear it, but with respect to
11 burden of proof do you charge the Victor vs. Nebraska
12 language of a juror being firmly convinced?

13 THE COURT: Yes.

14 MR. FRETWELL: Thank you.

15 THE COURT: I just didn't -- I didn't read you the
16 whole.

17 MR. FRETWELL: No objection on the charge.

18 THE COURT: It just starts off with the kind of doubt
19 that would cause a reasonable person to hesitate to act, is
20 the first part of it.

21 Yes, sir, Mr. Culbertson.

22 MR. CULBERTSON: Your Honor, just two things. I'll
23 make it very brief.

24 THE COURT: Yes, sir.

25 MR. CULBERTSON: You made reference to a new charge

1 out of the Supreme Court in terms of evidence, and I am
2 assuming you're talking about the decision that came down
3 from the Court of Appeals, State vs. Michael Wilson
4 Pearson.

5 THE COURT: No, sir. I was talking about the Supreme
6 Court decision about circumstantial evidence.

7 They -- you know, before State vs. Grippon we had a
8 circumstantial evidence charge, and basically, you know,
9 the Supreme Court was of the opinion at that point in time
10 that all of the circumstances had to reasonably point, you
11 know, if they're using circumstantial evidence. And the
12 Supreme Court sort of went away from that in State vs.
13 Grippon.

14 of course there was this -- there was a 2-justice
15 descent in that case, one of those being Chief Justice,
16 and, you know, certain changes. I think she persuaded them
17 to go back somewhat to where the Court was originally. And
18 so I've taken that, and I just incorporated into the
19 state's charge.

20 I believe it is the Supreme Court's view that if the
21 state relies on any circumstantial evidence that the
22 circumstantial evidence has to be consistent with each
23 other and point conclusively to the guilt of the defendant
24 beyond a reasonable doubt. So I just include that in the
25 state's description or the Court's description of direct

1 and circumstantial evidence. So that's what I was talking
2 about.

3 MR. CULBERTSON: Yes, sir. And I appreciate that. I
4 understand that. I just recently found out about this
5 State vs. Grippon case. I think I got it last night.

6 THE COURT: Okay.

7 MR. CULBERTSON: And I didn't note that.

8 THE COURT: Well, what is it that you -- what is it
9 that you wanted me to do?

10 MR. CULBERTSON: Your Honor, to be honest with the
11 Court, I personally have not had a chance to fully look at
12 the case yet. I just know it deals with some
13 circumstantial-evidence language.

14 THE COURT: Yes, sir.

15 MR. CULBERTSON: I've not had a chance, again, to
16 fully look at it.

17 THE COURT: All right.

18 MR. CULBERTSON: And I'm just alerting the Court
19 and/or your clerk to maybe take a look at it and see --

20 THE COURT: Well, I appreciate that, but, you know,
21 until our Supreme Court tells us to -- if they do -- change
22 again, then I'm going to stick with the last decision they
23 made.

24 MR. CULBERTSON: Yes, sir. I understand.

25 THE COURT: All right, sir.

1 MR. CULBERTSON: Also, Your Honor, one last thing I
2 wanted to bring up, and I made reference to this in my
3 opening.

4 At some point during your initial conversation with
5 the jury you indicated it was really four trials in one.

6 THE COURT: Right. And I told them at the -- in the
7 opening that -- that they were going to make four separate
8 decisions and one decision did not have to govern the
9 other.

10 They have to make a -- four separate decisions because
11 the elements are different, and I just told them they
12 needed to listen to the facts and evidence and then listen
13 to the Court's charge on the law and make a decision on
14 each one of them.

15 And I'll tell them that again when we get to the point
16 of the verdict form. And I did not talk about the verdict
17 form but it's -- the way I've got it here, they're very
18 straightforward. They've got the caption of the case.

19 There's a separate verdict form for each charge.
20 There's one for armed robbery; there's one for kidnapping;
21 there's one for possession of a weapon during the
22 commission of a violent crime; and one for resisting
23 arrest.

24 And I will tell you that in between the four verdict
25 forms I do have a short page in here, and it'll just

1 reaffirm what I'll tell them. But it's in there so they
2 know before they get to the possession of a weapon during
3 the commission of a violent crime.

4 There's a statement if the jury has found the
5 defendant guilty of either armed robbery or kidnapping they
6 must render a decision on the charge of possession of a
7 weapon during the commission of a violent crime.

8 And the next paragraph is, however, if the jury found
9 the defendant not guilty of armed robbery and not guilty of
10 kidnapping the defendant must be found guilty -- not
11 guilty -- must be found not guilty of the possession of a
12 weapon during the commission of a violent crime.

13 And then I tell them to proceed on to the resisting
14 arrest.

15 And on every form it basically says on the charge of
16 whatever it is, we, the jury, by unanimous consent find the
17 defendant. And it's two choices. And I always tell them
18 you've got to put one before the other. I do that. And
19 you've got not guilty or guilty. So that's how the verdict
20 form is. All right, sir.

21 MR. CULBERTSON: Thank you, sir.

22 THE COURT: All right. But I -- I intend when I get
23 to the verdict form to, again, explain to them you've got
24 four charges, just because you find one way in one of them
25 doesn't mean you've got to find the same way in the other

1 one. It can be all -- it can be different.

2 MR. CULBERTSON: Thank you, sir.

3 THE COURT: All right. Let's take a short break.

4 Now, in -- yes, sir.

5 MR. CULBERTSON: I was going to ask you Your Honor.

6 It's currently almost 3:00 o'clock. I know we're going to
7 take a short break.

8 THE COURT: Yes, sir.

9 MR. CULBERTSON: And I was just trying to get some
10 feel from the Court as to its willingness to come back
11 tomorrow morning and argue and charge.

12 THE COURT: Well, I'm not -- we're not -- it's not a
13 necessity that the jury has to render a verdict tonight.
14 It's not Friday.

15 So we'll take a short break. We'll come back. We'll
16 have the closing arguments. Now, in the closing
17 arguments -- if I am recalling correctly, the defendant did
18 not introduce any evidence.

19 So, solicitor, you would have the obligation to give
20 your complete argument first, and then obviously Mr.
21 Culbertson have the closing argument.

22 MR. FRETWELL: That's correct, Your Honor.

23 THE COURT: And then, obviously, the Court will charge
24 the jury, and we'd submit it to them for their
25 deliberations for some period of time.

1 It's my intention that -- I'm not going to have them
2 be here very late. I'll send them home unless they in the
3 communication that the judge is going to send you home for
4 tomorrow, they tell -- you know, they tell the bailiffs,
5 say, no, we're about to reach a verdict. You know, then
6 we'll stay. But we are not going to be here all night,
7 because there's no need for it since we've got court
8 tomorrow.

9 MR. CULBERTSON: Thank you, sir.

10 THE COURT: Okay. Thank you very much.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Solicitor, is the state ready
13 for the jury to come in?

14 MR. FRETWELL: Yes, Your Honor.

15 THE COURT: Defense?

16 MR. CULBERTSON: Yes, sir.

17 THE COURT: All right. Very good.

18 Ask the jury to come in, please, ma'am.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. Mr. Culbertson, the position
22 of the defense at this time?

23 MR. CULBERTSON: The defense at this time rests, Your
24 Honor.

25 THE COURT: Very good.

1 All right. Ladies and gentlemen, we have concluded
2 the evidentiary portion of this trial. There will be no
3 more evidence that is received in this case. That does not
4 end the proceedings.

5 where we are now is we will have the closing arguments
6 of the attorneys. I told you at the very beginning the
7 opening statements and closing arguments, they are not
8 evidence. You have now received all of the evidence in
9 this case.

10 The closing arguments are important. They're each
11 side's summation to you of what they believe that the
12 evidence has shown to you during the course of the trial,
13 remembering of course that you are the judges of the facts
14 in this particular case.

15 when we get done with the closing arguments I will
16 give you the law that you will apply to the facts and
17 evidence you find to be true in this case. And then I'll
18 submit the case to you for your deliberations and your
19 unanimous decision in this particular matter.

20 So with that, Solicitor.

21 MR. FRETWELL: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 MR. FRETWELL: Mr. Culbertson.

24 MR. CULBERTSON: Yes, sir.

25 MR. FRETWELL: Good afternoon, ladies and gentlemen.

Closing arguments

1 As the judge has told you, this is the conclusion of
2 the evidence in this case, and I'm going to try to be
3 brief, but I have to tell you this is my last opportunity
4 to speak to you. There've been a lot of exhibits in this
5 case. I'm going to try to be as brief as I can.

6 There are generally two types of crimes in a criminal
7 practice. The first, which is probably the most common, is
8 a case where there's a clear crime that's committed but we
9 don't know who did it. And those kinds of cases are
10 generally referred to by law enforcement officers as
11 who-done-its. That's probably the most common.

12 The second class is a situation where we know who the
13 parties are that are involved. It might be two individuals
14 that got into a fight. One's dead. Why did that person
15 die? Was it self-defense? Is there a justification for
16 it?

17 Those kinds of cases are not as common as the
18 who-done-its, the burglaries where there's a broken window,
19 there's items stolen but we don't know who did it. So
20 forensics come in. They dust for prints. They canvass the
21 neighborhood. They talk to neighbors, who saw what, trying
22 to make an identification of who committed the crime.

23 There's also a third category, and this third category
24 is actually very rare. And the third category is where
25 there's a clear crime and there's an individual there and

Closing arguments

1 we know who that person is because they're caught
2 redhanded.

3 Ladies and gentlemen, that is the kind of case that
4 you have before you today, a situation in which there's a
5 clear crime, a clear set of crimes, and an identifiable
6 individual who perpetrated those crimes.

7 You heard testimony starting yesterday from Tom Nash.
8 Tom Nash told you -- and Sharon Taylor told you as well --
9 that they were at the Dollar General on April 14th of 2013
10 closing the store, that at some point several people had
11 come in the store. Most of those people had gotten their
12 merchandise and were heading out of the store. And there
13 were one, two people left in the store.

14 Mr. Nash stepped out to help somebody to her car with
15 some bags, and at that point according to Ms. Taylor the
16 defendant she identified asked or motioned for her to come
17 to the back of the store, wanted her -- him -- she -- he
18 wanted her to show him where the snacks were.

19 You remember the testimony of Sharon Taylor that she
20 said she became uneasy at some point because the snacks
21 were clearly visible in front of her, and yet there was
22 still this pulling to the back of the store.

23 Now, Mr. Nash testified that when he came back in the
24 store alerted by Karen Nartowicz that there was something
25 going on in the store, he went back and he found his

Closing arguments

1 girlfriend on the ground with the defendant lying on top of
2 her. But at that point he became very concerned.

3 And, ladies and gentlemen, at the conclusion of what
4 happened there when he went and got that money, brought it
5 back and then followed that individual out of the store, if
6 it had not been for a couple of things that individual
7 would have left the store and this case would move back
8 into that first category, who-done-it.

9 Ms. Taylor and Mr. Nash both testified that the
10 individual wasn't known to them. They didn't know that
11 person, hadn't been in the store before that they -- that
12 they recalled.

13 But it was for a couple of things that this case takes
14 a different trek. It was Karen Nartowicz immediately
15 going, taking her cell phone and calling 9-1-1.

16 Now, Karen didn't testify much, didn't have a lot of
17 recollection of that night. But I submit to you all that
18 Karen Nartowicz is a hero because she contacted the police.

19 And Bruce Emily -- and you saw that video, how fast he
20 was moving. And I know we all sit there when we're driving
21 down and see a patrol car whiz by and think who does that
22 person think he is, they're not chasing anybody. Well,
23 ladies and gentlemen, that is an instance where Deputy
24 Emily is also a hero.

25 And Tom Nash is a hero to Sharon Taylor. And I'm

Closing arguments

1 sorry he got caught on the other side of that door, but you
2 all had a chance to listen to Tom Nash testify. And you
3 talk about somebody that's just a country boy, that's Tom
4 Nash.

5 I don't know how somebody can be married to somebody
6 for 30 years, quit your job, stay home, take care of that
7 lady while she died, get through that, have somebody else
8 come into your life and experience the kind of incident
9 that occurred on April 14th of 2013 and remain as
10 collective and as composed and thinking the way that Tom
11 Nash did. But you heard it from him on the stand and you
12 heard it from him on that 9-1-1 call.

13 And, ladies and gentlemen, when the state -- when the
14 judge tells you the state has the burden of proof -- and we
15 certainly have the burden of proof -- there's also a lot
16 that the prosecutor takes on.

17 And when a witness is kind of a little bit snappy to
18 defense counsel, makes you cringe a little bit. But you
19 have to think about this.

20 Tom Nash sees in front of him the individual who
21 almost took his girlfriend's life. And there's a man there
22 doing his job in representing him, and he's going to maybe
23 be a little bit terse. But that's Tom Nash. You saw him;
24 you heard him; you heard him testify. And you weigh his
25 credibility as to whether he saw his girlfriend Sharon

Closing arguments

1 Taylor on the ground unable to move.

2 Now, I also want you to think about this: You heard
3 Tom Nash testify, and Sharon Taylor, both, testify about a
4 can of Ravioli, that Sharon reached over and grabbed and
5 thought maybe if I just -- maybe I can get out of this.

6 And who knows what? Nobody knows what they would do
7 in that situation once they're in it. But Tom Nash was
8 there.

9 And here's the other hero in this case. Tom Nash
10 said, no, Sharon, don't do that, let's not antagonize him,
11 let me go while he's holding you hostage and procure \$22 --
12 \$22, ladies and gentlemen, that I submit was a ransom for
13 Sharon's life. And it worked. Whether it was the fact
14 that the defendant was able to get the money that he asked
15 for, whether it was the fact that Tom Nash told him you
16 better get out of here because the police are on their way.
17 Regardless, he got up, and he started walking out of that
18 door.

19 And, again, I want you to think about this. What
20 would have happened if Bruce Emily had been just a few
21 minutes late? What if Karen Nartowicz had decided, look,
22 I'm outta here, there's something going on, I'm just going
23 to run out the door, I'm going to go in another part of the
24 store, but I'm not going to call 9-1-1. She's a hero,
25 ladies and gentlemen. That's what she is.

closing arguments

1 You heard testimony from Deputy Emily, and you not
2 only heard the testimony. You saw on the surveillance
3 video where the individual -- the defendant walks out of
4 the store and starts to go to the right.

5 And this is a difficult medium to see anything to be
6 honest with you. Getting these bulbs right. And talk
7 about a show, this isn't a show. This is just, you know,
8 boards with paper on them and a lamp that sometimes doesn't
9 work. Sometimes it does.

10 But you'll have an opportunity in the jury room to
11 have that surveillance video with you and have a computer.
12 You can look at that surveillance video to see all of --
13 see all of the angles of it.

14 And I encourage you to look at the top of that -- of
15 that frame when the defendant's walking out the door to see
16 that Bruce Emily is right there. You see his feet
17 basically run right by as soon as -- as soon as the
18 defendant leaves the store.

19 And you also see that on Deputy Emily's in-car video.
20 You can see the individual turn and run. And you see Bruce
21 right after him. And you can tell he's moving because he's
22 calling into dispatch.

23 Sounds pretty -- pretty good for somebody that's --
24 that's running like that and somebody who's attained the
25 age that Bruce has to be able to run and keep up.

Closing arguments

1 And we saw the distance. You know, nobody would want
2 to do it, but we're talking about running around the
3 corner, as he pointed out, up Rutherford Road, down here
4 and around here. That's no short distance. But it is also
5 not miles.

6 And I've -- you know, full well Deputy Emily said
7 once -- once those other two officers were there I stopped
8 and I started walking. But he was there and he was able to
9 confirm in his testimony that the individual that was taken
10 into custody was the same individual that he had chased
11 from the front of that store and that he hadn't lost sight
12 until his brothers in blue were there able to get out and
13 affect the arrest.

14 Almost every witness who testified identified the
15 defendant, identified him as the individual who'd gone into
16 that store.

17 And, again, back at the surveillance video, you can
18 look on that surveillance video. And if you have a mind to
19 see it, track 8, minute 2.26. You can see gloves in his
20 hand, him putting the right glove on. .3 minutes and 18
21 seconds, you can see him putting the left one on. On track
22 6 you can see at minute 4.16, you can see as he walks
23 around the corner about to go up and -- and ask to see the
24 manager. Just for a second you can kind of see something
25 kinda out of blunt out of his pocket, and that's that

Closing arguments

1 knife, and he's putting it where he needs to use it. He's
2 wearing the gloves at that point.

3 Ladies and gentlemen, this wasn't a crime, a knee-jerk
4 crime. This crime was one where he brought the knife. He
5 had it with him. He brought the gloves. He was wearing or
6 he had those gloves and put them on in the store. And then
7 there's this, which was found on his person.

8 You're the finders of fact. You can make some headway
9 of what this is. You can also look in the video
10 surveillance from the Dollar General and see that Dollar
11 General sells trash bags that are just this color. And it
12 looks like somebody tried to fasten something, a piece of
13 cloth, onto a bag, and it also looks like it's torn. I
14 don't know if this is some kind of a face covering that was
15 torn. That's for you to decide.

16 But, ladies and gentlemen, this clearly doesn't work.
17 So, as I told you, I don't have an opportunity to get back
18 up and tell you something. It's not because I won't have a
19 response to what Mr. Culbertson tells you, but this is
20 maybe something that Mr. Culbertson might tell you. He
21 might say to you, well, if he had a mask, why wouldn't he
22 wear it? If he had a face covering, why wouldn't he wear
23 it?

24 Well, I'll give you two reasons. No. 1, it doesn't
25 work, and, No. 2, a mask is what you take with a gun, not a

Closing arguments

1 knife. A knife is something that you've got to be able to
2 lull somebody into a sense of security so that you can grab
3 them and overpower them. Gun. You can walk in with a mask
4 and point it at somebody and they're going to stop wherever
5 they are. But not with a knife. And that was the decision
6 that was made.

