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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD SCOTT ROBERTSON,

APPELLANT

APPELLATE CASE NO 2017-001656

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	
The State,)	TRANSCRIPT OF RECORD
)	2016-GS-42-05528 thru -05531,
-vs-)	2017-GS-42-03586
)	
Donald Scott Robertson,)	
)	July 24, 25 and 26, 2017
Defendant.)	Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE; and a jury

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

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Attorneys for the Defendant

Margaret A. Woods
Circuit Court Reporter

A. Correct.
Q. --- to base a picture off of your recollection of what he looked like?
A. Correct.
Q. Okay. Uh, you ended up completing the sketch with Deputy Finley ---
A. Uh, ---
Q. --- or nearly completing?
A. --- nearly completed and then, uh, I can't remember who it was but one the investigator or detectives came in, asked Finley to close his book and showed me a lineup and I immediately ---
Q. Okay, ---
A. --- pointed ---
Q. --- I'll ---
A. --- to the defendant.
Q. --- I'll show you, show you -- can you identify what this (indicating) is?
(Whereupon, a discussion was held off the record.)
A. Yes, that's that's Finley's composite ---
Q. Rendition of what you ---
A. --- from what ---
Q. --- described?
A. Correct.
Q. And how do you -- how does a sketch artist work?

A. They start, they have a book, uh, and it has, they ask you general questions and then they pull out section by section like was his face round, square, you know, here's a book, can you pick out the best fa -- or shape then it's details like the nose, the eyes, the chin, the hairline, it's very very detailed.

Q. Okay, so you go through all the different facial features, you're lookin' at a book to see what looks as close to the defendant as ---

A. Correct, ---

Q. --- as possible? Uh, ---

A. --- and then we tweaked.

Q. Okay.

(Whereupon, a discussion was held off the record.)

I'm gonna show you somethin' ask if you can identify what that is.

A. Yes, that's apparently Mr. Finley's handwriting but it's the choices that I made ---

Q. Cor -- and they correspond to a an image of a facial feature?

A. Right, in in other words, say if you had the book, it, you know, it would say A1 through or the page number I think is what that is and then the, what you chose as the shape or the ---

Q. Okay. Your Honor, can we -- like to admit, uh, these

A. Yes.
Q. Okay. Uh, at that point what did you do?
A. I briefly spoke with both the victims, um, spoke a little bit more with Mr., um, Williams at first showing me the things that had been touched in the house and things a that nature, um, and then, uh, then I spoke with, uh, Ms. Smith.
Q Okay. Uh, what did Ms. Smith tell you?
A. She gave a description, went over her statement with her, uh, and she gave a description of the gentleman she saw. She said she saw him while they were driving to the bank in the back seat a the car.
Q. Uh, did she tell you she'd be able to recognize him if she saw him again ---
A. Yes, sir.
Q. --- and that she maybe could describe him?
A. I asked her if she, uh, felt like if we had a composite sketch artist come out if she felt confident that she could give an accurate depiction of him, description of him so that the sketch artist could, um, and would draw a picture of him or whoever.
Q. And you ended up callin' out Mark Finley to do this composite sketch?
A. Yes, sir.
Q. Uh, were you present when he did the composite sketch?
A. No, sir.

Q. Where did you go?
A. I went back to the sheriff's office to start workin' on the case.
Q. Alright. Um, when you went back to the sheriff's office, what happened?
A. I spoke with other investigators in my unit, um, about the inci -- the incident that had occurred, um, spoke with other investigators outside of my unit about incidents, um, and people from the area, um, at which time I was given Mr. Robertson's name as a person fitting the description of what I was describing.
Q. Okay Uh, did you pull up a picture of Mr. Robertson?
A. I did, sir.
Q. It matched the description ---
A. It did.
Q. --- that -- or was roughly matched the ---
A. It ---
Q. --- description that ---
A. --- yes.
Q. --- Ms. Smith had given you?
A. Yeah.
Q. Uh, did you make a photo array, um, with Mr. Robertson in it?
A. Excuse me, yes, sir I did.
Q. How does -- how do you make a photo lineup? How do

uh, so please, please, please be prompt in your jury service.

Now Juror Number 210, uh, John Fowler, Mr. John B -- Fowler, you are hereby officially, uh, appointed the foreperson of this jury, your duty will be to preside in the jury room and be the spokesperson here in the courtroom for the jury, it will also be your duty at the end of this trial, uh, if the jury, when the jury reaches a verdict to write the verdict, uh, on the, uh, uh, verdict form and I'll explain that verdict form more fully at the close, uh, of this trial before you retire, uh, to deliberate. Any matters from the State?

MR. SMITH: No, Your Honor.

THE COURT: From the defense?

MR. SHEALY: None, Your Honor.

THE COURT: Okay, ladies and gentlemen, give your attention to the lawyers. Yes, sir.

MR. SMITH: Thank Your Honor. Good afternoon, ladies and gentlemen, seated between -- on the left here is Geri Smith and in the red shirt is Albert Williams, they're the victims in this case. This case happened on June 17th of 2016, was a Friday, it was like a typical morning for them, they're both retired, uh, they were going to drugstore and going to the trash dump jump -- dump off trash and up until that point it was a very typical morning until they got back to their home on [redacted] Cannons Campground Road here in Spartanburg County.

Mr. Williams went in first and Ms. Smith went in after him and they realized quickly that somebody had been inside their house and was still there. Donald Scott Robertson is the man that was inside this house and that's what we're here to prove today. He was wearing a mask, he was wearing gloves and he had a gun. He ordered them to sit down on the sofa and began making small talk with them. They look around the house, they're able to realize that he'd been in here for quite sometime, he's been through their belongings. He asks them about bank accounts that they have, asks them for any cash they have, Mr. Williams gives him cash, Ms. Ms. Smith gives the cash that she has to him, Mr. Williams gives his credit cards as well. Um, he ultimately gets interested about how much money he has in a bank account and they actually transfer from the house, they go out into Mr. Williams' green Explorer and they go to SC Telco Bank over by Asheville Highway. Um, the defendant has Mr. Williams write a check for $4100 and cashes that check and then Mr. Williams gives him the money in the ATM line. They end up comin' back to their house, Mr. Williams sees an opportunity when they go in, Mr. Robertson said that he was going to, uh, tie them up and leave them there, um, at that point Mr. Williams sees an opportunity, he runs inside the house, grabs Ms. Smith, locks the door, grabs a weapon and calls the police and defendant runs off. He's apprehended later by the sheriff's office,

witness if we can't find her.

THE COURT: Okay, maybe he went to look for her.

(Whereupon, Mr. Shealy returned to the courtroom.)

THE COURT: Yeah, Solicitor.

MR. SMITH: Your Honor, the State calls Geri Smith.

THE COURT: Alright, Ms. Smith.

(Whereupon, the witness came forward.)

(Whereupon, a discussion was held off the record.)

THE CLERK: Place your left hand on the Bible, raise your right, please.

GERI CHRYSTELLE SMITH, having been first duly sworn, testified as follows:

THE CLERK: Okay, have a seat and make sure you speak into the black microphone, please.

THE COURT: Ms. Smith, tell us your full name and spell your full last name for my court reporter, please.

THE WITNESS: My first name is Geri, G-E-R-I, middle name is Chrystelle, C-H-R-Y-S-T-E-L-L-E and the last name is the tough one Smith, S-M-I-T-H.

THE COURT: Alright, Ms. Smith, give your attention to the solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Good afternoon, Ms. Smith, uh, where do you live?

A. I reside at [redacted] Cannons Campground Road in Spartanburg.

Q. Spartanburg County?

A. Yes, sir.
Q. Uh, did you live there back on June 17th of 2016?
A. Yes.
Q. Who else lives at that residence?
A. Albert Williams.
Q. Um, tell me what happened on June 17th 2016 now.
A. Mr. Williams and I went to Cowpens to the dump, then we went to Walgreens and when we returned Mr. Williams ---
Q. What time of day was it?
A. Around 10:30 a.m. and Mr. Williams entered the residence, I was going up the steps behind him and when I reached the door it was kind of hard get, it it was open but it was hard to open and my cat sometimes will bunch up the entry rugs so that's what my assumption was and then as it pushed open the defendant grabbed me and slung me to the ground, at that point he s -- he asked Mr. Williams and myself to get on the sofa, sit on the sofa. He had a weapon, he had a gun and he tried to be calm and chitchat and asked for our money, asked for our phones, asked for credit cards, then he -- we realize that the window at the back door had been broken into. The defendant asked Mr. Williams to tape over the window, he then asked Mr. Williams about or it could been the window first or the asking for his pin numbers for his cards, then that turned into asking him how much money he had in the bank, how much money he could get out without having to go into the bank,

Mr. Williams said, I don't know, put the phone on speaker and called the bank to find out how much he could take out without having to go inside. They told him whatever amount, you know, that he wanted to at which point Mr. Williams asked the defendant, How much do you want me to take out or write a check for, he said, Forty-one hundred dollars, at that point Mr. Williams wrote a check for forty-one hundred dollars and then the defendant asked us to go to the credit union to retrieve the money.

Q. Okay, let me stop, that's okay but let me stop you, um, for a second. What did, what did you see? What did he look like when you first saw him?

A. He had on a ski mask, it was blue with red on the at eyes and the mouth, he had gloves on, he was wearing a neon green short-sleeve t-shirt, washed-out jeans and brown shoes or boots they didn't lace.

Q. Were you able to, I know he had a mask on at that point but were you able to pick out any features of him through the mask?

A. Had very clear, crystal clear blue eyes.

Q. What about, um, I know you described his clothing but any marks or skin, anything ---

A. Nothing ---

Q. --- to note?

A. --- that I noticed, I was more focused on trying to get a

general description and looking at the gun that he was holding.

Q. Okay. Uh, what did the gun look like?

A. It was silver revolver with a white, with white grip.

Q. Do you have experience with firearms ---

A. Not ---

Q. --- or ---

A. --- a lot but I know a revolver from a semi-automatic or whatever, you know, you can see the barrel.

Q. Okay. Um, did he take anything from you while you were inside of the trailer?

A. He took my fifteen dollars that I had, he took money from Mr. Williams, he took the cell phone, um, ---

Q. Alright, ---

A. --- I ---

Q. --- so so he had told you that he wanted to go by the bank and you were about to say, continue on out.

A. Okay. He wanted -- he had Mr. Williams go down the stairs first and he asked me to go down and Mr. Williams commenting to him that she's going to be slow because I had a broken ankle, so then we all got into the vehicle, Mr. Williams was driving, I was in the passenger seat in the front and the defendant was behind Mr. Williams.

Q. Whose vehicle is this?

A. Mr. Williams'.

Q. What type of car is it?
A. It's a '94 or '95 Ford Explorer ---
Q. Alright.
A. --- oh, I, or 2004, but I can't remember.
Q. Okay, so all three a you get in, ---
A. Yes.
Q. --- head to the bank?
A. And Mr. Williams, you know, he, the defendant was like, I don't want you, you know, look at me, whatever, so Mr. Williams moved the rearview mirror and then he said, No, put it back down, so it wouldn't look as suspicious and they put it ---
Q. Was it ---
A. ---- back in ---
(Indiscernible cross-talk.)
Q. --- your belief that he had taken off his mask or or ---
A. I did not at that point, I mean, you know, I mean, uh, when he said, I don't want you to look at me, that indicated but I did not have any, you know, point of reference at that time.
Q. 'cause you'd be been talking with him inside looking at his face but he had a mask on?
A. Correct.
Q. How long do you think you were inside of the Cannons

Campground house before ya'll went on to the bank?
A. I would estimate thirty minutes, ---
Q. Okay.
A. --- time is, you know, a little different when you're stressed but that's what it seemed like was thirty minutes.
Q. Okay, so what bank did ya'll end up going to?
A. SC Telco at Herring Circle.
Q. Alright, is that your bank or Mr. Williams' ---
A. Mr. Williams' bank.
Q. Alright. What did ya'll do at the bank?
A. We pulled up to the drive-thru, Mr. Williams put the the check in the tube and then he realized he hadn't put his ID so they had to ha -- they had to send it back down so he could put his ID in there ---
Q. Okay.
A. --- then the money came in its little envelope and I don't know, I just know Mr. Will, oh, sorry, Mr. Williams went like this (demonstrating) to hand him the money but but on the way to the bank is when I saw his face.
Q. Okay, and describe how that happened.
A. He asked me to turn around and look at a scar on his left arm that he said it happened in a police shootout and I I turned to look at him, I saw saw his face, he did not have the mask on at that point.
Q. What did you see?

A. I saw his, I saw his face, I saw that he had salt and pepper hair, that he was, you know, like people who work in the sun or whatever, a lotta wrinkles and just those clear blue eyes.

Q. Um, anything, you remember anything about facial hair or the color of his skin or anything like that?

A. He was very tan, very tan.

Q. Like you believed he worked outside?

A. That's, that was the assumption I made just because he was so tan.

Q. Okay. How quick -- how long do you think this look that you got at him was?

A. Probly three or four seconds.

Q. Okay, and it was you in the passenger seat looking at him seated behind Mr. Williams ---

A. Correct.

Q. --- in the the rear passenger driver side?

A. Correct, like like this (demonstrating).

Q. Okay. Um, after you leave the bank what happens?

A. Mr. Williams asked him, Where would you like to be dropped off, at which point the defendant said, We're we're going back to your house.

Q. Okay. How far away is the bank from your, ya'lls house?

A. I would guess 8 miles maybe, I I'm not really good at

distance that way.

Q. Um, did he say anything else to you while you were on on the way or back at the apartment anything ---

A. He was ---

Q. --- or trailer?

A. --- jabberin' about somethin' to, I don't -- he was talkin' about Florida, I don't know he's, if he said he's from Florida, if he was goin' to Florida, if -- I, you know, and I just know he was sayin' somethin' about Florida, that was on the way to the bank.

Q. Okay. Um, you leave the bank now end up back at Cannons Campground?

A. Yes.

Q. What happened then?

A. Mr. Williams got outta the vehicle and went up to the door, I got out, he inadvertently had all the doors locked so I'm like, Hello, hello, unlock the door, so he unlocks the door, I go behind him, Mr. Williams, and he pulls me and, you know, kinda slings me in the house and shuts the door so that he can call 911, we don't know what happened to the defendant, at that point we weren't concerned with where he was goin', we just wanted to be inside the house safe where we could call 911.

Q. So was Mr. Williams and then you're followin' in after him ---

A. Yes.
Q. --- and the defendant is somewhere behind you?
A. Yeah, I don't, I don't know where he was, all, you know, I I was concerned with getting in the house when Mr. Williams pulled me in, shut the door.
Q. Okay, and then what happened then?
A. Uh, that's when we called 911 or he called 911, we both spoke with them.
Q. Okay, uh, did officers end up comin' out to your house?
A. Yes.
Q. Do you remember how quickly they got there?
A. It was relatively quickly ---
Q. Okay.
A. --- and they separated us so that each gave a separate statement and in -- investigators, detectives, whatever, all, you know, were comin' and goin', um, and then they were aware that I had seen this, the defendant's face and asked me if I thought I, you know, did I see him well enough to do a composite sketch at which point I said yes.
Q. Okay, did a sketch artist end up comin' out to the Cannons Campground location?
A. Yes, sir.
Q. Okay. What happened with that?
A. Uh, I -- we did a composite. They have a book, it's like general face shapes and you pick and then it gets more and

more detailed: nose, shape a the nose, shape a the eyes, the, you know, forehead, wrinkles, chin, ears, and so I was workin' with the sketch artist, we were almost through and the detective came in with a lineup, ---

Q. Okay.

A. --- photo lineup ---

Q. Ho -- oh, about the sketch, so you're, you go through a bunch a different noses, bunch a different eyebrows and you just pick out the one you think closelys [sic] represent -- resembles the ---

A. Correct.

Q. --- defendant? Um, how long do you think that process took between ---

A. It ---

Q. --- you ---

A. --- was a, ---

Q. --- and the Deputy ---

A. --- it was about an hour.

Q. Okay, um, and did -- how how does it begin, do you just start lookin' at the book or do -- does he ask you anything?

A. He he asked me questions so that he can get a general basis like was he old, young, you know, thin, fat face type thing then it, then it's the book.

Q. Well how would you have described his build?

A. He was slender but very muscular.

Q. Okay, like a lean muscular?
A. He was lean and had like big arms.
Q. Okay. Um, um, did -- when you got back to the house, did you realize that more things were out of place than had been ---
A. Yes.
Q. --- when you got, ---
A. Yes, ---
Q. --- ran into ---
A. --- because ---
Q. --- him?
A. --- well when I got, initially when we got to the house, ya know, he's callin' the cops or talkin' to 911 and I'm in a panic because I have a cat and all I want to do is know where my cat is 'cause she's an indoor cat and I didn't want her outside and I noticed that the safe which was in my room had been tampered with to say the least, tryin' to break into it, and I know I had a watch that had been sitting on my chest of drawers that was gone ---
Q. Um-hum.
A. --- and outside of that as far, you know, I don't know 'cause I don't, usually go into the other end a the house, just my side.
Q. Alright, one second.
(Pause.)

A. And there were tools and thing ly -- lying on my bed where he had been using those to try to break into the safe.
Q. I'll show you series of pictures, ask if you can -- don't tell me specifically what they are but are those pictures of the house at Cannons Campground Road when you found it, I guess part of it when you first got there and then after you got back from the bank?
A. And that one I just, that's the back a the hou -- or the other part a the house where I don't go, the one, this one particular one.
Q. You didn't see that?
A. No.
Q. Alright. Alright, but the rest that's how the house looked ---
A. Yes, sir.
Q. --- on June the 17th?
A. Yes, sir.
MR. SMITH: Your Honor, we would move those into evidence, we ---
MR. SHEALY: Um, they're not presently marked.
MR. SMITH: They're not.
MR. SHEALY: I don't necessarily have a an objection but they do need to be marked first.
MR. SMITH: Yeah.
THE COURT: Okay.

(Photographs marked State's Exhibit Nos. 8, 9, 10, 11 and 12 for identification.)

MR. SMITH: Your Honor, at this time we'd like to move State's 8 through 12 into evidence.

MR. SHEALY: If I may just look at the numbers.

MR. SMITH: I took the guns out.

(Whereupon, a discussion was held off the record.)

MR. SHEALY: I have no objection, Your Honor.

THE COURT: State's 8 through 12 are, uh, admitted without objection.

(State's Exhibit Nos. 8, 9, 10, 11 and 12, photographs, admitted into evidence.)

BY MR. SMITH:

Q. What is that (indicating) a picture of?

A. That's where the defendant had asked Mr. Williams to cover up the door, the the window.

Q. Is that -- what door of the house is that?

A. The back door.

Q. Is that how he got into the house you believe?

A. That's what we believe, yes. The window was broken, he ent ---

Q. So there there's a window before the ---

A. Correct.

Q. --- duct tape and ---

A. Correct.

Q. --- was it aluminum foil?
A. It was a ca -- it was a glass window and the glass was in the house.
Q. Okay, um, that was State's Exhibit 8, this (indicating) is State's Exhibit 9, can you identify what that is.
A. That's the safe that was in my room and you can see just in that shot just the corner of some of the tools that he had.
Q. Okay. Um, did the safe, the safe look like that prior to ---
A. No, ---
Q. --- June 17th?
A. --- and it was sitting on, if you can see that blue crate, that's where it had been sitting.
Q. Um, any of your belongings inside a the safe?
A. No.
Q. Did did he actually get inside the safe?
A. No.
Q. Um, State's Exhibit 10 is the, is that just another picture of the safe?
A. Yes.
Q. Alright. This (indicating) is State's Exhibit 11.
A. That's my bed, can see the s -- the corner of the safe and the blue crate and none a those tools were on my bed so those had been placed there after we had left the residence.
Q. Okay, this (indicating) one as well? What ---

A. Yes.
Q. --- about this this (indicating) stuff on the floor, is that yours, the powder or whatever it looks like, is that you or ---
A. That's from his trying to open the safe.
Q. Okay. What was -- what were you feeling during all this this encounter with him with the gun?
A. Huh, huh, a little shaky, a little frightened and the fact that he had stated, you know, As long as you do what I say, you're going to be fine, and then when we were in the vehicle he's like, Don't do anything funny, I have nothing to lose.
Q. So you believed that if he didn't do -- if you didn't do what he said that harm could come to you or ---
A. Yes, most definitely.
Q. Alright. Um, um, you said that a watch was taken from the house, ---
A. Yes.
Q. --- you describe what that watch looks like.
A. It was gold with a white face, a little diamond chip at the top a the face and a rosette on each side.

MR. SMITH: Your Honor, I'd like to mark this for ID purposes.

MR. SHEALY: Judge, I don't have a problem with him marking to -- this (indicating) for ID purposes but I don't

want it, I don't want the envelope ---

MR. SMITH: Yeah, it ---

MR. SHEALY: --- marked, that makes sense.

(Watch marked State's Exhibit No. 13 for identification.)

BY MR. SMITH:

Q. Hand you what's been marked as State's Exhibit 13 for ID purposes, ask is that the watch that ---

A. Yes, ---

Q. --- was taken ---

A. --- it is.

Q. --- from you?

A. Yes, it is.

Q. Okay. So you talked about filling out the sketch with the deputy, the sketch artist, uh, did you believe that the final product was as accurate of a depiction as you could recall?

A. We were almost, well I'd say we were 99.9 percent complete, we were just gonna do a couple a tweaks maybe to the hair and that's when the lineup was shown to me. He said, Close the book, don't do anything more. I was advised not, you know, not to make judgment, it could or could not be the person in the lineup, et cetera and one, I guess it was number 1 and then I said, Eh, and then I looked at number 5 and I said, That's it right there, hundred percent.

Q. Do you remember what it was about number 1 that made

you ---
A. It was just the hair but his, I knew the face wasn't, you know, I knew the face wasn't the same.
Q. Okay. Uh, -- okay, who -- h-- do you know how long after ya'll had escaped that the sketch artist got there and you began fillin' fillin' out the sketch?
A. I know it took a little while for him to get there, I, um, maybe from -- are you talkin' about from the time that we were at ---
Q. When you called ---
A. --- the ---
Q. --- 911.
A. Oh, the time we called 911, maybe an hour and a half, I honestly don't know, ---
Q. Okay.
A. --- I I honestly don't know.
Q. That day ---
A. Oh, yes, ---
Q. --- while ---
A. --- that ---
Q. --- it was still ---
A. --- day.
Q. --- light out ---
A. Yes.
Q. --- side?

A. Yes, I mean, it couldn't a been more than couple hours.
Q. Okay. Um, I'm gonna hand up what's previously been marked as State's Exhibit 2, ask if you can identify what that is.
A. That is the composite sketch that Mr. Finley made via my verbiage.
Q. Okay. You didn't draw it but you describe ---
A. Yeah. No, I did not draw that, I wish I could draw that well but ---
Q. But that's ---
A. That was ---
Q. --- how you described the defendant looking and you were in agreement I guess that that was a accurate ---
A. Yes.
Q. --- depiction of what he looked like?
A. Yes.

MR. SMITH: Um, um, Your Honor, this point we'd like to move State's Exhibit 2 into evidence, uh, with permission to publish it to the jury.

MR. SHEALY: Judge, I'm gonna object at this point, I think there's insufficient foundation laid and I I'd go into ---

THE COURT: What is ---

MR. SHEALY: --- that ---

THE COURT: --- State's 2?

MR. SHEALY: --- just a minute.

MR. SMITH: It's a sketch, Your Honor.

THE COURT: Oh.

MR. SHEALY: If I may may approach.

THE COURT: Yes, sir, c'mon up.

(Whereupon, a bench conference was held off the record.)

BY MR. SMITH:

Q. Alright, after you and Deputy Finley were done with the sketch, did somebody come with a photo array?

A. Yes.

Q. Okay. Was that Detective Clark?

A. Yes.

Q. Um, did he tell you who to pick out of the photo lineup?

A. No.

Q. Did he tell you that the person who committed the crime was in the photo lineup?

A. No.

Q. Um, did he tell you, threaten you or coerce you in any way that you needed to pick out somebody or pick out pecific [sic] person?

A. No.

Q. Did he do anything to suggest to you who you needed to pick out or ---

A. No.

Q. --- anything like that?
A. No.
Q. Okay. Um, uh, gonna hand you State's Exhibit 4, ask if you can identify what this (indicating) is.
A. This is the lineup that I was shown ---
Q. Okay.
A. --- and this (indicating) is whom I picked, the defendant.
Q. And is your signature on that page?
A. Yes, sir, ---
MR. SHEALY: Judge, ---
A. --- it is.
MR. SHEALY: --- I'm gonna object to this point subject to my prior objection.
THE COURT: Okay, it's overruled, go ahead.
MR. SMITH: Your Honor, this point we9 move State's Exhibit 4.
THE COURT: It's over objection, it's admitted.
MR. SMITH: Thank you, Your Honor.
(State's Exhibit No. 4, lineup, admitted into evidence.)
BY MR. SMITH:
Q. Uh, did you sign the page?
A. Yes, I did.
Q. Did you circle the defendant that -- or the person that you identified out of the lineup?

A. Yes, I did.

MR. SMITH: Your Honor, we ask permission to publish this to the jury.

THE COURT: Yes, ma'am -- yes, yes, sir, I'm sorry.

Q. Um, you were talking about the process of going through it, that does he tell you to look at each one and and then ---

MR. SHEALY: Objection as to what he told her, that's hearsay.

THE COURT: Okay, rephrase.

Q. How did you go through the six pictures and ---

A. I was handed the photo lineup, I was asked to look at each one and if I, you know, if I thought I saw the defendant or whom I, you know, felt had taken us and I looked at number just for split second as far as any kind of just because his hair was up but immediately when I saw number 5 I said, That's him right there one hundred percent.

Q. Okay. Um, did did you make any comments that it -- does this picture look any different than what he looked like that day or is that ---

A. Um, I I don't think I did.

Q. Okay. Did did he explain to you that it's possible that people's hairstyle ---

MR. SHEALY: Objection, Your Honor, it's he's askin' for hearsay again.

THE COURT: Well he's not asking for what he said, he

he's askin' ---

MR. SHEALY: That ---

THE COURT: --- what if anything explained.

MR. SHEALY: Oh, my understanding was that he was asking what did Detective Clark tell her, ---

THE COURT: Okay.

MR. SHEALY: --- that was my understanding the question.

THE COURT: He's gonna testify to that I'm assumin'.

BY MR. SMITH:

Q. You picked out number 5?

A. Yes.

Q. Do you have any doubt that was ---

A. No.

Q. --- him?

A. No.

Q. Had you ever met any of the people in that photo lineup prior to being shown the array?

A. No.

Q. So number 5 to you was just a stranger ---

A. Yes, ---

Q. --- except ---

A. --- except for the incident, yes.

Q. Okay. Is the number 5 in the courtroom here today?

A. Yes, he is.

Q. You point to him.

A. Defendant (indicating).
Q. And ---
MR. SHEALY: Judge, again, I'm renewin' my objection that we made earlier.
THE COURT: Yes, sir, over objection, yes, you ---
Q. That's the man you saw in the back seat of the car when he asked you to turn around, look at his scar?
A. Yes, it is.
Q. You have any doubt?
A. No.
Q. Um, the drawing of the sketch or the describing how the sketch should be drawn in the lineup, where were those done? Where where were you when you did the sketch?
A. At my residence.
Q. And the lineup?
A. At my residence.
Q. And both of those things occurred on June 17th of 2016?
A. Correct.
Q. Um, how does this incident affected you?
MR. SHEALY: Objection, Your Honor, relevance.
THE COURT: Solicitor.
MR. SMITH: We'll move move on, Your Honor. I don't have any further questions for Ms. Smith.
THE COURT: Alright.
MR. SHEALY: Yeah.

THE COURT: Mr. Shealy.

MR. SHEALY: Thank you, Judge, may it please the Court.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Alright, Ms. Smith, you've testified that you had a broken ankle at the time this happened?

A. It was mending but yes, it had been broken, yes.

Q. Okay, so would -- were ya in a cast, ---

A. No, ---

Q. --- did ya have ---

A. --- not ---

Q. --- surgery ---

A. --- at that time, I was already out of a cast.

Q. Oh.

A. Well I wore, I had what they call an "air cast" and I was outta that.

Q. Okay, so you you weren't required to wear the air cast, is that my understanding?

A. I had gone past that point.

Q. Past that point.

A. Yes.

Q. Okay. Uh, now you've testified that when you were -- so you came into the house the second whenever you got there, is that correct?

A. Correct.

Q. Alright, and you were pushed to the ground at that point

or ---
A. After I got inside the door he pulled me to the ground.
Q. You were pulled to the ground.
A. Correct.
Q. Okay. Had Mr. Williams been pushed to the ground or pulled to the ground?
A. I don't know, he wasn't lying on the ground when I, when I entered.
Q. Alright. Now you testified about your, (cough interruption) of the house and could ya give us kind of a layout a the house.
A. Certainly. As you, when you enter the house, um, to the left-hand side against the wall towards the street is the sofa then there was a revolving reclining rocker in which the defendant sat. I was on this (indicating) end a the sofa, Mr. Williams was on this (indicating) end a the sofa and he (indicating) was in the recliner.
Q. Okay, that's when you come in the front door.
A. Correct.
Q. Alright. I'm gonna show ya State's Exhibit No. 8, what what door is that (indicating)?
A. That is the back door.
Q. So I'll ask you this: that (indicating) would be the correct orientation, correct?
A. Correct.

Q. Alright, so that's the back door, so what what do ya see when ya come in the back door?
A. As as if it were me coming in?
Q. Uh, yes, ma'am.
A. There would be the kitchen straight ahead and the dining table to the left, ---
Q. Um, ---
A. --- then the right would be the hallway to the master bedroom and the laundry area.
Q. Alright, and you testified that I guess ya'll have divided the house? So you said that you had your half and he had his half ---
A. Well, I live in one end and his room is in the other end.
Q. Okay. and how long have you lived at this particular address?
A. Since May of 2014.
Q. Alright. And how long have you known Mr. Williams?
A. I've known him for several years but not, I hadn't seen him in a long time until 2011 I believe it was.
Q. Okay, and then ya'll I guess you moved into his house I suppose as a, as a tenant, it's ---
A. Correct, ---
Q. --- his house or ---
A. --- it's his house.
Q. Alright. Uh, now you've also testified that when you you

come home at 10:30 you get pushed to the ground ---

A. Well to the floor.

Q. To the floor, oh, fair enough, and then at that point you get up and go sit on the sofa or how did that occur?

A. The defendant told us to get on the sofa, ---

Q. So ---

A. --- or told me to sit on the sofa.

Q. Said go sit on the sofa then he sat down on this revolving rocking ---

A. Yes.

Q. --- chair?

A. Um-hum, yes, sir.

Q. Alright. And at that point ya'll had some kinda conversation apparently sounded like.

A. Well that's after he had asked for the money and asked for the cards and took the cell phones.

Q. So he took the cell phones.

A. Yes.

Q. Okay, and you, I think you testified that ya estimated that conversation to be about thirty minutes?

A. That included the sitting in the living room and his going over to the dining table to get Mr. Williams to call the bank.

Q. Oh, so ya'll didn't do the calling of the bank in that sitting room, you did that at the dining room.

A. Correct.
Q. Alright. Did you all three of ya troop to the dining room ---
A. No, sir, ---
Q. --- table or did you ---
A. --- I ---
Q. --- stay on the sofa?
A. No, I stayed on the sofa.
Q. Alright, and then they went to the dining room.
A. Yes, and it's a very open area, it's not like room to room with door, you know, door jams in between, it's an open space so he could s -- he could still see me ---
Q. Alright, and at that point did he have the gun out?
A. Yes.
Q. Alright, so he had the pistol out the entire time.
A. Yes, ---
Q. And you testified ---
A. --- at least ---
Q. --- as to ---
A. --- from my visual perspective, it wasn't like he would stand there in the kitchen or dining area pointing it at me but it so I can't honestly say if he had it out when he was in that area 'cause I couldn't see because of the counter.
Q. Okay. Now you testified about a neon green shirt, ---
A. Yes, sir.

Q. --- now I've got in my notes a t-shirt, is that what ---
A. It ---
Q. --- it was?
A. --- was a t-shirt, yes.
Q. It was a t-shirt, alright. Uh, and just to make sure we're talkin' about the same thing t-shirt you mean just that ---
A. Short-sleeved t ---
Q. --- short ---
A. --- shirt.
Q. --- sleeve shirt, right? Okay. Uh, we're making a recording so I gotta make sure that we're ---
A. That's fine.
Q. Um, and you've testified that that back door was, that the window had completely shattered?
A. Yes, ---
Q. Alright.
A. --- I mean, there mighta been little shards in the edges or something but it it was broken, yes, there was glass all over the floor in the liv, uh, uh, dining area.
Q. Okay, and now you've also -- when you got into this vehicle, what kinda vehicle was it?
A. It's a Ford Explorer.
Q. Alright, and you've testified that he got in the back seat, is that right?

A. Correct.
Q. Alright, and this Ford Explorer is it just two rows or is it three rows?
A. It's two rows.
Q. Two rows, so he's sitting immediately behind Mr. Williams.
A. Correct.
Q. And again, are ya'll talking at this point?
A. He's chatting ---
Q. He's chatting.
A. --- and just, and, you know, tryin' to make small talk, I don't know if it was try to alleviate our nerves or what but he was chatty.
Q. Okay. While you were at the house though you didn't hear any banging on the safe, it was just ---
A. No.
Q. --- nothin' doin' with the safe while ya'll were at home.
A. Correct.
Q. Alright. Uh, and how long were ya'll gone to Cowpens?
A. An hour maybe, I honestly don't know, long enough to drive to Cowpens, fifteen, uh, forty-five minutes to an hour I gather.
Q. Okay, so you get into this Explorer and ya'll are driving away and you've testified that at some point Mr. Williams had moved the ---

A. Before we left the driveway he had moved the rearview mirror because mis -- the defendant had said he did not want us to look at him ---

Q. Okay.

A. --- which ironically he wanted me to look at him few minutes later but he had, Mr. Williams had turned the mirror up so that he couldn't see.

Q. So he knocked it up.

A. He turned it up ---

Q. Okay.

A. --- and the defendant said, No, no, turn it back down, because it would be less conspicuous that way.

Q. Alright, so he could then -- so Mr. Williams could use the rearview mirror to drive presumably.

A. Well, I'm sure he he was going to use the side mirrors I'm sure when he had raised the rearview mirror.

Q. Alright, so ya'll are driving, it's testified it took somewhere around fifteen, is it ten to fifteen minutes or fifteen to twenty minutes?

A. I would say ten to fifteen.

Q. Alright, and it's about 8 miles you testified to.

A. I gather 8 miles, I'm not a road specialist as far as distance goes.

Q. Sure. and throughout this time I guess at some point in this trip he asked you to look back at a scar?

A. That's what he stated, ---
Q. Alright.
A. --- said I would, he says, I want you to see this scar on my arm from where I was in a shootout with the police.
Q. Okay, and that's when you look back and saw his face.
A. Correct.
Q. Alright, and how long were ya lookin' back?
A. I'd say about three, four seconds.
Q. Alright, and did he have a scar on his arm?
A. I was not trying to look.
Q. You weren't trying to look.
A. No, ---
Q. Okay.
A. --- I mean, he would -- he said it was on the inside. He turned his arm outward so to speak so I could see the inside part of his arm but I, as I said I wasn't ---
Q. And was the pistol out at that point?
A. Pardon me?
Q. Was the pistol out at that point?
A. I I don't know.
Q. You don't know, ---
A. I ---
Q. --- so ---
A. --- honestly don't know.
Q. Alright, and this woulda been around about 11, what,

11:30 in the morning?
A. I would guess somewhere in that the area, yes.
Q. Okay, maybe 11, somewhere between 11, 11:30, is that ---
A. That would be a good estimate, yes, ---
Q. Okay.
A. --- sir.
Q. Now you've testified when ya'll were driving through that Mr. Williams, when ya'll got to the bank, Mr. Williams put the check in the tube, ---
A. Yes, ---
Q. --- that right, ---
A. --- correct.
Q. --- and then he sent it off, ---
A. Correct.
Q. --- and you've testified that he forgot to put his ID in there?
A. Correct.
Q. Alright, and then so they sent it back to him?
A. Yes.
Q. And when they sent it back to him they just sent presumably the check in in the tube.
A. I don't know, I wasn't looking at the tube.
Q. You weren't lookin' at what he was doin'?
A. Well I I know he went, Oh, God, I forgot to put my ID in

the tube, ---

Q. Okay.

A. --- so when the tube came back down I don't know if the check was in there or not, I just know he put his ID in the tube.

Q. Alright, and then he put it back or then he put it back and he shot it back through.

A. Correct.

Q. Okay, and it came back in an envelope you testified to?

A. Yes.

Q. Alright, and you have never seen Mr. Robertson before.

A. No, sir, not to my knowledge.

MR. SHEALY: If you'll bear with me, Judge.

(Pause.)

MR. SHEALY: Alright, I have nothing further of this witness.

THE COURT: Anything at all from the State?

MR. SMITH: No, Your Honor.

THE COURT: Okay. Ma'am, you may step down, please be careful.

(Whereupon, the witness left the stand.)

MR. SMITH: Break? Break?

THE COURT: Mr. Foreman, ladies and gentlemen a the jury, it is my, uh, custom to not run you longer than about ninety minutes, I I've been on the bench since 2:30, we're we're

about eighty f -- eight-five minutes into this so it's time for a break, uh, you can count on that every day a good, uh, good break if ever 'bout every ninety minutes or so, you shouldn't have to sit there all that long. I forgot to tell you and I will now say so if you see me stand a lot, uh, I just don't like to sit in the chair so two things with that; number one, if I'm sitting I'm tired a standing and if I'm standing I'm tired a sitting, it has nothin' to do with whether or not a witness who's testifying whether that's believable or or unbelievable, it has to do with the fact that I'm either tired a sitting or standing, I will also tell you as jurors that you're welcome to do so as well, so if you want to stand, it's fine with me, I merely ask that you sit on the back row so you will not block a fellow juror's view but if you are a person who likes to stand from time to time or stands a lot as I do, uh, you're welcome do that. My wife will tell ya that I can eat dinner before I get from the stove to the table 'cause I just eat as I go but having said that we're gonna take a break, don't talk about the case whatsoever, it's not at an end and it would be improper for you to do that so, uh, don't talk about the case, besides this is work, you're at work and the last thing you wanna do on a break is talk about work, 'kay. Mr. Foreman, take the jury out, please.

(The following takes place outside the presence of the

jury.)

THE COURT: Okay, we're gonna take about ten, ten, almost fifteen minutes or somethin' like that, bring 'em back, uh, you you know that I don't generally like to run past 5 or 5:15 on the first day but hereafter we'll run to 5:30, 5:45, okay.

MR. SMITH: Yes, sir, ---

THE COURT: Alright, let's take ---

MR. SMITH: --- we've got Ms. Moffitt and Mr. Williams is all we've got scheduled for the rest of ---

(Indiscernible cross-talk.)

THE COURT: Okay, we'll take take two more witnesses, uh, pretty quick there.

MR. SHEALY: I don't know Mr. Williams' gonna be all that quick, he's a victim.

THE COURT: Huh?

MR. SHEALY: I said I don't think Mr. Williams is gonna be all that quick 'cause he's alleged victim, ---

THE COURT: Well, okay.

MR. SHEALY: --- that that took an hour the other victim so I just wanna, that I want everybody to be aware that I'm just warnin'.

THE COURT: If they can be a quick, I mean, we're gonna stop -- well we'll take whatever it take.

MR. SMITH: Okay.

THE COURT: Okay, everybody, uh, we'll we'll be in recess

about fifteen -- what do you want it be, miss?

THE BAILIFF: Fifteen minutes.

THE COURT: Yeah.

(Laughter.)

(Whereupon, a recess was taken.)

THE COURT: We'll have, for planning purposes, you know, we'll have forty-five to sixty minutes, somewhere in that.

MR. SMITH: Yes, sir.

THE COURT: Okay.

MR. SHEALY: Uh, Judge, if I may put somethin' on the record.

THE COURT: Yes, sir.

MR. SHEALY: My client asked me to find a particular witness, I've documented my files who that witness is.

THE COURT: I can't hear you.

MR. SHEALY: Oh, sorry. My client had asked me to find a particular witness and I wanted to put on the record that we looked for that witness, I've had his family look for that witness and we have not been able to establish contact with that witness, uh, and I just wanted to put on the record we had a a phone number, that it was our last known phone number and we we just were not able to get her to either answer the phone and talk to us so so I did wanna put that on record.

THE COURT: Sir, if ya have any other way of gettin' in touch whoever who this person is, you give that to your

lawyers, they'll make sure they have opportunity to try to find that person ever who he or she is, I don't know.

MR. SMITH: I don't know either.

(Laughter.)

THE COURT: Only thing I know about is what I've heard today, that's all I, that's all I'm supposed to know. Alright, we ready for everybody?

MR. SMITH: Yes, sir, Your Honor.

THE COURT: Have our juries.

THE BAILIFF: Yes, Your Honor.

(Whereupon, a discussion was held off the record.)

(Photograph marked State's Exhibit No. 14 for identification.)

THE COURT: Who is gonna be the next witness?

MR. SMITH: We're gonna call Gail and then Albert.

THE COURT: Okay.

MR. SHEALY: Ju -- Judge, may we approach on ---

THE COURT: Yeah.

MR. SHEALY: --- planning things from here?

(Whereupon, a bench conference was held off the record.)

(The following takes place in the presence of the jury.)

THE COURT: Solicitor, you ready?

MS. WALTERS: Yes, Your Honor.

THE COURT: Alright.

MS. WALTERS: Your Honor, the State calls Gail Moffitt to

the stand.

THE COURT: Ms. Moffitt.

(Whereupon, the witness came forward.)

THE CLERK: Raise your right, please.

GAIL MOFFITT, having been first duly sworn, testified as follows:

THE CLERK: Thank you, have a seat, please.

THE COURT: Ms. Moffitt, tell us your full name and spell your last name for madam court reporter, please.

THE WITNESS: Gail Moffitt, the last name is spelled M-O-F-F-I-T-T.

THE COURT: Thank you. Solicitor.

MS. WALTERS: Thank Your Honor.

DIRECT EXAMINATION BY MS. WALTERS:

Q. Ms. Moffitt, where are you employed?

A. Clerk of court's office Spartanburg County.

Q. And what is your current position?

A. Assistant clerk of court.

Q. And how long have you been employed with the clerk's office here in Spartanburg?

A. Fifty years.

Q. And what what are your current duties?

A. Uh, I do more administrative work but, uh, we're a custodian of records which includes family, civil under -- and common plea records.

Q. So as part of your duties you do oversee the record system at ---

A. Right, I ---

Q. --- clerk's office.

A. --- I, like I -- and general sessions I meant to say we deal custioda -- custodian of general sessions records.

Q. And how are the records, uh, filed and stored with the clerk's office, is there a type of database, uh, how are ---

A. Re ---

Q. --- they, records maintained as part of the business records of the clerk's office?

A. Uh, we're under the CMS System, that's where we enter the data and we scan all records, we have originals and we also scan 'em to have a photocopy.

Q. Do you keep the originals here on site?

A. We do for a certain amount a time then they're sent to storage but they're all scanned.

Q. They're all scanned into the CMS System.

A. Right.

Q. It's electronic database?

A. Right.

Q. And then the originals are kept as well.

A. Yeah, we always keep the original.

Q. Can anyone, uh, delete or manipulate records?

A. No, they cannot.

Q. And are the records in the database complete and accurate copies?
A. They are.
Q. Uh, who is in charge of maintaining records, is it the whole clerk's office or certain people?
A. We have certain people that work in different divisions.
Q. Uh, are you considered a custodian of these records?
A. Yes.
Q. Uh, now, Ms. Moffitt, do you know the defendant Mr. Robertson?
A. I do not.
Q. Do you know, uh, the victims, Mr. Williams here (indicating) in the red?
A. I do not.
Q. Do you know Ms. Smith, uh, the second victim here (indicating) in the brown dress?
A. No, ma'am, I do not.
MS. WALTERS: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.
(Whereupon, counsel approached the witness.)
(Copy of Indictment Number 95-2682 marked State's Exhibit No. 6 and copy of Indictment Number 92-0801 marked State's Exhibit No. 7 for identification.)
Q. Ms. Moffitt, I am handing you what's been previously marked as State's Exhibit 6 and 7, can you tell me what it is

that I've handed you.
A. You've handed me certified copies of indictments.
Q. And whose indictments are those?
A. They are on Scott Robinson [sic] and Donald Scott Robinson.
Q. Now do both, uh, exhibits state Mr. Robertson's name?
A. They do.
Q. Okay, and they're indictments, correct?
A. They are indictments.
Q. And are there any other identifying information besides Mr. Robertson's name on front page of each a those exhibits?
A. Yes, there is, they're in the documentation.
Q. Uh, does it have a birthdate or or throughout the, uh, the exhibits are there any kind of date of birth or social, you don't need to read 'em but ---
A. They are, uh, hold on, let me look. Yes, they are date of birth on the documentation, right.
Q. And what is the charge that's listed on each of those indictments, those two separate indictments?
A. Burglary.
Q. And does it have a conviction date?
A. Yes, they do.
Q. And what was the conviction date?
A. Hm, for Indictment N -- uh, 1995-GS-42-2672, the conviction date was January 11th 1996.

Q. And for the other indictment, can you please read the indictment ---

A. For ---

Q. --- number as well.

A. --- Indictment 92-GS-42-801, the, uh, sentence is dated 5/5/92.

Q. And those were for guilty plea conviction dates?

A. Yes, both of 'em were.

Q. Uh, now, Ms. Moffitt, are these certified convictions for both exhibits that I've shown you are those maintained as part of the normal business records process and operations of the clerk's office?

A. They are.

Q. And are they complete and accurate depictions of the original certified convictions?

A. Yes, they are certified copies.

MS. WALTERS: Your Honor, may I approach?

THE COURT: Yes, ma'am.

MS. WALTERS: Your Honor, may I approach Ms. Moffitt?

THE COURT: Yes.

(Whereupon, counsel approached the witness.)

BY MS. WALTERS:

Q. Ms. Moffitt, I'm gonna hand back to you State's Exhibit 6 and 7, it's next to Exhibit 1, it's next 2672. Now, Ms. Moffitt, those are con -- certified convictions, uh,

for Spartanburg County, correct?

A. That's correct.

Q. And can you please tell me the identifying information that's listed in those certified convictions for Mr. Robertson, date a birth.

A. Okay, uh, 92-GS-42-801, the date of birth is listed as [redacted].

Q. And does it state his, uh, state the race and the gender as well?

A. Yes, it's a white male.

Q. And the next indictment.

A. This is pertaining to 95-GS-42-2682, the date of birth is listed as [redacted].

Q. And the sex and the gender?

A. White male.

MS. WALTERS: Beg the Court's indulgence.

(Pause.)

Q. And, Ms. Moffitt, again, those are for two charges, two indictments for which charges?

A. For the charge of burglary on both indictments.

MS. WALTERS: Your Honor, at this time I'd like to admit what's been previously marked for ID purposes as State's Exhibit 6 and 7 into evidence, front page only.

MR. SHEALY: No objection.

THE COURT: Without objection 6 and 7 is admitted.

MS. WALTERS: Thank Your Honor.

(State's Exhibit No. 6, copy of Indictment Number 95-2682 and State's Exhibit No. 7, copy of Indictment Number 92-0801, admitted into evidence.)

MS. WALTERS: Okay. Your Honor, no further questions from the State.

THE COURT: Okay. Anything from defense?

CROSS-EXAMINATION BY MR. SHEALY:

Q. Just one thing. Would you repeat those conviction dates, please. Do you -- do ---

(Whereupon, a discussion was held off the record.)

Would you repeat those conviction dates for us, please.

A. Okay, this is pertaining to the '92 indictment GS-42-801, it appears on the indictment 5/5/92.

Q. Okay.

A. This is pertaining to 95-GS-42-2682, it appears to me to be January the 11th 1996.

Q. That's all I have for this witness.

THE COURT: Anything further on that?

MR. SMITH: No, Your Honor.

THE COURT: Alright.

MS. WALTERS: No, Your Honor.

THE COURT: Ms. Moffitt, you may step down, thank you, please be careful.

(Whereupon, the witness left the stand.)

MS. WALTERS: Your Honor, may Ms. Moffitt be released?

THE COURT: Any objection?

MR. SHEALY: No objection.

THE COURT: You can go back to work, Ms. Moffitt.

THE WITNESS: Thank you.

THE COURT: Solicitor.

MR. SMITH: State calls Albert Williams.

THE COURT: Alright, Mr. Williams.

(Whereupon, the witness came forward.)

THE CLERK: Mr. Williams, before you take the stand if you'll place your left hand the Bible, raise your right, please.

ALBERT WAYNE WILLIAMS, having been first duly sworn, testified as follows:

THE CLERK: Have a seat here (indicating), please.

THE COURT: Sir, tell us your full name and spell your last name for madam court reporter.

THE WITNESS: Albert Wayne Williams, W-I-L-L-I-A-M-S.

THE COURT: Thank you, Mr. Williams. Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Good afternoon, Mr. Williams, um, how old are you?

A. I'm 61.

Q. Okay. Where do you live?

A. [redacted] Cannons Campground Road, Spartanburg.

Q. Spartanburg County?

A. (The witness nodded in the affirmative.)
Q. Were you livin', uh, at that location June 17th of 2016?
A. I was.
Q. Who else lives there with you?
A. Geri Smith.
Q. Alright. Uh, Mr. Williams, can you just tell what is your background, what you -- work background?
A. Military.
Q. Anything else?
A. Uh, welding, drivin' a tractor trailer, manager car wash.
Q. Do you work anymore?
A. No.
Q. Retired?
A. Yes.
Q. Alright. Uh, on June 17th 2016 can you just tell me how the day started, what you and Geri went to do.
A. We got up, we went to take off the trash and stop by Walgreens and we went back home.
Q. Do you remember around what time of day this was?
A. Uh, 9:30, 10:30, somewhere in there.
Q. The morning?
A. Yeah, we got home 10:30.
Q. Okay, um, what happened when you got back to your Cannon's Campground house?

A. It's a mobile home. I entered the front door and upon entry the door wouldn't open all the way, as I stepped inside an arm came up with a silver handgun and I kinda raised my hands and just backed up and Geri came through the door and he grabbed her and threw her to the floor.

Q. Alright, so did you back up inside the residence or backed ---

A. Yes, ---

Q. --- out ---

A. --- backed up inside the residence, I was already in the door.

Q. Okay. I know Ms. Smith kinda described the layout a the house but would that be backin' up towards where she described the couch would be or ---

A. Uh, the couch woulda been to my immediate left, recliner woulda been across the way, ---

Q. Okay.

A. --- it's a mobile home, remember, ---

Q. Yes, sir.

A. --- so I can see the back door from the front door.

Q. Alright, so did you go to the, I guess the, does the door open ---

A. I went ---

Q. --- to your ---

A. --- to the left.

Q. --- right?
A. I went to the left, yes.
Q. Alright, and then Ms. Smith came in, what happened to her?
A. He grabbed her and threw her to the floor ---
Q. Alright. What ---
A. --- and he told us, then he told us to get up and set on the couch which was actually the love seat.
Q. Okay. What what did the gun that he had look like?
A. It's a silver revolver with white handles.
Q. Okay. Do you have experience with firearms, I know you said ---
A. I do.
Q. --- military.
A. I do.
Q. Do you own firearms in addition to ---
A. I had four rifles in the house.
Q. Okay, so you're familiar with the sight of a a real gun?
A. Very.
Q. Did you believe that this was a real weapon that the man inside your house ---
A. It ---
Q. --- had?
A. --- was real.

Q. Um, can you describe what he was wearing when you saw him.

A. He had on a lime green t-shirt, jeans, I believe it was tennis shoes, had on a ski mask that was pulled down to his nose, you could clearly see his eyes and his chin.

Q. What color were his eyes?

A. They were blue.

Q. What -- did you notice anything about his chin? I mean, could you actually see his chin or you mean you could see the ---

A. You could see the ---

Q. --- the shape ---

A. --- chin, he had salt and pepper whiskers like ---

Q. So did ---

A. --- he does ---

Q. --- the, ---

a. --- now.

Q. --- did the mask just not cover that, are you just talking about you saw ---

A. No, ---

Q. --- a lot ---

A. --- it woulda came all the way down and covered the entire face ---

Q. Okay.

A. --- but he had it rolled up so that it only came came

down to the nose.

Q. So you could see ---

A. Yeah, ---

Q. --- below ---

A. --- presumably it was so he could breathe.

Q. Okay. Um, was there, was there a hole for the mouth or it's a ski mask without one?

A. Uh, I couldn't say.

Q. Alright, but you were able to see stubble I guess is what ---

A. Oh, yeah, kinda ---

Q. --- on ---

A. --- like ---

Q. --- his face ---

A. --- now, kinda like it is now.

Q. Alright, and what color was it?

A. Salt and pepper, white and black.

Q. Similar to ---

A. Yeah, similar to now.

Q. Okay. Uh, did you notice anything about the build of his body, anything like that?

A. He's slim, well-built, muscular, look like he'd been working construction, had a very very dark tan.

Q. Okay, so somebody you would think would probably for work works with their hands and works outside?

A. Yes, I would think so, yeah.
Q. Uh, is there anything else you notice about him?
A. Uh, he had a tattoo on what would be his left arm, I put in the report right arm 'cause as I was lookin' at him but it was right here (indicating), it looked like three feathers or three fingers, I said two tattoos only because two a the lines crossed and the other one didn't, ---
Q. Okay.
A. --- I've got it on my arm if you'd like to s -- me to show it, ---
Q. No, that's alright. Uh, ---
A. --- put it on with magic marker, ---
Q. --- uh, ---
A. --- it was blue by the way, looked like it been done with a ---
MR. SHEALY: Objection, Your Honor.
A. --- Bic pen and ---
MR. SHEALY: Objection, ---
THE COURT: Okay, ---
MR. SHEALY: --- Your Honor.
THE COURT: --- sir, ya ya have to just answer answer his ---
A. Okay, ---
THE COURT: --- questions, ---
A. --- yes, ---

THE COURT: --- okay.

A. --- sir.

Q. Um, alright, so you gave description and and what happened after Geri got thrown to the ground?

A. He told us to sit on the love seat, he sat in the recliner and he proceeded to do small talk, you know, first off, Give me the watch, gimme your money, and he told Geri give him what money she had, Got any credit cards, Yeah, Give them to me too, uh, ---

Q. Did you give him money?

A. Six hundred dollars cash.

Q. Okay, did you give him cards?

A. Gave him what he wanted.

Q. Uh, then what happened?

A. He wanted to know how much money I had in the bank and took me to the kitchen table and the rifle was layin' on the kitchen table next to my ledger so he knew what I had.

Q. What -- had the rifle been there, is that where you keep the rifle or ---

A. No, the rifle woulda been in the bedroom ---

Q. Okay.

A. --- along with the shotgun and the other two rifles.

Q. Okay.

A. The rifles were layin' out on the bed and rifle was in the kitchen next to my ledger.

Q. Okay, so you believe that he had been around the house and maybe had looked through your records about how much money you may have?

A. He clearly been in there for a while, he he got distracted, he was breakin' into my safe. If he hadn't a been tryin' to break in my safe, I feel he would've picked up what he wanted and left but the safe distracted him.

Q. Okay. Um, when you you walk over to that area where your ledger is, what happened then?

A. I made a phone call to the bank, put the phone on speaker so he could hear, we asked what the balance was and he said he wanted me to write a check for forty one hundred, it would be low enough we wouldn't have to go into the bank yet amount that he was happy with.

Q. Alright, did you write the check there or ---

A. I wrote it there on on the kitchen table.

Q. Uh, how much was the the check for?

A. Four thousand one hundred.

Q. Okay, and then what happened from that point?

A. Uh, he took us outside to the vehicle, Ford Explorer, he, as we went out he said, Don't look back, don't look at my face or I will shoot you, ---

Q. Okay.

A. --- so I got in the driver's seat, angled my mirror up so that I couldn't see him in the reflection, Geri got in the

passenger side and he got in the seat behind me ---

Q. Okay.

A. --- and he told me to put the mirror back down so it didn't look odd.

Q. Uh-huh. You tried to move the mirrors so you wouldn't see him?

A. Yeah, when I got in the vehicle.

Q. Alright. Alright, okay. Did you ha -- do you know if he had his mask on or not or did you ever see him when he was in the back seat, did you see if he had his mask on ---

A. No, ---

Q. --- or not?

A. --- I didn't turn around look at him, that when we were comin' outta the trailer goin' to the car he said he had his mask on off because we live right on main road, he didn't wanna look obvious; in other words, he didn't wanna walk then from from the trailer to the car with a mask on and a gun in his hand, Don't turn around.

Q. Okay. Um, I don't know if I mention this earlier, apologize if I did, was was he wearing gloves?

A. He had on a pair a gloves, yes, they were red with black palm and they had round circular dots all over the palm for better grip.

Q. Did, uh, did he have those on the entirely of the time he was in your house?

A. Yes, yes, he did.
Q. Uh, did you ever see him take those off at any ---
A. No, I ---
Q. --- point?
A. --- didn't.
Q. Okay. Um, so you write the check at your residence, do ya'll go get in a car then?
A. Yes.
Q. Alright, whose car did ya'll get into?
A. Was mine.
Q. What is it?
A. It's a 2004 Ford Explorer.
Q. Okay. Where where'd everybody sit?
A. I was in the driver seat, Geri was in the passenger seat and he was in the seat directly behind me.
Q. Did he tell you where to go or did ---
A. Yes, he told me to take him to the bank.
Q. And did you just -- did he know where the bank was or you you just went to your bank?
A. No, I told him I was at SC Telco, Herring Circle, I assume he knew the area bein' from Spartanburg so we drove to the Herring Circle Bank and went through the drive-thru.
Q. Okay. Uh, did he tell you anything about how to act when you were getting the money?
A. Yeah, he said, Don't do anything stupid or I'll shoot

you.

Q. Okay. Uh, did you make any attempt to try to alert the the teller ---

A. No, ---

Q. --- of ---

A. --- no, ---

Q. --- of what was happening?

A. --- no.

Q. Why not?

A. I don't know how long they've gotten away from Hardee's or Burger King; other words, they're young, they might say sumtin' stupid like, What's this 911 on the back, ---

Q. Okay, so you're ---

A. --- wasn't gonna ---

(Indiscernible cross-talk.)

Q. --- worried they would tip off that you had said something and then ---

A. I wasn't gonna do anything outta the ordinary, let him have the money, let him go.

Q. Oh. Um, did you end up getting the money from the bank?

A. Yes, we got the money and I pass it over my shoulder without looking back and he took the money.

Q. Okay, what happened from that point?

A. Well, that point I asked where he'd like to get off

hoping that he'd get outta the car and run but he said, No, we're goin' back to the trailer so we drove back to the trailer.

Q. Alright, what were you thinking at that point?

A. I hope a run across a police car and when we got to the intersection a California Avenue and Asheville Highway he received a phone call from someone and I could hear part a the conversation, it was very brief, uh, How much did you get, and the response was, I'm kinda busy right now, and he hung up, that was 11:15 'cause I looked at my clock in the car, ---

Q. Okay. Uh, ---

A. --- I said then we drove on to the house ---

Q. Okay. Do you know how far it is to the bank, to your ---

A. I'd ---

Q. --- bank?

A. --- say 10 miles.

Q. Okay. Uh, did you see his face at any point other than what you ear -- described earlier: the beard and his eyes?

A. I, no, I saw his eyes and I saw below his nose, ---

Q. So when ---

A. --- uh, ---

Q. --- he a -- when he asked Geri to turn around and you didn't turn around, you didn't see ---

A. He didn't ask me to turn around, no.

Q. Right, and you were doing what you were told.

A. Yes.
Q. Alright. Uh, you end up gettin' back to the house, explain how you got away.
A. Oh, I had plants settin' on my doorsteps, there's five steps leading up to the porch 'fore you can go in, so there's plants on the right side and we we had to go up single file, I went up first, Geri with her injured foot followed second and he was behind us. When I got up on porch, uh, I open the glass door, my glass has two-way mirror privacy tint; in other words, you see your reflection on this (indicating) side and on the other side I can look through and see you so when I pulled the door open he could not see through, I had the key in my hand, put it in the lock, opened the door, stepped in abruptly, turned around, grabbed Geri, pulled her in through the door and then I slammed the steel door shut and locked it, picked up the phone, called 911 and ran to the back room and got a rifle, put a bullet in it just in case he tried to force his way in.
Q. Okay, up until that point you'd done everything he said, what what made ya decide to break, make a break for it?
A. I was in fear that he might kill us when we got back in so that he could continue workin' on that safe 'cause he couldn't continue workin' on that safe with us there, he'd have to put the gun down to continue chopping on it.
Q. Did he tell you anything about what he intended to do

when you got back to the house?
A. He said he intended to tie us up and then leave but I had no reason to believe that.
Q. Um, I'm gonna show you what's been previously marked as State's Exhibit 14 and ask if you can, uh, describe what this is.
A. It's, uh, two rifles and a shotgun layin' on the bed.
Q. Where's the bed located?
A. It would be in the back bedroom.
Q. Of your house?
A. Yeah, it be my bedroom.
Q. Alright, uh, is that what you saw on June 17th 2016?
A. Uh, the rifle was actually laying on the table in your -- in beginning but when I got back in I picked it up off the table, went to the back bedroom and got a bullet and put it in real quick.
Q. Okay, so did you place one of those rifles I guess back ---
A. Yeah, yeah.
Q. --- and the others were already there but you replace ---
A. Yes, ---
Q. --- the one that you had picked up?
A. --- the police officers wanted to photograph this for evidence so, yeah, I laid the rifle back on the bed.

Q. Okay, so the other two guns that you didn't put there were they on your bed when you left to go to the dump?
A. No.
Q. Alright, is that (indicating) an accurate picture of what your house looked like on June 17th after the police arrived, you took pictures?
A. Yes.
Q. Your Honor, at this point I'd like to move State's Exhibit 14 into the evidence.
MR. SHEALY: No objection.
THE COURT: Without objection State 14's admitted.
(State's Exhibit No. 14, photograph, admitted into evidence.)
BY MR. SMITH:
Q. Uh, Mr. Williams, your checkbook does it have, like most standard checkbooks does it make a a carbon copy of a check that you write ---
A. Yes.
Q. --- like on pression [sic] paper, I don't know what the proper te -- term for it is but ---
A. Kinda like a carbon paper.
Q. Yes, sir.
A. Yes, whenever write a check there's a duplicate left in the checkbook.
Q. Okay. Did did -- was there one created on this one?

A. I presume so, yes.

Q. Alright. Do you remember showing your, um, showing the officers or telling the officers that you had carbon copy of, did you show them the checkbook that you had written a check outta?

A. No, I don't believe I did.

Q. Okay.

(Carbon copy of check marked State's Exhibit No. 15 for identification.)

Um, show you an item they're marked State's Exhibit 15, ask ---

MR. SHEALY: Objection, ---

--- if you ---

MR. SHEALY: --- gonna object to him for -- says he didn't show this to anybody.

MR. SMITH: Just to see if he can identify what it is, Your Honor.