7 You heard from the -- the testimony from Deputy
8 Giovanni and Deputy May how they got out, got out with the
9 defendant, that he continued to struggle.

10 And this may be another thing that Mr. Culbertson
11 might address with respect to the resisting arrest, because
12 he couldn't help it. He was being tased. There was no way
13 for him to give up his arms so that he could be handcuffed.

14 And you heard the testimony from the deputies that
15 that tasing is for a period of time, and then it stops.
16 And at that point they -- you can move your arms. You
17 certainly can't move your arms while that shock is going.
18 But after that point is the point at which the defendant
19 continued to struggle with the officers, continued to
20 resist that lawful arrest.

21 A couple of other things that I want to point out to
22 you. Mr. Culbertson talked about some other people in the
23 store and whether or not all of those people had left the
24 store.

25 You can look at that on the surveillance video. You

Closing arguments

1 can count them coming in, coming out. You can also look at
2 the other angles, the camera angles that are on there, and
3 you can determine whether they have any evidentiary value
4 to you or not and they factor into your decision process.
5 They're all there, and it's in evidence for you to see.

6 But I want to talk specifically just briefly about
7 some reference that Mr. Culbertson made a couple of times
8 with respect to locking that door. You heard testimony
9 that at 9:00 o'clock they're supposed to lock that door.

10 And I have an idea. With respect to the kidnapping
11 charge, there might be an argument that those individuals
12 that were in the store, well, if you take the state's
13 position, then Mr. Nash who was locking that door and
14 Ms. Taylor who was locking that door, they were kidnapping
15 everybody inside because surely they were seizing,
16 confining, inveigling, decoy, kidnap, abduct. Surely they
17 were confining them in that store.

18 That's just not the case, because you heard that every
19 private property has the authority of law to exclude
20 people, and the operative concept here is not keeping
21 people out. It's keeping people in.

22 And you heard the testimony of Sharon Taylor that
23 there's a little knob there that anybody could go up to.
24 Now, they didn't. You know, you go to the store when
25 it's -- when it's closed, and you wait for the person there

Closing arguments

1 to let you out. And they lock it back out after you not to
2 keep the rest of the people that are in there in there but
3 to keep anybody else from coming in.

4 The judge is going to give you definitions for each of
5 these words. Don't know if anybody ever heard of the word
6 inveigle. He's basically going to tell you that means to
7 lure, to entice.

8 And I would submit to you even though the state only
9 has to prove one of these for purposes of the kidnapping
10 statute that, in fact, the defendant and the proof that has
11 been given to you proves as you listen to the definition
12 all of these with the exception of a decoy; that there was
13 no decoy or object used to entice Ms. Taylor to come back
14 there. But she was seized. She was seized by her hair.
15 She was confined. She was unable to get up. She couldn't
16 move and she was not free to leave.

17 In fact, I think the way that she described it is that
18 while that knife was to her neck he had his hand on her
19 hair keeping her from moving at all and lying on top of
20 her.

21 And as you listen to the rest of the definitions that
22 the judge gives you for those words, again, I submit,
23 didn't decoy, but all of the rest without any authority of
24 law and certainly knowingly and unlawfully.

25 The armed robbery, the \$22, what I characterized for

Closing arguments

1 you as really what was the ransom that was paid for
2 Sharon's life. From the person or another person -- just
3 like if somebody went into a bank and robbed the bank,
4 they're actually taking the bank's money. The Dollar
5 General's money. This is Dollar General's money. But it
6 was taken from the person or the presence physically of Tom
7 Nash who handed it to him in the presence of the two
8 employees that were there, one that was on the floor being
9 held captive and the other, the cashier, who was able to
10 open the draw, specifically because they needed to get
11 money out to try to see if they could appease the
12 defendant's demands.

13 when he went out, took off running, definite
14 indication of an intent to permanently deprive the
15 individuals inside that store of that money and that
16 property using violence or by causing fear while armed with
17 a deadly weapon.

18 As I told you in the opening, the state -- the judge
19 will charge you that a knife is considered a weapon, in
20 fact, a deadly weapon under South Carolina law.

21 That when you are working through your verdict forms
22 that you have back there you'll have a separate verdict
23 form for each -- for each offense. And the Court's going
24 to instruct you that you must decide on the kidnapping and
25 the armed robbery before you move to that third charge,

Closing arguments

1 which is the possessing of a weapon during the commission
2 of a violent crime.

3 But if you find the defendant guilty of either or
4 both, and those -- those crimes being considered violent
5 crimes in South Carolina, then you can consider whether or
6 not he was in possession of a knife, that weapon, during
7 the commission of those -- of those -- those crimes.

8 And, finally, the resisting arrest. As the indictment
9 reads, basically, resisting the arrest of Deputy Giovanni
10 and/or Deputy May that you heard from who were clearly
11 identifiable law enforcement officers with their blue
12 lights on in marked patrol cars telling the defendant to
13 stop and taking him into custody on information that was
14 more than substantial for probable cause to make an arrest.

15 I'm -- perhaps Mr. Culbertson might touch on the
16 in-car videos, and I just encourage you to listen to the
17 testimony. Certainly, you can have it replayed if you need
18 to to hear from Deputy Giovanni where his car was facing
19 and whether or not he reviewed his tape, there was any
20 mention or -- or any visualization of the defendant on
21 there.

22 Finally, and I am going to end, I mentioned Deputy
23 Emily in particular, and these other deputies, because on
24 the night of August 14th of 2013 Greenville County
25 Sheriff's Office did their job. They did it, and they did

closing arguments

1 it exceptionally well.

2 They got there quick. They confronted the defendant
3 as he was coming out of the store, and they quickly got him
4 under control. I'm sure they would always like for that
5 result to obtain.

6 And, ladies and gentlemen, the individuals, the
7 manager, Sharon Taylor, her boyfriend, Karen Nartowicz, all
8 did their job.

9 Karen you might argue did a pretty significant job on
10 the night in question, along with Tom. But they did their
11 job. And think for a moment how difficult it had to be for
12 Sharon to come in here, to take this stand and tell a group
13 of strangers what happened to her not 30 feet from the
14 person she identified as doing it to her. Sharon Taylor
15 did her job.

16 Now, ladies and gentlemen, I'm asking you to do your
17 job, to deliberate and, as the judge instructs you, to come
18 to a unanimous verdict that speaks the truth. Thank you
19 for your time.

20 THE COURT: Mr. Culbertson.

21 MR. CULBERTSON: Thank you, sir. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. CULBERTSON: I'm not sure where to begin, and part
25 of the reason I'm not sure where to begin is because the

Closing arguments

1 solicitor from what I heard spent most of the time worried
2 about what it is I'm about to tell you.

3 What I'm about to tell you is my client is still an
4 innocent man, and it is their burden, their duty, their
5 obligation under the law to meet the burden of proof, meet
6 a burden to remove that cloak of innocence from my client.
7 And they stood up here and they put on this show for the
8 last day and a half and talked to you a little bit, and
9 they tried to convince you that because he didn't do this,
10 because he did that, because they have done in the past
11 he's guilty. He's not.

12 They have a burden of proving to you that my client
13 walked into this store, tried to rob the store, tried to
14 pull a knife on her, tried to do all of these things that
15 they say they think he did. They haven't proven any of
16 that to you. They haven't proven any of that to you.

17 I start off saying I'm just a poor old country lawyer
18 from Greenville, South Carolina. I don't have all of this
19 technology and I don't have all of this flashing lights and
20 all of this other stuff to show you.

21 They did, and they tried to show it to you. They did
22 show it to you. They showed you -- and I hate to do
23 this -- go over it piece by piece. They showed you this
24 video, a couple of videos.

25 But on one of those videos is photographs inside the

Closing arguments

1 store. And all the videos that you saw from inside the
2 store, tell me one -- tell me one picture where you see my
3 client doing anything wrong, doing anything at all.

4 You see him along with some other folks walking up and
5 down the aisles like people want to do in the store.

6 That's what they're here for. People walk up and down
7 shopping. He's doing it, and a lot of other folks are
8 doing it.

9 They want you to believe that -- and it's in the
10 corner over here that you can't see in the video. He
11 pulled her over there and did this, that and the other.
12 They've got videos all over the place.

13 You see on those videos people walking up and down all
14 of those aisles constantly. You see my client walking up
15 and down the aisles. You see Mr. Nash walk up and down the
16 aisles. You see the other employees and the other patrons
17 walking up and down the aisle.

18 At no point in time do you see my client doing
19 anything wrong. At no point in time do you see any of
20 those other people come up and going there's someone over
21 there, hey. You don't ever see that.

22 In all of the video they showed you -- and you watched
23 a lot of it -- there's none of that. You see some people
24 walking down the aisle, to the top of the aisle, to the
25 front of the aisle or whatever part of the aisle, doing

closing arguments

1 some shopping. At the same time my client supposedly has
2 dragged some woman down by the hair holding onto her to at
3 the other end of that aisle.

4 Remember what they told you. That was the aisle that
5 I was attacked on. She pointed that out while another
6 person was standing in front of that aisle shopping for
7 something. Nobody jumped up and down, nobody run, nobody
8 screamed, nobody said go help her.

9 They have not -- they, the state, have not given you
10 anything to look at that shows my client doing anything
11 illegal at all. Nothing. None of those videos show
12 anything wrong.

13 None of those videos show anything about my client
14 except him walking up and down the aisle shopping except
15 for one in which you see him walk up to the cash register
16 counter, put items on the table to cash out and then goes
17 back to get something else and comes back shortly after
18 that. That's all you see -- that's all you see.

19 Then they want you to believe that these gloves are
20 somehow evidence of something. They want you to believe
21 that they're evidence of my client's willingness and
22 preparedness to go into this store and rob it and not leave
23 any fingerprints. That's what they want you to believe.

24 Their video doesn't show that. Their video never
25 shows these gloves in my client's hand. He's walking

Closing arguments

1 around with these gloves clinched in his hand. He might
2 actually be switching them. He never had these things on.
3 He's just walking around with these gloves. They're his
4 gloves. I don't know what it showed. It sure doesn't show
5 he did anything wrong.

6 Then they want you to believe other stuff they haven't
7 shown to you. They want you to believe that this means
8 something, that this was in my client's pocket so it must
9 mean something.

10 I don't know that it was in my client's pocket. It
11 was found on the ground next to where they tased him and
12 put him down. I don't know what it is -- I don't know what
13 it is.

14 They want you to believe it was a mask that somebody
15 would rob -- wear to go in and rob a store. Look at the
16 videos. Look at the photographs. Look at everything.
17 This is nowhere near my client, nowhere. Never wearing it.
18 It's not on him. He's not wearing it. He's not trying to
19 hide it. He's not trying to disguise anything.

20 I don't know what that's for. I don't know what it
21 proves. It proves absolutely nothing like a lot of this
22 other stuff right here. It's great to thrash around and
23 talk about. It doesn't prove a thing, not a thing.

24 Then the worst part. Then they want you to believe
25 that you see not only my client in this video, but look at

Closing arguments

1 the video, never, but then they want you to believe you see
2 him pulling this out and waving this knife around. I don't
3 know. You'll have to look at the tape again.

4 Let me know if you ever see my client doing anything
5 wrong, illegal, out of the ordinary on those videos. Let
6 me know on any of those videos if you ever see this knife
7 in his right hand, in his left hand, behind his ear, on his
8 belt, anywhere on their videos. Let me know when you see
9 my client with this knife.

10 I want to talk about this knife a little bit more
11 before I move on because part of what they want you to
12 believe -- and it's true. Part of what they did is all of
13 these officers showed and took all of these photographs and
14 collected all of this evidence. And the forensic detective
15 came in and talked about the fact that she collected all of
16 this stuff at the directions of the other officer, that
17 sometimes she'll do testing on this and do fingerprints and
18 do this and that and the other.

19 Think about it. They knew. They had been told that
20 this knife had been held to the throat of a lady in the
21 store so much so that it cut her and had blood coming out.

22 Don't you think it would be a simple matter to say
23 this was my client's knife, we will test the knife and see
24 if her blood is anywhere on this knife?

25 Don't let them fool you with false promises. We

Closing arguments

1 promise we're going to show you, we're going to be able to
2 do this. They haven't done that yet. If they want to
3 convict somebody, do it right. Do your job. Show me the
4 connection between this knife, the young lady whose
5 knife -- whose throat got bloody a little bit and how it's
6 on this knife that that's my client's knife. They haven't
7 done that.

8 Likewise, in all of this technology and all of this
9 stuff they have, they haven't shown you anything.
10 Remember, there was supposed to be two more videos, two
11 more videos from inside the patrol car.

12 One of them, officer came up here and said, yeah, my
13 equipment is the same as everybody else's. You turn on
14 blue lights, it's supposed to start activating, it's
15 supposed to start recording, but mine wasn't working. For
16 whatever reason it was broken. Listen, that I understand.
17 Stuff breaks down.

18 The other officer gets up here and tells you that his
19 car is parked back here wherever this is, back here behind
20 where they stopped my client, tase him, throw him on the
21 ground, hit him a couple of times, that his car is parked
22 back there.

23 That's the blue light flashing in that one photograph.
24 That was his car. Remember, we talked about that's your
25 patrol car, was that on top of the patrol car. That sounds

Closing arguments

1 to me like "My Cousin Vinny". I don't know if any of y'all
2 have seen that movie where he parades in or whatever,
3 question somebody about what's behind the screen, what's
4 behind the bugs on the screen, what's behind the dirt on
5 the bugs behind the screen, how can you really see it.

6 He said that's my car with the blue lights on top. We
7 know that the blue lights are on the top as we reported.
8 They've all said that. We all know that.

9 There should be video of my client being stopped,
10 being tased, being hit by the police. Of all of this stuff
11 they've collected, it doesn't exist. It doesn't exist
12 because a couple of officers decided it's just not
13 important, there's just no need for us to bring it to the
14 jury to show it to them. Why? Why did they decide to just
15 throw that away? It may be the same reason they decided
16 not to test the knife.

17 They want you to believe that gloves, that some
18 plastic masking thing, and the fact that my client walks
19 out of the store with another gentleman who'd been in the
20 store, locks the door, and as he's standing in the doorway
21 being let out of the store he had been in for a while, a
22 bunch of police cars pull up and blue lights flashing and
23 an officer hops out pointing a gun at him.

24 Now, this speaks to some people more than others, and
25 I understand that and I appreciate that. But here is a

Closing arguments

1 gentleman, my client. Police pull up, point the gun
2 at him. He hadn't done anything. They don't tell him what
3 they want. They're just pointing a gun.

4 I submit it may not be that unusual for some people in
5 that situation to say I'm out of here. And he runs around
6 the corner of the building.

7 Is that evidence of a crime? No. He runs around, and
8 the chase ensued. Not just that guy, but a bunch of other
9 police cars show up. And he still keeps running because he
10 doesn't know what they want. Nobody said he'd done
11 anything wrong. They tase him. They throw him on the
12 ground. They hit him a couple of times. And then they
13 collect a lot of this stuff from him.

14 Wait a minute. His driver's license is in his wallet.
15 His money is in his pants pocket. His money is in his
16 wallet. His, his, his. It's all his. There's nothing
17 wrong with that.

18 No blood on the knife tested. No. Anything on the
19 video that shows my client doing anything other than what I
20 submit is a reasonable thing for a man in his situation
21 with a bunch of people pointing guns at him.

22 They haven't met their burden. They have a burden to
23 prove that my client did something illegal. They have a
24 burden to prove that my client is no longer innocent.
25 They, they, they. They have this burden. For some reason

Jury charge

1 they want you to think I have to explain why he did this or
2 I have to explain why he ran or I -- no. It's their
3 burden.

4 The judge will tell you it's their burden. There's
5 nothing anywhere here that shows you my client. My client
6 sits there today and I hope and dare say will continue to
7 be there an innocent man. Thank you.

8 THE COURT: All right. Ladies and gentlemen, it's now
9 my duty and responsibility to give you the law that you
10 will apply to the facts and evidence you find to be true in
11 this case.

12 I told you at the very beginning I would not indicate
13 to you at any point in time what I think the facts of this
14 case are, because it's not my job. It's your job. It's
15 your responsibility to have examined all of the facts and
16 the evidence in this case and find that evidence which
17 convinces you it's true.

18 I told you that you would have to judge the
19 credibility and the believability of the witnesses that
20 have come before you and testified in this case.

21 In doing so you can believe one witness against
22 several, or several against one. You can believe a portion
23 of what a witness says and disregard the remaining portion
24 of it.

25 If you've got a good sound reason for doing so you can

Jury charge

1 disregard in its entirety the testimony of a particular
2 witness. You look at whether the witness has exhibited to
3 you any kind of interest, motive, bias, prejudice they
4 might have in giving you the testimony. You examine the
5 opportunity for knowledge, how did they come about that
6 information they gave you from the witnesses witness stand.

7 You do not have any friends to reward; you do not have
8 any enemies to punish. Your verdict cannot be the result
9 of any kind of passion, prejudice or sympathy. It has to
10 be an examination of the facts and the evidence in this
11 case, and find that evidence which convinces you its true.
12 And then you're going to weigh that evidence against the
13 state's burden to prove the defendant guilty beyond a
14 reasonable doubt.

15 In this case, as with virtually every single case
16 that's tried, there are two kinds of evidence, direct and
17 circumstantial evidence.

18 Direct evidence. The kind of evidence that is
19 produced from a witness that testifies as to the existence
20 of a fact, what they saw, what they heard, what took place
21 in their presence.

22 Circumstantial evidence. Chain of facts indicating
23 the existence of a fact. The law doesn't make a
24 distinction between the two. A greater degree of certainty
25 is not required of one over the other, but to the extent

Jury charge

1 that the state relies on any circumstantial evidence all of
2 the circumstances have to be consistent with each other and
3 when taken together point conclusively to the guilt of the
4 defendant beyond a reasonable doubt.