MR. SHEALY: And ---

A. Yes, that's me ---

MR. SHEALY: --- that's what he testified to.

THE COURT: Okay, well let's see it, what is it, go ahead.

A. Yes, sir.

BY MR. SMITH:

Q. What i -- what is that (indicating)?

A. That would be a carbon copy of the check that I wrote.
Q. Is that your handwriting?
A. Yes, it is.
Q. Is it your bank account?
A. Yes, it is.
Q. Is it -- what's the amount?
A. Four thousand one hundred dollars.
Q. Um, is that a copy of the check that you wrote or a impressioned copy of the check that you wrote to that day June 17th?
A. I would have to say yes.
Q. Is it dated?
A. June 17th 2016.
MR. SMITH: Your Honor, at this point we'd move State's Exhibit 15 into evidence.
THE COURT: Objection?
MR. SHEALY: I I do, Judge, I think we have somethin' to take up outside the presence of the jury.
THE COURT: Well c'mon up.
MR. SHEALY: Okay.
(Whereupon, a bench conference was held off the record.)
THE COURT: That's what? State's what?
MR. SMITH: Fifteen.
THE COURT: State's 15 is, uh, over the objection of defense counsel it's admitted.

(State's Exhibit No. 15, carbon copy of check, admitted into evidence.)

MR. SMITH: Permission to publish it to the jury, Your Honor.

THE COURT: Yes.

MR. SMITH: See if we can take it out.

BY MR. SMITH:

Q. Is that (indicating) your signature?

A. Yes, it is.

Q. Alright, that say June 17th ---

A. Yes, it does.

Q. --- 2016 and I know that's hard to read but what do you think that amount is?

A. Forty-one hundred.

Q. Um, did the police ultimately respond after you got loose and the defendant went wherever he went?

A. Yes, they got there very quickly.

Q. Alright. Who, initially, was just a a road deputy showed up or you ---

A. I don't know, I think it was initially plain car deputies from burglary division.

Q. Okay, and did you explain to him what you had seen and what had occurred?

A. Yes, and as I was talkin' to him more deputies showed up in plain cars, like several.

Q. Okay. Uh, and you gave a statement to police that day?
A. They set us down and had us write out a statement.
Q. Did they -- did you go, each go do your own?
A. They put Geri in the back of a car and I sat at a table under a tree, they separated us so that we could write our statement.
Q. Okay.
A. Initially they did have us tell 'em what went on then they took us outside while they did their job inside the trailer.
Q. Um, and the statement you gave to law enforcement was given within hours of the, or maybe even an hour of this ---
A. Within ---
Q. --- crime happening ---
A. --- within the hour, that's ---
Q. --- or the end of the crime I guess.
A. I'd say within thirty minutes.
Q. Uh, did you know the defendant?
A. I knew him from when we were very young.
Q. Explain.
A. Uh, his mother is Leatha Riddle, she's the daughter of my father's sister, uh, so Scotty would be what, a second cousin but I hadn't seen him since we were like 5-years-old, his mother cut our hair at one time but father bein' in the Air

Force we didn't stay here, we moved on. When father retired he came back here, I finished high school, I joined the military and I left here so no, I haven't seen him since we were like 4 or 5.

Q. That even if you'd seen, even if you saw him, you wouldn't necessarily even recognize him as ---

A. No, ---

Q. --- what was ---

A. --- no, ---

Q. --- later you ---

A. --- uh-uh.

Q. When did you find out that ---

A. Uh, ---

Q. --- you were related to him?

A. --- I was relatin' the incident to my sister who's computer savvy, she looked up his name, it came back with the address [redacted] Gossett Road and that's when she said that's where Leatha lives, that's Scotty, ---

Q. But that time, ---

A. --- her son.

Q. --- at that time you already given your statement to law enforcement and ---

A. Yes.

Q. --- Geri had already done everything she did.

A. Yes, this was two or three days later, she figured it

out, this is who he is.

Q. Uh, we looked at a watch earlier or Ms. Ms. Smith looked at a watch, know you were in here, ---

A. Yes.

Q. --- did you give that to her?

A. Yes, I gave her a watch with a gold band, had two roses on either side, small diamond chip, black face.

Q. Alright. I know you said that you knew, you you found out a later time that you were related to him, did you ever give him permission come into your house?

A. No, I hadn't seen him in 52 years ---

Q. Right.

A. --- or more, hm.

Q. Um, Mr. Williams, just answer any questions Mr. Shealy has.

A. Okay.

THE COURT: Okay, let's see the lawyers and look at the time here, see where we are.

(Whereupon, a bench conference was held off the record.)

THE COURT: Okay, ladies and gentlemen, Mr. Foreman, ladies, gentlemen a the jury, uh, I generally work till about 5:30, 5:45, I start at 9 every mornin', we'll work till 5:30, 5:45 but I do not do that on the first day because you had no way of knowing that that's my schedule, uh, so I'm not gonna do that and we're about eight minutes till 5 p.m., uh,

Mr. Shealy on cross-examination will take us past 5:00, uh, that's not fair to you, there are many people have child care issues and some of us have adult daycare issues with aging parents so, uh, I try to be mindful of that; however, uh, please plan the rest a the week that you're with me to be here until somewhere around 5:30, 5:45, I will not stay, uh, past 5:45 absent some exigent circumstance, okay, some absolutely and necessary that has to be done but starting 9:00 every morning, we'll take a break about every ninety minutes or so, we'll go to lunch between 12, 12:30 and we'll take a good hour, hour fifteen minutes or at least you will, we might not, but we will -- you will, uh, and we'll reconvene every af -- every afternoon, again, we'll take breaks in the afternoon as well, having said that we're gonna recess for the day, I got one more little matter I need to take care of that doesn't concern this case and doesn't concern you but I'm gonna take care a something else that fill up the rest a my day, uh, so having said that, uh, Mr. Foreman and ladies and gentlemen, we're gonna let you go for the evening. Now, remember, and I charge you again, you are not free to do any research, don't try to learn anything about this case, everything we we learned we're learning together must come from this courtroom that is our system of justice, okay, uh, so don't do any research, uh, don't talk about the case with your spouse or family or friend, don't even think about the

case, once again this is work and the last thing you wanna do when you go home is think about work, you wanna think about somethin' else, play with your child or your grandchild, somethin' like that, uh, so with that I'm gonna let you go for the evening, I'm gonna ask you to be back in that jury room at some period prior to 9 a.m., again, we're all adults here, I'm not gonna tell anybody to be here ten minutes early or fifteen minutes early but the courthouse opens at 8:30, right?

POLICE OFFICER: Yes, sir.

THE COURT: I'm here by 8:00, the lawyers are here by 8:00, of course I have keys and I'm, I can get in but doors will open 8:30. I tell ya if you missed the coffee this mornin', don't miss it in the morning because these people in red coats make some really good coffee and, uh, they'll have some good and hot for ya in the morning, so come on in in the morning between 8:30 and 8 somethin' but at 9:00, actually, uh, Officer Pridgeon will come get me, he's assigned to me, so he will come to my chambers at ten minutes till 9 in the mornin' and walk me up here, I'll be comin' by that (indicating) door that I come by every mornin', uh, and I'll be in this courtroom on this bench at 9:00 tomorrow mornin', I'll be callin' for you. Thank you. Mr. Foreman, if you'd take the jury out and be dismissed. Have a good evenin'.

(Whereupon, a discussion was held off the record.)

COURT REPORTER: Thank you.

(The following takes place outside the presence of the jury.)

THE COURT: Mr. Williams, I'm gonna allow you to leave the stand. Now you are in the middle of your testimony, what that means is you cannot discuss your testimony with any person over the recess this evenin', not even with, uh, uh, Geri, okay, can't talk about the case at all, certainly can't talk to the prosecutors or any other witnesses, it's it's like you just can't do that, okay?

THE WITNESS: Yes.

THE COURT: Alright, so we'll let ya leave the stand, I'm gonna ask ya in the mornin' to be back at whatever time the solicitor asks you to be here but I need you in that, sittin' right there (indicating) at 8:59 and a half.

THE WITNESS: Okay.

THE COURT: You can step down, please ---

THE BAILIFF: Be careful.

THE COURT: --- be careful. You understand 8:59 and a half, you retired military, ---

THE WITNESS: Yes.

THE COURT: --- right? Yeah, I do too.

(Whereupon, the witness left the stand.)

(Whereupon, a discussion was held off the record.)

THE COURT: Okay, Mr. Shealy, you had so -- a matter that you had side barred, uh, and I made a ruling but, uh, I want

you put that on the record, please.

MR. SHEALY: Thank you, Judge, I objected to the State's Exhibit regarding the carbon copy if you'll bear with me one moment.

THE COURT: It be State's 15.

MR. SHEALY: It's fi -- State's 15. Uh, Judge, I would argue that in order to prove the content of the check they have to present the original check, that that's, well what we learned it as the best evidence rule, it's now Rule 1002 of the South Carolina Rules of Evidence. Now 1003 does talk about the admissibility of duplicates but again, I don't know that a carbon copy is necessarily a duplicate under that section because anybody who's ever written on carbon paper through a carbon copy knows that not necessarily everything is transferred by that piece of carbon paper, now Mr. MacDonald might be too young to have ever used carbon paper but I'm not and it it just doesn't always transfer and, ---

THE COURT: And you were ---

MR. SHEALY: --- Ju ---

THE COURT: --- careful not to say that the Court certainly is, right?

MR. SHEALY: Well, no, sir. No, sir, I would never say such a thing as that but so, Judge, it would be our position that it was, that that it's simply inadmissible as a, as proof of the check and if it's not proof of the check then it's not

proof of anything and that it's irrelevant, I mean, would be the chain of logic there.

THE COURT: Solicitor.

MR. SMITH: Uh, Your Honor, our position it's it's not saying that this is a copy of the check but it is a carbon copy that was made contemporaneously with the writing of the check and we intend to have somebody from the bank come and offer a copy of the check as well but, I mean, it it is evidence that he wrote that but it's not evidence that the check was cashed or anything to prove like the arm robbery, we're not offering it for that but just the fact that it was written, that he wrote that, that's his handwriting, that's the date that it was written, that's the amount.

THE COURT: Okay. Uh, the Court, uh, uh, rules, uh, previously overruled the objection and, uh, here's what I wrote a a note to myself, uh, Mr. Shealy, is it's an original document in and of itself, it was contemporaneously made by this gentleman when he wrote the check so it is a co -- it is an original document in and of itself when used in the context that's been used thus far; also, it's contemporaneously made when writing of the check is also made. You cited Rule 102 -- 1002 and 1003 but I refer you to 1001 subparagraph 4 which says that, A duplicate is produced by the same impression as the original, that's what we have here and then if you go to Rule one, uh, thousand and two, to prove content

of the writing, recording, or photograph, the original writing, recording is required except as provided by rules or statute, I believe unless there has been a change under 102 -- no, 103, you go to 103, uh, 1003, I keep sayin' 103, 1003, A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the authit -- authenticity of original or circumstances would be unfair to admit the duplicate in lieu of the original. I don't know if the State intends to move the original in or not but duplicate as defined 1001 is admissible, uh, and it's also admissible under 1003 and requirement of 1002, the original best evidence rule, my notes here that Judge, uh, who gave me this, Casey Manning, Judge Casey Manning gave me this little rule, uh, cheat sheet rulebook right here (indicating), uh, and it cited no South Carolina case had been found that deal with applicability of the best evidence rule photographs or other documents so anyway, havin' said that, uh, for those reasons; first of all, that it's not a copy made later, it's an original document in of itself, it's not proving the check itself but it is an original document and it's contemporaneously made and then Rules 1001, 1002, 1003 make even a duplicate copy which would also include a photocopy unless unless there's an authenticity question and I've not heard any argument about authenticity.

MR. SHEALY: Well, Judge, I haven't haven't been able to

cross-examine, don't know that there is one, I don't think that there is one but, I mean, I have to cross him so I can't, I can't make an argument without evidence I guess is my point.

THE COURT: I understand.

MR. SMITH: Thank you, Judge.

THE COURT: Alright, anything further?

MR. SMITH: No, Your Honor.

THE COURT: Okay, I'll be here at 8:00 in the mornin', anybody needs anything don't ex parte me, come see me, know where I am, probly everybody here has my cell phone number anyway if you need me durin' the evenin', you can reach, you can reach, uh, Chris on the email and that stays the same, law clerk email stays the same, never changes, you know how that works, uh, uh, so that'll be the same, again, we'll be here at 8:00 in the morning, otherwise I will take the bench at 9:00 sharp, Barry will come get me at 8:50, we'll come through the door at 8:59 and and a half.

MR. SMITH: We'll be here. Thank ---

MR. SHEALY: Thanks, ---

MR. SMITH: --- Your Honor.

MR. SHEALY: --- Judge.

MS. WALTERS: Thank you.

(Proceedings July 25, 2017)

(State's Exhibit Nos. 16 through 25 marked for identification.)

(Whereupon, a discussion was held off the record.)

THE COURT: Ma'am, come around if you don't mind.

(Whereupon, Juror Number 238 came forward.)

THE COURT: You are Cassandra McDonald?

JUROR NUMBER 238: Yes, sir.

THE COURT: Ms. McDonald, you've been late and can you tell me what -- why you're late.

JUROR NUMBER 238: My car wouldn't start at first and then when I got to Asheville Highway, I mean, like I was stuck in traffic.

THE COURT: Okay, which way did you come? I understand you live in Enoree.

JUROR NUMBER 238: Yes but I'm livin' -- well I'm not livin' but I'm stayin' with my boyfriend currently for this week.

THE COURT: Okay, where is that?

JUROR NUMBER 238: In Inman.

THE COURT: In Inman.

JUROR NUMBER 238: Um-hum.

THE COURT: Okay, do you need transportation tomorrow?

JUROR NUMBER 238: No.

THE COURT: Are you sure?

JUROR NUMBER 238: Yeah, I took his car and he's gonna get my car fixed.

THE COURT: Okay, alright. Uh, if ya need transportation

I can arrange for a s -- a officer to be there in the morning.

JUROR NUMBER 238: No, I don't need transportation.

THE COURT: You're sure?

JUROR NUMBER 238: Um-hum.

THE COURT: Okay, alright. Thank you, ma'am.

JUROR NUMBER 238: You're welcome.

THE BAILIFF: Okay, come back this (indicating) way.

JUROR NUMBER 238: 'kay.

(Whereupon, Juror Number 238 returned to the jury room.)

(Whereupon, a discussion was held off the record.)

(Whereupon, the witness returned to the stand.)

THE COURT: Thank you, Mr. Williams.

(Pause.)

MR. SHEALY: Uh, yes, sir.

THE COURT: Okay, we're ready.

THE BAILIFF: Yes, Your Honor.

(The following takes place in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. Mr. Foreman, any matters for the jury? Everything good?

JURY FOREMAN: No, Your Honor, everything's good.

THE COURT: Re -- ready to go to work.

JURY FOREMAN: Ready.

THE COURT: Mr. Shealy.

MR. SHEALY: Thank you, Judge, may it please the Court.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Alright, Mr. Williams, would you introduce yourself again just so that the, refresh the jury's memory as to who ya are.

A. My name is Albert Wayne Williams, I was living in [redacted] Cannons Campground Road.

Q. Okay. Now you've testified that just as soon as you got home the door was hard to open, is that what you were testifying to?

A. Uh, the door opened up most a the way but rather than going to the wall it stopped.

Q. Okay, when you say it went "most a the way," did it open enough for ya to get through it or ---

A. It opened ---

Q. --- not ---

A. --- 90 degrees.

Q. Okay, so straight out from the door, from the outside wall.

A. Yes.

Q. Alright, okay. Alright, and immediately at that point you saw a gun, is that what you testified to?

A. When I stepped through the door, that's when I saw the gun come up.

Q. Alright, did ya see the person immediately or was he behind the door or where was he?

A. He was behind the door, I didn't see the individual, I just saw the arm.

Q. Okay, and at that point he asked you to sit on the sofa?
A. No.
Q. Okay, what happened?
A. At that point I raised my hands and backed up three steps, Geri walked through the door, he grabbed her by the shirt, threw her to the floor, that's when he closed the door and told us to sit down on the couch.
Q. Alright, so initially he was behind the door, you saw the arm, put your hands up and you backed up three spa -- three steps, is that what you said?
A. Yes, I did and backed up inside the trailer.
Q. Okay, that's -- so you were not -- when you walked in and saw the gun, you did not back like this (demonstrating), you kinda backed like this (demonstrating) into the trailer as opposed to through the door?
A. I stepped through the door and as I saw the gun I turn to face the individual and I backed up into the trailer.
Q. Alright, and you've testified that when ya saw his face or well when you saw the front there was a a, was it a dark ski mask? Describe the ski mask one more time.
A. Uh, my recollection it was like a blue or a gray ski mask pulled down to, uh, his nose, you could see the eyes very clearly, you'd see the chin and the mouth.
Q. And you testified that that chin had three to four days

of growth on it or whiskers or ---

A. 'bout like now, yes, sir.

Q. Okay, so and at that point he orders ya'll to sit down, right?

A. Yes, sir.

Q. Okay, and ya'll make chitchat? When ya, when ya say "chitchat," I understand he asked for the the pins and the cards, what else is he askin' ya or tellin' ya or or whatever?

A. He asked me if I had a safe, I told him yes, I did, I didn't know he'd already found at that point.

Q. So he asked if ya had a safe.

A. Yes.

Q. Okay, and did he make other conversation? He ask you questions about your life or so -- I mean, a chitchat just seems like ---

A. He asked me for my watch, ---

Q. Okay, ---

A. --- he ---

Q. --- but ---

A. --- asked me ---

Q. --- what ---

A. --- for my cash, he asked Geri for her cash.

Q. And those are the kinds of things that he's asking for so it's not really small talk, they're just a string of demands?

A. Yes, sir, he was resting.
Q. Okay. Now do you recall him, believe you testified or maybe Ms. Smith had testified about Florida, that he was jabbering I believe is what Ms. Smith said about being from Florida or going to Florida?
A. He mentioned Florida twice in casual conversation.
Q. Well how did that come up?
A. Eh, just remarks that he made like South Carolina had too many black people.
Q. Okay, and then that that -- so so he's telling you, this person that he's never met, that he's from Florida and that South Carolina is bad.
A. Um, he didn't say he was from Florida just that apparently he had been to Florida.
Q. Okay.
A. He didn't expand on it, he -- it was just a statement.
Q. Okay, and then once ya'll get done there -- now I'd asked Ms. Smith, about how long were ya'll gone that morning to Walgreens and the recycling place?
A. Uh, forty-five minutes to an hour, we weren't no hurry.
Q. Alright, so forty-five minutes to an hour you were out of the house, ---
A. Yes, sir.
Q. --- is that fair? And you've also testified that Mr. Robertson's never been in your house, correct?

A. Correct.
Q. Alright, and that you've never given him permission to go to your house?
A. Correct.
Q. You've not seen him since you were 5-years-old?
A. Correct.
Q. Now, when did you move? I know you were, you you testified that you were gone for I think you said 52 years, what year did you move back to Spartanburg?
A. Uh, '85 or '86.
Q. Alright, and the house that ya live in right now it's my understanding that that's on family land?
A. Yes, sir, ---
Q. Okay.
A. --- it's a mobile home.
Q. I just -- uh, is the house next to it on fo, uh, family land?
A. Yes, ---
Q. Okay, ---
A. --- my mother's ---
Q. --- so ---
A. --- house.
Q. Alright, and do ya'll own other property in that area?
A. No, sir, just that ---
Q. Just that ----

A. --- section, yes.
Q. Okay, and that came down I believe from your grandparents, is that right?
A. Uh, my father purchased it ---
Q. Your father purchased it?
A. --- somewhere after World War II.
Q. Okay, uh, but again, your fa -- your, and your extended family it's my understanding owns property, that's just, that's where ya'll for -- live, right, where your extended family owns property?
A. Uh, my mother lives in the house, I'm currently residing in the house with her 'cause she needs care. I have the trailer next door where I was staying and still have most a property. My sister lives in Moore, South Carolina, she owns several houses around Spartanburg.
Q. Okay. Alright, so once ya'll get into the car my understanding is you leave or he has ya'll single file line, is that right? You're in front, ---
A. Yes, sir.
Q. --- Ms. Smith is in the middle, he's in the back.
A. Yes.
Q. And does he have the gun out at this point?
A. Uh, we were instructed not to turn around.
Q. So you don't know.
A. I would not know.

Q. Alright, and yesterday ya seemed to say that or ya did say that he had indicated that he had taken his ski mask off but that you didn't know if he had taken his ski mask off on the way to the car, is that right?

A. That's what he told me 'cause we live on a main road and it's very busy.

Q. Okay, so while he is kidnapping ya he's givin' ya a play-by-play of how he's taking the ski mask off.

A. He's instructing us as to what he would like us to do.

Q. Okay. Alright, so you get into the car and my understanding you immediately turn the mirror to the ceiling, right?

A. Yes, sir.

Q. Alright, so that you didn't see, right?

A. So that I wouldn't see his face so ---

Q. Okay.

A. --- he wouldn't be, uh, havin' an issue with that.

Q. Right, he wouldn't get angry that you were lookin' in the back seat.

A. He went to great extent to hide his identity.

Q. Okay, great extent and then he told ya to put it back, correct?

A. Yes.

Q. Alright, uh, and you put it back in substantially the same position I'm guessin'?

A. Yes, sir.
Q. I mean, in a position where you could use it to drive.
A. Yes, sir.
Q. Alright, and at that point do ya know if he had the gun out or not?
A. No, sir, he was settin' directly behind me, ---
Q. Alright.
A. --- couldn't see him at all.
Q. Couldn't see him at all, okay. So you couldn't see him at all but you were concerned that he might think you could see him, is that why you messed with the mirror?
A. Initially when we got in the vehicle I moved the mirror's position so as I wouldn't catch his glance of him, he had us move the mirror back so it didn't look outta place.
Q. Okay, and so at that point you drive I guess it's, you've testified it's 10 miles to the Asheville Highway ---
A. Yes, it was ---
Q. --- Telco?
A. --- but I believe that 10 miles would adequately cover it.
Q. Okay, and when ya get there -- now you, did ya write the check there or did ya write the check out at the mobile home?
A. I wrote the check out at the mobile home.
Q. Okay, and that was after your conversation with the bank

a ---
A. Yes, sir.
Q. --- asking them how much money you could get out without going in?
A. Uh, it was more or less to confirm exactly what was in the bank and then I was told exactly how much to write the check for, it was to, as he said to keep from havin' to go in the bank, ---
Q. Okay.
A. --- if we wrote it out for a larger sum they'd want us to come inside and he didn't wanna do that.
Q. So in your conversation with the bank they said that if you tried to get out more than forty-one hundred dollars you're gonna have to come in?
A. No, sir, it wasn't a conversation with any individual, it was an automated phone system ---
Q. Okay, but ---
A. --- merely telling you what you had in the bank.
Q. Alright, so whe -- in your, in your telephone call that was on speaker phone with the bank they never said how much money was the limit you could take out, even ---
A. No, sir.
Q. --- if you were gonna not go into the bank?
A. No, sir, it really told you how much you had, it's an automated system.

Q. I understand it's an automated system, I'm just ---
A. He's the one, he's the one that came up with the figure, if we went too high, he felt like we'd have to go inside.
Q. Okay, and my understanding is total, so there was seventy-three hundred dollars in the bank and he has you write the check for forty-one hundred dollars.
A. Correct, sir.
Q. So he left about thirty-two hundred dollars on the table.
A. Yes, sir.
Q. Okay. Alright, so you go to the bank and you get the tube out and then you put, presumably you put the check into the tube ---
A. Yes, sir.
Q. --- and then you -- did you -- did -- was there any conversation with the teller?
A. Uh, I don't believe there was.
Q. Okay, and then ya sent it down its way and then you waited on it, ---
A. Yes, sir.
Q. --- is that accurate? And what happened next?
A. They sent the check back 'cause I had forgotten to sign it.
Q. You had forgotten to sign it?
A. But I'd forgotten to sign the check on the back. They sent it back with an ink pen and I believe they may have asked

for some ID at the time too.
Q. Okay, uh, bear with me just one second. And at that point I guess you sign it and put it back in the tube and send it back on its way.
A. Yes, sir.
Q. Alright, how long did all a this take?
A. Uh, two minutes, they ---
Q. Yes, sir.
A. --- weren't busy, I was first in line.
Q. Okay, so your entire visit to the bank took about two minutes?
A. Two to three minutes yes, sir.
Q. Two to three minutes? Alright, and then at that point they give ya the money in a envelope I think you testified and you handed it back?
A. Yes, sir, they sent the money in an envelope, I took it outta the carrier and just held it up and he took it from my hand.
Q. And then you drive off.
A. And then I drive off.
Q. Alright, but at no time do you do anything to signal the teller that there was anything the matter.
A. No, sir.
Q. Alright, and at no time that you're aware of did Geri do anything to signal the teller.

A. No, sir.
Q. Alright, and at no time did you look in the back seat?
A. No, sir.
Q. So you wouldn't know if he had the ski mask on or off that point.
A. I would not.
Q. Alright, so ya'll drive back another, you've testified it's about 10 miles, how long does that ta -- drive take, it's 10 miles, does it take about fifteen ---
A. Fifteen ---
Q. --- minutes?
A. --- minutes maybe.
Q. Okay, so you drive fifteen more minutes back to your house, 'bout how long has all of this taken?
A. 'scuse me?
Q. About how long has this from the house to the bank and back to the house taken?
A. Uh, a half hour --
Q. Half an hour?
A. --- forty-five minutes maybe, ---
Q. Okay.
A. --- that wasn't my concern at that point.
Q. But I I understand. And throughout that period you and he had been talkin' or well he had been talkin', you had been listenin' is what it sounds like.

A. That's more like it. I was listenin', he was doin' the talkin'.
Q. Alright. Okay, and when ya get out of the car -- so where do you park relative to the mobile home?
A. Uh, I park in front.
Q. Okay. Is that, and when you say "in front," do you have a driveway there or just do yas park on the grass or do you have to park on the street?
A. Let me explain it this way: ---
Q. Okay.
A. --- the mobile home runs parallel to the Cannons Campground Road ---
Q. Okay.
A. --- and I have a driveway that pulls in and I pull right here (indicating) ---
Q. Okay, so ---
A. --- which would be at the front then I get out and you walk 'bout that (indicating), 'bout 15 feet to get to the porch.
Q. Okay, so your, does your driveway come off a Cannons Campground or does it come off of the side street ---
A. It ---
Q. --- and around?
A. --- comes off Cannons Campground and I can drive around behind the trailer and exit on Sunset.

Q. Okay, and when you parked where in relation to -- now just you've testified ya had a porch, does that porch have a railing on it?

A. Yes, it does.

Q. And you've testified it had plants on a ---

A. It -- the steps had plants.

Q. Alright, so is it fair that there's fairly tight quarters, is that accurate?

A. It restricts your access, you can't walk two abreast.

Q. Okay. And the stairs do they come straight out from the mobile home or do they go to the side?

A. Uh, the stairs are parallel to the mobile home, ---

Q. Okay.

A. --- there's five steps leading up to the porch.

Q. So you, ya'll get out, now your pa -- your driver's side door is closest or is facing the mobile home, is that correct ---

A. No, ---

Q. --- or am I, ---

A. --- the driver's side ---

Q. --- am I turned around?

A. --- door is facing the mobile home.

Q. The driver's side door ---

A. The driver's ---

Q. --- is facing ---

A. --- side is facing the mobile home.
Q. Alright, so when you get out you can immediate, you can see the mobile home, ---
A. Yes, sir.
Q. --- right? Alright, and so sh -- Ms. Smith had to walk around the car, ---
A. She did.
Q. --- to get and then ya'll got in a single file line again, is that right, ---
A. That's ---
Q. --- to go up ---
A. --- yes, ---
Q. --- the ---
A. --- I'd say that's correct.
Q. Alright, and when you're getting out of the vehicle ya didn't see his face then either.
A. No, sir, we have tinted windows, I couldn't have seen through it.
Q. Well, I mean, but he would've gotten out as well, right?
A. Uh, initially there was an issue. I got outta the vehicle, headed few steps towards the trailer, Geri hollered out, get my attention, uh, my car has child locks so I had to stop and press a button to let him outta the back seat.
Q. Okay, so my understanding is you had the child locks on on the back seat.

A. They're automatic.

Q. Alright, so he couldn't get outta the backseat ---

A. Not without me pressin' that ---

Q. 'kay, ---

A. --- button.

Q. --- without you pushin' that button, okay. So you push the button, let him out and he gets out and then you again don't see his face.

A. I do not see his face.

Q. Alright, and ya'll get in line and walk up this stair, uh, and -- bear with me just one second.

A. Take your time, sir.

Q. I'm a lawyer, we can't help it. Um, you open the privacy gla -- or you've testified that ya open, there's a, it's a glass door and then a a front door, right?

A. Yes, sir.

Q. Alright, so you open that door and it opens towards the steps.

A. Yes, sir.

Q. Alright, and on that front door it says, Video Camera Security, doesn't it?

A. Yes, sir.

Q. Alright, do ya have any video cameras on your house?

A. At the time I didn't, now I have four.

Q. Okay, so ---

A. That time I didn't have a burglar alarm, now I have one.

Q. --- so the video cam security that ya ---

A. It was a bluff, ---

Q. --- didn't have anything ---

A. --- it was a bluff.

Q. Okay, so ya open that door and how much space is between the door and the por -- and the porch railing?

A. Uh, the porch itself is 10 foot by 10 foot, ---

Q. Okay.

A. --- the door would be situated in the middle of that 10 foot, ---

Q. Alright.

A. --- so I'd say there's, what, 3 1/2, 4 feet on either side.

Q. Alright, but from the door to the far railing it would be closer to it sounds like 6 or 7 feet if it's a 10-foot porch and your door's only so wide, right?

A. Um, explain yourself. You mean from my front door to the outside railin'?

Q. Right, 'cause the the porch is a ---

A. It's 10 ---

Q. --- square ---

A. --- foot by 10 foot, ---

Q. Right, ---

A. --- yes.
Q. --- so it's a 10 foot by 10 foot square and then it leads to some stairs, right?
A. The stairs come up on the side, ---
Q. Sure.
A. --- mobile home bein' here (indicating), steps leadin' up to it.
Q. Okay, and then but when you open the door there's gonna be a, some amount of distance between the door and the far railing.
A. Yes, sir.
Q. Okay. How much is that distance do ya think?
A. Uh, 6 1/2 feet.
Q. Okay, and at that point you open the door and you go in and you -- was Ms. Smith immediately behind you or ----
A. She was immediately behind me, ---
Q. Alright.
A. --- we walked single file.
Q. Right, and then you had come around and opened the door, she was right behind you, where was the robber at this point?
A. He was walking up the steps behind Geri.
Q. So he had been slower than Geri.
A. Geri was impeding traffic because she'd had a broke ankle, ---

Q. Um-hum.
A. --- she was movin' slower, with the plants on the steps you couldn't go around her so he had to follow her up, ---
Q. Okay.
A. --- that gave me time to open the glass door with the privacy tint ---
Q. Um-hum.
A. --- so he could only see a reflection but I could see through it.
Q. Okay, and ---
A. I ---
Q. --- that's ---
A. --- had my keys in the hand ready to open the front door.
Q. Okay, so you open the front door with the keys and ya go i -- you grab Geri and bring her in, is that right?
A. I open the front door, I step inside, I look and she's walks around the edge a the glass door, I reach out, I grab her by the shirt, pull her in and slam the steel door in his face ---
Q. So that's ---
A. --- while ---
Q. --- a steel door?
A. It's a steel door ---
Q. Okay.
A. --- on the front, back however is styrofoam.