5 In this case the defendant did not testify. That is
6 not a fact for you to consider. You may not talk about it
7 in the jury room; you may not use it in your deliberations;
8 you may not use it mentally to make your decision in this
9 particular case. It's not a part of this case.

10 The defendant is presumed innocent. The state must
11 prove the defendant guilty beyond a reasonable doubt. The
12 defendant having no burden, there is nothing incumbent upon
13 the defendant to present any evidence or testify in the
14 matter. And the burden of proof remains always on the
15 state of South Carolina to prove the defendant guilty
16 beyond a reasonable doubt.

17 And it ties into that presumption of innocence that I
18 told you at the very beginning. The defendant is presumed
19 innocent when charges are brought against them; they're
20 presumed innocent when the trial starts; they are presumed
21 innocent now. They remain presumed innocent unless, until
22 you believe the state has proven to you the guilt of the
23 defendant beyond a reasonable doubt based upon the evidence
24 presented.

25 Now, in this presumption of innocence it's not just

Jury charge

1 some legal right or some legal phrase. It's a substantial
2 right to which every American is entitled, that they're
3 presumed innocent unless the jury is satisfied from the
4 evidence that the defendant is guilty of the crime or
5 crimes charged beyond a reasonable doubt.

6 So what's reasonable doubt? The kind of doubt that
7 would cause an ordinary reasonable person to hesitate to
8 act. Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced the defendant is guilty.

10 Now, there are very few things we can know with
11 absolute certainty, and the law does not require the state
12 of South Carolina to give you that kind of proof.

13 What is required is if based upon your view of the
14 evidence, the evidence you find to be true, you are firmly
15 convinced the defendant is guilty of the crime or crimes
16 charged, you must find the defendant guilty.

17 On the other hand, based upon your view of the
18 evidence, the evidence you find to be true, you are not
19 firmly convinced the defendant is guilty of the crime or
20 crimes charged, you must give the defendant the benefit of
21 the doubt and find him not guilty.

22 I told you at the very beginning the defendant is
23 charged with four crimes. So you're going to have four
24 decisions to make here. And I told you your decision on
25 one does not govern your decision on the next one, because

Jury charge

1 each crime has different elements, different things the
2 state has to prove to you beyond a reasonable doubt.

3 And I'm going to go over each one of those four crimes
4 with you, so you need to listen to what the state has to
5 prove to you and then go back to the evidence and say did
6 the state prove this to us beyond a reasonable doubt or
7 not.

8 Armed robbery. The state must first prove beyond a
9 reasonable doubt that the defendant took personal property
10 from the person or presence of another person. Property is
11 in the presence of a person if it is within their reach,
12 inspection, observation or control so that the person could
13 if not overcome with violence or prevented by fear from
14 keeping possession of the property.

15 The state also has to prove beyond a reasonable doubt
16 that the defendant carried the property away intending to
17 permanently deprive the owner of that property and to keep
18 the property for their own use.

19 The slightest removal, the possession of it, even for
20 an instant, is sufficient to show a taking and carrying
21 away. Taking and carrying away of the property must have
22 been done with violence or putting the owner of the
23 property in fear of violence.

24 And, finally, the state has to prove to you beyond a
25 reasonable doubt that the defendant was armed with a deadly

Jury charge

1 weapon during the robbery.

2 What's a deadly weapon? A deadly weapon is any kind
3 of article or instrument or a substance which is likely to
4 or could cause death or great bodily harm. Whether an
5 object or an instrument or some kind of substance has been
6 used as a deadly weapon depends on the facts and
7 circumstances of each case.

8 The next crime, kidnapping. The defendant is charged
9 with that crime, and the state has to prove to you beyond a
10 reasonable doubt that the defendant knowingly and
11 unlawfully seized or confined or kidnapped or abducted or
12 carried away another person without authority of law.

13 That means to do it wilfully against the law. It
14 means to do it with knowledge, not accidentally. Seize
15 means to take hold of suddenly or forcibly. Confine means
16 to limit or to restrict or to enclose within a certain area
17 or keep in.

18 Kidnap would mean to remove a person against their
19 will by unlawful force or fraud. And abduct means to carry
20 them off.

21 The state doesn't have to prove to you that the
22 defendant did all of them. The state has to prove to you
23 beyond a reasonable doubt that the defendant did one of
24 them.

25 Something done without the authority of law is

Jury charge

1 something which the law does not sanction, permit or allow.
2 And kidnapping does not have to be done for any particular
3 personal or monetary gain. It can be done for any reason
4 whatsoever.

5 If you find the defendant guilty of the crime of armed
6 robbery or kidnapping or both, but at least one of them,
7 then you may consider and would consider whether the
8 defendant is guilty of the crime of possession of a weapon
9 during the commission of a violent crime.

10 So the violent crimes here are armed robbery and
11 kidnapping. If you find him guilty of one of those, then
12 you consider did the defendant commit the crime of
13 possession of a weapon during the commission of a violent
14 crime.

15 The state has to prove to you beyond a reasonable
16 doubt that the defendant visibly displayed some type of
17 deadly weapon during the commission of a violent crime.
18 It's alleged here it's a knife. And that would be any kind
19 of instrument or tool with a sharp cutting blade, whether
20 or not fastened to a handle, which could be used to
21 inflict, cut or slash or wound.

22 In order to find the defendant guilty of the
23 possession of a weapon during the commission of a violent
24 crime you obviously have to have first found the defendant
25 guilty of committing the violent crime. And, again, armed

Jury charge

1 robbery and kidnapping are considered by the state of South
2 Carolina as violent crimes. And then the state has to
3 prove to you beyond a reasonable doubt that that weapon,
4 that deadly weapon, further advanced or helped in the
5 commission of that crime, the armed robbery or the
6 kidnapping.

7 And the last charge is resisting arrest. The
8 defendant is charged with resisting arrest. The state must
9 prove beyond a reasonable doubt that the defendant resisted
10 a lawful arrest being made by a person the defendant knew
11 or reasonably should have known was a law enforcement
12 officer.

13 Wilfully means intentionally, not accidentally.
14 Resist means to oppose, strive against. Obstruct means to
15 impede or hinder, interfere with.

16 That ladies and gentlemen, is the law that you're
17 going to apply to the facts and evidence you find to be
18 true.

19 Now, regarding this the Court has prepared for you
20 four verdict forms. Very straightforward. I have the
21 caption of the case.

22 Armed robbery. Under the charge of armed robbery, we,
23 the jury, by unanimous consent find the defendant. There's
24 two choices. Check one or the other. I put one before the
25 other. Don't assign anything to that. I've got to put one

Jury charge

1 before the other. Not guilty or guilty.

2 Once the jury has decided that case proceed on to the
3 next one.

4 Kidnapping. Under the charge of kidnapping of Sharon
5 Taylor, we, the jury, by unanimous consent find the
6 defendant. Again, two choices. Not guilty or guilty,
7 remembering again if you find him guilty of one or both,
8 then you can consider the third charge, possession of a
9 weapon during the commission of a violent crime. The jury
10 has found the defendant not guilty of both armed robbery
11 and kidnapping, then obviously you would have to find the
12 defendant not guilty of possession of a weapon during the
13 commission of a violent crime because you found him not
14 guilty of the violent crimes.

15 The fourth charge, resisting arrest. On the charge of
16 resisting arrest, we, the jury, by unanimous consent find
17 the defendant. Again, two choices, not guilty or guilty.

18 Again, four charges. Your decision on one doesn't
19 mean you've got to find the same thing on the next one.
20 Each one's different. Each one has a little bit different
21 elements that the state has to prove to you beyond a
22 reasonable doubt.

23 Now, the decision on each one of them must be
24 unanimous, and that means exactly what you think it means.
25 It means 12-0. It does not mean 11-1, 10-2, any

Jury charge

1 combination thereof.

2 Whatever the verdict is, it is the verdict of each and
3 every member of the jury.

4 So, Madam Forelady, you understand that you check the
5 appropriate block on the verdict form and sign your name.
6 You are indicating that this indeed is the verdict of each
7 and every member of the jury in this matter.

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Now, thank you very much.

10 All right. What I'm going to ask that you do, Madam
11 Forelady, is take the 12 members -- yourself included -- to
12 the jury room.

13 The two alternates, ladies, if you'll stay with us.
14 Take the other members of the jury to the jury room.

15 Madam Forelady, do not begin your deliberations until
16 the bailiff hands to you the verdict form and all of the
17 exhibits. When all of that comes into the jury room, then
18 your jury may begin its deliberations. Thank you very
19 much.

20 (Whereupon, the jury retired to deliberate at
21 4:00 p.m.)

22 THE COURT: As to the alternates in this matter, is
23 there any reason that the Court should not excuse the two
24 alternates at this time from the state?

25 MR. FRETWELL: I know of no reason, Your Honor.

1 THE COURT: From the defense?

2 MR. CULBERTSON: Not unless they want to stay.

3 THE COURT: Well, I appreciate that.

4 Obviously, if the Court excuses you y'all, you're free
5 to do whatever it is that you wish to do.

6 Ladies, you are -- did exactly what the Court asked
7 you to be the alternates in this case. You don't obviously
8 know how many times we have to substitute an alternate in
9 for a regular member of the jury. Somebody gets sick or
10 something, and it happens more than you would think it
11 would. It just didn't happen in this particular case. I'm
12 able to excuse you. You can go back about your regular
13 duties. The jury service this week is over with.

14 So if you needed some kind of statement for work, you
15 just go to the clerk's office downstairs and they'll get
16 that to you. But with that, you are excused.

17 Remember you earn an exemption for three years coming
18 back to circuit court jury duty. So if the fine clerk of
19 court sends you a notice, you can tell them you served.
20 Now, your local city judge or magistrate or federal judge
21 tells you to go see them for jury duty, I'm sorry. You've
22 got to go see them.

23 All right. Thank you very much.

24 (Whereupon, alternate jurors were excused.)

25 THE COURT: All right. Solicitor, exceptions,

1 deletions, additions to the charge from the state?

2 MR. FRETWELL: None, Your Honor.

3 THE COURT: From the defense, Mr. Culbertson?

4 MR. CULBERTSON: Your Honor, quite honestly, it's one
5 of the better charges I've heard in a long time. Again, I
6 object --

7 THE COURT: Well, I appreciate you saying that. I
8 just want to know if you have any objections or not.

9 MR. CULBERTSON: No objections, Your Honor.

10 THE COURT: Thank you very much.

11 All right. Gentlemen, I want to appreciate the way
12 that both of you tried this case and presented it to the
13 jury. You know, the Court found to be in a very
14 straightforward manner, and I appreciate you doing that.

15 Each of you represented the interest of your
16 respective side or client in this matter, and I appreciate
17 the job that both of y'all did. Thank you very much.

18 Will you check with the court reporter and make sure
19 we've got all of the right exhibits that go into the jury
20 room, please. Thank you very much. We'll be at ease until
21 the jury -- thank you.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. Solicitor and Mr. Culbertson.
24 I'm going to send the jury home for the evening, and we'll
25 resume tomorrow morning at 9:30. I'm going to call the

1 jury in.

2 Ask the jury to come in, please.

3 (Whereupon, the jury returned to the courtroom at
4 5:38 p.m.)

5 THE COURT: All right. Madam forelady and ladies and
6 gentlemen of the jury, I'm going to send you home for the
7 evening and I'll have you come back and resume your
8 deliberations tomorrow morning at 9:30.

9 The bailiff will inform you what time y'all need to
10 assemble so you can be in the jury room by 9:30 in the
11 morning.

12 With that, please remember what I told you before.
13 Don't talk about the case outside of your jury room. Don't
14 allow anybody to talk to you about it. You cannot discuss
15 it with anyone. You can't do any research. You can't look
16 up anything. I'll see you back tomorrow morning at 9:30.
17 And resume your deliberations at that time. Thank you very
18 much.

19 (Whereupon, the trial jury was excused.)

20 THE COURT: All right. Solicitor, anything from the
21 state at this point in time?

22 MR. FRETWELL: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. CULBERTSON: No, sir.

25 THE COURT: All right. Gentlemen, I'll see you back

1 tomorrow morning at 9:30. And we will be at ease then
2 until the jury needs us. All right. Thank y'all very
3 much.

4 MR. FRETWELL: Yes, sir.

5 MR. CULBERTSON: Your Honor, can I just -- just kind
6 of a housekeeping matter. Is it your intention to have the
7 jury at 9:30 tomorrow come back into the courtroom or --

8 THE COURT: No, sir. I'm just going to have them go
9 directly into the jury room and have the clerk take the
10 exhibits back into the jury room at 9:30 and have them
11 resume their deliberations.

12 MR. CULBERTSON: And you're going to do that when all
13 of them show up.

14 THE COURT: Right, oh, absolutely. The clerk will not
15 take the exhibits back into the jury room until all of them
16 show up. Absolutely. They all have to be here.

17 MR. CULBERTSON: Yes, sir.

18 THE COURT: Thank you all.

19 (Question from the jury marked Court's Exhibit No. 2;
20 question from the jury marked Court's Exhibit No. 3.)

21 END OF PROCEEDINGS OCTOBER 9, 2014
22
23
24
25

1 (Proceedings October 10, 2014)

2 (Whereupon, all jurors were present and the exhibits
3 were submitted to the jury at 9:23 a.m.)

4 (The following takes place outside the presence of the
5 jury at 10:04 a.m.)

6 THE COURT: All right. Counsel, I understand that you
7 have a matter for the Court.

8 MR. CULBERTSON: Your Honor, as is often the case,
9 unfortunately, during the course of a trial things may find
10 their way past my thought process. Specifically, in this
11 case there was testimony regarding an additional in-car
12 video that was not presented in evidence.

13 The issue of -- and I'll mispronounce this I'm sure --
14 but I call it spoliation came up. I did not raise that at
15 the time of your requested jury charges. Maybe I should
16 have. But, quite honestly, I did not have that thought in
17 my head at that time.

18 On reflection I now believe that that is an issue that
19 should have been raised. And although I did not request it
20 at the time you asked for jury charges, I'm requesting it
21 now.

22 Actually, what I'm doing now is my understanding of
23 the cases I've read on that issue, I would make the motion
24 for dismissal of the charges against my client. In the
25 alternative I'd ask for a charge on spoliation be given to

1 the jury.

2 THE COURT: All right, sir. Do you want to respond to
3 that, Solicitor?

4 MR. FRETWELL: Your Honor, first of all, the response
5 that I would have to Mr. Culbertson's motion to dismiss is
6 to say that I believe that that is not a proper motion,
7 that if the defense would like a spoliation-of-evidence
8 charge, that is a charge that they should request during
9 the charging conference which Your Honor held.

10 The fact that it was not requested may or may not be
11 an error on defense counsel's part, but I do not believe
12 the appropriate remedy is a motion to dismiss or the
13 entertaining of a motion to dismiss.

14 Do you want to hear the state's position on whether a
15 charge should be given at this point?

16 THE COURT: I suppose, yes. I would think you could
17 state that very quickly.

18 MR. FRETWELL: Yes, sir. My concern is having a
19 charge in isolation at this point, if the Court feels it's
20 appropriate to add a charge to what the Court has already
21 charged or already has been agreed to by both sides, would
22 highlight the issue improperly, that if the Court is
23 inclined to give such a charge that it should be in the
24 context of a recharge on all of the law in this case.

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

1 Yes, sir, Mr. Culbertson.

2 MR. CULBERTSON: If I could reply very briefly, Your
3 Honor.

4 while I understand and appreciate the solicitor's
5 position on that matter in terms of timing of my request, I
6 do not believe that there is any limitation on any due
7 process or protection issues that are raised. I believe
8 that this is actually a due process issue, and I think it
9 is appropriate for me raise that at any time.

10 THE COURT: All right. Very good.

11 All right. General rule of the law pursuant to the
12 due process law, 14th Amendment to the Constitutional of
13 the United States of America, criminal prosecutions must
14 comport to the prevailing notions of fundamental fairness,
15 and in that it is a standard that criminal defendants be
16 afforded a meaningful opportunity to present a complete
17 defense. The state does not however have an obligation to
18 have and preserve an absolute duty to preserve all
19 evidence.

20 Now, in this case particular matter to establish a due
21 process violation where the state has failed to preserve
22 some matter that potentially may have some evidentiary
23 value the defendant has to demonstrate to the Court that
24 the state destroyed the evidence in bad faith or that the
25 evidence possessed an exculpatory value apparent on the

1 face of the evidence before it was destroyed and the
2 defendant cannot obtain other evidence of comparable value
3 by other means.

4 Now, in this particular case, clearly, there's no
5 evidence in this case, certainly none produced by the
6 defendant and none that's been set forth in this trial,
7 that the state destroyed evidence in bad faith. There's
8 just no evidence, zero evidence, of that in this case.

9 The only testimony is that there was an in-car video
10 of one of the patrol cars, not the one that went to the
11 Family Dollar and saw the defendant exiting the -- or
12 some -- Dollar General -- I'm sorry -- the store but the
13 video of another responding officer.

14 Now, the officer said he viewed it with another duly
15 appointed law enforcement officer and all it showed was him
16 driving to the scene. That clearly doesn't have any kind
17 of evidentiary value. It just shows the car going to the
18 scene.

19 The officer testified how his car was parked. It was
20 not parked such that the defendant would have been in view
21 of the camera. There's no evidentiary value there.

22 Now, would the best, absolute, hundred percent best,
23 course of business have been to have made a copy of that
24 and turned it over to the state, yes. No question about
25 that. But there's no bad faith. There's zero evidence of

1 it.

2 So you look at the other part of it that the evidence
3 possessed some kind of exculpatory value apparent on its
4 face before the evidence was destroyed. And there is zero
5 evidence of that.

6 The only evidence is -- is that the video shows the
7 patrol car going to the scene. There's just zero, just no,
8 argument to be made that that has any kind of evidentiary
9 value in this case.

10 There's no evidence that the defendant was visible in
11 any of the video. There's no testimony of that. There's
12 nothing that shows it has any kind of exculpatory value or
13 any kind of evidentiary value of any type in this case.
14 Therefore, the motion to dismiss the charges is denied.

15 First, I don't think that's a proper motion regarding
16 the particular matter, but, be that as it may, the motion
17 to dismiss is denied.

18 And the Court refuses to give a spoliation-of-evidence
19 charge to the jury because there is no evidence in the
20 record that would support that charge on the law to the
21 jury. That request is denied. Thank you very much.

22 MR. CULBERTSON: Thank you, Your Honor.

23 MR. FRETWELL: Thank you, Your Honor.

24 THE COURT: Anything further from the state at this
25 point in time?

1 MR. FRETWELL: No, Your Honor.

2 THE COURT: Anything further from the defendant?

3 MR. CULBERTSON: No, sir.

4 THE COURT: All right. Then we'll just be at ease
5 until the jury needs us. Thank y'all very much.

6 MR. CULBERTSON: Your Honor --

7 THE COURT: Yes, sir.

8 MR. CULBERTSON: -- I'm sorry. You don't need this.
9 I just -- I know that everything has already been sent back
10 to the jury and they supposedly don't want stuff --

11 THE COURT: Yes, sir.

12 MR. CULBERTSON: -- and I was just on an early Friday
13 morning just trying to schedule everything else I need to
14 do today. I didn't know if you intended to bring them. If
15 there was some period of time I could go make some phone
16 calls and check.

17 THE COURT: Well, how far away will you be?

18 MR. CULBERTSON: Oh, not far at all. I will be if not
19 in this building, it's certainly within short --

20 THE COURT: Okay. Just make sure the clerk has your
21 cell number --

22 MR. CULBERTSON: She does.

23 THE COURT: -- and that you keep it on so that when
24 she calls you, you can just come right back. I don't have
25 a problem with that.

1 MR. CULBERTSON: Yes, sir. As soon as I get -- as
2 soon as I get notice, I'll be back in less than ten
3 minutes, five minutes.

4 THE COURT: Yes, sir. Great. Not a problem.
5 (Whereupon, a recess was taken.)

6 THE COURT: All right. Solicitor, Mr. Culbertson, I
7 understand that the jury wants us to recharge them the
8 definition of resisting arrest.

9 Is the state ready to receive the jury?

10 MR. FRETWELL: Yes, sir.

11 THE COURT: And the defense?

12 MR. CULBERTSON: Yes, sir.

13 THE COURT: Ask the jury to come in, ma'am.

14 (Whereupon, the jury returned to the courtroom at
15 10:40 a.m.)

16 THE COURT: All right. Ladies and gentlemen, you have
17 requested the Court to recharge resisting arrest, and I'm
18 happy to do so.

19 The state has to prove beyond a reasonable doubt that
20 the defendant resisted a lawful arrest being made by a
21 person the defendant knew or reasonably should have known
22 was a law enforcement officer.

23 Knowingly. That means consciously done that.
24 Wilfully means you've intentionally done it. You haven't
25 done it by accident. Resist. That means to oppose or

Jury charge

1 strive against or obstruct in any manner. Obstruct means
2 to impede or to hinder or interfere with. Even a peaceful
3 nonviolent or indirect obstruction regarding an arrest can
4 be classified as resisting arrest if the means used are
5 sufficient to prevent that officer from making an arrest.
6 That is the definition of resisting arrest.

7 So with that, Madam Forelady, I hope that answers your
8 question. Return your jury to the jury room and continue
9 deliberations. Thank you very much.

10 THE FOREPERSON: Thank you, Your Honor.

11 (Whereupon, the jury retired to deliberate at
12 10:44 a.m.)

13 THE COURT: All right. Gentlemen, we will be at ease
14 until the jury needs us. Thank you very much.

15 MR. CULBERTSON: Thank you, Your Honor.

16 (Question from the jury marked Court's Exhibit No. 4;
17 question from the jury marked Court's Exhibit No. 5.)

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Solicitor and Mr. Culbertson,
20 I understand that the jury has reached a verdict in this
21 matter. Is that correct? Is that your understanding also?

22 MR. CULBERTSON: That's what we have been told, yes,
23 sir.

24 THE COURT: All right. Very good. Are you ready to
25 receive it, Solicitor?

Verdict

1 MR. FRETWELL: Yes, Your Honor.

2 THE COURT: Mr. Culbertson.

3 MR. CULBERTSON: Yes, sir.

4 THE COURT: All right. I want to talk to everyone in
5 the courtroom.

6 I'm sorry. Could y'all move that out of the way so
7 when the jury comes in I see them, please?

8 (Pause.)

9 THE COURT: Thank you. I appreciate it.

10 We're about to receive the jury's verdict in this
11 matter. I do not know nor does anyone in this courtroom
12 know what that verdict is going to be.

13 We've asked this jury to do a very difficult thing,
14 that is for 12 people to agree on a resolution of the
15 matter.

16 This jury's verdict will be received with respect and
17 it will be received with silence. The Court will not
18 tolerate any kind of showing of emotion regarding the
19 jury's verdict.

20 If you cannot follow these instructions I'm asking you
21 to leave the courtroom, because if you fail to follow those
22 instructions you will then be detained by an officer of the
23 Georgetown County Sheriff's Office, and I will hold a
24 contempt of court hearing thereafter. Thank you very much.

25 If anyone would like to leave the courtroom, please do

Verdict

1 so now. Ask the jury to come in.

2 MR. CULBERTSON: Greenville.

3 THE COURT: Yes, sir, Mr. Culbertson.

4 MR. CULBERTSON: You're obviously anxious to get home
5 since you said Georgetown County Sheriff's Deputy instead
6 of --

7 THE COURT: It's Greenville County. Well, I
8 appreciate it, Mr. Culbertson. I'm sorry I said Georgetown
9 and not Greenville, which is appropriate, but obviously I
10 assume everybody understands. We'll -- thank you.
11 Appreciate it. Thank you.

12 (Whereupon, the jury returned to the courtroom at
13 11:00 a.m. to report its verdict.)

14 THE COURT: Madam Forelady, has your jury reached a
15 verdict in this matter?

16 THE FOREPERSON: Yes, sir, we have.

17 THE COURT: Could you hand the bailiff forms to the
18 bailiff? I mean the verdict forms to the bailiff, please.
19 Thank you, ma'am. I appreciate it.

20 All right. Madam clerk, you may publish the verdicts.

21 THE CLERK: Your Honor, in the case of
22 2013-GS-23-9292, the State of South Carolina vs. James
23 Eddie Bailey, No. 1, armed robbery. On the charge of armed
24 robbery, we, the jury, by unanimous consent find the
25 defendant guilty.

Verdict

1 No. 2, kidnapping. On the charge of kidnapping of
2 Sharon Taylor, we, the jury, by unanimous consent find the
3 defendant guilty.

4 No. 3, possession of a weapon during the commission of
5 a violent crime. On the charge of possession of a weapon
6 during the commission of a violent crime, we, the jury, by
7 unanimous consent find the defendant guilty.

8 No. 4, resisting arrest. On the charge of resisting
9 arrest, we, the jury, by unanimous consent find the
10 defendant guilty.

11 These are all signed by Kimberly Dunham, our
12 foreperson.

13 Ladies and gentlemen, if you agree these are the
14 verdicts you reached in your deliberation room would you
15 please raise your right hand?

16 (Whereupon, all jurors responded affirmatively.)

17 THE CLERK: Thank you.

18 THE COURT: Does the state wish the jury polled in
19 this matter?

20 MR. FRETWELL: No, Your Honor.

21 THE COURT: Does the defendant wish the jury polled in
22 this matter?

23 MR. CULBERTSON: No, sir.

24 THE COURT: Thank you very much.

25 Madam Forelady and ladies and gentlemen of the jury,

Verdict

1 you did exactly what the Court asked you to do, that is to
2 well and truly deliberate in this case and reached a true
3 and just unanimous verdict in this matter.

4 I understand, the parties understand, everyone
5 understands we asked you to do a difficult thing. It is
6 not often easy to get two people to agree on something,
7 much less 12 people. So we understand that and we
8 appreciate that. And I appreciate as your presiding judge
9 the jobs you did in this particular case.

10 You've earned an exemption from coming back to circuit
11 court jury duty within three years. So if your fine clerk
12 of court here sends you a notice about your duty in the
13 next three years, you can tell the clerk that you have
14 served.

15 Now, if you happen to live in the city, certainly if
16 the county magistrate sends you a summons or a federal
17 judge sends you a summons, you do have to go see them. But
18 you just don't have to come and see us in the next three
19 years.

20 All right. Thank you very much. With that, you are
21 excused from your jury service for this week. Appreciate
22 it very much. Thank you.

23 (Whereupon, the trial jury was excused.)

24 THE COURT: Motions by the defense?

25 MR. CULBERTSON: Your Honor, obviously, I'd move at

1 this time for a directed verdict.

2 THE COURT: All right, sir. Regarding the defendant's
3 motion in this matter to, in effect, renew the motion for a
4 directed verdict by a motion for a new trial the Court --
5 in that standard I have to look at whether or not there's
6 any kind of competent evidence that would sustain the
7 jury's verdict.

8 Even if the Court disagreed with the verdict, which in
9 this case I do not, and I believe that it's a proper
10 verdict in this matter -- but if the Court -- even if I did
11 disagree with the verdict, the trial judge may not
12 substitute his judgment for that of the jury when there is
13 competent evidence to sustain the jury's verdict.

14 I find there has been more than sufficient evidence,
15 proper evidence, that has been introduced in this matter
16 that would prove and has shown the defendant guilty beyond
17 a reasonable doubt of all four charges.

18 I respectfully decline to grant your motion for a new
19 trial.

20 MR. CULBERTSON: Thank you, sir.

21 THE COURT: Any other matters?

22 MR. CULBERTSON: Yes, sir. I would obviously at this
23 time like to for the record renew all of my previous
24 motions including the additional request that I had made to
25 the Court to charge the jury in spoliation.

Sentence

1 THE COURT: All right, sir. All of those matters are
2 for the record. The Court's ruling is on the record on all
3 of those matters. They were respectfully declined at that
4 point in time, and the Court renews all of those prior
5 findings at this time. Thank you very much.

6 MR. CULBERTSON: Thank you, sir.

7 THE COURT: All right. Is the state ready to proceed
8 to sentencing in this matter?

9 MR. FRETWELL: We are, Your Honor. I would just if it
10 pleases the Court, I'd like to put the on the record. I
11 think we discussed this in chambers at the beginning of the
12 trial, but put on the record that the state has served
13 notice of intent, life without --

14 THE COURT: Do you have -- is that in the clerk of
15 court's file, or do you have a copy of that?

16 MR. FRETWELL: I have a copy of it, and it's also in
17 the clerk of court's file.

18 THE COURT: I tell you what. Why don't we just to be
19 safe, you make that a court's exhibit in this matter?

20 MR. FRETWELL: And, Your Honor, what I'll be asking
21 the Court to mark is as Court's Exhibit 2 the notice of
22 intent to seek a sentence of imprisonment for life without
23 the possibility of parole, as Court's Exhibit 3 the
24 affidavit of service on defense counsel, and as Court's
25 Exhibit 4 the affidavit of service on the defendant at the

Sentence

1 detention center.

2 THE COURT: All right. Actually I think those might
3 be different numbers, but they will be marked as court's
4 exhibits. The court reporter will take care of marking
5 those as exhibits.

6 Go ahead and do that now, please.

7 MR. FRETWELL: Your Honor, in addition --

8 THE COURT: I'm sorry. The court reporter has got
9 to --

10 MR. FRETWELL: I'm sorry.

11 (Notice of intent marked Court's Exhibit No. 6;
12 affidavit marked Court's Exhibit No. 7; affidavit marked
13 Court's Exhibit No. 8.)

14 THE COURT: Solicitor, you may proceed.

15 MR. FRETWELL: Your Honor, in addition to those items
16 that I've asked and the Court has agreed to have marked as
17 court's exhibits, I have the 11 prior certified copies of
18 convictions for the convictions that are referenced on the
19 state's notice of intent to seek life without parole that I
20 would also like to enter as court's exhibits and into the
21 record at this time.

22 THE COURT: All right. Those would be Court's
23 Exhibit -- next. I believe that to be Court's Exhibit 9 in
24 this matter. Do you want them all marked as one? Do you
25 want them all marked as one, sir?

Sentence

1 MR. FRETWELL: However the Court feels is appropriate.

2 THE COURT: One is fine.

3 (Copies of indictments and sentences marked Court's
4 Exhibit No. 9.)

5 THE COURT: Now, as I understand it, what now has been
6 marked as Court's Exhibit No. 9 are these prior convictions
7 of the defendant that were classified as most serious by
8 the State of South Carolina, that being one count of armed
9 robbery and ten counts -- I'm sorry -- one count of armed
10 robbery. And that was from 1982. And then ten counts of
11 armed robbery that followed in 1996. Is that correct?

12 MR. FRETWELL: That's correct, Your Honor.

13 THE COURT: Very good. Be glad to hear the state's
14 arguments.

15 MR. FRETWELL: Your Honor, the only thing in addition
16 to what the Court already knows about the facts of this
17 case is I would like to bring to the Court's attention that
18 the defendant has been incarcerated since the date of --
19 since the night of the arrest on April 14th of 2013.

20 In addition to the convictions that the state has
21 handed up, the defendant has convictions in 1982 for grand
22 larceny, for assault and battery of a high and aggravated
23 nature.

24 The charges that the prior convictions, other prior
25 convictions, the defendant received that were not -- that

Sentence

1 did not qualify for the life-without-parole calculation
2 were a strong arm robbery, two counts of purse snatching in
3 1996. And that is the totality of the defendant's record,
4 Your Honor.

5 If it pleases the Court and at the appropriate time I
6 believe the victim would like to address the Court on the
7 issue of sentencing.

8 THE COURT: All right. I'll be glad to hear from you,
9 ma'am, if you want to stand up. And, again, you'll need to
10 state your name for the record. But I'll be glad to hear.
11 If you want to -- stay right there is fine.

12 THE VICTIM: Your Honor, my name is Sharon Taylor.

13 THE COURT: Yes, ma'am. Go ahead.

14 THE VICTIM: And I beg of you today to please put this
15 man away so that he can never do to anybody else what he's
16 done to me.

17 It's been a year and six months, and I have not slept
18 one night. So I'm begging Your Honor to please see that he
19 goes away and can't do this again.

20 And to him I would like to say --

21 THE COURT: Ma'am, I'm sorry. You cannot address the
22 defendant. It's not proper. If you have comments, I'll be
23 glad to receive them. You may not address the defendant.

24 THE VICTIM: I just want to say his brother has told
25 me he's sorry. It is not his brother's place to apologize

Sentence

1 for what he's done for me, but I do appreciate it.

2 THE COURT: Thank you, ma'am. I appreciate that very
3 much.

4 Anything further, Solicitor?

5 MR. FRETWELL: No, Your Honor.

6 THE COURT: All right. Thank you.

7 All right. Mr. Culbertson, I'll be glad to hear from
8 you, sir.

9 MR. CULBERTSON: Thank you, Your Honor.

10 Mr. Bailey is 52 years of age and just celebrated a
11 birthday -- he'll be 51 the [REDACTED] of this month, I believe.

12 He originally is from Spartanburg County. His mother
13 who is in poor health is not able to be with him today or
14 any time during this trial. His brother I think -- one or
15 two other family members -- periodically have been here.
16 His brother, I think, the entire time.

17 He's got a family that supports him to the extent that
18 they can. And what I mean by that is obviously Mr. Bailey
19 has spent a great deal of his life in the custody of the
20 Department of Corrections in South Carolina.

21 He has indicated to me that he is sorry for what
22 happened. It was a situation in which he had recently been
23 released from prison.

24 On that particular day he found himself taking some
25 prescription medication, and in addition to prescription

Sentence

1 medication he was taking took some illicit substances also.
2 Not using that as an excuse. He doesn't want to use that
3 as an excuse. I just bring that to the Court's attention
4 to say that he had obviously ingested some material. It
5 probably did not happen in the best state of mind.

6 He knows what he did was wrong. He knows he's going
7 to have to suffer and pay a penalty for that. And he and I
8 talked about the fact that given his prior record, given
9 this event, Your Honor has very little, if any, discretions
10 with what sentence you have to impose.

11 He knows it's going to be a life-without-parole
12 sentence, and I can speak to that a little bit more in just
13 a moment. But knowing that you have very little
14 discretion, I don't really have any -- much more to say in
15 regards to Mr. Bailey's status at this time.

16 He has expressed to me that he would like to
17 communicate his sympathy and sorry to the defendant [sic]
18 and for everybody he put through that night, everything he
19 put them through that night.

20 Had he been in any better state of mind he believes --
21 and I do too -- that it's unlikely that would have
22 transpired. But he knows what he did was wrong. He knows
23 he subjected them to a great deal of pain and mental
24 heartache, and for that he truly is sorry.

25 And so his brother. I think his brother has actually

Sentence

1 had some communications with one of the victims in this
2 case already. She indicated. They apparently have known
3 each other for a number of years. In fact, I think there's
4 some degree of relationship between these two families in
5 such that they look after one another's children from time
6 to time. It's just a bad situation. I know Your Honor is
7 kinda hamstrung on what sentence you have to impose today.

8 I just want to tell you a little bit before that
9 happens about Mr. Bailey.

10 He informed me that he does not wish to add anything
11 to that and does not wish to address Your Honor or anybody
12 else at this time, and he's also told me that he intends to
13 immediately file an appeal in this matter. And I'm telling
14 him today since he has told me that that's outside of my --
15 as his attorney right here, that's outside of my authority
16 and my control, that he needs to get in contact with the
17 office of appellate defense in terms of being able to file
18 that appeal.