Q. Alright, and at that point you don't know what happened, I mean, with -- that the robber disappears that point, ---

A. At that point ---

Q. --- correct?

A. --- I did not no longer see him.

Q. Right, okay. Uh, when you were getting out of the vehicle, did ya look around at all?

A. I did not turn back, no.

Q. Alright, when ya got home from the recycling place, did ya look around at all?

A. Uh, no, sir, I just got outta the vehicle, we went up, got in the trailer and that's where the problem started.

Q. Okay, so there were no suspicious vehicles that you're aware of anywhere ---

A. Uh, ---

Q. --- around there?

A. --- no, sir, across the street there is a funeral home, ---

Q. Okay.

A. --- parked, cars park over there all the time day and night.

Q. Okay, but, again, the ---

A. There ---

Q. --- ya'll had ---

A. --- was no -- there was no indication there there

anyone ---

Q. Sure.

A. --- had been there, no, sir.

Q. And you had to take your or well ya did take your car to the bank, correct?

A. No, sir, I pulled in my driveway and stopped at the corner of the trailer ---

Q. Yeah. No, I'm saying that but you took -- whenever he wanted to go to the bank you had to take your vehicle, ---

A. Yes, sir.

Q. --- your Ford Explorer, ---

A. Yes, sir.

Q. --- right? Alright, bear with me just one moment.

(Pause.)

Alright, so going back just one last set a questions. You got back to Spartanburg around 1985 or '86, is that ---

A. Yes, sir.

Q. --- what you testified to? And then I think you've testified to what you were doin' at that point but what were you -- where were you workin'?

A. Uh, uh, believe I was managing a car wash downtown at some point, mostly I was goin' to college under the old GI Bill.

Q. Okay. What were you goin' to college for?

A. So, uh, I started off at USCS and then went to

Spartanburg Tech.

Q. Alright, and that through the years I guess you you've had number of jobs it looked like and but ultimately and when did you retire?

A. Uh, 2001.

Q. Alright, and Ms. Smith moved into your house as a ten -- or your, the mobile home, excuse me, but moved into there as a tenant in 2014, that right?

A. I believe so, yes, sir.

Q. And in all that time you had not seen Mr. Robertson?

A. Had not seen him, no, sir.

Q. You, had ya seen Ms. Riddle, ---

A. Who ---

Q. --- Leatha Riddle?

A. Uh, who's ---

Q. Leatha Riddle.

A. No, uh-uh.

Q. That's his or it's his mother.

A. Correct. No, I've -- no.

Q. So he didn't come to your house in 2015 ---

A. No, sir.

Q. --- and engage in a business transaction?

A. No, sir, never seen him.

Q. And he never di -- didn't come to your house in 2016 and engage in business transaction?

A. No, sir.
Q. So you've been here since 1985.
A. For the most part, I was drivin' a tractor trailer for a while, ---
Q. Alright.
A. --- went all over United States.
Q. And how long was that for?
A. Six months.
Q. Alright, so since 1985 bar six months.
A. 'scuse me?
Q. I said since 1985 bar six months when you were drivin' all over the states.
A. Yes, sir.
Q. That's all I have for this witness.
REDIRECT EXAMINATION BY MR. SMITH:
Q. Uh, Mr. Williams, you talked about that man in the back of the Explorer when you got back from the bank was I guess stuck inside, uh, why did you let him out?
A. Uh, Geri raised her voice quite loud, he was threatenin' her and a glass won't stop a bullet.
Q. Fair enough but she's still in the car?
A. Yeah, she was at that point, ---
Q. Okay, uh, ---
A. --- her door would be locked too.
Q. Passenger side can't open either?

A. It's automatic child locks.
Q. Okay. Uh, when you got money from the ATM or deposited the check, did you count the amount of money that you got?
A. No, I didn't, sir.
Q. Do you normally count money when you get it out of a bank?
A. Normally I would.
Q. Why did you not count it this time?
A. Didn't matter, I wasn't gonna get keep it.
Q. Alright, I don't have anymore questions.
THE COURT: Anything at all?
RECROSS-EXAMINATION BY MR. SHEALY:
Q. Alright, said you weren't gonna keep it but wouldn't it have been important to make sure that it's forty-one hundred dollars?
A. No, it wouldn't, not to me at that point.
Q. So if he had counted it and gotten angry that wouldn't a been a problem.
A. It would probly been a problem but ---
Q. Okay, that's all I have.
THE COURT: Thank you, sir, you may step down, please be careful.
(Whereupon, the witness left the stand.)
THE COURT: Solicitor.
MS. WALTERS: And, Your Honor, the State calls Julie

Pennoyer.

THE COURT: Alright. Come right up here (indicating) and be sworn,7 ma'am.

THE WITNESS: Okay.

(Whereupon, the witness came forward.)

THE CLERK: Place your left hand on Bible, raise your right, please.

THE WITNESS: Um-hum.

JULIE PENNOYER, having been first duly sworn, testified as follows:

THE CLERK: Be seated.

THE WITNESS: Yes.

THE COURT: Ma'am, tell us your name and spell your last name for my court reporter, please.

THE WITNESS: Sure. Julie Pennoyer, it's P-E-N-N-O-Y-E-R.

THE COURT: Thank you. Solicitor.

MS. WALTERS: Thank Your Honor.

DIRECT EXAMINATION BY MS. WALTERS:

Q. Uh, Ms. Pennoyer, where are you employed?

A. SC Telco Federal Credit Union in Spartanburg.

Q. And where is that located in Spartanburg?

A. We're right off Asheville Highway near Herring Circle, uh, North Town Drive by Bi-Lo.

Q. Well what's the address?

A. 130 North Town Drive, Spartanburg 29303.
Q. And that's in the county a Spartanburg, correct?
A. Yes.
Q. What is your current position at South Carolina Telco?
A. Branch manager.
Q. And how long have you been employed with South Carolina Telco?
A. Two years.
Q. Have you been the branch manager the entire time?
A. No, I was lending specialist for the first year and then branch manager since then.
Q. And as branch manager what are your duties?
A. I am responsible for making sure everything runs smoothly: assisting members, processing loans, IRAs, uh, run the teller drawer if needed, uh, coaching staff, that's pretty much everything.
Q. Now can you please explain to us the normal pro -- like check process, um, a brief pra -- brief process when South Carolina Telco receives a check for payment or or a deposit or withdrawal.
A. Um-hum. We would get an ID no matter what, even if we re -- remember the member, just as a courtesy we're gonna ask everybody to make sure we have the right member, uh, so we'll always get the ID, make sure it's signed, verify the funds are available, um, and go ahead and cash the check or process the

transaction that the member requests.
Q. Now what happens to those original checks that are processed for payment, when you receive those, what happens to those checks?
A. It's scanned in so there's an image and then it's kept for six months retention time and then destroyed.
Q. Where is those -- where those original checks kept for the retention period?
A. They're in a locked s -- uh, safe room in the branch.
Q. Okay, so they're actually at the bank.
A. Um-hum.
Q. And those electronic copies where are they stored, what kinda database?
A. It's called "Laserfiche" and so it's our main, uh, storage that stores like statements, the check copies, membership cards, everything.
Q. Now are these images, um, in the database complete and accurate copies of those original checks that are processed for payment?
A. Yes.
Q. Now can anyone delete or manipulate those records?
A. No.
Q. Who is in charge of maintaining those records at at your branch?
A. That would be me, I'm able to go in and print items as

needed or get video or anything that's needed, IT is the only one that could make any changes and that's with a special request.

Q. When an account holder opens a checking account, are they given a debit card or and they're given a checkbook? I mean, when when somebody comes in to open an account, a checking account, ---

A. Um-hum.

Q. --- they're given items to start up with your bank, ---

A. Um-hum.

Q. --- are they given a checking card like a debit card, are they given a checkbook with ---

A. We kind ---

Q. --- checks?

A. --- of, it's case by case 'cause we're going to see how the member's gonna use the account so, yes, you can always order checks, we can print starter checks, um, request a debit card, we don't have 'em on site so you have to have it mailed to you, get the pin a couple days later so just checks, debit card, bill pay, mobile app, all those.

Q. Um, now, Ms. Pennoyer, do you know the defendant, Mr. Robertson, who's who's seated over there (indicating) in the white shirt?

A. No, ---

Q. Do ---

A. --- but ---

Q. --- you know, uh, the victim, uh, Mr. Williams, Albert Williams or Ms. Smith?

A. Just from being a member.

Q. Not -- so you have an account for by the name of Albert Williams. Do you know how long he's had an account with South Carolina Telco?

A. Long-time member, I'm not sure a the time but I know it's a long time.

Q. Have you seen him in the bank?

A. Yes.

Q. Uh, Ms. Pennoyer, was Mr. Williams issued checks by South Carolina Telco?

A. Yes.

Q. Your Honor, may I approach the witness?

THE COURT: Sure.

(Whereupon, counsel approached the witness.)

Ms. Pennoyer, can you please tell the Court what it is that I just handed you.

A. Um-hum, this is the image of the check that was presented and scanned into Laserfiche and the front and the back where it's scanned and signed so it's the actual check that was cashed.

Q. Was the check that was cashed. Can you tell me little bit about the check, uh, the date, who it was made payable

to, ---

A. June the ---

Q. --- who signed the back.

A. Yep, it's dated June 17th 2016, made pal -- payable to Albert Wayne Williams, uh, four thousand one hundred dollars, signed and Mr. Williams signed the back as well.

Q. So he signed his name on the made payable to line, ---

A. Yeah, payable ---

Q. --- si ---

A. --- to him, signed as the account holder and signed as the person cashing the check.

Q. And this is a South Carolina Telco check.

A. Yes.

Q. And how do you know it's a South Carolina Telco check, that it was provided by South Carolina Telco?

A. Oh, I was able to print it through Laserfische, our system, that's where ---

Q. Do you all have a logo on your check?

A. Yes, logo on our check and it says it's rewards checking account.

Q. So you a -- you're able to pull that from your system.

A. Um-hum.

Q. Now was this check maintained as part a the normal business records process and operations at South Carolina Telco?

A. Yes.
Q. Is it complete and accurate depiction of the original check front and back?
A. Yes.
Q. Was there any problem with this check bein' processed at your bank?
A. No.
Q. Your Honor, at this time I'd like to move what's been previously marked, Your Honor, as, uh, State's Exhibit 23 for ID purposes, I'd like to admit that into evidence.
MR. SHEALY: No objection.
THE COURT: Without objection it's admitted.
(State's Exhibit No. 23, copy of check, admitted into evidence.)
MS. WALTERS: Your Honor, may I publish this to the jury?
THE COURT: Absolutely.
BY MS. WALTERS:
Q. Now, Ms. Pennoyer, you stated, there we go, you stated that, um, Mr. Williams' name was here (indicating), pay to the order, payable to ---
A. Yes.
Q. --- and that it, you stated previously that he signed as the account holder ---
A. Um-hum.
Q. --- and he signed it on the back and it has, these checks

have their account holder's name and address in the top left.
A. Yeah.
Q. Sir, we can have the lights turned off.
(Whereupon, the bailiff turned the lights off.)
And what does it say, I know it's hard to read, as Mr. Williams' address?
A. I don't know the numbers but was Cannon Campground Road.
Q. That's here in Spartanburg?
A. Yes.
Q. And what are all these numbers here (indicating)?
A. That be the transaction number, when the check gets imaged it has a code that prints on it.
Q. So if it has the -- would it have the date all crunched in there?
A. Yes.
Q. Would it have like a teller ID number?
A. Yes.
Q. Now how do you know, I know it's hard to read on here, how would you know that this, when this check was deposited?
A. We have a receipt that prints along with the check copy that gives the time, the teller number as well so you can clearly see it all.
MS. WALTERS: Your Honor, may I approach the witness?
THE COURT: Yes.
(Whereupon, counsel approached the witness.)

Q. Ms. Pennoyer, I am showing you what's been previously marked as State's Exhibit 24 for ID purposes, can you please tell me what that is.

A. This is the receipt that we would provide to the member and it has their account number, the date, the teller number, receipt member's number, uh, the member's name, the date, real date 'cause you can change the effective date but generally wouldn't do that, uh, time and what the transaction was so when it's an honest check, that's a check you write for to yourself for cash so it's just showing that we received the check and disbursed cash.

Q. And are those deposit slips are those also stored in the same electronic database that you've spoke of previously?

A. Yes.

Q. And those are, that electronic database is accessible at your branch location in Spartanburg.

A. Yes.

Q. Now is it -- are those maintained as part a the normal business records process and operations of South Carolina Telco?

A. Yeah.

Q. Is that a complete and accurate depiction of the original deposit or transaction slip?

A. Yes.

Q. Your Honor, at this time I'd like to move what's been

previously marked as State's Exhibit 24 into evidence.

MR. SHEALY: No objection.

THE COURT: It's without objection.

(State's Exhibit No. 24, SC Telco withdrawal receipt, admitted into evidence.)

MS. WALTERS: Thank Your Honor, may I publish it to the jury?

THE COURT: Yes, ma'am.

BY MS. WALTERS:

Q. And, Ms. Pennoyer, for the jewel -- for the jewelry -- for the jury at the top it has your bank logo, um, can you t -- you tell us the date of this transaction.

A. Yes, it's June 17th 2016 at 11:09 a.m. by teller 1130.

Q. And who is teller 1130?

A. It's Denecia Bertick (phonetic).

Q. And what is the sequence number, what does that mean?

A. That way we can locate the transaction.

Q. And that had account -- what is that? That has the amount, the forty-one hundred ---

A. Yes, it's since the honest check for cash is kinda like a withdraw, that's why it says withdraw from rewards checking, and then you'll see the honest clearing of forty-one hundred and what the cash was dispensed was forty-one hundred.

Q. So that's his balance after the forty-one hundred was withdrawn?

A. Correct.
Q. He had a balance of three thousand eight hundred twenty-five dollars and ten cents?
A. Yes.
Q. Beg the Court's indulgence.
THE COURT: Yes.
(Pause.)
MS. WALTERS: Um, . . .
(Whereupon, a discussion was held off the record.)
MS. WALTERS: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.
(Whereupon, counsel approached the witness.)
Q. Ms. Pennoyer, I'm handing you what's been previously marked as State's Exhibit 25, can you please tell the Court what that is.
A. Yes, this is the video surveillance from the drive-thru transaction that day that was provided to the detective from this ---
Q. And how do you know that that's the surveillance video?
A. When the detective first came in, uh, to the branch, I was responsible for pulling up our video and showing him the video so we watched that together and then we had, uh, it printed on a CD and provided.
Q. Now did you review that copy today before court?
A. Yes.

Q. And did you verify that was the same surveillance video that was submitted to the investigator?
A. Yes.
Q. Did you sign and date?
A. Yes, sign and dated.
Q. But did you sign, date the envelope and the CD?
A. Yes, both.
Q. Now, Ms. Pennoyer, do you have video surveillance all throughout the bank?
A. Yes, there's probly twenty-four cameras.
Q. And this is the one that would be in the ATM line?
A. Drive-thru lane 2 I believe it is, yes.
Q. Okay. Do you have a video for every drive-thru lane or is it just certain ---
A. Just 2 and 3 and ATM.
Q. So that one was at the ---
A. Second lane.
Q. --- second one, so this isn't the one when you first pull into the bank, it's the one that you actually are face-to-face with the teller?
A. Yeah, 'cause when you first, the first lane we don't use because the drawer is hard to operate and it could hit a car but you wouldn't need a camera 'cause you're face-go-face at that point but there's a camera for us for lane 2.
Q. Okay, so so in in this incident Mr. Williams wouldn't be

right next to the drawer ---

A. No.

Q. --- teller where you can actually see their face and they can see yours, ---

A. No, further away, ---

Q. --- would be the ---

A. --- lane 2.

Q. --- one down.

A. Um-hum.

Q. Now how are videos stored with South Carolina Telco, is it the same type of program or database?

A. It's called "Vid-Center," and it's where you can look up security cameras, real-time, uh, backdated, stored so it's the same type system but just for video.

Q. Now are they all electronic or do you electronic and hard copies of the videos?

A. It's electronic and we can provide any copies when we need to.

Q. Now are they, uh, maintained and stored as part of your normal business records procedures ---

A. Yes.

Q. --- in South Carolina Telco? Can these videos be deleted or manipulated?

A. No.

Q. Who has access to these videos besides you?

A. Branch managers, compliance department and IT.

Q. Who was able to burn that video for you?

A. That was done by, uh, Matt in our compliance department.

Q. And are these videos in the database are they complete and accurate copies?

A. Yes.

Q. Is that (indicating) a complete and accurate copy?

A. Yes.

Q. Your Honor, at this time I'd like to admit and introduce into evidence what has been previously marked as State's Exhibit 25 for identification purposes.

THE COURT: Any objection?

MR. SHEALY: I have no objection.

THE COURT: It's without objection, it's admitted.

(State's Exhibit No. 25, SC Telco video surveillance DVD, admitted into evidence.)

MR. SMITH: Thank Your Honor. May we publish this to the jury?

THE COURT: Yes, ma'am.

THE COURT: Your Honor, beg the Court's indulgence, it's gonna take us a second to do the video on the . . .

(Pause.)

THE COURT: I will say we're gettin' cl -- very close to a break, if you're gonna take a minute or two, you want me to go ahead and break now?

MR. SMITH: I think we're almost done with this ---

THE COURT: Okay.

MR. SMITH: --- witness, Your Honor.

THE COURT: Okay, alright.

MS. WALTERS: Yes, Your Honor.

(Pause.)

(Whereupon, State's Exhibit No. 25 was played for the jury.)

BY MS. WALTERS:

Q. Ms. Pennoyer, can you tell us, um, who that (indicating) is driving up to the window.

A. Yes, that's Mr. Williams.

Q. And what is the date?

A. June 17th 2016.

Q. And the time?

A. 11:10 a.m.

Q. And that you stated that was the second drive up lane?

A. Correct.

Q. And all the drive-up lanes from I guess has, 2 to 4 have the tubes?

A. Um, 2 and 3 next door there and the third's the ATM.

(Whereupon, a discussion was held off the record.)

Q. Now, Ms. Pennoyer, normally with a forty-one hundred dollar withdrawal is it normal for customers, account holders to, uh, write checks to themselves and in order to do a

withdrawal for cash?
A. Yes.
Q. Is it normal for them to do it through the ATM with their debit card withdraw cash?
A. There's only a five hundred dollar a day limit in the ATM so you can only get up to five hundred per day.
Q. So would not be able to take forty-one hundred outta the ATM.
A. No.
Q. Do account hor -- 'count holders normally write, um, withdrawal slips as well to receive money?
A. Yeah, if they don't use checks they'll write a withdrawal slip.
Q. So it is normal for somebody taking out forty-one hundred dollars to write a check to themselves.
A. Yes.
Q. Do you all require, um, a person to come into the bank with that amounta money or do you just require the verification with ID?
A. We have to have the ID, verify the check is signed, we'll verify the signature to the membership card as well and we don't have a set policy that says, Okay, if it's five thousand dollars you come inside but in general rule if it is about five thousand we would have the member come inside.
Q. So if he had ha -- if he had wrote it for nine hundred

dollars more, he woulda been required to come inside.
A. Yes.
Q. Now was Mr. Williams reimbursed for that money through the bank?
A. Yes.
Q. And when was he reimbursed the forty-one hundred?
A. It was January I believe the date's 26th.
Q. So it was about seven months later.
A. Yes.
Q. And how was he reimbursed, did he have to file a report? a claim?
A. He was instructed, uh, first to file police report and then we had that and then there was a letter written to request the funds be reimbursed.
Q. Now the investigator had already arri -- did he, the investigator on this case already arrive on this date?
A. Yeah, he was here just this afternoon on June 17th 2016.
Q. So there -- then there was already a police report starting so ---
A. Right, yes.
Q. --- and well an investigation starting in the case I should say.
A. Yes.
Q. Beg the Court's indulgence.

(Pause.)

Ms. Pennoyer, the way these videos are it seems very splotchy, can you explain to the Court why it's like that and not a continuous stream of like well how it be on YouTube where it would be a normal video and there's not this robotic movement.

A. Um-hum, it is -- well the camera's set and it points that (indicating) way so it's not, I know it's on a DVR and I don't know, I'm not all tech-savvy, but it records to a DVR so I'm sure it's the storage space and limits that it's not like perfect streaming video.

Q. When you all watch it on your database, is it perfect streaming?

A. You can reset, um, there's like times one, times two, times four to speed it up like real-time and so if you s -- do slow it down it gets splotchy.

Q. Okay, so this is slow down?

A. Yeah, it's a little bit slow.

Q. And that's why it would be splotchy?

A. Yes.

Q. Beg the Court's indulgence.

(Pause.)

Your Honor, the State has no further questions for this witness.

THE COURT: Okay, let's let's take a break this point,

it's been runnin' about ni -- Ladies and gentlemen, Mr. Foreman, we've been runnin' for, uh, we've been here close to ninety minutes, uh, I know we are-a little late gettin' started this morning but, uh, but we've been here so, uh, the staff, I have to make sure we all take take a break this mornin'. Uh, I hope ya enjoyed some coffee this morning, I, uh, I I did and it's it's good and I, and I hope everybody enjoyed it, there might be some more back there if you want some. Uh, we're gonna let ya go out to, on to your mornin' break, this'll be a good fifteen, eighteen-minute break, use facilities, get some water if you'd like some water or some coffee, uh, I don't know if there's anything else back there, if ya need somethin' let one a the bailiffs know, we'll try very hard to accommodate ya.

Mr. Foreman, ladies and gentlemen, the case has not ended, you cannot deliberate about the case, don't talk about the case with each other, uh, don't discuss it, don't even think about it, again, you're at work and ya don't wanna be workin' on your break.

Now, I didn't say this yesterday and and I don't like sayin' it but I will, uh, if you smoke and I hope ya do not because it killed my sister but if you smoke and you need to go outside, you'll have to be escorted and you'll, someone will have, one a the bailiffs or officers will have to stay with you so if you, uh, if that -- if you need to do that, we

can accommodate you on that, uh, but you'll have to be escorted out and escorted back in, okay, so I'll let you decide that and I hope ya don't and if ya do smoke please quit. Mr. Foreman, if you'll take the jury out.

(The following takes place outside the presence of the jury.)

THE COURT: Ms. Pennoyer, I'm gonna have to take you in custody and handcu -- no ---

(Laughter.)

THE COURT: You may step down, you cannot talk with anyone about your testimony ---

THE WITNESS: Okay.

THE COURT: --- but feel free to get some water, some coffee, we'd be happy to accommodate ya, just can't talk to anyone about your testimony till it's ended and then you can talk about it all you like.

THE WITNESS: Thank you.

THE COURT: Thank you, ma'am.

THE WITNESS: Thank you.

(Whereupon, the witness left the stand.)

THE COURT: Let's be in recess about fifteen minute.

(Whereupon, a recess was taken.)

(Whereupon, a discussion was held off the record.)

THE COURT: Ms. Pennoyer, you return back to the stand,

please.

(Whereupon, a discussion was held off the record.)

(Whereupon, the witness returned to the stand.)

THE COURT: Okay, you remain under oath, you understand?

THE WITNESS: Uh, sure thing.

THE COURT: Ready for the jury?

MR. SMITH: Yes, sir.

MR. SHEALY: Yes, Your Honor.

THE COURT: Okay, we'll have the jury.

(Whereupon, a discussion was held off the record.)

(The following takes place in the presence of the jury.)

(Photographs marked State's Exhibit Nos. 26, 27, 28 29 and 30 for identification.)

THE COURT: Mr. Foreman, uh, everything good with the jury?

JURY FOREMAN: Yes, Your Honor.

THE COURT: Ready to work?

JURY FOREMAN: Ready.

THE COURT: Alright, Mr. Shealy.

MR. SHEALY: Thank Your Honor.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Ms. Pennoyer, you've testified that there is, there's no set policy on how much ya have to cash to get to come inside but that usually ya'll ask about five thousand dollars.

A. Correct.

Q. Alright, is that on your automated system?
A. No.
Q. So if you call into the bank looking for that information through the automated system, it wouldn't tell you five thousand dollars is the limit and you can write a ---
A. No.
Q. --- check for the right or is that listed anywhere on your website?
A. No.
Q. Is that broadcast on any of your statements, anything like that?
A. No.
Q. No, okay, so a member wouldn't necessarily know that that's the limit or that that's ya'lls policy, is that correct?
A. Right.
Q. Okay. Alright, you've testified that that that that receipt, believe it's up here, listed the time of the withdrawal at 9 -- at 11:09 I believe.
A. Um-hum.
Q. Alright, and if you don't mind I'm just, I have to have a witness up here, I'm gonna publish I believe it's State's Exhibit No. 25 so everybody can just watch it, I won't be asking any questions about it but we gotta do it at some point so he's ---

A. Um-hum.

(Whereupon, State's Exhibit No. 25 was played for the jury.)

Q. Alright, Ms. Pennoyer, you were not the teller who took this particular transaction, correct, ---

A. Right.

Q. --- these transactions, so you don't know what was said, any discussions they had or went on, is that correct?

A. Right, we have just a normal greeting, How may we, welcome to SC Telco, how may we serve you, so just that sort of normal transaction we have done.

Q. Okay, um, and you don't know what -- well, again, you don't know if the teller told him that you're close to the line or somethin' like that, ---

A. No.

Q. --- any a that stuff? Oh, and you've testified also that there was a reimbursement?

A. Yes.

Q. And when was that?

A. January 26th.

Q. So you put the forty-one hundred dollars back in the account in January.

A. Right.

Q. Alright. Thank you, ma'am, that's all I have of this witness.

THE COURT: Anything?

MS. WALTERS: Yes, Your Honor, brief.

THE COURT: Brief.

REDIRECT EXAMINATION BY MS. WALTERS:

Q. Uh, you're, Ms. Pennoyer, um, you had stated earlier there two different databases for the records and for the video, ---

A. Um-hum.

Q. --- are the video and the records database linked together?

A. No, they'd be two separate systems 'cause there's Whittenbox Security Systems that's our cameras and then Symitar is our system for processing transactions so that they're not the same.

Q. So that the video started 11:10, 20 seconds. Your Honor, may I approach?

THE COURT: Sure.

(Whereupon, counsel approached the witness.)

Q. And what was the time on the receipt?

A. 11:09 a.m.

Q. So it's about a minute twenty seconds off so they wouldn't a been linked together with the ---

A. No, ---

Q. --- time.

A. --- there's a, when we audit and we find that there is a

difference in time, we have to have it put back so it's on the same ---

Q. But this was the same transaction.

A. Yes.

Q. And -- beg the Court's indulgence.

(Pause.)

Ms. Pennoyer, in reference, um, to your voice greeting when you, when a account call -- account holder calls and are they able to get their account balance, I know Mr. Shealy said that that you don't have the policy stated on the greeting but a caller can get an -- get their account balance?

A. Yeah, there's two different lines: there's the audio response line which is just automated and then the line where you can call our member service center and talk to a person.

Q. So you can do either option ---

A. Yes.

Q. --- but in either option could get your account balance.

A. Yes.

Q. Beg the Court's indulgence.

(Pause.)

Ms. Pennoyer, the bank reimbursed, uh, Mr. Williams for the forty-one hundred dollars, why would they have reimbursed him the forty-one hundred dollars?

A. When we knew there was a police report and all this had

happened, uh, we reimbursed after knowing that SC Telco wasn't the victim, that the victim should be reimbursed and then our insurance imbur -- reimbursed the credit union.

Q. So the bank declared that Mr. Williams was a victim.

A. Yes.

Q. And do you all get a copy of the investigative report?

MR. SHEALY: Objection, Your Honor, I don't know that that's relevant. I don't believe the bank gets to determine who's a victim and who's not.

THE COURT: Well, uh, it's overruled, she's on, uh, redirect but and and you asked questions about the money but let's move along.

A. What was your last ---

Q. The bank in order determine who's refunded the money would need to get a copy the investigative report, correct?

A. Yes.

Q. And they determined he was the victim.

A. Yes.

MR. SHEALY: Alright, ---

Q. No further questions.

MR. SHEALY: --- I gotta ask questions about that.

RECROSS-EXAMINATION BY MR. SHEALY:

Q. So do ya'll have a bank detective?

A. We have security and compliance department.

Q. Alright, but you don't have a detective ---

A. No.
Q. --- like they used to have the, uh, hotel detective in these places when you see murder mysteries and things, ya'll don't have a bank detective ---
A. No.
Q. --- who goes out and investigates ---
A. No.
Q. --- and interviews witnesses ---
A. No.
Q. --- and has them come -- have them come in and swear to things.
A. No.
Q. No, okay. So the investigation that the bank does is, We got a police report and so we're gonna reimburse, is that my understanding?
A. Yeah, they had to have all the documentation in order to do a reimbursement.
Q. Okay, and barring the time stamps on the receipt whenever it prints out does that at the beginning of the transaction or is at the end of the transaction?
A. It be at right as it's completed so the end.
Q. So the 11:09 on that receipt would be the end time regarding that transaction.
A. Yeah, so if the teller ran the transaction, like keyed it in really quick and then she's counting the money or whatever

she's doing for that extra time, that would have been processed already so, yeah, right after it's run.

Q. Okay, that's all I have for this witness.

THE COURT: Thank you, you may step down.

THE WITNESS: Thank you.

(Whereupon, the witness left the stand.)

MR. SMITH: State calls Mike Doshi.

THE COURT: Okay.

MR. SHEALY: Judge, I have a matter of law.

THE COURT: Okay, ya'll wanna come up.

MS. WALTERS: Your Honor, may Ms. Pennoyer be released?

THE COURT: Any objection?

MR. SHEALY: I have no objection.

THE COURT: Ma'am, you may stay or go, whichever you choose.

THE WITNESS: Alright, thank you.

(Whereupon, a bench conference was held off the record.)

THE COURT: Mr. Foreman and ladies and gentlemen, this is one a those times where I'm gonna have to excuse you from the, uh, courtroom for a few minutes, uh, take up a matter of law, uh, again, it's one a these rules in this (indicating) book and and, uh, I think we're gonna be in a discussion about that so I'm gonna ask you to leave the room at this time. Uh, listen, don't talk about the case, don't discuss the case whatsoever, it certainly is not at end end. Mr. Foreman.

(The following takes place outside the presence of the jury.)

THE COURT: Okay, jury is out. At this time I I understand that there's a argument about relevancy of the testimony so you wanna proffer the witness?

MR. SMITH: Yes, Your Honor, we call Mike Doshi to the stand.

THE COURT: C'mon up, sir, and be sworn.

(Whereupon, the witness came forward.)

THE WITNESS: Afternoon.

THE CLERK: Place your left hand on Bible and raise your right, please.

MIKE DOSHI, having been first duly sworn, testified as follows:

THE CLERK: Have a seat, please.

THE COURT: Sir, tell us your full name and spell your last name, please.

THE WITNESS: My name is Mike Doshi, D-O-S-H-I.

THE COURT: Thank you. Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Uh, Mr. Doshi, you're retired now but you used to be a manager at Days Inn?

A. I was owner and manager of Days Inn in Boiling Springs, South Carolina.

Q. Okay, is is that on Highway 9?

A. It is on Highway 9, off off Highway 9, it's on the Rogers Commerce Boulevard.

Q. What else is around there, is a ---

A. There's a restaurant, uh, there a Capris, uh, Fatz Café, there is a post office across the street.

Q. Is a Zaxby's there?

A. There's a Zaxby, uh, on Highway 9, yes.

Q. Okay. Um, as part a bein' a manager, do you collect records of new registrations of guests?

A. Yes, sir, I do.

Q. What information do you take down from guests when somebody ---

(Indiscernible cross-talk.)