19 THE COURT: All right, sir. He has to do that within
20 ten days of today.

21 MR. CULBERTSON: Yes, sir, Thank you, sir.

22 THE COURT: Very good.

23 Mr. Bailey, could you stand up, please?

24 Regarding 2013-GS-23-292, regarding the indictment for
25 four counts, that being armed robbery, kidnapping,

Sentence

1 possession of a weapon during the commission of a violent
2 crime and resisting arrest -- regarding the resisting
3 arrest, the Court sentence in this matter is for one year.
4 You're given a time-served sentence for that.

5 Regarding the possession of a weapon during the
6 commission of a violent crime, the defendant is committed
7 to the state department of corrections for a term of five
8 years concurrent with counts one and two.

9 Regarding armed robbery and kidnapping, both of those
10 matters pursuant to Section 17-25-45, Mr. Bailey, as your
11 attorney has explained to you, your prior record includes
12 obviously many more than the two most serious offenses that
13 put you in this capacity.

14 Do you understand the state of South Carolina has a
15 3-strike law for serious crimes and two strikes for most
16 serious? And your past 11 convictions for armed robbery
17 puts you in the position where the statute is mandatory
18 regarding Section 17-25-45.

19 Therefore the sentence the Court imposes upon you is
20 life imprisonment without the possibility of parole. Thank
21 you, sir.

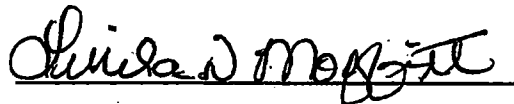
22 END OF REQUESTED TRANSCRIPT OF RECORD
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th and 10th days of October 2014.

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

December 16, 2014

A handwritten signature in cursive script, reading "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES EDDIE BAILEY,

APPELLANT

APPELLATE CASE NO. 2014-002447

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	7
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<u>Arizona v. Youngblood</u> , 488 U.S. 51 (1988).....	8
<u>Brady v. Maryland</u> , 373 U.S. 83 (1963)	7
<u>Kershaw County Board of Education v. U.S. Gypsum Co.</u> , 302 S.C. 390 S.E.2d 369 (1990)9	
<u>State v Harvey Jones and Melissa Jones</u> , 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996).....	7
<u>State v. Adams</u> , 304 S.C. 302, 403 S.E.2d (Ct. App. 1991).....	9
<u>State v. Austin</u> , 299 S.C. 456, 385 S.E.2d 830 (1989)	10
<u>State v. Brandt</u> , 393 S.C. 526, 713 S.E.2d 591 (2011).....	10
<u>State v. Cheeseboro</u> , 346 S.C. 526, 552 S.E.2d 300 (2001)	8
<u>State v. Gillian</u> , 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004).....	7
<u>State v. Hutton</u> , 358 S.C. 622, 595 S.E.2d 876 (2004).....	9
<u>State v. Kennerly</u> , 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).....	7
<u>State v. Mattison</u> , 388 S.C. 469, 697 S.E.2d 578 (2010).....	10
<u>State v. Osborne</u> , 291 S.C. 265, 353 S.E.2d 276 (1987)	7

Statutes

South Carolina Code § 56-5-2953 (C).....	9

Other Authorities

U.S. Const. amend V	7
U.S. Const. amend VI	7
U.S. Const. amend XIV	7, 8

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Bailey's request to charge the jury on the spoliation of evidence when the in-car video of Deputy Joseph Giovanni, who was one of the responding officers, was destroyed by the officers before it was viewed by the parties?

STATEMENT OF THE CASE

On October 22, 2013, the Greenville County Grand Jury indicted James Eddie Bailey on the charges of armed robbery (AR), kidnapping, possession of a weapon during the commission of a violent crime, and resisting arrest. October 8-10, 2014, Bailey proceeded to trial before the Honorable Steven H. John and a jury. Bailey was represented by Symmes Watkins Culbertson, and the state was represented by Allen Fretwell. October 8, 2014 R. 1. The jury returned verdicts of guilty on the four charges as indicted. Oct. 9, 2014 R. 114, ll. 20 – R. 115, ll. 24. Judge John sentenced Bailey to the required life without parole (LWOP) based on Bailey's prior convictions of AR in 1982 and ten counts of AR from 1996. Oct. 9, 2014 R. 118, ll. 7 – R. 125, ll. 21. Bailey's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

On April 14, 2013, Appellant James Bailey entered the Dollar General Store on Poinsett Highway in Greenville just before closing time at nine o'clock pm. Sharon Taylor, the manager, was there as well as the cashier and Tom Nash who was Sharon's boyfriend. Oct 8. 2014. R. 5, ll. 17 – R. 6, ll. 6.

Bailey allegedly followed Ms. Taylor until he cornered her in an aisle, grabbed her hair, threw her on the floor, and held a knife to her throat. Bailey allegedly told her this was a robbery and he was going to kill her. He pushed on her throat with the knife until blood appeared. Ms. Taylor's boyfriend appeared. Bailey told him he wanted money so Tom Nash went to the cash register and got twenty-two dollars which he gave to Bailey. Oct. 9-10, 2014. R. 32, ll. 1 – R. 35, ll. 7.

In the meantime, the cashier had seen Bailey on top of Ms. Taylor so she called 911 and summoned the boyfriend, Tom Nash. When he gave Bailey the money, Nash told him he better leave because the police were coming. Bailey then left through the front door. Oct. 9-10, 2014 R. 35, ll. 5 – 22; Oct. 8, 2014 R. 6, ll. 1 – R. 7, ll. 18.

Deputy Nathaniel Emily was the first officer to respond to the incident. When he pulled up to the store, he saw Bailey and Nash at the door. Deputy Emily pulled his weapon and Bailey ran around the corner. He did see a knife in Bailey's hand. Deputy Emily was not the officer who arrested Bailey. Oct. 9-10, 2014 R. 48, ll. 1 – R. 53, ll. 9. A DVD of the in-car video from Deputy Emily's car that was operating at the time was introduced and published to the jury. Oct. 9-10, 2014 R. 44, ll. 1 – R. 47, ll. 22.

Officer Michael J. Giovanni heard the dispatch of the incident and joined in the chase of Bailey. He saw Bailey behind a church and yelled for him to stop. Bailey continued

to walk away. Deputy Giovanni pulled his taser and used it on Bailey. Other deputies arrived and assisted Giovanni. They finally subdued Bailey and found a knife in his hand. Oct. 9-10, 2014 R. 57, ll. 1 – R. 62, ll. 24.

Deputy Giovanni admitted that he had an in-car video that was operating that night. However, it was not turned over to the prosecution as evidence because Deputy Giovanni saw nothing of evidentiary value on the video. He viewed it and it only showed his driving to the scene. Bailey was not on that video. Oct. 9-10, 2014 R. 55, ll. 1 – R. 56, ll. 16.

Following the jury charges, there was no objection to the charges by either party. The following day when the trial resumed, defense counsel requested that the judge give the jury a charge on spoliation based on the fact that Deputy Giovanni's in-car video was not presented in evidence. Counsel said he should have requested it earlier but was requesting it then. Counsel made a motion for the charges against Bailey bedismissed. Oct. 9-10, 2014 R. 91, ll. 8 - R. 105, ll. 25.

The solicitor argued that a motion to dismiss was not proper and defense counsel should have requested the charge during the charging conference. Defense counsel responded that this was due process issue that could be raised anytime. The judge responded that there was no evidence that the state destroyed the evidence in bad faith. The judge refused to give the spoliation charge. Oct. 9-10, 2014 R. 106, ll. 1 – R. 109, ll. 23.

ARGUMENT

The trial court erred in denying Appellant Bailey's request to charge the jury on the spoliation of evidence when the in-car video of Deputy Joseph Giovanni, who was one of the responding officers, was destroyed by the officers before it was viewed by the parties.

The Due Process clause of the Fifth and Fourteenth Amendments mandate a defendant's fundamental right to a fair trial. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).

In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, 373 U.S. 83 (1963), the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996) citing Brady v. Maryland, *supra*.

The Sixth Amendment provides an accused with the right to be confronted with witnesses against him. The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004).

The Fourteenth Amendment secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law. U.S. Const. amend. XIV.

In Arizona v. Youngblood, 488 U.S. 51 (1988), the United States Supreme Court held that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence did not constitute a denial of due process of law. Youngblood was accused of sexually assaulting and sodomizing a ten year old boy. The police collected a rectal swab for semen and the child's clothing. However, the police failed to refrigerate the clothing and failed to perform tests on the semen samples. None of their information was concealed from the respondent at trial, and the evidence was made available to the respondent's expert who declined to perform any tests on the samples.

In his dissent in Arizona v. Youngblood, *id.*, Justice Blackmun wrote that a defendant was entitled to a fair trial, and not a "good faith" try at a fair trial.

The South Carolina Supreme Court held in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), that to establish a due process violation based on the destruction of evidence, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith; or (2) that the evidence possessed an exculpatory value before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

The Supreme Court held the proposition that Cheeseboro had to show bad faith on the part of the state. Bailey's case is distinguished because the evidence was never presented to him.

Cheeseboro is the wrong standard. It is impossible to comply with because how much evidence of misconduct is being demonstrated currently with camera recordings is difficult to determine. Therefore, the police should not be able to destroy evidence because in their unilateral opinion it had nothing of value.

In State v. Hutton, 358 S.C. 622, 595 S.E.2d 876 (2004), the Court of Appeals held that the state's failure to preserve the victim's unfinished initial statement to police officer did not violate due process, and the defendant was not prejudiced by the state's failure to preserve the statement. However, the Court wrote that although they could not find that the defendant was entitled to a dismissal of the charges, the Court wrote that they "cautioned the prosecution and law enforcement authorities that the destruction of evidence will be highly scrutinized."

In Kershaw County Board of Education v. U.S. Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990), the Supreme Court approved the trial court's use of a spoliation charge even in the absence of evidence of intentional misconduct.

South Carolina Code Section 56-5-2953 (C) provides that a video recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined. Although 56-5-2953 concerns reckless homicide or driving while under the influence of intoxicating liquor, the premise is the same. Evidence in the form of a police video should be preserved.

In State v. Adams, 304 S.C. 302, 403 S.E.2d (Ct. App. 1991), Adams was claiming the original breathalyzer test was not valid and it was lost. However, Adams had been given a copy of the results, and could testify as to his claim. Bailey never had the evidence nor a

copy nor the results so he could not determine if it was exculpatory or not. The police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith. The police conduct was a violation of his due process right to a fair trial.

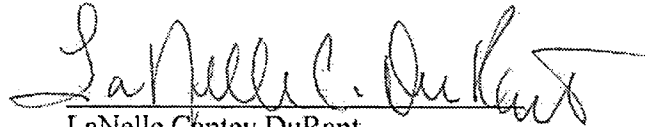
In State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011), the Supreme Court, citing State v. Austin, 299 S.C. 456, 385 S.E.2d 830 (1989), ruled that a request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010).

The trial judge erred in not giving the requested jury charge on spoliation. There was evidence in Deputy Giovanni's testimony that the in-car video was not presented as evidence. It was only his word that there was nothing significant on the video. Bailey did not have a chance to view it to determine if this was accurate. This was prejudicial to Bailey.

CONCLUSION

Based on the above, Bailey's convictions and sentences should be reversed and his case remanded for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle C. DuRant". The signature is written in dark ink and is positioned above the printed name and title.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**Appeal from Greenville County
The Honorable Steven H. John, Circuit Court Judge**

Appellate Case No. 2014-002447

THE STATE,

Respondent,

v.

JAMES EDDIE BAILEY,

Appellant.

FINAL BRIEF OF RESPONDENT

**ALAN WILSON
Attorney General**

**SUSANNAH R. COLE
Staff Attorney**

**Post Office Box 11549
Columbia, SC 29211
(803) 734-3727**

**WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit**

**305 E. North St
Greenville, SC 29601
(864) 467-8647**

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	7
 The circuit court properly denied Appellant's untimely request for a spoliation jury charge in this case because the State did not destroy the dashboard camera's videotape in bad faith, and there was no indication the videotape contained exculpatory evidence.	
CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases:

<u>Am. Cast Iron Pipe Co. v. Williams</u> , 591 So.2d 854 (Ala. 1991).....	8
<u>Arizona v. Youngblood</u> , 488 U.S. 51 (1988).....	9
<u>State v. Moses</u> , 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010)	9
<u>Thomas-McCain, Inc. v. Siter</u> , 268 S.C. 193, 232 S.E.2d 728 (1977).....	8

Statutes:

S.C. Const. Art. V, §21	11

Rules:

Rule 20 of the South Carolina Rules of Criminal Procedure.....	7

STATEMENT OF ISSUE ON APPEAL

The circuit court properly denied Appellant's untimely request for a spoliation jury charge in this case because the State did not destroy the dashboard camera's videotape in bad faith, and there was no indication the videotape contained exculpatory evidence.

STATEMENT OF THE CASE

Appellant was indicted for armed robbery, kidnapping, possession of a weapon during the commission of a violent crime, and resisting arrest on October 22, 2013, by a Greenville County grand jury. A jury found Appellant guilty of all charges after a trial before the Honorable Steven H. John. (R. p. 1.)¹ Symmes Watkins Culbertson, Esquire represented Appellant, and Allen Fretwell, Esquire represented the State. Judge John sentenced Appellant to one year imprisonment for resisting arrest, five years for possession of a weapon during a violent crime, and life imprisonment without the possibility of parole for armed robbery and kidnapping. (R. p. 124, line 24- p. 125, line 20.) Appellant filed a timely Notice of Appeal, and this Appeal follows.

¹ The trial took place over three days in October of 2014.

STATEMENT OF FACTS

On the evening of April 14th, 2013, Sharon Taylor, the manager of a Greenville Dollar General, was preparing to close the store for the night. (R. p. 31, line 2-25 and p. R. Supp. p. 1, line 1-14.) Taylor had not been scheduled to work and was on vacation, but she agreed to come in around 6:30 pm, when the manager who was scheduled that evening quit suddenly. (R. p. 31, lines 12-19.) Because she was not expecting to be called in to work, and she lived a long distance away, Taylor was accompanied to the store by her boyfriend, Tom Nash, who would wait for her until the end of her shift. (R. Supp. p. 1, lines 5-10.) Also working that evening was Karen Nartowicz, a cashier at the Dollar General. (R. p. 30, lines 21-25.)

At around 8:55 pm, Taylor noticed a few customers still shopping in the store, including Appellant, who entered and asked Nartowicz about pet food. (R. p. 32, lines 18-20.) Her boyfriend Nash was helping another female shopper carry her bags to her car outside. (R. p. 17, lines 2-6.) Appellant lingered in the back corner of the store, which Taylor found unusual because the pet food was located in a different area. (R. p. 32, lines 18-20.) Taylor asked Appellant if he needed any help, but he declined, so she stepped into the office for a few minutes. (R. p. 32, lines 21-25.) As she exited the office, she heard Appellant ask Nartowicz where “the other lady was.” (R. p. 33, line 14.) Taylor asked him how she could help him, and he responded he needed help with some snacks. (R. p. 33, lines 17-20.)

Taylor was immediately uncomfortable with Appellant’s request, because the snacks were clearly visible. (R. p. 33, lines 19-23.) Taylor stayed behind Appellant as she directed him down the aisle, but he turned and grabbed her by the hair, held a knife to her side, and dragged her to the back hall. (R. p. 34, lines 1-3.) Appellant threw Taylor to the

floor and held her down at knifepoint, telling her “this is a robbery and I’ll kill you.” (R. p. 34, lines 3-5.)

Nartowicz heard the commotion and told Nash, who had just returned inside from helping the customer to her car. (R. p. 17, lines 2-14.) Nash saw Appellant on the floor with Taylor, with one arm wrapped around her side, and the other holding her head back. (R. p. 18, lines 6-10.) Taylor attempted to grab a can of soup to hit Appellant, but Nash told her to stop for fear of angering Appellant. (R. p. 19, lines 10-17.) Appellant told Nash he wanted money and told him to go to the cash register to get it or he would kill Taylor. (R. p. 34, lines 20-24.) Appellant began to cut Taylor across her throat. (R. p. 34, lines 22-23.)

Nash took twenty- two dollars from the cash register. (R. p. 21, lines 5-9.) Nartowicz was speaking to the 911 operator and handed Nash the phone. (R. p. 21, lines 10-14.) The operator told Nash the police were on the way. (R. p. 21, lines 13-14.) When Nash returned to Appellant and Taylor, he gave Appellant the money and told him the police were coming. (R. p. 35, lines 5-7.) Appellant released Taylor but told her to stay on the floor. (R. p. 35, lines 8-10.) As he walked to the front of the store, he noticed Nartowicz on the phone and motioned toward her. (R. p. 22, lines 6-10.) Nash told him to leave and held open the front door. (R. p. 22, line 11.)

As Appellant stepped out of the front door, he noticed the police car that had just arrived on the scene. (R. p. 22, lines 17-18.) Master Deputy Nathaniel Emily, of the Greenville County Sheriff’s Department, was approximately two miles away when the call went out from dispatch, so he was able to arrive at the Dollar General within thirty or forty-five seconds. (R. p. 36, lines 1-2 and p. 37, lines 5-7.) Emily parked the patrol car facing the store, with his blue lights and siren extinguished. (R. p. 38, lines 13-22.) A

spotlight over the front door of the Dollar General shone down and illuminated the entrance. (R. p. 39, lines 14-19.) As Emily exited his vehicle, he noticed Appellant, who matched the description given by dispatch, and Nash at the front door of the store. (R. p. 39, lines 2-13.) Emily drew his sidearm and shouted at Appellant to put his hands up. (R. p. 39, lines 6-7.) Emily was able to see the knife in Appellant's left gloved hand and what appeared to be wadded up paper or cash in his right gloved hand. (R. p. 41, lines 6-13).

Appellant ran away, and Emily followed in foot pursuit. (R. p. 41, lines 19-21.) Emily's dashboard camera recorded his approach to the Dollar General and continued to record after he parked his patrol car. (R. p. 44, lines 12-19.) The video was entered into evidence at trial. (R. p. 45, line 24.) As Emily chased Appellant, he radioed the suspect's description to dispatch. (R. p. 42, lines 8-10.) Emily chased Appellant through several parking lots, and kept the other responding units apprised of their location. (R. p. 42, lines 8-25 and p. 43, lines 1-12.) Emily used his flashlight to illuminate Appellant running ahead of him. (R. p. 43, lines 15-17.)

Deputy Giovanni, also with the Greenville County Sheriff's Department, heard the call go out from dispatch and aided in the pursuit. (R. p. 54, lines 22-25.) Giovanni's dashboard camera activated at the same time as his blue lights, and recorded his drive to the scene. (R. p. 55, lines 17-25 and p. 56, lines 1-5.) When Deputy Giovanni parked his car, however, Appellant was already behind a nearby church, and Giovanni lost sight of him for a few seconds. (R. p. 58, lines 9-13.) Giovanni spotted Appellant walking away, and called out to him. (R. p. 58, lines 16-22.) Appellant continued to walk away after Giovanni repeated his calls, so the deputy deployed his taser on Appellant. (R. p. 59, lines 4-7.) Giovanni later reviewed his dashboard camera with his Sergeant, and because

Appellant was never in view of the camera, he determined the video had no evidentiary value and it was erased. (R p. 56, lines 6-16.)

Deputy Mathew May was also on scene to assist in the arrest. (R. p. 63, lines 24-25.) Appellant fell to the ground when Deputy Giovanni tased him. After the five second cycle finished, Giovanni and May attempted to take custody of him. (R. p. 60, lines 2-7.) While Appellant was on the ground, Giovanni and Deputy May struggled to pull his hands out from under him to place him in handcuffs. (R. p. 61, lines 4-19.) Appellant resisted, and refused to put his hands behind his back. (R. p. 62, lines 12-14.) Eventually the deputies were able to pull his hands from underneath him, and they discovered Appellant was still holding the knife. (R. p. 62, lines 20-22.) During the search incident to Appellant's arrest, deputies found twenty two dollars in cash in his front right pocket, gloves, a piece of black cloth with string attached, and his wallet in his rear right pocket. (R. p.. 64, lines 1-25 and p. 65, lines 1-25.)

ARGUMENT

The circuit court properly denied Appellant's untimely request for a spoliation jury charge in this case because the State did not destroy the dashboard camera's videotape in bad faith, and there was no indication the videotape contained exculpatory evidence.

Appellant argues the trial judge committed reversible error when he refused to charge the jury on a spoliation of evidence inference. Appellant waived his objection to the charge given at trial, however, by failing to make his request in a timely manner. Further, Appellant presented no evidence of bad faith by the State, nor indicated any exculpatory value of the missing evidence to warrant such a charge. His argument, therefore, is without merit.

Improper Objection Under Rule 20

At trial, Appellant only discussed two issues before the judge charged the jury, and those involved circumstantial evidence and the distinction among the four charged crimes. (R. p. 66, lines 10-13 and p. 67, lines 4-5.) After the judge gave the jury instructions, he again asked for objections. Appellant replied "'your honor, quite honestly, it's one of the better charges I've heard in a long time.'" (R. p. 102, lines 4-5.) His request to the trial court judge for the spoliation charge was made the following day, while the jury was in deliberations. (R. p. 105, lines 8-17.) As for why the issue was not raised previously, counsel conceded, "I did not have that thought in my head." (R. p. 105, lines 16-17.)

Rule 20 of the South Carolina Rules of Criminal Procedure states:

(a) Time for Request. All requests for legal instructions to the jury shall be submitted *at the close of the evidence*, or at such earlier time as the trial judge shall reasonably direct. All requests must include accurate citation to authorities relied upon.

(b) Objections to Charge. Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction *before the jury retires*, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. *Failure to object in accordance with this rule shall constitute a waiver of objection*

(emphasis added.) The solicitor properly pointed out that the addition of the charge after the jury began deliberations would improperly highlight the issue, giving the charge more weight than it deserved. (R. p. 106, lines 18-24.) Appellant failed to object when given the opportunity before and after the jury was charged at the close of evidence, and he made his motion well after the jury retired.

Any error should be called to the attention of the judge at the conclusion of the charge in the absence of the jury; a party who fails to object at that time cannot later complain. Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 199, 232 S.E.2d 728, 730 (1977). Moreover, to be timely, an objection to the trial court's oral charge, with grounds for the objection, must be made before the jury retires to consider its verdict and must be stated with sufficient clarity or specificity to preserve the error. Am. Cast Iron Pipe Co. v. Williams, 591 So.2d 854, 856 (Ala. 1991). Thus, in accordance with the Rules of Criminal Procedure and the common law, Appellant's request for the jury charge was untimely, and his objection was therefore waived.

Failure to Show Bad Faith or Exculpatory Value

Appellant contends the circuit court erred in denying his request for a spoliation of evidence jury charge and therefore violated his due process rights. He argues a spoliation charge was mandated by Deputy Giovanni's failure to preserve the dashboard camera videotape from the night he was arrested.

As the trial judge noted, the State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (R. p. 107, lines 11-25 and 108, lines 1-3.) The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

As a threshold matter, the videotape was "potentially" useful evidence, at best, although Appellant offers no suggestion how it might be useful, and the State did not have an absolute duty to preserve it. Therefore, Appellant must show either bad faith by the police, or the videotape had "readily apparent" exculpatory value before it was taped over. The State submits he cannot meet either prong of the spoliation analysis, and therefore, a spoliation jury charge was not warranted in this case.

Significantly, Appellant does not contend the videotape was intentionally destroyed to avoid revealing exculpatory evidence. Rather, he argues the decision by Giovanni and his supervisor to review and erase the tape was inappropriate police procedure tantamount to bad faith. (Appellant's Brief p. 10.) The evidence presented at trial, however, contradicts his argument. Giovanni and his supervisor reviewed the video, saw Appellant never appeared on camera, and therefore they believed the tape had no evidentiary value. (R. Supp. p. 2, lines 11-23.)

Giovanni testified he was the second officer on scene, and Appellant was out of his line of sight when he parked his patrol car. (R. p. 58, lines 1-10.) The trial court judge found “zero” evidence the State destroyed the videotape in bad faith. (R. p. 108, lines 7-8.) Thus, Appellant clearly cannot meet the first prong of the spoliation analysis.

Appellant contends because he has no knowledge of what evidence the video may have shown, a conclusion the tape contained exculpatory evidence is required. Appellant cannot even speculate the videotape had any exculpatory value, much less “readily apparent” exculpatory value. On the contrary, both Giovanni and Emily testified Appellant matched the suspect’s description, ran from the police, and continued to resist arrest. The dashboard videotape from Emily’s patrol car, which was more probative and relevant, was entered into evidence.

In the absence of bad faith or exculpatory value, the State was not required to preserve the videotape. Appellant essentially contends he was entitled to a spoliation charge simply because the videotape was no longer available. Mandating a spoliation charge under the circumstances of this case effectively eviscerates the limits established in Youngblood, and adopted by the courts of South Carolina in Moses. In essence, defendants would be entitled to the spoliation jury charge even in cases where the State would not be required by law to preserve the evidence at issue, simply because the defense claims the evidence was “potentially” useful, even if there is no indication the evidence had exculpatory value. Such a result imposes an unwarranted burden on the State, which will face the negative inference of a spoliation charge based on nothing more than a defendant’s conclusory claim particular evidence might have helped the defense.

Further, specifically instructing the jury it may infer the videotape in this case was adverse to the State would be tantamount to a prohibited charge on the facts. S.C. Const. Art. V, §21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). It is undisputed the videotape footage from the night Appellant was arrested was no longer available only because the deputy and his supervisor taped over it in the ordinary course of business. Even if stated as a permissible inference, a specific jury charge regarding the unavailable videotape would improperly focus on the fact the videotape was unavailable.

Appellant questioned witnesses about the missing videotape, and he argued in closing that the missing videotape created reasonable doubt. (R. Supp. p. 2, lines 11-25, p. 3, lines 1-13; R. p. 178, lines 9-16.). The circuit court properly instructed the jury it was the sole judge of the facts and the witnesses’ credibility. (R. p. 91, lines 18-24). The jury knew about the missing videotape and was free to give the missing videotape whatever weight the jurors deemed necessary.

In the absence of evidence indicating State misconduct, or that the videotape had any exculpatory value, the Appellant was not entitled to the spoliation jury charge. The circuit court properly denied Appellant’s untimely request, and his conviction should be affirmed.

CONCLUSION

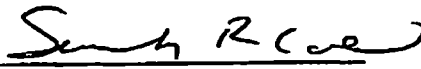
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SUSANNAH R. COLE
Staff Attorney

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Susannah R. Cole
Bar # 68383

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 8, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Eddie Bailey, Appellant.

Appellate Case No. 2014-002447

Appeal From Greenville County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2016-UP-278
Submitted March 1, 2016 – Filed June 8, 2016

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Susannah Rawl Cole, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Nesbitt*, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) ("In
criminal cases, the appellate court sits to review errors of law only." (quoting *State*

v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)); *State v. Lemire*, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); Rule 20(a), SCRCrimP ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial [court] shall reasonably direct."); Rule 20(b), SCRCrimP ("[T]he parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. . . . Failure to object in accordance with this rule shall constitute a waiver of objection.").

AFFIRMED.¹

HUFF, A.C.J., and SHORT and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 24, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. James Eddie Bailey
Lower Court Case No. 2013GS2309292
Appellate Case No. 2014-002447

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

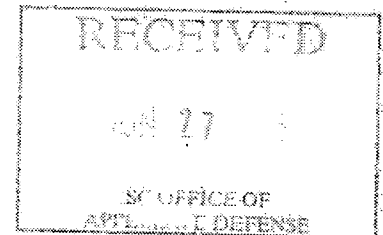
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
LaNelle Cantey DuRant, Esquire
Susannah Rawl Cole, Esquire
William Walter Wilkins, III, Esquire



FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville S.C.)James Eddie Bailey #114196)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-23-

03795
FILED-CLERK
JUDITH B. WICKS
GREENVILLE, SC
COURT
2017 MAY 22 PM 2:09

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- ① Place of detention McCormick Correctional Institution
- ② Name and location of Court which imposed sentence Greenville County
Court house Greenville, S.C.
- ③ Name(s) of co-defendant(s) (if any) N/A
- ④ The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: NOT AVAILABLE AT THIS TIME, WILL
(a) Provide at Amendment stage.
(b) _____

- (c) _____
- ⑤ The date upon which sentence was imposed and the terms of the sentence:
- (a) October 10, 2014
- (b) NATURAL Life without Parole
- (c) _____

- ⑥ Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty threw Trial by Jury
- (c) after a plea of nolo contendere _____

- ⑦ Did you appeal from the judgment of conviction or the imposition of sentence?
Yes to Appellate Courts

- ⑧ If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
- i. S.C. Appellate Court
- ii. _____
- iii. _____

- (b) the result in each such Court to which you appealed:
- i. Upheld Sentence under "good faith effort"
- ii. _____
- iii. _____

- (c) the date of each such result:
- i. JUNE 8, 2016
- ii. _____
- iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
- (b) _____

(c) _____
 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Counsel

(b) TRIAL COUNSEL FAILED TO REQUEST JURY INSTRUCTION

(c) TRIAL COUNSEL GAVE ERRONEOUS ADVICE WHICH CAUSED ME NOT TO TESTIFY ON MY OWN BEHALF.

11. State concisely and in the same order the facts which support each of the grounds set out in (10): this is All (A)

(a) Requested Mental Health Therapist at trial never called Him (for history's medication effects)

(b) Requested Motion of Discovery to prepare for trial only given half

(c) Never showed me incriminating pictures which could of swayed a plea.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Court of Appeals

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C.

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES only the ^{JB} video issue

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Video Issue
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Court of Appeals
- ii. _____
- iii. _____

16

If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Yes the destruction of video
- (b) _____
- (c) _____

17

Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18

If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. SYMMES CULBERTSON (AT TRIAL) (Preparation) (Sentencing)
- ii. _____
- iii. LANELLIE CanteY DURANT (Appeal) (Preparation)
- S.C. Commission of Indigent Defense (Division of Appellate Defense)
- P.O. Box 11589 Columbia, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. Appellate Attorney
- iii. _____

19.

State clearly the relief you seek in filing this application:

NEW TRIAL and what ever court
deems proper.

20.

Are you now under sentence from any other court that you have not challenged?

No!!

STATE OF SOUTH CAROLINA)

County of)

McCORMICK)

VERIFICATION

I, James E. Bailey, being duly sworn
 upon my oath, depose and say that I have subscribed to the foregoing application; that I know the
 contents thereof; that it includes every ground known to me for vacating, setting aside or
 correcting the conviction and sentence attacked in this application; and that the matters and
 allegations therein set forth are true.

James E. Bailey

SWORN to and subscribed before me this
 day of May

5th2017

Michael G. Moore
 Notary Public

Michael G. Moore
 (L.S.)

My Commission Expires:

July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, James Eddie Bailey, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James E. Bailey
James E. Bailey Applicant

SWORN or affirmed to and subscribed before me this

5th day of May, 2017.

Michael Camano
Notary Public

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
James Eddie Bailey, #114196,	)	2017-CP-23-3295
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on May 22, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In October 2013, the Greenville County Grand Jury indicted Applicant for armed robbery, kidnapping, possession of a weapon during the commission of a violent crime, and resisting arrest (2013-GS-23-9292). Symmes Culbertson, Esquire, represented Applicant. Allen Fretwell, Esquire, of the Thirteenth Circuit Solicitor's Office prosecuted the case. On October 8-10, 2014, Applicant proceeded to trial before the Honorable Steven H. John. The jury found Applicant guilty as indicted. Judge John sentenced Applicant to imprisonment for life for armed robbery and kidnapping, five years for possession of a weapon during the commission of a violent crime, and one year for resisting arrest.

Applicant filed a timely notice of appeal. LaNelle Cantey DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 8, 2016. State v. Bailey, Op. No. 2016-UP-278 (S.C. Ct. App. filed June 8, 2016). The remittitur was returned to the circuit court on June 24, 2016.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel failed to request jury instruction."
 - b. "Trial counsel gave erroneous advice which caused [Applicant] not to testify on my own behalf."
 - c. "Requested mental health therapist at trial, never called him (for history and medication effects)"
 - d. "Requested motion of discovery to prepare for trial, only give half."
 - e. "Never showed [Applicant] incriminating pictures which could of swayed a plea."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624,

that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the

PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFERY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 1, 2017.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2017-CP-23-3295
	)	
JAMES EDDIE BAILEY, #114196	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this 1st day of September, 2017.


 Lindsey McCoy, Legal Assistant

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2017-CP-23-03295
)
) **ORIGINAL**
)
 JAMES EDDIE BAILEY)
) APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
 THE STATE OF SOUTH CAROLINA)
) RESPONDENT)

December 15, 2017
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
 Attorney for the Applicant

DESHAWN MITCHELL, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

INDEX OF WITNESSES

JAMES BAILEY

Direct By Mr. Richey	5
Cross By Mr. Mitchell	11
Direct By Mr. Richey	15
Cross By Mr. Mitchell	21
Redirect By Mr. Richey	26

There were no exhibits.

» > O < «

Certificate of Reporter	27

1 THE COURT: All right, Mr. Mitchell, you may
2 call the next case, sir.

3 MR. MITCHELL: May it please the Court, Your
4 Honor. This is 2017-CP-23-3295, James Bailey vs. The
5 State of South Carolina. The Applicant is presently
6 confined in The South Carolina Department of
7 Corrections pursuant to Order of Commitment of the
8 Greenville County Clerk of Court. In October 2013,
9 the Greenville County Grand Jury indicted Applicant
10 for armed robbery, kidnapping, possession of a weapon
11 during the commission of a violent crime and
12 resisting arrest. Mr. Culbertson represented The
13 Applicant.

14 On October 8th through 10th, 2014, The Applicant
15 proceeded to trial before the Honorable Steven H.
16 John. And the jury found Applicant guilty as
17 indicted. Judge John sentenced Applicant to
18 imprisonment for life for armed robbery and
19 kidnapping, five years for the possession of a weapon
20 during the commission of a violent crime and one year
21 for resisting arrest. The Applicant filed a timely
22 notice of appeal, the South Carolina Court of Appeals
23 affirmed Applicant's conviction on June 8th, 2016. A
24 remitter was returned to the circuit court on
25 June 24, 2016.

JAMES BAILEY-DIRECT BY MR. RICHEY

1 The Applicant is present in the courtroom today
2 and is represented by Mr. Richey.

3 THE COURT: Okay, Mr. Richey.

4 MR. RICHEY: Thank you, Your Honor, may it
5 please the Court. We call Mr. James Bailey.

6 THE COURT: All right, Mr. Bailey, you want to
7 come on up, sir?

8 THE CLERK: Place your left hand on the Bible
9 raise your right hand.

10 James Bailey, after being duly sworn, testified
11 as follows.

12 THE CLERK: Thank you, you may be seated.
13 Please state your full name for the record.

14 THE WITNESS: James Eddie Bailey.

15 DIRECT EXAMINATION

16 BY MR. RICHEY:

17 Q Mr. Bailey, are you currently in the Department
18 of Corrections?

19 A Yes, sir.

20 Q What are you in there for?

21 A Convicted of armed robbery and kidnapping.

22 Q Were you convicted in Greenville County?

23 A Yes, sir.

24 Q Who represented you on those charges?

25 A Mr. Symmes Culbertson.

JAMES BAILEY-DIRECT BY MR. RICHEY

1 Q And you filed an Application for Post-Conviction
2 Relief because you believe Mr. Culbertson did not
3 effectively represent you; is that correct?