A. We run the ID and from the ID we copy the name, address and we also require the kind of a vehicle they drive.

Q. Alright, and what do you end up doing with those records?

A. We are required to keep the records for seven years.

Q. Who requires you to do that?

A. Um, our CPA.

Q. What's that?

A. Our accountant.

Q. Okay, and so that's for making your books accurate or whatever ---

A. That is ---

Q. --- that monies ---

A. --- correct.
Q. --- come in?
A. That is correct.
Q. Uh, do you -- every single guest that comes in fills in a new re -- registration?
A. We fill out, they sign the paper.
Q. Okay, so you fill out, it's typed.
A. It is done in the computer system and then we we do, we put, uh, put the information in the computer and print out the signing sheet, ---
Q. Okay.
A. --- they sign it and put the information about their car.
Q. I'm gonna show you what's been previously marked as State's Exhibit 22, ask if you can identify what that is.
A. This here is just your paper copy of the registration paper.
Q. Okay, and that's from your, ---
A. That is from ---
Q. --- you don't have anymore but the Days Inn you used to own?
A. That is correct, that's the Days Inn that I used to own, okay.
Q. Okay. What is the date for the registration?
A. In June 17 Friday.
Q. Okay, of what ---

A. 2016.
Q. Okay. Who was it rented out to?
A. It was rented out to Terri Lynn Johnson.
Q. Alright. Um, is there any other information on there about Ms. Johnson?
A. No, I don't see anymore information other than her address.
Q. Her address, was that what you would have gotten off of a driver's license?
A. From her ID. Uh, some people do not have I, uh, driver's license so we require ID.
Q. Okay, but some sort of official identification?
A. Correct.
Q. Um, do these records get manipulated in any way?
A. No, sir, no, they don't.
Q. Uh, do you have any specific recollection of providing this specific registration to police?
A. I do not recall right now.
Q. Alright. Uh, Your Honor, be seeking to introduce that exhibit in through Mr. Doshi during the trial but that is essentially the questions that we would have for him.
THE COURT: Yes.
CROSS-EXAMINATION BY MR. SHEALY:
Q. Well, Mr. Doshi, would it surprise you if your hotel is 7.4 miles away from the incident location, that surprise you?

A. From what loca -- where they from?

Q. [redacted] Cannons Campground Road.

A. Uh, that sounds about right.

Q. Okay, so you know where Cannons Campground Road is?

A. Yes, sir, I do.

Q. Uh, well so it sounds like it's about 7.4 miles away?

A. I would say that is correct.

Q. Alright, and you've got listed on that registration, uh, a box for a vehicle, ---

A. Correct.

Q. --- what does it say in that box?

A. No vehicle.

Q. So there's no vehicle, 7.4 miles away.

A. Correct, they may be probly dropped by somebody possibly.

Q. Okay, but you don't know.

A. No, I do not know.

Q. I mean, and do you re -- you -- do you remember taking this registration?

A. No, I don't remember that.

Q. Alright, so you don't, you don't know if someone checked in with their -- with her or any a that stuff?

A. One of my employee must have checked in and then I do not recall that.

Q. No? So this was probably checked in by somebody other than you.

A. Correct.

Q. Alright, sir, that's all I have.

MR. SMITH: I have a couple questions.

REDIRECT EXAMINATION BY MR. SMITH:

Q. Uh, Mr. Doshi, a -- does the -- is there any indication of when the room was booked on this sheet or or when the registration ---

A. It was booked on June 17th 2016 at 10:32 p.m.

Q. Okay, and that that's indica -- is that up here (indicating) in the upper ---

A. That is ---

Q. --- right corner where it says ---

A. Correct.

Q. --- printed and has the date and time? Uh, do you physically go out and check to see if they have a vehicle or are you kinda just taking them at their word on that?

A. No, we do -- I do not go out and check for the vehicle, we just take the information and that's how we bill it.

Q. Okay, I mean, that do you tow pe -- if there's vehicles that are inside there that do you issue parking passes or anything like that for ---

A. No, we don't.

Q. Okay, so it's totally possible that somebody has a vehicle but just chose to not tell you.

A. That is correct.

Q. That's all I have for Mr. Doshi and then that the relevance would all be added to by Detective Clark.

THE COURT: Okay, well that's what I need to hear too.

MR. SMITH: Okay.

THE COURT: Sir, you may step down.

THE WITNESS: Thanks.

(Whereupon, the witness left the stand.)

MR. SMITH: We call Detective Tom Clark.

MR. SHEALY: Uh, Judge, it's -- why don't we just have him, have the detective testify in fronta the jury and then have Mr. Doshi testify or not testify and ---

THE COURT: Well at this point, I'm gonna do this, uh, at this point the relevance has not been established under 401, okay, but I'm told today at the side bar that the detective is gonna connect the dots on that, ---

MR. SHEALY: Okay.

THE COURT: --- I don't know that.

MR. SHEALY: Oh, yes, sir, that's, uh, that's ---

THE COURT: At this point ---

MR. SMITH: If we need to change the order, we we can.

THE COURT: Well, at this point he's objectin' on relevance ground and and that's, there's no evidence before me. I understand what I was told at side bar, ---

MR. SMITH: Yes, sir.

THE COURT: --- that's not in the record so at this point

Mr. Doshi's testimony is not relevant, it might be made relevant by this witness so Mr. Shealy.

MR. SHEALY: Judge, I believe they called Detective Clark so we'll we'll have out that.

THE COURT: Well they gonna call him we ---

MR. SHEALY: That's ---

THE COURT: --- gon ---

MR. SHEALY: --- fine.

THE COURT: --- you want his prof -- you want his testimony proffered or do you know that he's gonna testify that Terri ---

MR. SHEALY: Yes, ---

THE COURT: --- Lynn ---

MR. SHEALY: --- sir, I I suppose. I mean, it's it's their proffer but it, I guess they've called him so . . .

THE COURT: Well I'm just askin' that he, is there any question about he's gonna say that Terri Lynn is -- was the girlfriend and that they were together?

MR. SHEALY: Well I don't know exactly what he, I mean, I I I don't know what he's gonna say and you ---

THE COURT: C'mon ---

MR. SHEALY: --- know know, Judge, you you've done this a long time, I ---

THE COURT: I did.

MR. SHEALY: --- there's a lotta weird things come out.

THE COURT: Twenty twenty-five years I did. Ha -- have a seat right there (indicating), Detective, and let's see, let's see.

(Whereupon, the witness came forward.)

THOMAS LOREN CLARK, having been first duly sworn, testified as follows:

THE CLERK: Okay, have a seat, please.

THE COURT: Now we're just here on the proffer on that ---

MR. SMITH: Yes, sir, ---

THE COURT: --- issue of relevance, we're not ---

MR. SMITH: --- I'll ---

THE COURT: --- gonna take ---

(Indiscernible cross-talk.)

MR. SMITH: --- I'll skip how long he's worked at the sheriff's ---

THE COURT: Yeah.

MR. SMITH: --- office.

THE COURT: Sir, tell us who ya are, spell your last name, please.

THE WITNESS: My name's Thomas Clark, my last name's spelled C-L-A-R-K.

THE COURT: Thank you. Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Detective Clark, did you ultimately sign warrants on

this defendant?
A. Yes, sir, I did.
Q. Was he apprehended about a week after the incident?
A. Yes, sir.
Q. Did you speak with him at the sheriff's office?
A. Yes, sir.
Q. You go over Miranda rights prior to that?
A. Yes, sir.
Q. Uh, did he agree to talk to you about some things?
A. Yes, sir.
Q. Uh, did he tell you who his associates were, who he had been around the time of the alleged crime?
A. Yes, sir.
Q. What -- who did he tell you he had been with?
A. He gave the name of a female, Terri Lynn Johnson.
Q. Okay. Um, what did he say about Ms. Johnson in regards to this incident?
A. They were ex-boyfriend and girlfriend but they still were friends, would be together, um, and that, um, that he was with her during, later during that day and that night.
Q. On June the 17th of ---
A. Seventeen ---
Q. --- 2016?
A. --- yes, sir.
Q. Did he say where he was at with her?

A. The Days Inn.
Q. He said he was at the Days ---
A. I'm sorry, ---
Q. --- Inn?
A. --- I'm sorry, he said that he was on -- with her originally at White Avenue.
Q. Okay, di -- but he denied his involvement in this incident?
A. Yes, sir.
Q. Um, did you ultimately -- did he tell you where else he had been living or other places he'd been staying?
A. He stated that he had several friends, um, in several different places around Spartanburg that he would stay, that he was homeless and that he would stay in the woods or several different places.
Q. Did he tell you about a location near the Days Inn?
A. Yes, sir.
Q. Where was that?
A. He said, uh, near Zaxby's on Highway 9 which Zaxby's is across the street. We canvassed the woodline around Zaxby's and then across the street around behind the Waffle House and where we found, um, some clothing.
Q. Okay, you believe that to be the location he described to you?
A. Yes, sir.

Q. Uh, how did you get to the Days Inn from that point?
A. The woodline, where we were at where the Waffle House is right behind there is Fatz Restaurant, Capris' Restaurant and then the Days Inn, um, based on my experience as an investigator I went to the Days Inn to see if Mr. Robertson had been at the Days Inn.
Q. Why would you think he may have been there?
A. He was someone who had committed this crime and had forty-one hundred dollars and was homeless, that would give him the opportunity to not be homeless for a while.
Q. Okay, did you go to the Days Inn?
A. Yes, sir.
Q. Who did you speak to when you were there?
A. Mr. Doshi.
Q. Uh, what did you, what did you tell him?
A. I showed him a single photograph of Mr., um, um, Robertson and asked him if he had ever seen that person.
Q. Alright. Now he said he can't, don't want you to say what he said but what, after you showed him the picture what did he do?
A. He gave me a hotel registration form for Terri Lynn Johnson.
Q. And did you see what date that registration form was for?
A. It was on the incident locat -- incident date, the ---
Q. And the time?

A. Yes, sir, I don't have the form in fronta me ---
Q. Okay.
A. --- so I don't ---
Q. Um, did you collect a copy of that registration, make it part of your case file?
A. Yes, sir.
Q. Your Honor, I don't have any further questions this time.
THE COURT: Mr. Shealy.
CROSS-EXAMINATION BY MR. SHEALY:
Q. Alright, now, Detective Clark, you testified that Mr. Robertson had told ya that he was homeless, correct, ---
A. Yes, sir.
Q. --- and and that he had a number of various campsites?
A. Number of different places he would stay including different place at campsites that he ---
Q. Alright, ---
A. --- would stay at.
Q. --- and you said you were ki -- canvassing the woodline and you saw s -- you found some clothes.
A. We went up into the woods behind the Waffle House.
Q. Okay, and you found some clothes.
A. Yes, sir.
Q. Alright. Okay, did ya get any DNA off a those clothes?
A. No, sir.
Q. Did any a those clothes have a ID on it, ---

A. No, sir.
Q. --- in 'em, ---
A. No, sir.
Q. --- anything like that?
A. No, sir.
Q. Alright, and at that point you went to the Days Inn ---
A. Yes, sir.
Q. --- and got this registration.
A. Yes, sir.
Q. Now my understanding from Mr. Doshi that he be -- you were in the courtroom when he testified, right?
A. Yes, sir.
Q. Alright, so he just testified that he thought that the -- an employee had taken that registration ---
A. Yes, sir.
Q. --- but you're sayin' that he told ya that it was a registered guest.
A. Yes, sir. Well he saw, he he he said that he had seen him and he gave me the registration for Terri Lynn Johnson, that she had registered in the room.
Q. Okay. Where is White Avenue?
A. White Avenue is off of Howard Street by the sheriff's office.
Q. Okay, and you've testified that he had told ya that he was at White Avenue?

A. He had been there.
Q. For that entire day?
A. No, sir.
Q. Okay. I got nothin' further further ---
THE COURT: Anything at all?
Q. --- of witness.
MR. SMITH: No, Your Honor.
THE COURT: Officer, you may step down, please be careful.
(Whereupon, the witness left the stand.)
MR. SHEALY: We, Judge, as, I mean, I still don't see how it's relevant to anything. Somebo -- that any number of people can stay at the Days Inn, I I don't, that it doesn't make any fact in this case any more or less likely to have occurred, there's a, any of those elements, a burglary or armed robbery or kidnapping or anything, there's just, there's nothing that makes it more or less likely and that's the test of relevance so there's no relevance.
THE COURT: Solicitor.
MR. SMITH: Well, I might need recall him. Uh, Your Honor, I forgot there's there's somethin' I need to ask Detective Clark if we can recall him to the stand.
THE COURT: Okay.
(Whereupon, the witness returned to the stand.)
REDIRECT EXAMINATION BY MR. SMITH:

Q. Did you contact Terri Johnson as after Donald Robertson told you that he had dated her and had been with her on the incident date?

A. Yes, sir.

Q. Uh, did you have her come down to the sheriff's office?

A. Yes, sir.

Q. You had a conversation with her, did you inform her that he had been arrested on these charges in connection with a home invasion ---

A. Yes, sir.

Q. --- and that things had been taken as a result of that home invasion?

A. Yes, sir.

Q. Uh, did you, did you end end up ending that interview and she left?

A. Yes, sir.

Q. Did she contact you again?

A. Yes, sir.

Q. Did you meet back up again?

A. Yes, sir.

Q. What happened at that meeting?

A. She gave me a gold watch with, um, a link bracelet ---

Q. Okay.

A. --- with roses on ins -- inside.

Q. Did you make any effort to contact the victim after

getting that watch?
A. Yes.
Q. Who did you call?
A. I called the residence and spoke with Mr. Williams, uh, Ms. Smith was unavailable.
Q. What did Mr. Williams tell you about the watch?
A. I asked him, um, if he recognized, I gave him description a the watch, he said yes, that he had purchased the watch for Ms. Smith.
Q. Did you give him a description of the watch or did ---
A. I ---
Q. --- you ---
A. --- I ---
Q. --- ask ---
A. --- asked him, ---
Q. --- him what a description of ---
A. --- I a ---
Q. --- the watch ---
A. --- I'm sorry, ---
Q. --- was?
A. --- misspoke. I asked him ---
(Whereupon, the witness reviewed the incident report.)
Q. It's your last page like third ---
A. I'm ---
Q. --- paragraph up.

A. --- I'm tryin', I'm tryin' to read through it now.
Q. Okay.
A. "After leaving the sheriff's office I was contacted by Terri, she told me ---
MR. SHEALY: Judge, I'm gonna object to reading the incident report.
Q. Your -- see what your report says and tell me whether you told him what the watch was or whether he described the watch.
A. Okay. Bear with me just a second and I don't know if I can find it.
Q. Okay.
(Pause.)
A. While I was talking to Ms. Johnson I cont -- I placed her on hold and I contacted Mr. Smith and asked him about ---
Q. Mr. Williams or ---
A. --- or Mr. Williams about the watch and he gave me the description of the watch.
Q. Okay. Did you end up eventually contacting Geri Smith?
A. Yes, sir.
Q. Was that -- when was that?
A. It was the following day.
Q. What happened in that conversation?
A. I asked her if she was missing a watch ---
Q. Okay.
A. --- and she gave me the description of same watch.

Q. Alright. Did you take that watch into evidence as part a this case?
A. Yes, sir.
Q. Alright. Your Honor, I don't have any further question.
THE COURT: Mr. Shealy.
RECROSS-EXAMINATION BY MR. SHEALY:
Q. Alright, you testified that you contacted Terri Johnson, what day was that?
A. This was on 6/20 -- sorry, hold on just one second, 6/28.
Q. So that woulda been eleven days after this incident, correct?
A. Yes, sir.
Q. Then you said couple of, that she recontacted ya? What day was that?
A. Same day after she left.
Q. Same day and then you met with Ms. Johnson at -- on June 29th, correct?
A. Yes, sir.
Q. Alright, and June 30th is when ya spoke with Geri, correct, ---
A. Yes, sir.
Q. --- Ms. Smith?
A. Yes, sir.
Q. So that woulda been thirteen days after the alleged incident, right?

A. Yes, sir.

Q. Alright. You got it back or allegedly on twelve days after the incident, right?

A. Yes, sir.

Q. Alright, that's all I have for this witness.

THE COURT: Okay, and, sir, you may step down, please be careful.

(Whereupon, the witness left the stand.)

THE COURT: Mr. Shealy, anything further?

MR. SHEALY: I have some argument, uh, if this is the proper time, I don't know. Um, Judge, that it's still not relevant because these -- apparently they get this watch from a person who is not going to testify and believe it was eleven days -- well, they speak with her eleven days after, twelve days after they recover the watch, thirteen days after when they talk with Ms. Smith, watch obviously is very small and our test for these things is that the easier that they're turned over, easier to turn them over, the less time the relevancy, the less time it's relevant that she has it, so eleven days for a watch is an eternity. I have TVs that get turned over four or five times in eleven days, get sold and resold, resold and resold and with my clients. They have failed to establish how any of this is relevant to whether this happened or not, whether this burglary, armed robbery, kidnapping happened or not, all they have established is that

eleven, that my client may have been with Ms. Johnson when Ms. Johnson paid for a room on June 17th, now I understand that the officer says that Mr. Doshi told him that but Mr. Doshi's not gonna testify to that and obviously the officer can't testify what Mr. Doshi told him. They have established that eleven days later they speak with a Ms. Johnson and Ms. Johnson apparently then turns over this watch twelve days later, twelve days, so I don't, that they they haven't linked my client particularly, well Ms. Johnson to begin with but; further, all they can prove is that they recovered a watch from Ms. Johnson thirteen days or twelve days, excuse me, after it was allegedly taken and as I've said that that's just not, it's just not relevant, Ms. Johnson if she were here and were to testify where she got it from then it might be relevant and probably would be relevant but Ms. Johnson isn't here, isn't gonna be testifying and I'm gonna be objecting obviously to anything that was, that builds off of hearsay testimony so I I I just, I don't think that they can establish a relevancy in front of a jury. Thank you.

MR. SMITH: Well, I think we were careful to avoid hearsay and how we got the evidence in, I mean, he's saying that he met, he's not saying that Terri Johns -- or Terri said that Donald Robertson gave her the watch, we have a link of that they were together, um, through his own admission to the

defendant on the date of this incident, uh, while I know he thinks that twelve or thirteen days is a long time, they didn't know of Terri Johnson until they interviewed him, at that point after she finds out that he's under investigation for these things and then she's met with the sheriff's office she decides to call them and hand over a watch, uh, I think it it's fair that a jury could draw a conclusion that she believed that the watch was stolen or that there was a reason that the sheriff's office needed to have that watch, it just so happens to be a watch that's described as bein' stolen in the home invasion that he has been identified as the victim as committing it, uh, ---

MR. SHEALY: I don't know if you're done ---

MR. SMITH: Yeah, I I ---

MR. SHEALY: And therein lies the problem, Judge, it invites rank speculation by a jury as to what Ms. Johnson was thinking, what she was going to do, why she was gonna do it or why she didn't do it, it's just, it just invites rank speculation that is not at all grounded in the facts.

THE COURT: Well at this point the motion before the Court unless I'm really missin' somethin' in here the only reason Detective Clark took the stand was tie Ms. Johnson as part of Mr. Doshi's testimony so it -- my motion before the Court is the relevancy of Mr. Doshi's testimony, right?

MR. SMITH: That's correct.

THE COURT: Okay, Court finds that that testimony is relevant under 401 and admissible under 402. The officer has tied together that the reason that the slip is or the receipt is in the name of Terri Lynn Johnson is that there's acquaintance, uh, of the defendant so that's the only motion before the Court, I'll deal with the relevancy on other issues, uh, as we go along.

MR. SHEALY: Judge, ---

MR. SMITH: Your Honor, while ---

MR. SHEALY: --- Judge, it would be our position that the the relevancy the, that it all ties into the relevancy of the -- that document and Mr. Doshi's testimony. If if they can't tie my client to Ms. Johnson then I don't think they can tie him to this registration I guess is and I may have inartfully stated my argument.

THE COURT: The the the gentleman what produced a receipt but from Terri Lynn Johnson with registration when asked by the officer, that's what I heard, about this gentleman here (indicating), not asked about Terri Lynn Johnson, he asked about this gentleman here (indicating) and this gentleman produced that receipt, that ties him to that receipt. He, I mean, I don't know if he can say, I don't know what he's gonna say and I don't know if he's gonna say remembers it or doesn't remember this gentleman but for whatever reason Mr. Doshi

produced a receipt when asked, as that's the testimony I heard, when asked about this (indicating) gentleman, the defendant, and I may -- am am I missin' somethin'?

MR. SMITH: That was how we've worded it, Your Honor.

THE COURT: Okay. Alright, we ready?

MR. SMITH: We -- I -- is it -- I -- is the order okay if if it -- if we call Mr. Doshi and then call Tom and that ---

THE COURT: That's that's fine with me, Mr. Shealy, you know, might object to that but, uh, if so, uh, I can do two things and I've done it before is, uh, if it's not made relevant, I will order it stricken from the record, ---

MR. SMITH: Okay.

THE COURT: --- that I prefer not to do that, I'm gonna, I'm goin' on good faith you're gonna call Officer Clark some point.

MR. SMITH: We're we're callin' him.

THE COURT: Okay. We ready?

MS. WALTERS: Yes, Your Honor.

MR. SMITH: Yes, Your Honor.

THE COURT: Okay.

(Whereupon, a discussion was held off the record.)

THE COURT: Just ball park figure this a twenty minute witness, fifteen?

MR. SMITH: I I think it'll be what you saw in the the proffer.

THE COURT: Okay, we may break for lunch then.

(Whereupon, a discussion was held off the record.)

(The following takes place in the presence of the jury.)

THE COURT: Mr. Foreman, are we ready to work?

JURY FOREMAN: Yes, Your Honor, we're ready.

THE COURT: Thank you. Solicitor.

MR. SMITH: The State calls Mike Doshi.

THE COURT: Sir, c'mon up and be sworn.

(Whereupon, the witness came forward.)

MIKE DOSHI, having been first duly sworn, testified as follows:

THE CLERK: Thank you, have a seat here (indicating), please. Thank you.

THE COURT: Sir, tell us your name and spell your last name for the court reporter, please.

THE WITNESS: My name is Mike Doshi, D-O-S-H-I.

THE COURT: Thank you. Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Uh, Mr. Doshi, where did you work on, uh, June 17th of 2016?

A. I was working at Days Inn in Boiling Springs, South Carolina.

Q. Where is that located in Boiling Springs?

A. It's located on 115 Rogers Commerce Boulevard right behind Fatz Cafe.

Q. Alright. Uh, what did you do there, you s -- did you say you were the owner and manager?

A. I was an owner and a manager.

Q. What did you do as being an owner and a manager?

A. I managed, I do everything that comes under the business.

Q. Okay. Uh, as a part of ya'lls business do you take in, uh, registration information when a new guest comes in?

A. When a new guest comes to check in, we require their ID and we copy the ID and the computer printout that is, uh, signing 'ceipt, we request a guest to sign paper and put information about the vehicle they drive.

Q. Okay. Uh, you do this for every guest that comes?

A. For all the guests who stayed in the motel.

Q. And how are the records maintained?

A. These records are maintained for seven years.

Q. And who requires you to or why do you keep the record for seven ---

A. We ---

Q. --- years?

A. --- keep it required by, it is advised by our CPA or accountant.

Q. To make sure that your books are accurate or something like that?

A. Which I do that 'cause I think it's also federal law to require to keep for seven years.

Q. For bein' an innkeeper?
A. Correct.
Q. Um, where do ya'll store the records, you -- is it electronic, are they stored physically?
A. These records are stored in the audit boxes at the location of the business.
Q. Okay, and then do you, after you do the printout do you have the the guests sign the the registration?
A. That is correct, the guest signs the paper, correct.
Q. Okay. I'm gonna hand you what we previously marked as State's Exhibit 22 ask if you can just tell me what this (indicating) is.
A. This is the signing sheet that, uh, normally guests check, uh, signs when they check in, also tells you the name, address of the guest, also it tells you the date and the time they check in physically.
Q. Okay. Um, does that look, is that a record from your business?
A. That is correct, has my address and it's from my location, correct.
Q. Um, as a part of your job, uh, do you, uh, sometimes pull these for the police and is it ---
(Indiscernible cross-talk.)
A. I have done -- we have that many times for the state officials, sir.

Q. Okay, so this is all all, even your interaction with the police is just in the ordinary course ---

A. It's very ---

Q. --- of business.

A. --- very routine, yes, sir.

Q. Okay. Um, can you tell me who the name on that piece of evidence is for.

A. The person who registered, uh, is Terri Lynn Johnson.

Q. Okay. Does it have her address?

A. Her address, uh, and it did, uh, her address is that plus the time and the date she checked in.

Q. Okay, what date was the check-in for?

A. She checked in on June 17, 2016 at 10:32 p.m.

Q. Um, is that an accurate copy of the registration that was for that guest?

A. That is correct, very accurate.

Q. Alright. Your Honor, at this point we'd like to move State's Exhibit 22 into evidence, permission to publish it.

THE COURT: Mr. Shealy.

MR. SHEALY: I'd renew my objection.

THE COURT: It's over defense counsel's objection.

MR. SMITH: Okay.

(State's Exhibit No. 22, Days Inn registration, admitted into evidence.)

BY MR. SMITH:

Q. Do you have any recollection of your interaction with police pertaining to this registration?

A. No, sir, I do not recollect this time because it's very routine, we do several times a year and I do not remember all of them.

Q. That and is there a reason that you have a lot of interaction with police and is it ---

A. I guess we have lot of criminals around.

Q. Okay. Can you see, uh, one, wait one second, it'll get brighter, it's the, that's (indicating) the name a the guest?

A. That is that.

Q. The address below that's an address her, does that come off of an identification card or driver's license, whatever that ---

A. Some kind of ID, I cannot tell you was driver's license or something else.

Q. Okay, it's got the room info, the s -- the anticipated stay, cost and all that different information.

A. That tells you that originally they checked in for two nights then they extend it for three, six and so on but they keep extending it, look like they stayed for over seven days.

Q. Seven days? Where you ---

A. And now you see that? Uh, tonight, two, three or week, see the handwriting?

Q. That's -- yeah, ---

A. They extended ---

Q. --- uh, ---

A. --- the stay for, you know, first time they check in for two nights and you can see they paid for two nights that hun, uh, one thirties, forty somethin', one ---

Q. Right.

A. --- yeah, one thirty-six forty ---

Q. Okay.

A. --- then they extend it for one more night so they must have paid 68.20 more then we see 204.60 ---

Q. Okay.

A. --- and they extend it for six night and seven nights like that.

Q. Alright, and is this (indicating) the signature that -- you didn't fill this part out, did you?

A. No, they are, they always written by the guest.

Q. Alright, and up here (indicating) that's the time that the ---

A. That ---

Q. --- check-in occurred?

A. --- that is correct, that's the date 6/17/2016 at 10:30 to 59 second.

Q. So they give you the information, you key it in, print this (indicating) out and they sign it?

A. That is correct.
Q. Alright. Oh, does the the receipt indicate how the room was paid for, through a card ---
A. Yes, ---
Q. --- or ---
A. --- it says right here (indicating) they, uh, they handed cash, they paid cash.
Q. Alright.
A. If that was a credit card, you would see the four, last four digits of the credit card ---
Q. Okay, ---
A. --- when ---
Q. --- would that be cash for a, the the entire stay?
A. Correct.
Q. Alright.

MR. SMITH: I I don't have any further questions, Your Honor.

THE COURT: Mr. Shealy.

MR. SHEALY: Thank Your Honor.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Alright, Mr. Doshi, you familiar with Cannons Campground Road?
A. Yes, I am.
Q. Alright, how 'bout how far away is that from your hotel?
A. I will guess 7 to 8 miles.

Q. Seven to eight miles.
A Um-hum.
Q. Alright. And you just saw that State's Exhibit No. 22, does it list a vehicle number on it or a make or a model?
A. No.
Q. No, alright, and that information is ordinarily provided to you, ---
A. Correct.
Q. --- presumably that's why it's on the form.
A. Right, they said they do not own vehicle, that's what it says.
Q. Okay. And, again, just to make sure, this room was purchased by a Terry Lynn Johnson.
A. That is correct.
Q. Alright. Now did you take this registration, did an employee did take this registration or do you know?
A. I do not recall but I do have information and I can get you that information and who was the employee who took this, uh, registration.
Q. Okay, that's all I have.
THE COURT: Anything at all?
MR. SMITH: Yes, Your Honor.
REDIRECT EXAMINATION BY MR. SMITH:
Q. Um, do you issue parking passes for the Days Inn?
A. No, sir, we don't.

Q. Do you check to see if they arrived in a vehicle or do you just take 'em at their word?
A. We take their words.
Q. Alright, so if a car is found in the lot and it's not registered, you're not gonna call for it to be towed?
A. No, we don't do that.
Q. Alright. This says departure up here (indicating), says 6/19/2016, how did --- how does that square with the the two, three, six, seven nights part?
A. Yeah, they check in on Friday for two nights, that makes Sunday the check out date but then they keep extending so Sunday was not the real day they leave there, they really left, they musta left after seven days so they probly left Friday after on 24th.
Q. Well why wouldn't there been a an indication that the bill is more or anything like that?
A. Oh, we do not keep printing every day, we just, oh, no, scratch it and handwrite on the ---
Q. I know you did that for one extra day but why is it not ---
A. I I have no idea why we did not do it because we don't do that all the time.
Q. Do you know that he's ---
MR. SHEALY: Judge, ---
A. Yeah, ---

(Indiscernible cross-talk.)

MR. SHEALY: --- I'm gonna object ---

(Indiscernible cross-talk.)

THE COURT: Hold on, hold on, hold on, sir, hold on, objection.

MR. SHEALY: Uh, I I I don't know the relevance of this, it's goes way past redirect, ---

THE COURT: Yes, sir, ---

MR. SHEALY: --- it's s ---

THE COURT: --- that's sustained, this goes way past redirect.

MR. SMITH: Thank Your Honor, ---

THE COURT: Thank you.

MR. SMITH: --- we're done with Mr. Doshi and if he could be excused, please.

THE COURT: Sir, you may step down, please be careful.

THE WITNESS: Thank you.

(Whereupon, the witness left the stand.)

THE COURT: Alright, it's gettin' close to lunchtime so where are we on the witnesses here? Let's see the lawyers.

(Whereupon, a bench conference was held off the record.)

THE COURT: Mr. Foreman, ladies and gentlemen, we're talkin' about takin' a break here for lunch, uh, an and it's gonna be a little longer, uh, uh, lunch break because I actually have somethin' I have to do not regarding this case,

uh, at at 12:30, so, uh, I actually have to, we'll get the next trial kinda in place and some things like that which is why you've been seein' some people come and go from the courtroom, so having said that, we are gonna recess now for a extra long lunch break and this only happens every so often so you're you're a, you're in good standing, uh, but we're gonna come back at 2, come back at 2, back to your jury room. Now, I will tell you once again, I think I mighta said this yesterday, I got some other things to do that don't concern this case but it would not be proper for you to come into the courtroom during those matters either so I don't want a juror, we have open courtroom in in America of course and in South Carolina but at this point I don't, I would ask you not to come in this courtroom 'cause I'm gonna continue to work, again, won't concern this case but I got some other things I gotta do, uh, and so I will ask you not do that. Don't discuss the case, don't talk about it, don't think about it, you're on lunch break from work, uh, but it's an extra long lunch break, 2:00, you might even get a chance to run by, uh, one a your favorite shoppin' places, shoot, I love to go to Tractor Supply at lunchtime, suppertime, so anyway, Mr. Foreman, take your jury out, I'll see you back at 2:00, again, please be timely in your service, okay, I'm not goin' very far, I'll be right here.

(The following takes place outside the presence of the

jury.)

THE COURT: Okay, we can be off the record, we just gonna be in, uh, recess here until 2.

(Whereupon, a recess was taken.)

(Whereupon, Juror Number 238 came forward.)

THE COURT: Ms. McDonald, uh, we're back on the record here 'cause I don't ever talk to jurors outside the presence of the court reporter so we're tardy again today, can you tell me where you've been, ma'am.

JUROR NUMBER 238: I have just exchanged my car, my car was worked on this mornin', that's why I said that I didn't need a, uh, officer in the mornin' and so I just picked up my car.

THE COURT: So you went and switched cars and got your ---

JUROR NUMBER 238: Yes, ---

THE COURT: --- car?

JUROR NUMBER 238: --- I got my car, my boyfriend had my car. He took my car this mornin', ---

THE COURT: Okay.

JUROR NUMBER 238: --- he got it fixed or whatever and we switched out cars.

THE COURT: Okay, well I've talked with the lawyers and and here here, this this is, this is an official warning, okay, uh, from here on out as long as this trial lasts I ---

JUROR NUMBER 238: Um-hum.

THE COURT: --- need you here timely, ---

JUROR NUMBER 238: Okay, ---

THE COURT: --- understand?

JUROR NUMBER 238: --- I will, ---

THE COURT: In the event ---

JUROR NUMBER 238: --- I will, sir.

THE COURT: --- that there's a violation of that, uh, I've already talked to the lawyers, I'm gonna remove you from the jury but if I have to do that I'm gonna hold a contempt citation, ---

JUROR NUMBER 238: Alright.

THE COURT: --- okay, so, uh, I need you to be timely because you're holding not only us up ---

JUROR NUMBER 238: Yeah, I I understand.

THE COURT: --- but you got thirteen other people back there, okay.

JUROR NUMBER 238: Yeah, I understand.

THE COURT: Thank you, ma'am.

JUROR NUMBER 238: Thank you.

(Pause.)

(Whereupon, a discussion was held off the record.)

THE COURT: Ready for the jury?

MR. SMITH: Yes, Your Honor.

MR. SHEALY: Yes, Your Honor.

THE COURT: We'll have the jury.

THE BAILIFF: Yes, Your Honor.

(Whereupon, a discussion was held off the record.)

(The following takes place in the presence of the jury.)

THE COURT: Mr. Foreman, any matters for the jury?

JURY FOREMAN: No, sir.

THE COURT: Ready to go?

JURY FOREMAN: Ready to go.

THE COURT: Solicitor.

MS. WALTERS: Thank Your Honor. The State calls its next wit -- witness, uh, Deputy Mark Finley.

(Whereupon, the witness came forward.)

MARK STEVEN FINLEY, having been first duly sworn, testified as follows:

THE CLERK: Have a seat there please, sir.

THE COURT: Officer, tell us your full name and spell your last name for madam court reporter, please.

THE WITNESS: Full name is Mark Steven Finley, F-I-N-L-E-Y.

THE COURT: Thank you. Solicitor.

MS. WALTERS: Thank Your Honor.

DIRECT EXAMINATION BY MS. WALTERS:

Q. Deputy Finley, what law enforcement agency are you employed by?

A. Spartanburg County Sheriff's Office.

Q. And how long have you been employed by Spartanburg County sheriff's Office?

A. Thirty-one years.

Q. And what were the positions that you've held?

A. I've been a ID officer, patrol, detectives, um, currently I'm family court security, um, sketch artist.

Q. And how long have you been in law enforcement, thirty-one years?

A. That's it, um-hum.

Q. And do you have any other degrees?

A. Have a a bachelor of arts in journalism.

Q. Okay. And what are your present duties with the sheriff's office?

A. Uh, well, court court security, we, um, we're assigned to a judge, I'm assigned to a judge in family court and when she is not present I, uh, go over to the warrant office and help serve warrants, arrest warrants.

Q. And when you were, um, were you on patrol last year in June?

A. No, last year I worked working in family court.

Q. You're working in family court and were you working on the day of June the 17th of last year?

A. Yes.

Q. What shift were you working?

A. First.

Q. And can you explain to the jury what shift that is, the first shift, ---

A. It's ---

Q. --- what time a day.

A. --- 8:30 to 5.

Q. So you were here at at the courthouse?

A. Yes.

Q. And how did you get involved in this case?

A. Uh, Detective Clark called me and asked me if I could do a sketch, um, kind of explained the situation and gave me an address where I was to go to the home the victim and so it's what I did.

Q. Do you remember what time of day that was?

A. I'd say middle a the afternoon.

Q. How did you get involved in doing sketches?

A. Uh, well I've always kind of enjoyed as a hobby sketching faces and about twelve years ago I thought it might be interesting to see if I could be the sketch artist at the sheriff's office so, uh, I approached the sheriff about it, He said, you know, that, uh, that might work, um, ---

Q. Were ---

A. --- that ---

Q. --- there other sketch artists the sheriff's office at that time, were you the ---

A. No, ---

Q. --- only one?
A. --- we were, that we were without sketch artist. Um, I attended the FBI's 3-week course in in sketch artistry and we went from there.
Q. When when was that that you attended that ---
A. Twelve ---
Q. --- class?
A. --- years ago.
Q. And you said it was for three weeks?
A. Three weeks, yes.
Q. And how did you get enrolled in the FBI class?
A. Uh, I took it upon myself to to call up there and find out about the the little course and, uh, how I would go about enrolling. Um, I had to send some, um, sketches that I've done and then they they accepted me, you just don't walk into the FBI's school, you have to kinda prove yourself so . . .
Q. So you you sent in sketches ---
A. Yes.
Q. --- and they approved you ---
A. Yes.
Q. --- and then you did the 3-week class?
A. Yes.
Q. So you've been doing sketches ever since then for the sheriff's office?
A. Yes.

Q. How many sketches would you say, rough estimate, have you done since you started doing sketches with the sheriff's office?

A. Actually I don't do that many, it's not like hundreds or an anything like that, might be, I don't know, maybe seventy-five.

Q. Have you done any sketches recently with the sheriff's office?

A. I think this was the last sketch that I did.

Q. Last year? So we go back to the incident date on June the 17th, so you were called as you stated by Investigator Clark and you were working here, so what happened after you got the call?

A. I I I have my, um, uh, paper, pencils and all that in the car so I just went out to the address that Detective Clark had told me, you know, where to go to the house and and I proceeded to do the sketch.

Q. That was [redacted] Cannons Campground Road?

A. I remember it was on Cannons Campground Road.

Q. And who did you speak with when you arrived there to do the sketch?

A. Um, the couple that lived there.

Q. Did you speak with, you speak with Geri Smith?

A. Whatever the lady's name is, I I've I've forgotten.

Q. When you start a sketch, how how does that work?

A. Um, we -- well we sit down, I sit down with the the the person I'm working with and the FBI has a a facial identification catalogue that has hundreds of, uh, facial features: eyes and noses, lips, shapes of head, hair, ears, um, and I ask the the person to to think about, you know, the face that we're going to do and then we go through the catalogue and pick out the various features. Um, each feature has a code beside it and I write down the code next to, if it's eyes, that'll have a code, nose will have a code, and when we're done picking out all the features, I can go back and and flip through and and get those particular features and and draw them.

Q. Your Honor, may I approach the witness?

THE COURT: Yes, ma'am.

(Whereupon, counsel approached the witness.)

Q. Deputy Finley, I'm handing you what's been previously marked as State's Exhibit, first, let me show it to opposing counsel.

(Whereupon, defense counsel examined the exhibit.)

Can you please tell the Court what it is that I'm handing you.

A. That's the FBI facial identification fact sheet, um, that is what I use to, um, enumerate features and put the codes beside each feature so that I can go back later and and, uh, look through the catalogue and pick the, that exact feature

out.

Q. And at the top there's some information that's filled out, can you read to the Court what information that is.

MR. SHEALY: Judge, I'm gonna object to reading, that's hearsay and there's no other, there's no exception that would allow this in, it would be like putting in a police report, something like that.

MS. WALTERS: Your H -- Your Honor, may we approach?

THE COURT: Yeah.

(Whereupon, a bench conference was held off the record.)

MS. WALTERS: Your Honor, may I approach?

THE COURT: Yeah.

(Whereupon, counsel approached the witness.)

BY MS. WALTERS:

Q. Master Deputy Finley, can you please tell the Court, um, which codes were given ---

A. You want me to read all these codes?

Q. --- and what was checked off.

A. Put on my glasses.

MR. SHEALY: Judge, may we approach again?

THE COURT: Yeah.

(Whereupon, a bench conference was held off the record.)

BY MS. WALTERS:

Q. Deputy Finley, can you recollect the description that Ms. Smith gave you for you to be able to do the sketch in

reference to the facial features.

A. I I couldn't recollect all those features, been a year ago, I mean, I can, I can look at this and tell but . . .

Q. Beg the Court's indulgence.

(Pause.)

Deputy Finley, I'm gonna backtrack a little bit to to your code book and your process, so you're -- you have a catalog you stated, how big is this catalog?

A. It's about that (indicating) thick and pages and pages and pages.

Q. Is it separated by eyes, nose, mouth, all the facial features ---

A. Yes.

Q. --- in different sections, ---

A. Yes.

Q. --- like different chapters of a book?

A. Yes, it's got hairstyles, um, yes.

Q. How many where you'd say are different options for each chapter, just rough estimate, hundreds? more than a hundred?

A. Maybe a hundred per feature, ---

Q. Alright, about a hundred per feature ---

A. --- just say ---

Q. --- just a guesstimate.

A. --- there's ---

Q. And you stated that each feature has a code?

A. Yes.
Q. So each each little picture ---
A. Is coded.
Q. --- is coded and from what Ms. Smith pointed out to you, did she point out and say -- how did sh -- how did she determine which which code for you to write down?
A. Well I'll normally tell people to just take a minute, take a deep breath, maybe close your eyes, visualize the face that you are going to describe to me, just relax, and, um, then we will start from the head shape. You know there, you've got round head, you've got square head, you've got triangular heads and we we start there to get a basic kinda framework for the face, um, and I will ask her what what what shape would you say that head was and, you know, if they say it was very round then there's a section in the book for very round head shapes or triangular and we'll turn to that section and I will say, Look at, look at all these options that you have and tell me which one is the best fit, so then the person will look and they'll pick out one that, and then we'll write the code for that specific picture then we will go to maybe eyes and do the same thing, just visualize those eyes, tell me a and look through this catalog, tell me which eyes and you recall and and then noses, lips, ears, cheeks, jaw line, hair, just specific until we worked all the way through, uh, ---
Q. So once you've gotten all those codes down after that's

selected do you start drawing after that or do you, did you take it and draw elsewhere, where did you do the sketch?

A. I did it at her kitchen table, um, and the person can be sitting there or they can, if they have to kinda be in the the same room or in the same house but go maybe somewhere. I can do a lot of it on my own but I I bring 'em back and ask 'em periodically, you know, how's this lookin', how's the shape a that head lookin', is that kinda what your remember, uh, how those eyebrows comin', you know, just we kinda collaborate, um, ---

Q. So as soon as you got those code numbers you started drawing that sketch right there ---

A. Yes.

Q. --- on her kitchen table and how long were you there doing the sketch?

A. I don't re -- I I think it was maybe maybe a little over two hours, that I think it took about thirty minutes to forty-five minutes just to pick out the features, that that's that's kinda the first part of procedure and it's very important so that takes a while, um, but I don't exactly, it was maybe two, two and a half hours to do the whole s -- whole thing.

Q. Beg the Court's indulgence.

THE COURT: Yes, ma'am.

(Pause.)

Q.9 Your Honor, may I approach the witness?

THE COURT: Yes, ma'am.

(Whereupon, counsel approached the witness.)

Q. Deputy Finley, I'm showing you what's been previously marked as State's Exhibit 2, let me show this to opposing counsel.

(Whereupon, defense counsel examined the exhibit.)

Can you please tell the Court what it is that I have just handed you.

A. That is is a sketch of a male head, face.

Q. Did you do that sketch?

A. I I did.

Q. And how do you know you did that sketch?

A. Well my name is written down below the sketch and it says 2016 and I know it's my sketch.

Q. And is this a sketch you did for this incident?

A. Yes.

Q. Your Honor, at this time I'd like to introduce what's been previously marked as State's Exhibit 2 into evidence.

MR. SHEALY: Judge, when they offered it with Ms. Smith I objected, I'm gonna object again based on that Ms. Smith had testified that it was not complete so it's not and an incomplete sketch and meaning I don't, I think that it's maybe it's irrelevant, ---

THE COURT: Yes, sir.

MR. SHEALY: --- probably approach.

(Whereupon, a bench conference was held off the record.)

BY MS. WALTERS:

Q. Deputy Finley, when you were working on that sketch, did any other law enforcement come to the home ---

A. No.

Q. --- when you were workin' on the sketch or when you were ending the sketch?

A. Detective Clark, uh, came by as I was finishing the sketch.

Q. And can you, uh, elaborate on that to the Court and ---

A. Um, that he came to the home with a a photographic lineup.

Q. And you were fi -- finishing up at that time?

A. I had just finished.

Q. You had just finished.

A. Finished.

Q. Did he ask to speak with you or did he ask to speak to the victim at that time?

A. He spoke with me briefly before he showed the lady the lineup.

Q. But you had completed the lineup, ---

A. I had, yeah, ---

Q. --- I mean, excuse me completed sketch.

A. Yeah, it was complete.

Q. Your Honor, at this time the State would again, uh, like to introduce what's been previously marked as State's Exhibit 2 into evidence.

THE COURT: Mr. Shealy.

MR. SHEALY: I think that that covered my objection.

THE COURT: It's admitted without objection.

(State's Exhibit No. 2, sketch, admitted into evidence.)

MS. WALTERS: Your Honor, may I publish it to the jury?

THE COURT: Yes.

MS. WALTERS: Beg the Court's indulgence.

(Pause.)

BY MS. WALTERS:

Q. Deputy Finley, have you ever seen this, the defendant Mr. Robertson before this incident?

A. No.

Q. How was Ms. Smith when she was giving you the details, um, o -- for you to be able to do the sketch?

A. She was very positive, uh, very good at picking out the features, she, uh, she had a good grasp of what features she wanted to pick out.

Q. So she was, she was very quick at pi -- at picking those out in the book?

A. Quick and decisive.

Q. Was this a very fast process for you doing the sketch or for pickin' the codes out and doing the sketch?

A. It was probly the fastest sketch I've done and she she was quick, forty-five minutes to pick out features is is is pretty quick.

Q. Now I know I just asked have you ever seen the defendant Mr. Robertson before, have ya ever seen a picture of him before you did the sketch?

A. No.

Q. So you had no idea what he looked like ---

A. No, ---

Q. --- 'fore this.

A. -- no idea.

Q. So you were going off what Ms. Smith had told you ---

A. Yes.

Q. --- in reference to his, all his features to be able to create this sketch?

A. Yes.

Q. And one last question, Deputy Finley, after you did the sketch did you leave the residence?

A. Yes.

Q. Okay. No questions at this time, Your Honor, ---

THE COURT: Mr. Shealy.

Q. --- further questions.

MR. SHEALY: Thank Your Honor.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Just couple a questions. So you see what's been marked

as State's 3, marked as, was it State's 2, yeah, what's marked as State's 2, in that description that you were given was there any mention of whiskers, mustache, beard, any a that?

A. I don't know, I don't think she mentioned a mustache, beard or any facial hair.

Q. Didn't mention any facial hair, okay, that's all I have for this witness.

THE COURT: Thank you. Sir, you may step down, please be careful.

(Whereupon, the witness left the stand.)

THE COURT: You need the officer to stay, Solicitor?

MS. WALTERS: Beg beg the ---

MR. SMITH: Can ---

MS. WALTERS: --- Court's indulgence.

MR. SMITH: --- can we ask one follow-up question of that witness related to that point?

THE COURT: Related to the one point.

MR. SMITH: Yes, Your Honor.

THE COURT: Come back up, Officer.

(Whereupon, the witness returned to the stand.)

REDIRECT EXAMINATION BY MR. SMITH:

Q. Did your interaction making this ---

MR. SHEALY: Judge, I'm gonna object, it's Ms. Walters' witness. Ms. Walters ---

THE COURT: Her witness.

MR. SHEALY: --- has to answer the question -- ask the question.

REDIRECT EXAMINATION BY MS. WALTERS:

Q. I'm just gonna confirm one point, Deputy Finley, your interaction was with Ms. Smith, the female victim.

A. As far as the sketch goes, yes.

MS. WALTERS: Thank Your Honor.

THE COURT: Anything as to that one question?

MR. SHEALY: Uh, no, ---

THE COURT: Sir, you may ---

MR. SHEALY: --- Your Honor, ---

THE COURT: --- step down.

MR. SHEALY: --- I I got nothin'.

(Whereupon, the witness left the stand.)

MR. SMITH: Um, State calls Detective Tom Clark.

(Whereupon, the witness came forward.)

THOMAS LOREN CLARK, having been first duly sworn, testified as follows:

THE CLERK: Thank you, have a seat please.

THE WITNESS: Yes.

THE COURT: Sir, tell us your name and spell your last name for my court reporter, please.

THE WITNESS: My name's Thomas Loren Clark, my last name is spelled C-L-A-R-K.

THE COURT: Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Uh, Detective Clark, where are you employed?

A. The Spartanburg County Sheriff's Office.

Q. How long have you been there?

A. Uh, just under twenty years.

Q. What have you done at your time with the sheriff's office?

A. I was initially assigned to uniform patrol for a short period then uniform patrol policing which involved neighborhood watch programs and investigations, uh, targeting, uh, high risk, uh, crime area, I then transferred to uniform patrol investigations, um, short time after that I was transferred to investigations where I've worked property crimes, um, arsons, white collar cases, um, the Special Victim's Unit and for the last six years I've been part a the Violent Crimes Unit and I now work cold case homicide.

Q. Okay. Were you worked the Violent Crimes Unit back on June 17th of 2016?

A. Yes, sir, my main function was rob -- or what was robberies.

Q. Robbery was your specialty?

A. Yes, sir.

Q. Um, how did you find out about this case on June 17th of 2016?

A. I was notified initially, um, by a supervisor, um, that

the incident had occurred and that there were officers responding.

Q. Uh, where did you go first?

A. I initially went to the bank, I was advised that a, that the victims had been taken to a, to the bank, um, to their bank where that check -- where check was cashed, ---

Q. Alright.

A. --- this was the SC Telco at Herring Circle.

Q. Herring Circle. Uh, who did you speak to when you were there?

A. Ms., uh, Julie Ponyer ---

Q. Alright.

A. --- Pennyor, sorry.

Q. Pennoyer?

A. Pennoyer.

Q. Um, what was her position at the bank?

A. I don't, um, I don't recall exactly what her position was at that time.

Q. She some sort of supervisory role you imagined?

A. Yes, sir.

Q. Um, what did you ask her?

A. I explained to her the situation and briefly what was going on and asked her if we could view the video of the transaction.

Q. Did you have the time of when you thought the tra --

transaction happened or did ---

A. Yes.

Q. --- she look up the transaction?

A. I had an approximate time. Um, I gave her the victim's name and she was able to pull up the transaction and based off that information pull up the video.

Q. Okay, and did you watch the video while you were at the bank?

A. Yes, sir.

Q. Uh, Your Honor, I'd like to once again publish, uh, the bank video Detective Clark saying what he saw on it.

MR. SHEALY: Uh, gonna object to Detective Clark saying what he sees on it, the video can speak for itself. He wasn't there, he can't narrate the video, Judge, I would object to that, I believe that the video speaks ---

THE COURT: Video speaks ---

MR. SHEALY: --- for itself.

THE COURT: --- for itself. Well you wanna ask him a question 'bout the video?

MR. SMITH: Make observations of what he believed he saw in the video, what he sees in the video.

THE COURT: Well ya'll come here.

(Whereupon, a bench conference was held off the record.)

THE COURT: Okay, alright.

BY MR. SMITH:

Q. You watch the security video with Ms. Pennoyer?
A. Yes, sir.
Q. After watching the video you decided to continue your investigation of the case?
A. Yes, sir.
Q. What did ya do at that point?
A. I then re -- I requested a copy of the video and a copy of the check that had been presented by Mr. Williams for four thousand one hundred dollar.
Q. Did you get copies of it that day?
A. No, sir, ---
Q. Alright.
A. --- she had to go through her legal process to be able to find.
Q. Okay. Uh, where did you go after you'd been to the bank?
A. I went to the scene on Cannons Campground Road.
Q. [redacted] Cannons Campground ---
A. Yes, sir.
Q. --- Road? Uh, what did you observe when you got there?
A. When I first arrived on scene, um, I spoke briefly with the responding officer, um, and then spoke with the forensics officer, um, about processing the scene, um, what was gonna be processed, things of that nature and ---
Q. Can you ---
A. --- then ---

Q. --- explain what a forensics officer is.
A. They, um, take photographs of the scene, process the scene for fingerprints, um, things of that nature, ---
Q. That would be ---
A. --- collecting ---
Q. --- kind of ---
A. --- evidence.
Q. --- like a CSI-type guy?
A. Something a -- something along that line, they process or collect any evidence.
Q. Okay. Uh, can you describe what the house is like or what the trailer is like.
A. It's mobile home. Um, when you go up your front door is almost to the center, front center a the residence, there's a s -- a front porch 10 by 10, um, roughly to my estimate, uh, there's stairs coming up if facing the residence to the right, um, they're out just a bit from the residence, there's a small partition fence right here (indicating) and then the door is in, roughly in the middle of the porch.
Q. Okay. Did you see any signs of forced entry on the front door?
A. No, sir.
Q. You continue on into the house?
A. Yes, sir.
Q. What did you see inside the house?

A. Inside the house the back window had been taped, there was glass laying on the kitchen floor just inside ---

Q. Okay.

A. --- the back window, um, there was a safe. When you walk in the residence, it's kind of open up and there's a partition between the living room area, dining room area and the kitchen area, it's like a little like this (indicating) way to go to the kitchen and in the dining room area there's a partition say about this (indicating) high and then on the other side is a little table, uh, there's a room to this (indicating) direction and there was a safe that had been, look -- appeared that someone had been trying to get in it in that the door had been vandalized.

Q. Okay, I'm gonna hand you a couple pictures and ask if you can tell me what these are.

MR. SHEALY: Should be over there (indicating).

Q. Yeah. This is State's Exhibit 26, 27, 28 and 29, ask if you can identify what these are.

A. Yes, sir, this (indicating) is the, uh, front of the mobile home.

Q. Okay, that's as you believe as you saw it that day?

A. Yes, sir.

Q. Alright.

A. This (indicating) photograph is the dining room area to the back door, ---

Q. Okay.
A. --- um, the, where the tape, where the window was taped up, it's photograph number 27 or i -- item number 27, I'm sorry. Um, this (indicating) is the floor, um at the base a the door that had been damaged where we believe entry had been gained and then this (indicating) is another photograph of that same, it's just a more closer, more detailed photograph.
Q. Are all four of those true and accurate copies a what you saw back when you responded to the scene ---
A. Yes, sir.
Q. --- at Cannons Campground? Your Honor, this point we'd like to move State's Exhibit 26 through 29 into evidence with permission to publish.

MR. SHEALY: No objection.

THE COURT: Without objection they're admitted, you may publish.

(State's Exhibit Nos. 26, 27, 28 and 29, photographs, admitted into evidence.)

BY MR. SMITH:
Q. State's Exhibit 26, is this (indicating) the the door that's the taping that you're talking' about?
A. Yes, sir.
Q. Is this (indicating) the, what you're referring to as what you I guess believe is the window that had previously been there?

A. Yes.
Q. Okay, State's Exhibit 28.
A. That is a closer-up picture of the ---
Q. Appears to be ---
A. --- floor betwe -- at the door, this is the chair right here (indicating) and table ---
Q. Looking ---
A. --- right ---
Q. --- straight down?
A. Yes, sir.
Q. Finally 29.
A. And that's a closer-up ---
Q. Okay, that was was this (indicating) glass?
A. Yes, sir.
Q. Um, did you speak with the victims, I know you said that you directed ID what to do, what did you tell them to to do as far as processing the scene?
A. We were told, I was told by the responding officer and by the forensics officer who was on scene on my arrival that they had been advised that, by the victims that the, um, suspect wore gloves during the encounter, um, so it was believed that there were not going to be any fingerprints; however, to err on the side a caution, um, was not sure that gloves were worn the entire time so there were so -- and and some items had been moved in the residence, um, so I asked that they be

processed, look for prints and and to be photographed.
Q. Okay. Uh, did you do anything with -- did -- the car, is that included as part of the crime ---
A. Yes.
Q. --- scene?
A. Yes, sir.
Q. Do you have them ---
A. Yes, sir.
Q. --- photograph and ---
A. Yes, sir.
Q. --- fingerprint that as well? Um, what else do -- what did you do next to continue your investigation?
A. I reviewed, I was advised by responding officer that the victims were separated and want that upon his arrival, um, and were provided written statements, I then went on to, read the written statements and then went over the written statements with each one the victims.
Q. Okay. Did you -- do you look around the area and see just ki -- what kind of area is this area of Cannons Campground Road?
A. It's, there, and I forget the name of it, there is a, uh, mortuary, uh, directly across the street, it's just past, uh, Mary Black Hospital if you're leaving Spartanburg and it's almost across from Summit Hills Nursing Home. There is another road that intersects, corresponds right there

(indicating) so you can actually, their driveway when you come off Cannons Campground it kinda comes up beside the the end a the mobile home and you can look around back onto this little, and I don't remember the name a the road, um, I got, well I walked outside, um, with, um, the responding officer and the forensics officer and canvassed the area around the property. There's, um, part of the property belonging to the victim was on to the back side, um, went around there to see if there was anything of evidentiary value there, um, I then after speaking with the victims, um, and their statements, um, canvassed the area to see if there was any potential video.

Q. Did you find any places that you ---

A. No, sir.

Q. --- thought -- so you didn't pull any video from anywhere?

A. No, sir.

Q. Um, you spoke with both a the victims while you were there after they had completed their statements?

A. Yes, sir.

Q. Uh, did you understand if any of them had seen the suspect's face?

A. Yes, ma'am, ---

Q. Alright.

A. --- yes, sir. Um, Ms. Smith indicated, she said she saw the defendant's face or the suspect's face and said that, um,

she said she saw his face.

Q. Okay, what did you do then?

A. I asked her, um, if she felt like she would be able to describe him to a sketch artist to potentially give a, um, for him to generate composite photograph.

Q. What did she say?

A. She said she could.

Q. What did you do that point?

A. We talked a few, a little while further and she said that she felt like, she she said that she could recognize the person if she saw him again.

Q. Okay.

A. Um, after talking to her briefly she wa -- she was visibly shaken, um, after talking to her briefly, um, I requested, um, I contacted Sergeant Bradley and asked her if O -- Deputy Finley would be available to respond to speak with M -- uh, Ms. Smith about doin' composite.

Q. Okay. What did you do then?

A. I spoke with Deputy Finley, I gave him the address where he needed to respond to, um, I explained to Ms. Smith that Deputy Finley would be responding, he would be in a marked unit, um, so that she didn't, if she saw an unexplained vehicle pull up she didn't need to worry, that it would be a marked unit and then I returned to the sheriff's office to further inves -- start the investigation.

Q. Um, so were -- you were not present at the scene when Deputy Finley arrived ---

A. No, sir.

Q. --- begin the sketch?

A. No, sir.

Q. Uh, did you communicate to Deputy Finley, that did you have a suspect in mind, did you communicate anything to Deputy Finley other than where to go?

A. No, that, uh, that was all I, all I gave him.

Q. Um, what happened when you return to the sheriff's office?

A. When I return to the sheriff's office, um, I was able to continue, other investigators, I was given the name of an individual who was known to that area ---

Q. Uh, ---

MR. SHEALY: Objection, ---

A. --- to ---

MR. SHEALY: --- Your Honor, we may approach.

(Whereupon, a bench conference was held off the record.)

BY MR. SMITH:

Q. You were speaking to -- you ha -- you had a description from the victims ---

A. Yes, sir.

Q. --- combined what the suspect ---

A. Basically from Ms. Smith, yes, sir.

Q. Alright, okay. Um, alright, and when you returned to the sheriff's office what did you do?

A. I, I was able to develop a, through speaking with investigators, a name of a person who lived and was known to be in the area that matched that description, ---

Q. Okay, ---

A. --- um, ---

Q. --- and who was that?

A. That was Mr. Robertson.

Q. Alright, and then what did ya do?

A. I then generated a photo lineup contained Mr. Robertson.

Q. Okay, can you explain how a photo lineup gets generated, ---

A. Our ---

Q. --- least at the sheriff's off -- at the Spartanburg Sheriff's Office.

A. --- our system we, um, we type in person's name, it gives, um, it has parameters set up for their height, weight, age, hair color or its complexion, skin complexion, things of that nature, basically to encompass their physical description, um, and then it generates matches, potential matches to go with that, people that look like that, have the same basic physi -- physical description.

Q. Okay, and so I I'm guessing the computer takes a description and pulls people that based off certain parameters

are in a range that looks like ---
A. Yes, sir.
Q. --- the person that you start with.
A. Yes, sir.
Q. Uh, and then you said you get a big list of results or maybe a small list a results but ---
A. It depends on the person and on physical description, sometimes you may get small amount, sometimes you may get one.
Q. And then do you pick which of that list goes in in addition with the ---
A. You can, yes, you do, yes, sir.
Q. Is that, is that how you generate ---
A. Yes, sir.
Q. --- this one? Okay. Um, I'll show you what's previously been admitted as State's Exhibit 4, ask if you can identify what this is.
A. Excuse me. Yes, sir, this is the photo lineup I generated.
Q. Alright, and which position is Mr. Robertson in on the photo array?
A. Position number 5.
Q. Okay. Permission to publish this to the jury, Your Honor. Um, ---
THE COURT: What is that, it's 2?
MR. SMITH: This is, uh, State's Exhibit 4.

THE COURT: State's 4, okay.

Q. Um, so after you get the photo lineup array, what did you do next?

A. We also have an affidavit that we have to take with us when we present a photo lineup.

Q. And what does the affidavit generally say?

A. It's instructions, um, for presenting the photo lineup and ---

(Whereupon, a discussion was held off the record.)

--- it's instruction for presenting the photo lineup and it's also the place for the victim if they do identify someone from the photo lineup for them to fill out and for them to sign.

Q. So is -- there's a routine instruction that you give to ---

A. Yes, sir.

Q. --- everybody that you show a photo ---

A. Yes, sir.

Q. --- lineup to? What's the purpose of that instruction being the same every time everything?

A. Consistency and to make sure that the photo lineup is fair and not biased.

Q. Alright. I'm gonna show you what's previously been admitted as State's Exhibit 5 ask if you can identify that.

A. Yes, sir, this is the affidavit that, um, Ms. Smith

signed on ---

Q. Okay. What do you explain to the person that you're presenting a photo array to or how do you explain to them, just go through it like you'd be goin' through it on a routine day.

A. We tell 'em, uh, prior me doin' instructions that suspect's facial descriptions, hair, facial hair may change, body weight may change, I as a standard I take it a little bit further, this says that, um, their facial hair may change, um, that they're not compelled to identify anybody, the suspect may may not appear as they did when the incident occurred, depending on the time frame of the incident, um, they're due to change in hairstyle, facial hair, um, or the quality of photograph and witness that, um, not to discuss the procedure with any other witnesses that there may potentially be.