4 A Yes, sir.

5 Q And do you believe that Mr. Culbertson
6 improperly investigate your case?

7 A Yes, sir.

8 Q You believe he did do a proper investigation?

9 A He didn't do a proper investigation.

10 Q What did -- what did you ask him to do or want
11 him to do?

12 A Well, I asked him to subpoena my therapist.
13 When -- asked when we was getting ready to prepare for
14 trial, I asked for my motion of discovery. Which I only
15 got half of.

16 Q When you say you got half of, what does that
17 mean?

18 A That mean that -- they was passing pictures
19 around in the courtroom that I had never seen. I still
20 never seen them to this day.

21 Q Okay. When you say there was information that
22 Mr. Culbertson had that you didn't have?

23 A Right.

24 Q Okay. And how did you know that?

25 A Because I seen the jury -- I seen the solicitor

JAMES BAILEY-DIRECT BY MR. RICHEY

1 when he gave it to the jury to look at it. But I'm saying
2 I never did ever get the true pictures. I didn't even
3 know the pictures exist.

4 Q Okay. Let me go back and try to clarify this.
5 In your case, there were pictures involved in this case,
6 correct?

7 A Right.

8 Q And when you got your discovery, you didn't have
9 those pictures?

10 A No, sir, I didn't have no pictures.

11 Q And did you discover the pictures during your
12 trial?

13 A I mean, like I said, I seen them passing them
14 around in the courtroom during my trial. I still haven't
15 seen them till today.

16 Q So, Mr. Culbertson didn't go over those pictures
17 with you at all?

18 A No, sir.

19 Q In terms of any type of plea offers, were there
20 any plea offers available in your case?

21 A Well, the only thing he told me, 30 years. And
22 that's a life sentence for me.

23 Q How old are you?

24 A I'm 54.

25 Q And at the time of this case, that was pretty

JAMES BAILEY-DIRECT BY MR. RICHEY

1 much the rest of your life?

2 A That been the rest of my life.

3 Q Now, these pictures that he did not show you, do
4 you think that that would have assisted you in making a
5 decision about your case?

6 A It could have persuaded me to make a decision to
7 not have a jury trial.

8 Q Okay.

9 A I mean, if I knew what was on the pictures.
10 See, I still don't know what was on the pictures. And
11 pertaining to my case, part of it is I told him, I don't
12 remember half of the stuff that went on.

13 Q When you say half the stuff --

14 A When I was being arrested.

15 Q Okay.

16 A What I was arrested for.

17 Q Okay. Do you believe that Mr. Culbertson could
18 have done a better job of representing you?

19 A Yes, sir.

20 Q Okay. This was -- this incident occurred at a
21 Dollar General; is that correct?

22 A Right.

23 Q And it was alleged that you, in fact, robbed a
24 lady at the Dollar General; is that correct?

25 A Right.

JAMES BAILEY-DIRECT BY MR. RICHEY

1 Q Okay. And at the Dollar General, there was an
2 incident that took place outside the Dollar General where
3 they arrested you; is that correct?

4 A Right.

5 Q And there was a video of that incident; is that
6 correct?

7 A Right.

8 Q And what happened to that video?

9 A The officer said him and his sergeant viewed the
10 video and deposed of it, said nothing was on that video.

11 Q So, it got disposed of?

12 A Yeah.

13 Q And Mr. Culbertson attempted to make an
14 expoliation motion; is that correct?

15 A He did.

16 Q Did you see any issue with that?

17 A I mean, he did like -- I mean. . . .

18 Q The Judge did not allow him to do it; is that
19 correct?

20 A Right.

21 Q Okay. Do you think if Mr. Culbertson had
22 represented you properly, the outcome of your case would
23 have been different?

24 A I know it would have.

25 Q Uh?

JAMES BAILEY-DIRECT BY MR. RICHEY

1 A I know it would have.

2 Q Okay. Tell me why you believe that.

3 A Because my psychological evaluation as well as
4 my mental state should have been represented at trial.
5 And it wasn't.

6 Q Okay. You -- you were evaluated by The State
7 Hospital; is that correct?

8 A Right. By the state doctor.

9 Q Okay. And do you believe that that doctor acted
10 in your best interest?

11 A No.

12 Q Okay. Did you and Mr. Culbertson talk about
13 that?

14 A Not really. I mean, I think -- I been taking
15 psychotic medication for some years now. And at that time
16 I was on psychotic medication. Which my medication had
17 been recently changed. And I brought this to his
18 attention but it was like it didn't matter. Nothing
19 didn't matter. Whatever I said didn't really matter.

20 Q Did you testify in your trial?

21 A No, sir.

22 Q Okay. And did you discuss that with
23 Mr. Culbertson?

24 A No, sir.

25 Q Okay. Do you believe you should have testified?

JAMES BAILEY-CROSS BY MR. MITCHELL

1 A Yes, sir.

2 Q Why is that?

3 A Because I feel as though my mental state should
4 have been known by the jury. And they would have had a
5 chance to make a decision on my competent when this crime
6 supposedly took place -- I mean, happened. Only thing he
7 would say, Oh, they just going to say you was drunk. No,
8 we're not.

9 Q Did y'all discuss anything about this supposed
10 knife, you and Mr. Culbertson?

11 A No.

12 Q And you believe that there was some mitigation
13 for this happening, right?

14 A Yeah.

15 Q And what's that?

16 A I mean, I just feel like I wasn't properly
17 represented. I feel like I could have came out better or,
18 I mean. . .

19 Q Are you asking this Court to grant you a new
20 trial?

21 A Yes, sir.

22 MR. RICHEY: Okay, thank you. Answer any
23 questions that the attorney general has, please.

24 CROSS-EXAMINATION

25

JAMES BAILEY-CROSS BY MR. MITCHELL

1 BY MR. MITCHELL:

2 Q Good afternoon, Mr. Bailey, how are you?

3 A I'm all right.

4 Q I just have a few questions for you. How many
5 times did you meet with Mr. Culbertson?

6 A Probably about three or four.

7 Q Three or four times. Did you guys go over any
8 discovery at all?

9 A No.

10 Q No. Did he provide any of it to you?

11 A Yeah, he sent some guy over there with half of
12 it with some paper work. He didn't deliver it, you know,
13 down at the jail.

14 Q So, what was in the discovery that you had?

15 A Just witness statements. That's basically all I
16 got.

17 Q Okay. So, witnesses who would testify at the
18 trial?

19 A Right.

20 Q Okay.

21 A And, you know, the officers and stuff in the
22 incidents.

23 Q Yes, sir.

24 A That's basically it, that's all I got.

25 Q Okay. Prior to you going to trial, did you

JAMES BAILEY-CROSS BY MR. MITCHELL

1 review any videos of any surveillance?

2 A Yeah, yeah. They did show a video of me walking
3 around in the store.

4 Q Okay. So, you had videos, you had statements
5 from witnesses, statements from police officers?

6 A Yeah.

7 Q Prior to you going to trial?

8 A Yeah.

9 Q Okay. Did Mr. Culbertson discuss with you any
10 defenses to your case?

11 A No.

12 Q Didn't discuss any defenses to you. So, you got
13 tested for your mental competency, right? The doctor
14 tested you?

15 A Yeah, I went down there.

16 Q Okay. So, that's a yes or no?

17 A Yes, I went down there.

18 Q Did you get tested?

19 A Yeah, he said he did an evaluation.

20 Q Okay. And what did the evaluation come back?

21 A They said I was competent to stand trial.

22 Q Okay. Did you not agree with that?

23 A As I said before, I been on psych medication for
24 years. A few years now.

25 Q Did you give your attorney any possible leads or

JAMES BAILEY-CROSS BY MR. MITCHELL

1 witnesses that you wanted to call on your behalf or
2 anything like that?

3 A Oh, yeah. I told him to all my therapist of
4 mental health. I was in mental health. I told him to
5 subpoena my therapist from mental health.

6 Q To come and testify --

7 A Right--

8 Q -- to what?

9 A To my defense.

10 Q Which was?

11 A What going on with me mentally. At that time
12 when this occurred.

13 Q So, you were under the influence of drugs when
14 this incident happened?

15 A Basically, psychotic.

16 Q Okay. Now, I know I heard you testify that
17 Mr. Culbertson didn't go over your right to testify in
18 this particular case?

19 A Right.

20 Q Do you remember the Judge going over it with
21 you?

22 A No, sir. Like I said, a lot of stuff is just. .

23 .

24 Q So, you didn't understand what was going on
25 during the trial?

SYMMES CULBERTSON-DIRECT BY MR. RICHEY

1 A Some I did, some it just, like I say. . .

2 Q Okay.

3 Judge, I would just note for the record
4 Page 143 through 147, Judge going over his right to
5 testify.

6 THE COURT: Okay.

7 MR. MITCHELL: That's all the questions I have
8 for him, Judge.

9 THE COURT: All right.

10 Any redirect, sir?

11 MR. RICHEY: No other questions.

12 THE COURT: All right.

13 MR. RICHEY: We call Mr. Symmes Culbertson.

14 THE COURT: Mr. Bailey, you can step down, I
15 appreciate it, sir.

16 THE CLERK: Mr. Culbertson, please place your
17 left hand on the Bible, raise your right hand.

18 Symmes Culbertson, after being duly sworn,
19 testified as follows:

20 THE CLERK: Thank you, you may be seated. State
21 your name for the record.

22 THE WITNESS: Symmes Culbertson.

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Mr. Culbertson, do you recall representing James

SYMMES CULBERTSON-DIRECT BY MR. RICHEY

1 Bailey?

2 A Yes.

3 Q And you represented him in Greenville County,
4 correct?

5 A That's correct.

6 Q And you were in the courtroom during
7 Mr. Bailey's testimony; is that correct?

8 A The one just now?

9 Q Yes, sir.

10 A Yes, sir.

11 Q And you heard him raise a issue of your
12 investigation of the case. Can you -- can you explain to
13 us what investigation you did or normally do?

14 A In regards to this particular case, I certainly
15 reviewed all of the discovery that had been provided to me
16 pursuant to our discovery requests. As I recall, I also
17 drove by the scene in question where this crime allegedly
18 took place.

19 Q Did you provide him with all the discovery?
20 Mr. Bailey raised an issue that he did not receive all of
21 the discovery.

22 A On the -- if you don't mind, I'm referring to my
23 file here very briefly. And there's a notation in here
24 that on September 29th of 2014, an investigator with the
25 Public Defender's Office, I know him as JC. JC, actually,

SYMMES CULBERTSON-DIRECT BY MR. RICHEY

1 took a copy of the discovery down to the law enforcement
2 center and personally delivered it to Mr. Bailey. So, he
3 got a copy of everything I had at that time.

4 Q In terms of the trial, at the trial itself,
5 there was some testimony that there was some pictures that
6 were not made available to him and the jury saw the
7 pictures and he never saw them. Do you recall any of
8 that?

9 A I'm not sure what he's talking about there.
10 There were some photographs introduced at trial. But
11 those were all photographs that The State had presented.
12 Mr. Bailey certainly had a chance to review those prior to
13 us going to trial. I'm not sure of any other photos he's
14 talking about that he wasn't aware of.

15 Q Okay. Because he said -- his testimony was that
16 the photos were not beneficial to him and he believed they
17 would have swayed his decision to plead guilty.

18 A My recollection is that there were some
19 photographs contained within the Code 5 discoverable
20 material that we had been provided. And to my knowledge,
21 he was provided copies of those photographs. At least, at
22 the time, that a copy of it was delivered to him at the
23 law enforcement center.

24 Q What about his mental state, you had him
25 evaluated; is that correct?

SYMMES: CULBERTSON-DIRECT BY MR. RICHEY

1 A Yeah, there was a question about his mental
2 status or his competency. He was, actually, was taken
3 down to Columbia. As I recall twice to be evaluated at
4 The State Hospital. Also, The Public Defender's Office
5 provided funding for a local person, we used Dr. Price.
6 Dr. Price, actually, also went down to Columbia to talk to
7 Mr. Bailey.

8 Q Did that yield any benefit to you?

9 A The State Hospital said he was competent to
10 stand trial, that's why he was sent down there to be
11 evaluated. Dr. Price indicated he was also competent.
12 May have had some other issues but nothing that rose to
13 the level of the offense.

14 Q This was a robbery that supposedly taken place
15 at the Dollar General; is that correct?

16 A Correct.

17 Q And it was alleged that Mr. Bailey robbed the
18 lady in the store, correct? Something to that extent?

19 A Yeah, as I recall there were actually a few
20 other people, two, three other people who may have been in
21 the store at the time. But clearly, there was, at least,
22 the clerk of the store was there.

23 Q And he got, supposedly, got out of the store and
24 cops arrested him outside, somewhere outside the store.
25 And do you recall there being a video destroyed in the

SYMME CULBERTSON-DIRECT BY MR. RICHEY

1 case?

2 A There was a video that apparently one of the
3 patrol cars was equipped with a video camera. And that
4 camera became activated whenever the blue lights were
5 turned on. Apparently, there was a video. Story of the
6 video that should have been available. However, by the
7 time we got around to try to look at it to prepare for
8 trial, it no longer existed. Apparently, it had been
9 erased or destroyed or purged from their system.

10 Q You attempted to make an expoliation motion, I'm
11 referring to Page 194, you attempted to do that; is that
12 correct?

13 A Correct.

14 Q And the Judge denied that?

15 A Correct.

16 Q Okay. Can you tell me, what were your talks
17 like with Mr. Bailey?

18 A I'm not sure quite what that question is, how to
19 respond to that.

20 Q Okay. When you would sit down and discuss the
21 case with him, was he telling you that he was not guilty
22 of the charge?

23 A I had several conversations with Mr. Bailey, the
24 first on April the 26th of 2013, when I was initially
25 appointed to represent Mr. Bailey. I'm looking at my

SYMMES CULBERTSON-DIRECT BY MR. RICHEY

1 notes in my file from that date. It indicates that I met
2 with him down at the law enforcement center. There's also
3 a notation that I need to have him evaluated. At that
4 time, that was my initial impression. I raised that issue
5 and sought to have him evaluated on competency levels by
6 The State Hospital. There were several other, 1, 2, 3, 4,
7 I mean, there another half dozen or more notations on the
8 other dates that I met with Mr. Bailey. They run a gamut
9 of the things we talked about, either [indiscernible]
10 hearing or various other issues that came up during the
11 course of my representation.

12 There's one notation in here about we
13 actually discussed the offer we had received from the
14 solicitor's office by way of a offer for a plea. And
15 there's a notation in here from 10/3 of '14 that indicates
16 that Mr. Bailey would be interested in entering a plea to
17 a 15 year sentence. But no such offer was ever made by
18 the solicitor's office. So, we had to proceed to trial.

19 Q And based on your conversations with him, do you
20 believe that he had the ability to understand any of these
21 offers?

22 A I believe that he did, yes, sir.

23 MR. RICHEY: Okay, thank you. Answer any
24 questions that the attorney general has for you,
25 please.

SYMMES CULBERSTON-CROSS BY MR. MITCHELL

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Mr. Culbertson.

A Yes, sir.

Q After you got the discovery, I believe you testified after you got the discovery you met with The Applicant in this case and went over some of it with him; is that correct?

A That is correct.

Q Okay. Now, tell me the evidence in the case, The State's evidence, and what they had against The Applicant?

A Well, they had a lot of evidence. I'm not sure how much you want -- I mean, that's an open-ended question, I apologize.

Q Well, let me ask you this, was there any type of surveillance video from the store?

A There was an in-store surveillance video.

Q With The Applicant inside of the store?

A Yes.

Q Okay. Potential witnesses in this case, they had witnesses who could testify?

A Yes.

Q Okay. And if I'm understanding correctly from the transcript, The Applicant robbed the store with a

SYMME'S CULBERSTON-CROSS BY MR. MITCHELL

1 knife; correct?

2 A Correct.

3 Q Okay. And when the police officers captured The
4 Defendant, they found the knife on his person; correct?

5 A Correct.

6 Q Okay. With the money that was taken from the
7 store, correct?

8 A Correct.

9 Q Okay. Now, talking about this expoliation
10 charge, you did make the charge; correct?

11 A I made the request, yes.

12 Q And The Judge --

13 A The Judge denied it.

14 Q Okay. And the charge was based on a video from
15 a camera inside of a dash cam police officer's car,
16 correct?

17 A That's correct.

18 Q Okay. And The Judge denied it, do you recall
19 what the basis of his denial was?

20 A Not off the top of my head.

21 Q Okay.

22 A I don't recall right now, I'd have to look back
23 at the transcript.

24 Q Let me ask you this, would it be fair if I said
25 that the video dash cam just showed the officer driving to

SYMME CULBERSTON-CROSS BY MR. MITCHELL

1 the location but never had The Applicant in front of the
2 camera?

3 A Honestly, I don't recall--

4 Q Okay.

5 A -- at this time what it showed or did not show.

6 Q Fair enough. Let me ask you this, I heard you
7 testify that you did some investigation in this case, you
8 drove by the scene, you went over the discovery--

9 A Actually, went to the store, walked in the
10 store, yes.

11 Q Okay. Did you need to talk any witnesses or
12 anybody like that or whatever or any witnesses that you
13 needed to?

14 A Not, when I was there. When I went by the store
15 to just kind of get the lay of the land, the potential
16 State's witnesses were not in the store at that time.

17 Q Okay. What was, I guess, the theory of the case
18 going into trial?

19 A My theory of the case going into trial?

20 Q Yeah. What were you trying to tell the jury,
21 show the jury. I know there was a lot of evidence in the
22 case against The Applicant.

23 A Well, there was a lot of evidence in the trial,
24 there was a in-store video that showed my client, showed
25 two or three other individuals that were in there

SYMME'S CULBERSTON-CROSS BY MR. MITCHELL

1 shopping at that time. But in none of those videos, none
2 of those scenes with the in-store tape, did you ever see
3 Mr. Bailey holding a knife to anybody's throat or actually
4 taking money out of the cash register. There was nothing
5 that actually caught him on video in the process of
6 robbing the store.