Q. Okay.

A. I take it a step further, um, when I show a photo lineup I tell the person that the person that committed the crime or the wit -- person that they witnessed in a crime may or may not be in the lineup, ---

Q. Right.

A. --- not to feel compelled to identify anybody and not to eliminate anybody, to look at each picture individually, if they recognize someone to tell me who and where they recognize them from because they may recognize someone in the photo

lineup from somewhere else which has happened to me before.
Q. Okay. Uh, this is the, an original copy of the lineup that was presented to Ms. Smith?
A. Yes, sir.
Q. It -- why is it in black and white?
A. Ms. -- Mr. Robertson, um, and and he has very blue eyes, uh, his eyes stand out, um, could not in the lineup pull, find compatible individuals with eyes that would not make him stand out on the photo or we're taught our photo lineup that there's supposed to be consistency across the board as best we can do so sometimes photo lineups will be in color, um, I would -- I did not want to because of Mr. Robertson's eyes I felt that if I had done the photo lineup in color that it would have been biased, um, because of his eye color or or 'cause of his eye color.
Q. Alright, uh, when you got back to the scene, what was happening at Cannons Campground Road?
A. Deputy Finley had just, was just finishing up and just, uh, was basically just finished up with the, uh, with the sketch.
Q. Okay. Uh, what did you do?
A. I spoke with, um, Deputy Finley briefly, um, about the sketch, asked him how things went, um, he explained that, um, Ms. Smith did a good job, she, as far as feeling very confident, very comfortable with the process, um, and that she

was confident, um, and positive with the composite that had been generated.

Q. Okay. Did you look at the composite?

A. I s -- yes, I did.

Q. Alright, and then what did you do?

A. After which, um, I then spoke with Ms. Smith and advised her that I needed her to look at some photographs and, um, gave her the instructions that I mentioned a few minutes ago.

Q. Okay, and describe how the selection process went.

A. When she first looked at the photographs, she said number 1's hair stuck up similar to what the suspect's hair, it's how the hair, his hair was, um, and then she immediately went to number 5, looked at him and went to number 5 and said that number 5 was the person that robbed them.

Q. Okay, so would you describe it as decisive?

A. Yes, sir. I I asked her and it's in the affidavit, um, if she was positive in her identification and she said she was.

Q. Alright, at that point what did you do?

A. At that point I went back to the sheriff's office, I typed up a supplemental, um, adding, um, Mr. Robertson as the suspect in the investigation and went and presented the case to a magistrate ---

Q. For warrants?

A. --- for warrants.
Q. Alright. Um, and that all of this events that we've described in testimony occurred on June the 17th?
A. Yes, sir.
Q. Um, does the -- do you have the affidavit sheet that she signed, what time is it?
A. She signed the affidavit, I presented it to her and she signed the affidavit at, um, 1745 which is 5:45 p.m.
Q. Okay. Do you remember when the incident was reported?
A. It was roughly 11:45 that I wa -- I was, just after 11:45 when I was notified.
Q. Okay. Uh, was Mr. Robertson ultimately picked up on those warrants?
A. Yes, sir, he was.
Q. Was -- do you -- did you have an opportunity to speak with him?
A. Yes, sir, I did.
Q. Where did that occur?
A. At the sheriff's office.
Q. Um, prior to speaking with him did you go over his rights?
A. Yeah. Yes, sir, I did.
Q. Uh, did he understand them?
A. Yes, sir.
Q. Was he in handcuffs when you began the interview?

A. No, sir.
Q. Okay, so it's just s -- describe a room that these interviews take place in.
A. The, um, I don't mean to interrupt, if she's looking for the Miranda form it's in case file packet, it's not in the evidence sheet, ---
Q. Alright.
A. --- I mean, evidence envelope. It, um, it's roughly a 12 by 12 room, maybe a little bigger, maybe a little smaller, I never measured it, um, there is a table a little bit smaller than the tables the attorneys are sittin' at, um, and then there's, um, two chairs, one chair on one side, one chair on -- at the end and and another chair on the other side ---
Q. Okay.
A. --- which which Mr. Robertson was sitting at when when I entered the room.
Q. Is there a form that you go over, I mean, or do you just tell them what their rights ---
A. We read them their rights from, uh, ---
Q. Hold on one sec.
A. We read them their rights from a form provided by the sheriff's office.
Q. Alright, it's just like the photo identification form, is it the same thing ---
A. Yes, sir.

Q. --- every single time?
A. Yes, sir.
(Miranda pre-interrogation waiver form marked State's Exhibit No. 31 for identification.)
Q. I'm gonna hand you what's been marked as State's Exhibit 31 ask if you can tell me what this is.
A. Yes, sir, this is the Miranda form that was, uh, presented to Mr. Robertson.
Q. Was that the original?
A. Yes, sir.
Q. Uh, your Honor, this time I'd like to move State's Exhibit 31 into evidence with permission to publish it.
MR. SHEALY: No objection.
THE COURT: Without objection State's 31.
(State's Exhibit No. 31, Miranda pre-interrogation waiver form, admitted into evidence.)
Q. Do you have the defendant acknowledge with signature that they understand the rights?
A. Yes, sir, and then we also has a -- have them -- it notarized.
Q. Okay. Was somebody else present in there with you when you interviewed him?
A. Yes, sir.
Q. Okay. What does he have listed as his ---
A. He ---

Q. --- home?
A. --- s -- he stated that he was homeless.
Q. Okay. Just for some biographical information, I know you probly don't just lead in in an interview with get down to gist of things, what did Mr. Robertson tell you about what he had been, what had been going on in his life?
A. He said that he had, um, lost his job sometime earlier I believe, um, bear with me just a second.
MR. SHEALY: This is objection, Your Honor, I'm gonna object to relevance. What -- I I don't see how -- that question is; one, vague, what was goin' on in his life at the time and; two, I don't see how it's relevant to ---
Q. Was Mr. Robertson employed?
THE COURT: Well hang on a second. Did - did -- Solicitor.
MR. SHEALY: So those would be my objections, Your Honor.
MR. SMITH: Well we can withdraw it, we've already ---
(Indiscernible cross-talk.)
THE COURT: No, I mean, you're gonna make -- you got, you got a a point, you gonna make it relevant or . . .
MR. SMITH: Yes, Your Honor, I I -- we wanna approach.
(Whereupon, a bench conference was held off the record.)
BY MR. SMITH:
Q. Was he employed at at the time?

A. No, sir, he said he was not.
Q. Did he tell you where he had recently been staying?
A. Here and there in the woods, ---
Q. What -- can you further ---
A. --- either Highway 9 area, ---
Q. Okay.
A. --- um, and different different friends and and and mainly in the woods.
Q. Okay. Are are we talking multiple locations?
A. Multi -- yes, sir, multiple locations.
Q. Alright. What about any family members or other pla -- re -- actual residences that he stayed.
A. He would -- he said that he would stay, go to a friend's house on White Street here in Spartanburg off Howard Street.
Q. Okay, and who was that friend?
A. Terri Lynn Johnson.
Q. Alright, did he say how he knew Ms. Johnson?
A. She was an ex-girlfriend.
Q. Anybody else that he stayed with: family members or, um, friends, anything?
A. He didn't mention any -- I don't -- I -- and he didn't mention anybody specific, ---
Q. Alright.
A. --- um, that I recall, he just was that he would stay with different friends and and and and in the woods at

different locations.

Q. Okay. Um, when you asked him about June 17th, what did he tell you, where'd he tell you he had been?

A. He had been with Terry Lynn Johnson at her mother's residence on White Street the entire day.

Q. Alright. Is, when you speak to Mr. Robertson and you get the name Terri Johnson, is that the first time that you've heard that name in relation to this case?

A. Yes, sir.

Q. Alright. So he denied any involvement in this crime.

A. Yes, sir.

Q. Did he mention any areas that he hangs out and frequents, I know he's homeless and has places around but ---

A. Highway 9, uh, near Zaxby's, the, in the wooded areas up in there.

Q. Okay, any other places that he mentioned?

A. The Highway 9 corridor and there were some other places over near Cannon's Campground Road, uh, or in Gossett Road area, just that that general vicinity.

Q. Do you know why he'd be in Gossett Road?

A. His mother, uh, lives on Gossett Road, I don't remember the exact address.

Q. Is is Goss -- is that area close to [redacted] Cannons Campground Road?

A. It's it's a couple miles down the road but it in --

actually intersects with Cannons Campground Road.
Q. Alright. So did that essentially conclude your interview with him?
A. Yes, sir. at that point, um, yes, sir.
Q. Okay. What did you do after you spoke with him?
A. I then, myself and other investigators responded, 'scuse me, to the area of Zaxby's and the woodline there and the woodline across the street where the Waffle House is.
Q. On Highway 9?
A. Yes, sir, right there above, um, 85.
Q. What was your purpose of goin' to this area?
A. To try to locate any place that he might be staying, any clothing ---
Q. Okay.
A. --- or anything of like -- of that nature that might belong to Mr. Robertson.
Q. Did you ultimately find anything?
A. We fou -- we did find some articles of clothing and other items.
Q. Show you what's been previously marked as State's 19 and 20 and ask if you can tell the jury what these are.
A. It's a backpack with some clo -- a back, um, black bag, I'm sorry, uh, with some jeans and some clothing in it and a drink bottle next to it.
Q. Is that what you found at the, in the location that he

had described to you?

A. Yes, sir.

Q. Is that an accurate representation of what you found that day?

A. Yes, sir.

Q. Your Honor, at this point I'd like to move Defendant's 19 and 20 into evidence.

MR. SHEALY: Again, Judge, I'm objecting for relevance because they they can't even prove these articles of clothing are Mr. Robertson, at least I haven't heard any testimony ties them to my client.

THE COURT: Solicitor.

MR. SMITH: He went to the area off of his description of where he had been staying.

THE COURT: They're they're relevant, they're admitted over objection.

(State's Exhibit Nos. 19 and 20, photographs, admitted into evidence.)

MR. SMITH: Your Honor, may I publish 'em to the jury?

THE COURT: Yes, the numbers again?

MR. SMITH: 19 and 20.

THE COURT: Yes, sir, you can publish.

BY MR. SMITH:

Q. Alright, did you find anything of evidentiary value to this case and these belongings?

A. No, sir.
Q. Alright. What did you do after you found this location?
A. Finished canvassing the area and went, I -- the Days Inn, just behind the woodline where we're at is Fatz, Capri's and then the Days Inn rest, uh, the Days Inn Hotel, ---
Q. Okay.
A. --- um, I decided to go to the Days Inn Hotel to see if Mr. Robertson had by chance been staying there.
Q. What was your reason for suspicion of that or why did your head go that way?
A. Um, a check for forty-one hundred dollars in cash as well as cash had been taken from the victims so someone that is homeless and has come into some money is more than likely gonna not wanna be homeless and ---
MR. SHEALY: I'm gonna object, Judge, that's just speculation.
THE COURT: It's it's overruled, go ahead.
Q. Um, ---
A. --- so I went to the hotel to see if he had stayed there.
Q. Okay. Who did you speak to when you were at the hotel?
A. I spoke with the manager slash owner, Mike Doshi.
Q. And what did you say to Mr. Doshi?
MR. SHEALY: Objection, Your Honor, that calls for

hearsay.

THE COURT: He asked what he said.

MR. SMITH: What did he ---

MR. SHEALY: What ---

MR. SMITH: --- say.

MR. SHEALY: --- he said, that's still a statement out of court.

THE COURT: What he ---

MR. SMITH: What ---

THE COURT: --- said.

MR. SMITH: --- what ---

MR. SHEALY: Yes, sir, but if we may approach.

THE COURT: Yes.

(Whereupon, a bench conference was held off the record.)

THE COURT: How 'bout, uh, don't talk about the case, take the jury out for just a minute.

(The following takes place outside the presence of the jury.)

THE COURT: Mr. Shealy.

MR. SHEALY: Judge, my position is anything that he said to Mr. Doshi and anything that Mr. Doshi then said to him is hearsay and it's made hearsay by the fact that believe he's gonna testify as to things that he did after Mr. Doshi talked to him, that builds upon the hearsay and I think that all of that, everything that he's going to talk about from the Days

Inn Hotel Mr. Doshi has already testified he doesn't remember any a this conversation ---

MR. SMITH: Okay.

MR. SHEALY: --- and I I think that it's gotta stop at that point when Mr. Doshi says, I don't remember anything about this conversation. They don't -- they can't go around with the hearsay rule by saying that he asked if this person was here and then he went and talked to Mr. -- Ms. Johnson and then he did this based on all, based on what Mr. Doshi says he doesn't remember having said; in other words, it it's all simply hearsay, it builds upon hearsay and it's a way, they can't circumvent a hearsay rule simply by having him by some kind of clever manipulation of he asked these questions, Mr. Doshi gave some answer, we're not going to say what the answer is but he gave some answer, And then I went to Ms. Johnson, I I think that that, again, that that's simply not permissiveness, that shoehorns or it circumvents our hearsay rules and we've already had as I've said Mr. Doshi testified that he doesn't remember anything about this conversation.

THE COURT: Okay, Solicitor.

MR. SMITH: Your Your Honor, that that is admissible, I mean, and you can say that you had a meeting with somebody and then after the meeting what did you do, don't tell me what they said, he's not gonna testify anything to what Mr. Doshi

testified, we went through this in a, in a proffer earlier, Your Honor, but he can testify about what he s -- he cer -- I don't know how it's hearsay for him to testify about what he said, I don't know how witnesses could testify otherwise but it -- what what Tom did and what happened after he speaks to Mr. Doshi is not hearsay, it's ju -- it's just not.

THE COURT: Mr. Shealy, your objection that he can't say what he said to Mr. Doshi, is that hearsay?

MR. SHEALY: Yeah, a -- my position is that what they're getting into at this point is all an attempt to circumvent our hearsay rules because their witness won't testify the way they want to -- want her t -- or want him to and they can't find another witness, that would be Ms. Johnson, Ms. Johnson's not gonna be testifying, and I believe now we haven't, we may not have gotten there yet but I believe that I I can foresee what he's gonna testify to, particularly given we've had a proffer ---

THE WITNESS: Um-hum.

MR. SHEALY: --- and so, Judge, it would be my position that what they're doin' is simply an attempt to get around a hearsay rule because they can't get folks to testify the way they want them to testify.

THE COURT: Okay, the Supreme Court has also held that evidence of a prior statement that was made by a witness who testifies at the trials, quote, simply does not meet the

definition of hearsay, *State v. Dingle* at 279 South Carolina 278, that's a 1983 decision. In *Dingle* the witness, declarant herself, testified to her prior statement, so any statement that he made to Mr. Doshi or anyone else is not hearsay within within 801 and never have been. Now if your position is that he cannot testify, law enforcement cannot testify to what they did as a result of havin' a conversation with someone, uh, that's overruled too and that's that's not, that's not hearsay either. If if, it's my understanding, now somebody correct me here, but if he testifies that he gets a tip or this officer or that officer, anybody and they they talk with someone on the street, they don't even identify who that person is, as a result of that they conduct their investigation, they learn somethin', that's not hearsay, um, am am I missin' the boat here?

MR. SMITH: No, Your Honor, ---

THE COURT: Mr. ---

MR. SMITH: --- that ---

THE COURT: --- Mr. Shealy, you think I'm missin' the boat, help me, give me a case.

MR. SHEALY: Well, I don't have a case on me and, Judge, again, that you've you've overruled me and I'm ---

THE COURT: No, I understand ---

MR. SHEALY: --- okay with ---

THE COURT: --- but I'm ---

MR. SHEALY: --- that but, ---

THE COURT: --- askin' for, ---

MR. SHEALY: --- I mean, ---

THE COURT: --- I'm askin' ---

MR. SHEALY: --- my, ---

THE COURT: --- to ---

MR. SHEALY: --- but the problem again, Judge, is and it it may not necessarily be to this particular question but where we're going is that that the, his conversation with Mr. Doshi who has testified ---

THE COURT: Yes.

MR. SHEALY: --- that he has no recollection of any of this and there is no view, I mean, that he ca -- he has no picture of my client, Mr. Doshi has no picture of my client, he cannot independently recall this this conversation that they're supposed to have had, that that then led to a Terri Johnson who then gave a watch eleven days later. My objection is that the fact witnesses who would be necessary to prove those assertions are not going to be here or have testified in contradiction to what has been te -- or what is going to be testified to or has been testified to, Mr. Doshi said, I don't remember.

THE COURT: Okay, so it it, movin' down the street on this, on this matter to where we're headed and we all know because a the proffer but is your position gonna be that this

officer right here (indicating) cannot say that he was given a watch by Terri Lynn Johnson?

MR. SHEALY: That that would be my position, yes, sir.

THE COURT: Under what rule?

MR. SHEALY: Well, Judge, one, I don't think they proved that it's relevant because, again, they can't prove that it came from my client, they can prove that it came fr -- they -- Judge, that would be like if I gave him somethin' outside a court, he couldn't just come in and testify that I gave him a thing, it's gotta be tied to this particular case and it's gotta be tied to the particular defendant. My defendant or my client is not tied to this watch by Ms. Johnson who apparently returns it many days later ---

THE COURT: So ---

MR. SHEALY: --- and so all of that becomes simply not relevant because it's givin', uh, we don't know where Ms. Johnson got it, it ---

THE COURT: No ---

MR. SHEALY: --- invites speculation by a jury to say, Well why wh -- why did she give this or where did she get it from but without that witness it just, we descend into speculation and and whispers of conspiracy things and and I think that our rules are against that.

THE COURT: Mr. Smith.

MR. SMITH: Your Honor, that I'm tryin' to find a case.

The case I'm thinkin' of is it's, it was initially tried and then they retried it and the lady had died after that and at ---

MR. SHEALY: That ---

MR. SMITH: --- the trial they said, "Did you speak ---

MR. SHEALY: --- that ---

MR. SMITH: --- to her at the hospital," and they said, "Yes." "Don't tell me anything that she said, what did you do after?" "I signed warrants against so and so for criminal sexual conduct against the defendant," and that's okay because it's not saying what that individual said, it's just saying what he did after having a conversation. I saw another one with a will case which is, "Don't tell me what you said 'cause the person's dead." "Well what did you do?" "Right after the conversation I went and changed the will to the beneficiary," from Matt Shealy to Judge Kelly or something like that, and that, and that he may say it's an in around the hearsay rule and it very well may be an in around the hearsay rule but the the rules are the rules and it's not a violation of the rules the way that we're phrasing the question, that most a the rules of evidence are about phraseology, not about the content of the information that's coming out, I think the way we're asking it's not calling him to testify to what Mr. Doshi said or anything like that, just that he received items from people.

THE COURT: Yeah, I -- and we're not gonna get into what Mr. Doshi said, Mr. Doshi was here, he had his own say so if he remembers he remembers, if he doesn't remember, he doesn't remember but we're not gonna get into that. Ready?

MR. SMITH: Yes, Your Honor.

THE COURT: We have our jury.

THE BAILIFF: Maxie, we're ready.

(The following takes place in the presence of the jury.)

THE COURT: Everything good, Mr. Foreman?

JURY FOREMAN: Jury's ready, Your Honor.

THE COURT: Yes.

MR. SMITH: Thank Your Honor.

BY MR. SMITH:

Q. Um, Detective Clark, we talked about that Mr. Robertson had been arrested on June 24th on these warrants but you were continuing your investigation, ---

A. Yes, sir.

Q. --- um, when you're going out to continue an investigation, is it common for you to carry a picture of who the defendant is or the suspect to to show to people they had seen ---

A. Yes, sir.

Q. --- him?

A. Yes, sir.

Q. Did you generate one in this case?

A. Yes, sir.
Q. Alright, I'm gonna show what's previously been marked as State's Exhibit 21 ask if you can tell me what that is.
A. This is a photograph of Donald Scott Robertson that I generated, printed out print.
Q. Is it the same photo from the photo lineup just ---
A. Yes, sir, it ---
Q. --- with just a bigger version.
A. --- it's just an enlarged version.
Q. Okay. Your Honor, this, uh, time we'd like to move State's Exhibit 21 in, uh, with per -- it's State's 21 into evidence.

THE COURT: Any objection?

MR. SHEALY: No objection to this particular exhibit, no.

THE COURT: Without ---

MR. SMITH: Um, ---

THE COURT: -- objection.

(State's Exhibit No. 21, photograph, admitted into evidence.)

THE COURT: --- thank Your Honor.

BY MR. SMITH:
Q. Um, did you have that with you when you went up to the woods behind Highway 9 and then when you went to the Days Inn?
A. Yes, sir.
Q. Okay. And we talked about that you had met with, you met

Mike Doshi at the manager slash owner of the Days Inn on Highway 9, ---

A. Yes, sir.

Q. --- correct? Did you show him that picture?

A. Yes, sir.

Q. Alright. After you showed him that picture what did he do?

A. He gave me a hotel registration form for a Terri Lynn Johnson.

Q. I'm gonna hand you State's Exhibit 22, is that what he handed you?

A. Yes, sir.

Q. When does the registration indicate that the room is booked?

A. It's -- you bear with me 'cause I don't know how to read this thing.

Q. Oh.

A. 6/17/2016, ---

Q. Alright.

A. --- um, at 10:32:59 p.m.

Q. Alright, and after that did you leave the Days Inn?

A. Yes, sir.

Q. Um, did you ever reach out and attempt to contact Ms. Terri Johnson?

A. Yes, sir.

Q. Were you successful?
A. Yes, sir.
MR. SHEALY: Uh, Judge, I'm gonna renew my objection.
THE COURT: Okay, overruled.
Q. Um, how how did you contact her?
A. Went to her mother's residence on White Street, told her mother that I needed to talk to her.
Q. Did you, did both a you go back to the sheriff's office then?
A. She was not there, she contacted me and then met me at sheriff's office.
THE COURT: 'scuse me. Officer, will you adjust that, I'm havin' trouble hearin'.
A. I'm sorry.
THE COURT: Thank you.
A. Thank you. She, uh, she was not there, she met me at a later time at the sheriff's office.
Q. Okay, she ---
A. Is that better, Judge?
Q. Just speak up 'cause all ---
A. Okay.
Q. --- the mics not workin', likes to pretend.
A. Okay.
Q. Um, did she come in -- she came in voluntarily?
A. Yes, sir.

Q. Um, that what what did you tell her?
A. I told her that I was investigating Mr. Robertson in reference to a, um, robbery, burglary, um, and kidnappin' case.
Q. Did you tell her when it had occurred?
A. Yes, sir, I did.
Q. Did you, did you tell him -- did you tell her that he had been arrested on these charges?
A. Yes, I told her that he had been char -- again, he had al -- had been arrested.
Q. Uh, and she ultimately she just left the sheriff's office, not ---
A. Yes, sir.
Q. --- wasn't charged with anything?
A. No, sir.
Q. Um, did you hear from -- what date was that that you met with Terri Johnson?
A. June the 28th at approximately 5 p.m.
Q. Okay. Did you ever hear from Terri Johnson again during your investigation of this case?
A. Yes, sir.
Q. And how did that, how did that occur?
A. I received a phone call from Terri.
Q. And, again, not gonna say what she said but during the course of the phone call what did you do?

A. I contacted, I I contacted the residence of Mr. Williams, um, trying to reach, uh, Ms. Smith.
Q. What was the purpose of that?
A. To ask if she owned a gold watch with roses on this band. Um, Mr. Williams told me that Mrs. Smith -- Ms. Smith was out of town, was unavailable, he told me that he ---
Q. Wait, ---
A. I'm sorry.
Q. --- did, that you said -- did you tell them that what the watch looked like that or ---
A. No, I'm sorry, I asked him if if she owned a watch, he said, I, and I apologize, he, I asked Mr. Williams if Ms. Smith owned a watch, he told me that he had bought her a gift ---
MR. SHEALY: Objection, Your Honor, hearsay.
THE COURT: It's the statement of Mr. Williams?
MR. SMITH: Yeah, he testified to that, Your Honor, ---
THE COURT: Okay, ---
MR. SMITH: --- that ---
THE COURT: --- overruled.
A. He told me that he had bought her a gift, it was a gold watch with roses on each side a the band and a diamond chip on the face.
Q. Was Ms. Johnson on hold while you had this ---
A. Yes, sir.

Q. And then you end up renewing your conversation or goin' back to the line with Ms. Johnson ---

A. Yes, sir.

Q. --- and ultimately concluded the conversation?

A. Yes, sir.

Q. Uh, what happened next?

A. Then on, um, the 29th at about 5 p.m. I met Ms. Johnson at the sheriff's office.

Q. Okay. When you meet with people for an interview or anything like that at the sheriff's office, do you identify who they are in addition to who they purport to be?

A. Yes, sir.

Q. How do you do that?

A. By their driver's license ---

Q. Okay.

A. --- information.

Q. So the first time that you met with Terri how f -- even before maybe meeting here had you already pulled up a a driver's license of what she looks like?

A. Yes, sir.

Q. Okay. And, uh, the person you met with at the sheriff's office was Terri Johnson?

A. Yes, sir.

Q. And and what happened when you met her that second time?

A. I recovered a lady's gold watch with rose, small roses on

each side a the, on the band on each side and a small diamond chip on the face.

Q. Oh, I'm gonna hand you what's previously been marked as State's Exhibit ---

MR. SHEALY: Yeah, I'm I'm aware of it, I'm gonna renew my objections well that I've been making all this ---

THE COURT: Alright.

MR. SHEALY: --- renew.

Q. --- what's previously been marked for identity purposes as State's Exhibit 13, ask if, is that the watch that you received that day is at the meeting with Ms. Johnson?

A. Yes, sir.

Q. Uh, and after receiving it what did you do with it?

A. It was placed in evidence.

Q. Alright. Your Honor, this time I would move State's Exhibit 13 into evidence with permission to publish it to the jury.

MR. SHEALY: Again, Judge, I've made a number of different objections to this particular watch.

THE COURT: Okay, it's over objection of defense counsel, it's admitted. That's State's what?

MR. SMITH: Thirteen, Your Honor.

(State's Exhibit No. 13, watch, admitted into evidence.)

BY MR. SMITH:

Q. Did you ever end up making contact with Ms. Smith?

A. Yes, on June the 30th at 'proximately 9:30 a.m. I contacted Ms. Smith by telephone and asked her if she owned a watch.

Q. Did you ask her if it had been taken ---

A. I a ---

Q. --- or ---

A. --- I did.

Q. --- missing?

A. She said that she realized that she was missing a watch ---

Q. Where ---

A. --- from from her residence.

Q. And did she acc -- accurately describe the watch that you had ---

A. Yes, sir, ---

Q. --- in your ---

A. --- she ---

Q. --- possession?

A. --- she specifically said it was a gold watch with a segmented type band with a diamond in the top a the face and she went further on to describe the rose.

Q. Um, sorry, I'm going a little out of order here but when you met with Mr. Robertson after he'd been picked up on warrants, uh, did you ask for pictures to be taken of him?

A. Yes, sir.

Q. What's the purpose of that?
A. The pictures of him to, uh, for markings of the tattoos ---
Q. Okay.
A. --- and things of that nature.
Q. Okay, and you saw what he looked like that day when he came in?
A. Yes, sir.
Q. Were were you there when you -- when they took pictures of him?
A. Uh-huh.
Q. I'm gonna hand you what's been marked as State's Exhibit 16, 17 and 18, ask if you tell me what these are.
A. These (indicating) are front facial and photographs and photograph Mr. Robertson standing.
Q. Alright.
A. This is, these (indicating) are tattoos of pi -- photographs of his right arm and the tattoos that are on his right arm, um, one of them appears to be a rose with underneath it is what people refer to as a, uh, "angel catcher" with feathers on it and then above it it has a name, I believe it says Crystal but I can't be for sure.
Q. And the next one?
A. And then the next one is his left arm, um, on top has two tattoos, the upper tattoo is some kind of an animal face I

believe and the bottom is, uh, of the grim reaper type character.

Q. And those are accurate of what you saw that day lookin' at Mr. Robertson?

A. Yes, sir.

Q. Your Honor, this point I'd like to move State's Exhibit 16, 17 and 18 and with permission to publish.

THE COURT: Any objection?

MR. SHEALY: No, sir, thank you.

THE COURT: Okay, without objection.

(State's Exhibit Nos. 16, 17 and 18, photographs, admitted into evidence.)

BY MR. SMITH:

Q. Did you notice anything about Mr. Robertson's complexion?

A. Excuse me, he was, um, tan, um, looked like he spent a lot of time in the sun, farmer's tan, you could see where his shirt would stop and his tan line would begin right below the, where the tattoo, where the bottom tattoo is, you can see the tan line ---

Q. Alright.

A. --- and you can see it on this (indicating) arm as well in the middle of the what I call a grim reaper type tattoo.

Q. Okay. Did you ultimately end up receiving, uh, copies of the check and the surveillance video from the bank?

A. Yes, sir.

Q. Please answer any questions Mr. Shealy has, please.

THE COURT: Mr. Shealy.

MR. SMITH: Now ---

MR. SHEALY: Judge, may we approach?

THE COURT: Sure.

(Whereupon, a bench conference was held off the record.)

THE COURT: Alright, Mr. Foreman, ladies and gentlemen, the lawyers have reminded me that it's past my ninety minutes and I appreciate them doin' that 'cause sometimes I do forget but it is, we've been running for a good ninety minutes now, it's 2, uh, actually, uh, 3:35 so, uh, it is time for our afternoon break, this will be a good solid 15, 20-minute break for ya because we'll come back and then we'll run to the rest of the day so, uh, be sure to, uh, refresh yourself, uh, water is here, they've made some coffee if, I don't know if they have any coffee made but if you want some they'll make some for you, uh, just, uh, tell us what you need and, again, if you, if you smoke and, uh, and you need to go out and do that and I hope you don't, uh, you have to be escorted out, uh, they'll bring you back, okay. Don't talk about the case on your break. Mr. Foreman.

(The following takes place outside the presence of the jury.)

THE COURT: Any matters from the State this time?

MR. SMITH: No, Your Honor.

THE COURT: From the defense?

MR. SHEALY: No, Judge.

THE COURT: Alright, let's be in recess and refresh ourselves. Mr. Clark, you can't talk with anyone as you know 'bout your testimony, don't ---

THE WITNESS: Yes.

THE COURT: --- don't have any conversations, please come back up there at about five minutes till.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

(Whereupon, the witness left the stand.)

(Whereupon, a recess was taken.)

(Whereupon, the witness returned to the stand.)

THE COURT: We ready?

MR. SMITH: Yes, sir.

THE COURT: Matt?

MR. SHEALY: Yes.

THE COURT: Okay.

THE BAILIFF: Um-hum. Uh, Lynn, we're ready.

(The following takes place in the presence of the jury.)

THE COURT: Mr. Foreman, is the jury ready?

JURY FOREMAN: Ready, Your Honor.

THE COURT: Okay, Mr. Shealy.

MR. SHEALY: Thank Your Honor.

CROSS-EXAMINATION BY MR. SHEALY:

Q. Uh, Detective Clark, you've testified regarding this -- well we'll start with the affidavit, the photo identification, State's Exhibit No. 5. Okay, I'll hand that to ya and in that document, I understand you keep calling an affidavit but is that sworn to?

A. In regard to?

Q. Is it a sworn document, is a notarized document?

A. This one, ---

Q. That ---

A. --- this one ---

Q. --- that ---

A. --- is not no, sir.

Q. --- it is not notarized.

A. No, sir, it's ---

Q. Do ya'll have, do ya'll have notaries at the sheriff's department?

A. Yes, sir, we do.

Q. Okay, but ya'll didn't get that particular document notarized.

A. Because of the time of day I did not have one available.

Q. Ya didn't have a notary available?

A. No, sir, I was by, I was by myself at that point when I -- when Investigator Finley or Deputy Finley was not a notary.