7 So, when we were at trial, that's one of
8 the things we talked about. Especially, during closing
9 arguments that there was no evidence there that showed him
10 doing anything illegal.

11 Q Okay. But there was testimony from the
12 witnesses, correct?

13 A There was testimony from the witnesses, correct.

14 Q Okay. And just briefly on that plea offer,
15 there was a plea offer from The State of 30 years?

16 A That is correct.

17 Q Okay.

18 A The solicitor's office had sent a plea offer on
19 6/26 of '14. That came from Mr. Fretwell, who was the
20 assistant solicitor handling the case at that time. They
21 indicated a willingness to allow Mr. Bailey to enter a
22 plea to armed robbery, kidnapping, possession of a weapon
23 during the commission of a violent crime and to resisting
24 arrest. And The State would dismiss one, two kidnapping
25 charges and one attempted murder charge. They would make

SYMME CULBERSTON-CROSS BY MR. MITCHELL

1 a recommendation of a 30 year sentence.

2 Q Okay. And The Applicant rejected that plea
3 offer?

4 A That's correct.

5 Q Okay. Now, I just want to make sure the
6 record's clear. The Applicant was tested for his
7 competency, correct?

8 A Correct.

9 Q And the competency evaluation was --

10 A Showed him to be competent.

11 Q Okay. And that evaluation was entered at the
12 actual trial itself?

13 A You know, I'm not sure. I can't recall right
14 now today about that.

15 Q Okay. Fair enough. And did he ever ask you to
16 subpoena a therapist to come testify?

17 A I had had, as indicated earlier, The Public
18 Defender's Office made arrangements for Dr. Price to go
19 down and talk with Mr. Bailey. Which he did. At the
20 trial, I did not think it was in Mr. Bailey's best
21 interest to have Dr. Price testify, so we did not call him
22 to testify.

23 Q Why was that?

24 A Because Dr. Price would have indicated a
25 diagnosis of an opinion of malingering as part of his

SYMMES CULBERTSON-REDIRECT BY MR. RICHEY

1 assessment. And I did not think that was an issue of fact
2 that we needed to bring out in front of the jury.

3 MR. MITCHELL: Thank you, Mr. Culbertson.

4 MR. RICHEY: Just a couple of questions.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q Mr. Culbertson, did you relay those plea offers
9 to Mr. Bailey?

10 A Yes.

11 Q Tell him about those?

12 A Yes, sir.

13 Q Okay. And did you have any discussion with his
14 personal therapist?

15 A I'm not sure what you mean by personal
16 therapist. I was unaware of a personal therapist. I knew
17 that he had been receiving some mental health counseling
18 through Greenville County Mental Health. But no, I did
19 not -- I do not recall having that conversation with a
20 personal therapist.

21 Q Okay.

22 MR. RICHEY: No other questions.

23 Thank you, Your Honor.

24 THE COURT: All right, anything further for
25 Mr. Culbertson?

SYMMES CULBERTSON-REDIRECT BY MR. RICHEY

1 MR. MITCHELL: No, Your Honor.

2 THE COURT: All right, you may stand down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Anything further from The Applicant,
5 sir?

6 MR. RICHEY: No, sir.

7 THE COURT: From the state?

8 MR. MITCHELL: Nothing from the State, Your
9 Honor.

10 THE COURT: All right, I'll take the matter
11 under advisement, I'll rule in the next few weeks.
12 All right.

13 (WHEREUPON, the proceedings were concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

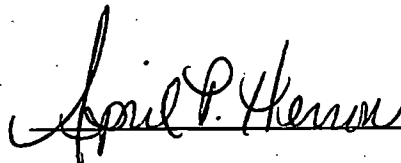
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 15th day of December, 2017.

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

June 20, 2018

A handwritten signature in cursive script, reading "April P. Herron", is written over a horizontal line.

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Eddie Bailey, #114196,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-3295

ORDER OF DISMISSAL

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief filed on May 22, 2017 by James Eddie Bailey (Applicant). Respondent made its Return on or about September 1, 2017. An evidentiary hearing into the matter was convened on December 15, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Symmes W. Culbertson, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In October 2013, the Greenville County Grand Jury indicted Applicant for armed robbery, kidnapping, possession of a

1 *AS*

weapon during the commission of a violent crime, and resisting arrest (2013-GS-23-9292). Symmes W. Culbertson, Esquire, represented Applicant. Allen Fretwell, Esquire, of the Thirteenth Circuit Solicitor's Office prosecuted the case. On October 8-10, 2014, Applicant proceeded to trial before the Honorable Steven H. John. The jury found Applicant guilty as indicted. Judge John sentenced Applicant to imprisonment for life for armed robbery and kidnapping, five years for possession of a weapon during the commission of a violent crime, and one year for resisting arrest.

Applicant filed a timely notice of appeal. LaNelle Cantey DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 1, 2016. State v. Bailey, Op. No. 2016-UP-278 (S.C. Ct. App. filed June 8, 2016). The remittitur was returned to the circuit court on June 24, 2016.

FACTUAL HISTORY

On the evening of April 14th, 2013, Sharon Taylor, the manager of a Greenville Dollar General, was preparing to close the store for the night. (T2. p. 13, line 2 – p. 14, line 14.) Taylor had not been scheduled to work and was on vacation, but she agreed to come in around 6:30 pm, when the manager who was scheduled that evening quit suddenly. (T2. p. 13, lines 12-19.) Because she was not expecting to be called in to work, and she lived a long distance away, Taylor was accompanied to the store by her boyfriend, Tom Nash, who would wait for her until the end of her shift. (T2. p. 14, lines 5-10.) Also working that evening was Karen Nartowicz, a cashier at the Dollar General. (T2. p. 8, lines 21-25.)

At around 8:55 pm, Taylor noticed a few customers still shopping in the store, including Appellant, who entered and asked Nartowicz about pet food. (T2. p. 15, lines 18-20.) Her boyfriend Nash was helping another female shopper carry her bags to her car outside. (T1. p. 61,

lines 2-6.) Appellant lingered in the back corner of the store, which Taylor found unusual because the pet food was located in a different area. (T2. p. 15, lines 18-20.) Taylor asked Appellant if he needed any help, but he declined, so she stepped into the office for a few minutes. (T2. p.15, lines 21-25.) As she exited the office, she heard Appellant ask Nartowicz where "the other lady was." (T2. p. 16, line 14.) Taylor asked him how she could help him, and he responded he needed help with some snacks. (T2. p. 16, lines 17-20.)

Taylor was immediately uncomfortable with Appellant's request, because the snacks were clearly visible. (T2. p. 16, lines 19-23.) Taylor stayed behind Appellant as she directed him down the aisle, but he turned and grabbed her by the hair, held a knife to her side, and dragged her to the back hall. (T2. p. 17, lines 1-3.) Appellant threw Taylor to the floor and held her down at knifepoint, telling her "this is a robbery and I'll kill you." (T2. p. 17, lines 3-5.)

Nartowicz heard the commotion and told Nash, who had just returned inside from helping the customer to her car. (T1. p. 61, lines 2-14.) Nash saw Appellant on the floor with Taylor, with one arm wrapped around her side, and the other holding her head back. (T1. p. 62, lines 6-10.) Taylor attempted to grab a can of soup to hit Appellant, but Nash told her to stop for fear of angering Appellant. (T1. p. 63, lines 10-17.) Appellant told Nash he wanted money and told him to go to the cash register to get it or he would kill Taylor. (T2. p. 17, lines 20-24.) Appellant began to cut Taylor across her throat. (T2. p. 17, lines 22-23.)

Nash took twenty- two dollars from the cash register. (T1. p. 65, lines 5-9.) Nartowicz was speaking to the 911 operator and handed Nash the phone. (T1. p. 65, lines 10-14.) The operator told Nash the police were on the way. (T1. p. 65, lines 13-14.) When Nash returned to Appellant and Taylor, he gave Appellant the money and told him the police were coming. (T2. p. 18, lines 5-7.) Appellant released Taylor but told her to stay on the floor. (T2. P. 18, lines 8-10.)

As he walked to the front of the store, he noticed Nartowicz on the phone and motioned toward her. (T1. p. 66, lines 6-10.) Nash told him to leave and held open the front door. (T1. p. 66, line 11.)

As Appellant stepped out of the front door, he noticed the police car that had just arrived on the scene. (T1. p. 66, lines 17-18.) Master Deputy Nathaniel Emily, of the Greenville County Sheriff's Department, was approximately two miles away when the call went out from dispatch, so he was able to arrive at the Dollar General within thirty or forty-five seconds. (T2. p. 53, lines 1-2 and p. 54, lines 5-7.) Emily parked the patrol car facing the store, with his blue lights and siren extinguished. (T2. p. 55, lines 13-22.) A spotlight over the front door of the Dollar General shone down and illuminated the entrance. (T2. p. 56, lines 14-19.) As Emily exited his vehicle, he noticed Appellant, who matched the description given by dispatch, and Nash at the front door of the store. (T2. p. 56, lines 2-13.) Emily drew his sidearm and shouted at Appellant to put his hands up. (T2. p. 56, lines 6-7.) Emily was able to see the knife in Appellant's left gloved hand and what appeared to be wadded up paper or cash in his right gloved hand. (T2. p. 58, lines 6-13).

Appellant ran away, and Emily followed in foot pursuit. (T2. p. 58, lines 19-21.) Emily's dashboard camera recorded his approach to the Dollar General and continued to record after he parked his patrol car. (T2. p. 65, lines 12-19.) The video was entered into evidence at trial. (T2. p. 66, line 24.) As Emily chased Appellant, he radioed the suspect's description to dispatch. (T2. p. 59, lines 8-10.) Emily chased Appellant through several parking lots, and kept the other responding units apprised of their location. (T2. p. 59, lines 8-25 and p. 60, lines 1-12.) Emily used his flashlight to illuminate Appellant running ahead of him. (T2. P. 60, lines 15-17.)

Deputy Giovanni, also with the Greenville County Sheriff's Department, heard the call go out from dispatch and aided in the pursuit. (T2. p. 84, lines 22-25.) Giovanni's dashboard camera activated at the same time as his blue lights, and recorded his drive to the scene. (T. p. 85, lines 17-25 and p. 86, lines 1-5.) When Deputy Giovanni parked his car, however, Appellant was already behind a nearby church, and Giovanni lost sight of him for a few seconds. (T2. p. 88, lines 9-13.) Giovanni spotted Appellant walking away, and called out to him. (T2. p. 88, lines 16-22.) Appellant continued to walk away after Giovanni repeated his calls, so the deputy deployed his taser on Appellant. (T2. p. 89, lines 4-7.) Giovanni later reviewed his dashboard camera with his Sergeant, and because Appellant was never in view of the camera, he determined the video had no evidentiary value and it was erased. (T2 p. 86, lines 6-16.)

Deputy Mathew May was also on scene to assist in the arrest. (T2. p. 112, lines 24-25.) Appellant fell to the ground when Deputy Giovanni tased him. After the five second cycle finished, Giovanni and May attempted to take custody of him. (T2. p. 90, lines 2-7.) While Appellant was on the ground, Giovanni and Deputy May struggled to pull his hands out from under him to place him in handcuffs. (T2. p. 91, lines 4-19.) Appellant resisted, and refused to put his hands behind his back. (T2. p. 92, lines 12-14.) Eventually the deputies were able to pull his hands from underneath him, and they discovered Appellant was still holding the knife. (T2. p. 92, lines 20-22.) During the search incident to Appellant's arrest, deputies found twenty two dollars in cash in his front right pocket, gloves, a piece of black cloth with string attached, and his wallet in his rear right pocket. (T2. P. 116, lines 1-25 and p. 117, lines 1-25.)

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "Trial counsel failed to request jury instruction."
- b. "Trial counsel gave erroneous advice which caused [Applicant] not to testify on my own behalf."
- c. "Requested mental health therapist at trial, never called him (for history and medication effects)"
- d. "Requested motion of discovery to prepare for trial, only give half."
- e. "Never showed [Applicant] incriminating pictures which could of swayed a plea."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he was represented by Trial Counsel for his charges and that he only met with him a couple of times. He testified Trial Counsel did not do a proper investigation into his case. Applicant testified he requested that his mental health therapist be available for trial to testify about his history and the medications he was taking. He testified he believed his mental status should have been presented at trial as he believed he suffered from mental illness. Applicant testified Trial Counsel only gave him half of his discovery and he never received the other half. He testified Trial Counsel presented him with a plea offer of thirty years but he turned it down. Applicant testified Trial Counsel attempted to request a spoliation charge but was unsuccessful. He also testified he believed he should have testified at his trial.

Trial Counsel's Testimony

Trial Counsel testified he was appointed to represent Applicant in this case. He testified he received all the discovery from the State and reviewed it. Trial Counsel testified he provided all of the discovery to Applicant and went over it with him. As part of his further investigation, Trial Counsel testified he drove by the scene of the incident. Trial Counsel testified he met with Applicant several times. He testified based upon his initial impression of meeting Applicant, he decided to have him evaluated. Trial Counsel testified Applicant was found competent to stand trial. He testified he discussed the plea offer he received from the State with Applicant but that

AS?

Applicant rejected it on June 26, 2014. Trial Counsel testified Applicant wanted a fifteen year plea offer. Trial Counsel testified he attempted to make a request for a spoliation jury charge as one of the in-car video from the police was not provided to the defense in discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117; 386 S.E.2d at 625. First, the applicant must prove that

7. *137*

counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel discussed below.

Failure to Request Jury Charge

Applicant alleged in his application ineffective assistance of counsel for failure to request a spoliation jury charge. This Court notes that current South Carolina jurisprudence does not support a spoliation charge in criminal cases absent extraordinary circumstances. In a criminal case, the State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 [1991]). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the

evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403. This Court notes Trial Counsel testified he attempted to make a request for a spoliation jury charge as one of the in-car videos from the police was not provided to the defense in discovery. However, Trial Counsel made the request after the trial judge had given its charge to the jury and the jury received the case for consideration. (T2. p. 194). Notwithstanding, this Court finds as the trial court did a spoliation charge was not proper. In its ruling the trial court ruled “in this particular case, clearly, there’s no evidence in this case, certainly none produced by the defendant and none that’s been set forth in this trial, that the state destroyed evidence in bad faith. There’s just no evidence, zero evidence, of that in this case.” This Court joins in that analysis as the record reflects the evidence that was destroyed that the Applicant alleged required a spoliation charge was a dash cam video of one of the officers as he approached the scene and showing only that. (T2 p.197.) Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance. Specifically, Applicant failed to present any credible evidence regarding any bad faith on the part of the police or that the video tape in question had “readily apparent” exculpatory value before it was deleted. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). As a result, this Court finds

9
R37

Applicant failed to meet either prong of the spoliation analysis. The allegation is denied and dismissed.

Advice not to testify

Applicant presented testimony in a cursory fashion concerning Trial Counsel's advice not to testify. Applicant has failed to show deficiency or prejudice with respect to this allegation. The trial judge fully advised Applicant of his right to testify at trial. The record indicates clearly that the Applicant made a choice, of his own free will and volition, not to testify after having been fully advised of his rights and ramifications of testifying or, in the alternative, not testifying. Applicant chose not to testify. Accordingly, he has also failed to show prejudice with respect to this allegation, and it is denied and dismissed.

Failure to Present Evidence of Mental Health Issues

Applicant alleged in his application ineffective assistance of counsel for failure to present his mental health therapist at trial. Applicant testified he requested that his mental health therapist be available for trial to testify about his history and the medications he was taking. He testified he believed his mental status should have been presented at trial as he believed he suffered from mental illness. Trial Counsel testified he met with Applicant several times. He testified based upon his initial impression of meeting Applicant he decided to have him evaluated. Trial Counsel testified Applicant was found competent to stand trial. This Court finds Applicant has failed to demonstrate that a competency evaluation or any evidence of mental treatment or evaluation was available, admissible, or exculpatory. Further this Court finds Applicant has not presented any evidence or called any witness at his evidentiary hearing to substantiate his allegation. The Supreme Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or otherwise offer the testimony in accordance with

the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. *See* Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina

LB

Bailey v. State of South Carolina
2017-CP-23-03295³⁹¹

Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of March, 2018.



ROBIN B. STILWELL
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY, KIDNAPPING, POSSESSION OF A
 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
 AND RESISTING ARREST**

At a Court of General Sessions, convened on

OCT 22 2013

the Grand Jurors of Greenville

County present upon their oath:

COUNT I – ARMED ROBBERY

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: funds belonging to DOLLAR GENERAL taken from the person or presence of Sharon Taylor and/or Tom Nash and/or Karen Nartowicz This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II - KIDNAPPING

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away Sharon Taylor an employee of DOLLAR GENERAL, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

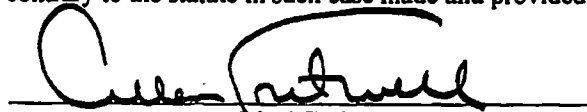
COUNT III – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JAMES EDDIE BAILEY did in Greenville County on or about the 14th day of April, 2013, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Armed Robbery and/or Kidnapping. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

COUNT IV – RESISTING ARREST

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, knowingly, willfully and unlawfully oppose or resist an arrest being made by Mike Giovanni and/or Matt May with the Greenville County Sheriff's Office whom he knew or reasonably should have known were law enforcement officers. This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

N Emily

RJR

Greenville County Sheriffs Office

4/15/2013

ARREST WARRANT NUMBER

2013A2330203010, 2013A2330203012,
2013A2330203015 and 2013A2330203016

Count I, II, III, IV

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-

AOF

009292

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2013

THE STATE

vs.

JAMES EDDIE BAILEY

Indictment for

0139/0095/0549/0326

ARMED ROBBERY, KIDNAPPING, POSSESSION
OF A WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME AND RESISTING ARREST

VIOLATION § 16-11-0330, § 16-03-0910,
§ 16-23-0490 and § 16-9-0320 (A)

ENTERED
ACCT.

RJR