Q. Okay, so at 5:45 in the afternoon the sheriff's department closes?

A. Uh, there were no investigators available for me to contact to have it notarized.

Q. So and there isn't any way you could look in the phone book and call a notary public?

A. I didn't.

Q. Ya didn't do that.

A. No, sir, I didn't do ---

Q. Okay, ---

A. --- that.

Q. --- so it's not really an affidavit, it's just a statement that she signed, correct?

A. I guess you could say that.

Q. Okay. Now you've testified also regarding these clothes off Highway number 9, you found a bag you said?

A. Yes, sir, um-hum.

Q. Let's see if I can find those. That's gonna be State's Exhibits 18 and 19, I'll just hand them to you.

A. Uh, sure.

Q. Now now in that bag what did you find?

A. Clothing, miscellaneous clothing, um, jeans, things a that nature, some deodorant, ---

Q. Alright, ---

A. --- things ---

Q. --- did ya ---
A. --- of that nature.
Q. --- swab any a those things for DNA?
A. No, sir, they were not.
Q. Okay. Did ya find any identifying cards or anything like that?
A. No, there were nothing found.
Q. Did you find a gun?
A. No, there was no gun found.
Q. Okay. In fact, you've testified that you found nothing of evidentiary value there, ---
A. That's correct, ---
Q. --- correct?
A. --- nothing was found.
Q. Now as you've testified about this lineup that you gave, you testified that it was in black and white, right, ---
A. Yes.
Q. --- and that you generated that lineup?
A. Yes, I did.
Q. From a description that you had been given by Ms. Smith, correct?
A. Not from a description I'd been given by Ms. Smith, no.
Q. So what description, who gave ya the description?
A. I went back to the sheriff's office with the description, I spoke with other investigators, um, ---

Q. Who gave ya the description is my question.
A. Ms. Smith.
Q. So you generated the lineup from a description given to you by Ms. Smith ---
A. Yes, ---
Q. Oh.
A. --- I didn't, I didn't just based off the description, no, ---
Q. Alright, but ---
A. --- I thought ---
Q. --- Ms. ---
A. --- that, I thought that's what you were asking just based off the description.
Q. No, no, I was ---
A. Okay.
Q. --- asking who made the description and did ya get any description from Mr. Williams?
A. No, sir.
Q. You'll bear with me, Judge. Just a couple more questions. Uh, Investigator Clark, did you take into evidence this, uh, for the record I'm showing you State's Exhibit Number ni -- 29 that (indicating), did ya take that into evidence?
A. I cannot recall off the top a my head if -- I would have to look at, I don't recall off the top a my head.

Q. Okay. Uh, do you know what that (indicating) thing is?
A. I'd have to say maybe looks similar to like something like a Pop-Tart ---
Q. A ---
A. --- thing.
Q. --- piece a foil wrapper maybe?
A. Something, uh, and along that line.
Q. But again, we took, it looks like State's Exhibit 27 has it in there, State's Exhibit 28 ---
A. Um-hum.
Q. --- State's Exhibit 29 so we took three pictures of it but we didn't take it into evidence and I'll show you State's ev -- 27, 28, 29 if you'd like me to. I my may approach the witness, ---
THE COURT: Yes.
Q. --- I've been neglecting to ask, I apologize, Your Honor.
A. Yes, sir, it is in all three pictures, it's also in all three pictures of the door and the glass that was broken through the window.
Q. Okay. Now you've testified that ya'll took the, I guess was it Talanges who took fingerprints or what ID officer was ---
A. Tala ---
Q. --- there?
A. --- Talanges.

Q. It was Talanges, alright, and you were the lead investigator, correct?
A. Yes, sir.
Q. Okay, so you told 'em what to fingerprint, what not to fingerprint?
A. We consulted.
Q. Okay. Now this is State's Exhibit Number 8, that's (indicating) the presumed route of entry, correct?
A. Correct.
Q. Did ya'll swab or check for fingerprints that door handle or that lock?
A. No, sir, he did not.
Q. Okay. Gonna show ya State's Exhibit No. 9, did you take fingerprints or are you aware of any fingerprints or any DNA swabs of either the safe or that handle a that tool that's kinda taken out there?
A. Without looking his report I cannot recall the top a my head if he processed the safe, we we did have a discussion about the safe but since we were told that the suspect was wearing gloves I can't recall without looking his report.
Q. Okay. Gonna show ya State's Exhibit Number 11 where there a whole bunch a tools, do you recall any a those being cr -- processed ---
A. No, ---
Q. --- by ---

A. --- for the same reason.
Q. Alright, and here's State's Exhibit Number 14 and were those ---
A. I ---
Q. --- fingerprint ---
A. --- cannot, I I don't believe so for the same reason.
Q. Okay. Now do you recall Ms. Smith giving you some cigarette butts?
A. I don't recall her giving me any cigarette butts.
Q. Okay. Were any cigarette butts taken into evidence in this case?
A. I don't recall 'em without looking at the evidence sheet or Investigator Talanges' report.
Q. If you'll bear with me, Judge.

(Pause.)

Alright, so you don't recall if Officer Talanges collected two used cigarette butts.
A. I I do not recall.
Q. Alright. Do you recall him collecting a beer can?
A. I do remember him mentioning a beer can that was found, I think it was on the side a the road but I don't recall ---
Q. Alright, ---
A. --- the exact conversation.
Q. --- but those things were not -- well, we don't have any DNA in this case.

A. No, sir.

Q. Alright, and presumably cigarette butts would would carry DNA, is that your your training and experience?

A. It could, yes, sir.

Q. Okay. That's all that I have for this witness, Your Honor.

THE COURT: Solicitor?

MS. WALTERS: Beg the Court's indulgence.

(Pause.)

REDIRECT EXAMINATION BY MR. SMITH:

Q. The pictures that were shown of the Pop-Tart wrapper you, what do you think, what was the picture taken of?

A. The window and the gla -- the door and the glass.

Q. What was the replacement window made out of?

A. Is made out of tape and I don't have a close-up but it appears to be s -- it looks to be like maybe a garbage bag or something along that line.

Q. Okay. I I don't have anymore questions.

THE COURT: Alright, anything at all on this, uh, a little bit, sir?

MR. SHEALY: No, no, nothing on that, no, ---

THE COURT: So, ---

MR. SHEALY: --- Your Honor.

THE COURT: --- Officer, you may step down.

(Whereupon, the witness left the stand.)

MR. SMITH: Uh, Your Honor, if we could recall Ms. Smith briefly. State calls Geri Smith.

(Whereupon, the witness returned to the stand.)

THE COURT: Ms. Smith, you were previously sworn and you remain under oath.

THE WITNESS: Yes, sir.

THE COURT: Solicitor.

DIRECT EXAMINATION BY MR. SMITH:

Q. Uh, Ms. Smith, did the defendant smoke cigarettes during your interaction with him inside your house or the person inside your house?

A. Yes, I offered him a cigarette.

Q. Inside ---

A. Inside, ---

Q. --- Cannons Campground?

A. --- yes, sir.

Q. Did he accept?

A. Yes, he did.

Q. Did he smoke?

A. Yes, he did.

Q. What did he do with the cigarette butt?

A. I have no idea, he did not put it in the ashtray.

Q. Okay, so you don't think the cigarette butt was inside your house after he left?

A. Not to my knowledge.

Q. Did you smoke on the way to the bank?
A. Yes.
Q. Did he smoke on the way to the bank?
A. Yes.
Q. Now how did that come about?
A. I offered him a cigarette again and again no cigarette butt.
Q. Was not left in the car?
A. No.
Q. Did you tell the investigators this?
A. Yes.
Q. But they collected the cigarettes butts anyway?
A. Yes.
Q. The the defendant was wearing gloves when you saw him inside your house?
A. Yes.
Q. I don't have any further questions, Your Honor.
THE COURT: Mr. Shealy.
CROSS-EXAMINATION BY MR. SHEALY:
Q. Ms. Smith, you've testified previously in this trial, correct?
A. Yes, sir.
Q. Alright, didn't testify anything about offering a cigarette, did ya, ---
A. It wasn't brought up to my ---

Q. --- not back ---
A. --- attention or asked of me.
Q. And so you've test -- you're testifying that you offered the armed robber a cigarette.
A. There's no smoking allowed in Mr. Williams' house; however, I asked Mr. Williams, I said, Is it okay under these circumstances that I smoke a cigarette, and at that point I did offer the defendant a cigarette in hopes that he would leave a cigarette butt in the ashtray for DNA evidence.
Q. Okay, so they collected two cigarette butts, ---
A. Correct.
Q. --- correct? Okay. Now -- that's all I have of this witness, Judge.

THE COURT: Alright, ma'am, you may step down, please be careful.

THE WITNESS: Yes, sir.

(Whereupon, the witness left the stand.)

MR. SMITH: Your Honor, if we can just check evidence that might be ready to ---

THE COURT: Alright.

(Whereupon, a discussion was held off the record.)

MR. SMITH: Your Honor, this point State would rest.

THE COURT: State rests, okay. Now, Mr. Foreman, ladies and gentlemen, the significance of that what he just said is the State at this point has has in -- at this point has called

all witnesses that it intends to call, uh, this case is not at an end but it's getting very close to being at an end. Now, when the State rests there's a couple of matters of law that I have to take up, uh, outside of your presence, uh, and I'll be back with you but this might take about, uh, twenty minutes or somethin' like that, alright. Do not discuss this case, it is not over, the State has rested but I've got some things I gotta take up with the lawyers, uh, which are called "matters of law," so, Mr. Foreman, take your jury to the jury room, be back and we'll -- I'll be back with ya in 'bout twenty minutes, fifteen, twenty minutes.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the State?

MR. SMITH: Nothing, Your Honor.

THE COURT: Matters from the defense?

MR. SHEALY: Judge, we would move for a directed verdict on these cases based on my prior objections, motions, things of that nature, thank you.

THE COURT: Well let's let's, uh, Mr. Shealy, let's put this on, a little more clearly on the record, how 'bout that. Motion for directed verdict.

MR. SHEALY: Yes, Your Honor. Judge, it would be our pet -- position State's failed to elicit evidence that a competent jury, uh, that even when viewed in the light most

favorable to the State could go to prove that my client was armed with a deadly weapon or had two prior convictions unfortunately. Judge, uh, we believe that the State has failed to present enough evidence to prove that he's actually, that this was actually forcible taking of any property which is obviously an element of armed robbery, I also believe the State has failed to produce enough, a sufficient amount of evidence in that he had a weapon so that would regard his possession of a firearm case.

And as for the kidnappings, I don't believe the State or we would argue that State's not produced a sufficiency of evidence to prove or to -- and when viewed in the light most favorable to the State that my client actually kidnapped anybody or abducted or carried them away, uh, when in fact I think at one point that Mr. Williams testified that they had locked the armed robber in a car, he then unlocked it, so, Judge, we believe that and yet we would make that motion for directed verdict, we'd also renew our previous motions to suppress the in -- sta -- the in-court identification, yet if the in-court identification were to have been suppressed we believe that the State certainly have, wouldn't have proven enough information regarding identification.

We would renew our motion regarding the watch that was turned over by Ms. Johnsons allegedly, alle -- believe it was twelve days after, um, this alleged incident or thirteen or

no, was twelve days after this alleged incident, it was returned Ms. Smith thirteen days after the alleged incident so, Judge, we would argue that there's nothing that ties that watch and we have already argued I believe persuasively that there's nothing that ties that watch to my client except that Ms. Johnson turned it in but again there's no evidence that Mr. Robertson gave her that watch or that she was in any way involved in this alleged armed robbery, she coulda gotten it off the street, could have changed hands any number of ways. Uh, Judge we don't believe and well, it would be our position that had that motion or that motion been granted that we believe there -- again, the State would have failed to have produced enough evidence to identify my client, I mean, that's, we believe that motion should have been granted as well, uh, we would also renew any other motions that I have neglected to mention just now.

THE COURT: Uh, Solicitor.

MR. SMITH: Um, Your Honor, in the light most favorable to the State, Ms. Smith identified Mr. Robertson as the person that, um, committed this crime, both she and Mr. Williams stated that he had a real firearm, in the light most favorable to State, that would mean that he was armed. Mr. Sm -- uh, Williams testified that he had not given this man permission to be inside of his house, that makes it a burglary, Ms. Moffitt testified about two prior burglary

convictions and offered certified convictions which would meet the elements of burglary first but also we believe that he had a weapon, there's evidence in the light most favorable to the State that the person that was inside the house moved weapons which would mean they possessed weapons during the commission of the burglary, they testified about that they were ordered to sit on the sofa, that they were ordered to go to the bank, while they weren't bound or anything that would meet the definition of a kidnapping. Mr. Smith testified that he gave six hundred dollars to the victim inside of the house, Ms. Smith gave fifteen dollars. Uh, Ms. Smith's position is that the watch was taken not off of her person but under case law that her, the resistance a the victim woulda still been overcome by the weapons so that would also meet the armed robbery and the bank transaction could meet the armed robbery. Uh, Your Honor, as far as the possession of weapon by a person convicted of violent crime, there's a stipulation that he has the violent crime and the evidence, um, saying that he possessed a weapon would be sufficient in the light most favorable to State to withstand the motion.

THE COURT: Uh, this court respectfully denies the motion for a directed verdict, uh, by the defense, the, uh, Court is concerned with the existence of evidence, not the weight and also, as everyone correctly mentioned when reviewing a denial of a directed verdict, uh, the Court views the evidence and

all the reasonable inferences most and in and all reasonable inferences in the light most favorable, uh, to the non-moving party which is the State a South Carolina.

As to the motion to suppress, uh, the, uh, Court identification or out-of-cour -- in-court identification, uh, Court reaffirms its, uh, its ruling on that, uh, for the reasons heretofore previously stated which are in the record.

As to the watch the motion was for relevance, court found that it was relevant evidence, uh, and respectfully disagrees with defense's position in that it is circumstantial evidence, it is not direct evidence but it is circumstantial evidence that the girlfriend or former girlfriend at least an acquaintance now, uh, of defendant had the watch, uh, turned that watch over to law enforcement, it was properly introduced into evidence as, uh, property, uh, int -- recovered in this matter, uh, that she had, and that she had that watch which is the watch of Ms. Smith and she testified to what it looked like, she identified it on the phone, uh, the record is replete.

As to the hotel receipt, the Court finds, uh, and you you you are renewing your motion that an objection to that, that was also on relevance, once again, a hotel, uh, was, uh, a officer went to the hotel, uh, asked with a picture of this defendant if he had seen him, I know it was not before the Court but I understand it is a disagreement as to what the

property owner/manager said but that's not, uh, in the record, it's not before the Court but nonetheless as a result of that investigation the officer, Detective Clark was then provided a a hotel receipt in the name of, uh, Terri Lynn Johnson which is either the girlfriend, former girlfriend or certainly acquaintance, uh, and then the, uh, Mr. Doshi, uh, explained that instead of one night or two nights it was actually extended for a 7-night period. Do I have that document? Do you have it handy?

COURT REPORTER: What one?

THE COURT: The hotel.

COURT REPORTER: Got this (indicating).

THE COURT: Days? That's it I believe. Yes, that's, uh, State's Exhibit 22, uh, and that it was paid for in cash so again, that's circumstantial evidence, uh, that he was there, he, uh, he told the officers himself that he was homeless and staying in areas, clothing was found in that vicinity, it's not been tied, uh, directly to this defendant, again, all that is circumstantial evidence so at any rate anything further from the defense?

MR. SHEALY: Uh, no motions, I didn't know if you wanted to do the charge, ---

THE COURT: I do.

MR. SHEALY: --- discuss the charge.

THE COURT: Well let's do this, uh, do do you wanna put

on the record that you talked to your client?

MR. SHEALY: Yes, sir. Well, Judge, I've s -- to begin we need to do a mot, uh, make a motion to settle my client's record as to what State believes to be impeachable offenses were he to testify.

THE COURT: Okay, is that not settled?

MR. SHEALY: Well we gotta, we gotta put it on the record, there's a PCR about that.

THE COURT: Okay, State.

MS. WALTERS: Beg the Court's indulgence.

MR. SMITH: One one second, Your Honor.

(Pause.)

MR. SMITH: Your Honor, he has a 2016 breach of trust with fraudulent intent.

THE COURT: Mr. Shealy.

MR. SHEALY: Judge, I don't believe he's been convicted of that, I have, I believe I represent him currently on ---

MR. SMITH: This is ---

MR. SHEALY: --- that ---

MR. SMITH: --- a Campobello, it appears to be a magistrate court charge.

THE COURT: Is there disposition?

MR. SMITH: It it says convicted on the rap sheet, Your Honor. It's four counts of grand larceny that are gonna be and one, uh, petty larceny and four four forgeries, I don't

know.

THE COURT: Let Mr. Shealy look, see if he's got that.

MR. SHEALY: Judge, uh, my client tells me he doesn't remember a Campobello breach a trust so we would ask that the State prove that by something other than a rap sheet 'cause as Your Honor I'm sure knows rap sheets are notoriously, uh, ---

THE COURT: Besides the, ---

MR. SHEALY: --- not ---

THE COURT: --- besides Campobella, what about the others?

MR. SMITH: Um, Your Honor, has a, some a these are older, um, I understand it's a 10-year but he's also was in prison for about fifteen years and he was released in 2014 so I I don't know if you want anything that's beyond ten, um, that he has grand larceny from 1996.

THE COURT: Mr. Shealy.

MR. SHEALY: Well, Judge, this -- to to go beyond ten years, State has to provide me with written notice, they've not provided me with written notice, so I think where he was residing doesn't matter within, in within the rule, I mean.

THE COURT: So what do ya got at this point, just the forgeries?

MR. SMITH: Within within ten years we we won't have anything except the breach of trust which I imagine overnight

we could probably get a certified conviction of that from Campobello but other than that he has numerous pending charges that are but that's not good enough.

THE COURT: Alright, Mr. Shealy.

MR. SHEALY: Well, so, Judge, I mean, my understanding is then that the State would have and again, my client says he doesn't remember 2016 ---

THE COURT: Well unless he's got -- unless he gets a certified copy a conviction that won't come ---

MR. SHEALY: Yes, ---

THE COURT: --- in.

MR. SHEALY: --- sir, so my understanding then would be that that would be the only charge that they would endeavor to get or to im -- impeach him with so, Judge, if you'll give me just one second, let me talk to him.

THE COURT: Okay.

(Attorney/client discussion held off the record.)

MR. SHEALY: Judge, I think we're ready for you to do the colloquy, I don't believe Mr. Robertson's gonna testify but I I would feel more comfortable if Your Honor asked him.

THE COURT: I'll be, I'll be happy to. Sir, if you'd stand and be sworn, please.

(Whereupon, the defendant stood.)

THE CLERK: Raise your right hand, please.

DONALD SCOTT ROBERTSON, having

been first duly sworn, testified as follows:

EXAMINATION BY THE COURT:

Q. Sir, you are Mr. Donald Scott Robertson, is that true?

A. Yes, sir.

Q. Mr. Robertson, you have been in the courtroom these two days during these entire proceedings, have you not, ---

A. Yes, sir.

Q. --- and you read, write, and understand the English language.

A. Yes, sir.

Q. Mr. Robertson, at this time I want to explain certain rights to you and if you do not understand something I say or if you wanna speak with either or both of your lawyers, you stop me and I'll just, and I will stop because it's important that you talk with your lawyers, understand?

A. (The defendant nodded in the affirmative.)

Q. Okay. Sir, we have reached the stage of the trial where you may present your defense. You have a right to claim protections given to you by the Fifth Amendment to the Constitution of the United States which says in part, No person shall be compelled in any criminal case to be a witness against himself. Additionally, you have the right to claim the protections given to you by Article I, Section 12 of the South Carolina Constitution which states in part, No person shall be compelled in any criminal case be a witness against

himself, this means you cannot be required to testify in this case. Sir, you have the right to testify in your own defense but no one can make you do so, this is a personal right and no one can waive this right except you. If you decide testify, you'll be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. Additionally, if you have convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this court determines the probative value of admitting the evidence outweighs its prejudicial effect, a solicitor will be able to introduce your record to attack your credibility. If you decide testify, this decision on your part must be freely, intelligently and voluntarily made with the knowledge of protections given to you by both Constitution of the United States and the State a South Carolina and the consequences of your decision. If you decide not to testify, I will instruct jurors they cannot give the fact that you did not testify any consideration and that there will be absolutely no prejudice to you because you did not testify. Sir, it is entirely your decision as to whether or not you testify, do you understand what I have explained?

A. Yes, sir.

Q. Do you have any questions about what I have explained?

A. No, sir.

Q. Have you discussed with your lawyers, plural, you have two, whether you should or should not testify?
A. Yes, sir.
Q. Do you wish to talk with your lawyers any further about this issue?
A. No, sir.
Q. Sir, do you wish to testify?
A. No, sir.
Q. Are you under the influence of drugs, alcohol or any medication that interferes your thinking ability?
A. No, sir.
Q. You are clear mind and know what you're doing?
A. Yes.
Q. And that's your decision?
A. Yes.
Q. Thank you, Mr. Robertson.

THE COURT: Mr. Shealy.

MR. SHEALY: Judge, that would be the only issue that we had so we'll rest on record ---

THE COURT: Okay, ---

MR. SHEALY: --- once they come back.

THE COURT: --- if, uh, I do this often, uh, and I offer it to ya now, you're now resting on the record, I'll let you do that in fronta the jury if you'd like.

MR. SHEALY: Yes, sir, that's that's my normal or ---

THE COURT: Okay.

MR. SHEALY: --- our normal practice that ---

THE COURT: Alright, ---

MR. SHEALY: --- so, yes, Judge.

THE COURT: --- so you're resting at this point. Anything from the State?

MR. SMITH: No, Your Honor.

THE COURT: Anything from the defense?

MR. SHEALY: I just renew those prior directed verdict motions as ---

THE COURT: And ---

MR. SHEALY: --- well ---

THE COURT: --- and ---

MR. SHEALY: --- as the other motion.

THE COURT: --- and the rulings are the same and you are protected, you have raised all of those for, uh, for for the appeal if necessary. Okay, uh, with that I wanna return the jury, allow Mr. Sh -- uh, Shealy to then rest in fronta the jury and we'll excuse them for the night, okay. Alright. We'll have our jury.

(The following takes place in the presence of the jury.)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, uh, at this time give your attention to the defendant. Mr. Shealy.

MR. SHEALY: Judge, defense would rest.

THE COURT: Defense rests.

MR. SHEALY: Defense would rest, yes, sir.

THE COURT: Alright, there being defense has now rested, there no reply from State, okay. Mr. Foreman and ladies and gentlemen, this case is now at an end, all the testimony that you are going to see or hear is now before you, due to the lateness of the hour I'm not gonna send you out in a little bit here to deliberate so I'm gonna tell ya how this will proceed. Closing arguments will be next, the lawyers will have twenty, twenty-five, thirty minutes, somethin' like that each, uh, to make a closing statement to you and then I will charge you on the law in this case after which time I will ask you to retire to the jury room, uh, and begin your deliberations so you could expect in the mornin' that I will be here as usual 8:00, couple minutes after, I'm here few minutes till this mornin', uh, I will meet with the lawyers, we will talk about any little small details or issues that we might need to talk about after which time I will take the bench at 9 a.m. sharp, 9 a.m. sharp. When you come and sit in that (indicating) box, you will ex -- you will hear from the lawyers in their closing statements, they will present their closing statements to you after which I will then charge you on the law so you could expect to have this case, uh, to you somewhere around 10:30 tomorrow morning, okay, usually takes about ninety minutes to get that done so about 10:30 tomorrow

the case will be yours.

Now, until I tell you to begin to deliberate tomorrow somewhere around 10:25, you are not free to do so. Please do not discuss this case with anyone at home, don't discuss it with each other, don't even discuss it within your own mind, okay, you're at work, you don't need to be goin' home and thinkin' about work, you wanna go home and look at the ball game or rerun the race or somethin', get ready for Bristol here shortly, so somethin' like that but we don't need to be worryin' about work, but tomorrow, tomorrow mornin' at 9:00, uh, lawyers will, I call your attention to the lawyers, they'll make closing statements, I will charge you the law and then it will be your time to deliberate. Again, don't try to do any research or learn anything about the case, please, okay.

Now, I am gonna once again ask you please be timely in your jury service, cannot start without all of you, okay, with that, Mr. Foreman, if you will take your jury out, be dismissed for the evening, see you tomorrow morning.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the State?

MR. SMITH: Nothing, Your Honor.

THE COURT: Matters from the defense?

MR. SHEALY: Nothing, Your Honor.

(Proceedings July 26, 2017)

THE COURT: Ready to go?

MR. SHEALY: Uh, Judge, you'll just give me just one, just a few seconds to set everything up.

MR. SMITH: Your Honor, they didn't put up a case, is it we go and then they're goin', that's is ---

THE COURT: Yeah.

MR. SMITH: Okay.

THE COURT: Um-hum. They they didn't put up a case and didn't introduce anything ---

MR. SMITH: Yes, sir.

THE COURT: --- so . . . Ready to go?

MR. SHEALY: Uh, yes, sir.

THE COURT: I'm not rushing anybody but, everybody, my my minister can say it in twenty minutes on Sunday so keep that in mind. We have the jury.

THE BAILIFF: Yes, Your Honor.

(Whereupon, a discussion was held off the record.)

(The following takes place in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen, Mr. Foreman, uh, thank, I thank all of ya for your patience, we ready to go?

JURY FOREMAN: Yes, Your Honor, ready to go.

THE COURT: Okay. Lawyers ready?

MR. SMITH: Yes, Your Honor.

MR. SHEALY: Yes, sir.

THE COURT: Mr. Smith.

MR. SMITH: Thank you. This (indicating) sketch was made by Geri Smith after the robbery, within hours of the robbery when they, when Albert and Geri came home and found a man inside their house. During the course a the robbery the time she was with him she said that she saw his face for about three seconds from the passenger seat of the Ford Explorer back to the rear driver's side, saw the defendant's face without ever seeing a picture with him -- of him, without ever meeting him with the Deputy Mark Finley and she's able to come up with this (indicating) sketch through Deputy Mark Finley who's trained with the FBI, has been doin' sketches for over a decade and that is the picture that she identifies out of a photo lineup as the person that was inside a the house, robbed her of her cash, robbed Mr. William of cash, credit cards and ultimately ordered them to go to the bank withdraw four thousand one hundred dollars, this was not given to her, there was nothing suggested to her, this is her recollection of what he looks like and it is the defendant, 'fore she ever, before the police ever even had a suspect she knew exactly what he looked like, it's scary. Every time I think of this case this is what I think of: how good the sketch is compared to what Mr. Robertson looks like in the photo lineup that she identified him out of: salt and pepper hair. One thing you

don't get in it is the clear blue eyes which both Mr. Williams and Ms. Smith testified to because he was wearing a ski mask. Uh, Mr. Williams didn't see his face, he saw his eyes, he has distinctive blue eyes, it's him. Additionally, this is the, Ms. Smith's contribution to the case, the best thing she contributes to the case, she saw his face but that's not all we have, Mr. Williams was able to provide some details about his body. Mr. Williams said he was skinny which the defendant is, he said he had a tan like he works outside and he described a tattoo on his arm that came down below the t-shirt line and if you look he had a farmer's tan, this upper right picture has a farmer's tan and below the t-shirt line is two what looks like feathers or something like that and he described two strings or lines coming down from the de -- from the perpetrator's arm, it's totally consistent with what you see in this (indicating) picture: there's a tan line, you can see where his shirt would be and you can see that there's a little bit of a tattoo that's hanging down below the tan line, that's what he's able to offer, he also offers the fact that he had blue eyes, the fact that he had salt and pepper hair because of what he was able to see in the beard, that's also consistent with what the defendant has. These two things alone are pretty strong evidence but that's also not all we have, we have the bank video, I'd like to watch it with ya'll again. I direct your attention to something different than

what you probly looked at the first time you watched it 'cause it's not what I saw the first time I watched it. Most people would look at Albert and Geri most likely, what I would like you to look at is this in the back right here (indicating). Now as you can tell this video is not running seamlessly, it's one second stills, if you look at the timing here it's going one second. If you look at that (indicating) black image there that's behind the reflection, it's a tinted glass and there's a reflection of the bank and the sky but if you look at this (indicating) throughout the video, it moves, you can see light coming through from behind right there (indicating) which was just not there, there's something inside the car that's moving, that's exactly where Mr. Williams and Ms. Smith describe the defendant as sitting when they went to SC Telco on Asheville Highway, that it's the shape of a head and it moves right there (indicating), right there (indicating), moving forward, that there is a person seated in the back seat of this car and that person is Donald Scott Robertson. What you'll also see as we get into the video more there's continued movement throughout. One thing you'll see Albert never looks back ever, doesn't make any attempt to look back, even when he ends up handing him the money it's just a straight back, he's actually looks, he's looking down at the seat of the, uh, almost at the steering wheel and just hands it back. He doesn't count it? very unusual for somebody who's

withdrawing forty-one hundred dollars from a bank, you'd expect somebody to check the balance but as he told you he didn't care because the money was going to this (indicating) man that's in the back seat that he found inside his house on Cannons Campground Road on June 17th of 2016 after they came back from the dump.

Now they look calmer in this (indicating) part, it's also not live so it's hard to tell what their emotions are but the defendant; number one, has been inside their house and had a conversation for an extended period of time, they've had time possibly for their nerves to calm down, additionally he has a weapon and has told them that they need to comply with what he says and to not do anything funny or he would do harm to them and that he had nothing to lose and that they needed to do everything he said and they did that. Mr. Williams testified he didn't try to alert the teller because he was worried about what would happen if the teller tipped off the robber by saying something.

I'm gonna jump forward just a little bit here. Alright, again, right there (indicating), there's no image there, the head is here (indicating), it's gonna come back, you can see that's different than what you saw at the beginning of the video and that is not a reflection, that is something inside of the car, it's a person inside a the car. There (indicating) it is moving again. Now I don't know if you saw

that, that's (indicating) a hand, that was the hand of Mr. Robertson taking the cash from Mr. Williams and there (indicating) it is, you can see it. Mr. Williams is reaching back, not looking back whatsoever in the back seat because he's been told to not to look in the back seat and there's (indicating) a hand grabbing the money from him. This happened, it's on video, they testified about it, it's all consistent.

Okay, so after they come back from the bank, you can take the lights up, after they come back from the bank they get out, they get loose, Geri speaks to the initial officer that gets there, gives him a description, speaks to Tom Clark, Tom Clark says, Okay, sounds like she's got a pretty good look at this guy, we don't have anything else: we don't have any surveillance, we don't have a car, we don't know where this guy came from, you know, there's there's no sign of who it is so let's do a sketch artist and she does the sketch. They end up, he goes back to the sheriff's office, conducts an investigation there, comes up with a a potential that Donald Scott Robertson fits the description of the person who committed this crime, the information he's getting from the witnesses. He generates a 6-person photo lineup. She identifies and there's three different witnesses that testified about how quickly it was, how confident it was, how assertive she was and one hundred percent that it was Don

Robertson, she talked about she hesitated for a second on number 1, Tom Clark talked about that too because she thought the hair was like salt and pepper and spiky but as soon as she got to 5 she knew it was him, he di -- Tom Clark again, he took the extra step of making it black and white to not make it any more suggestive than it already and that it not make it suggestive at all because he has blue eyes and the blue eyes could ruin the the photo array but as we've already seen she drew a sketch that's almost identical to the picture that she picked out. Um, so Tom Clark gets warrants, Detective Clark gets warrants for her based off of her identification and what they have at the scene. If you remember the pictures, the safe is broken, the back window's open or the back window is broken, it has been taped up, there's glass inside the house, the safe is ruined, uh, just absolutely beaten, there's tools, guns, everything moved around inside of the house, there's all the evidence consistent that a burglary was interrupted and then it turned into a kidnapping and armed robbery.

Well, what happens when Mr. Robertson gets picked up? he gets picked up about a week after the warrants are issued, warrants issued on June 17th the day of the crime, all of these things, all of this happens on the day of the crime, Mr. Williams' description, Ms. Smith's description, the photo array, the sketch, all that comes in that day. Mr. Robertson gets brought into the sheriff's office and he

speaks with Detective Clark after being advised of his rights and speaks freely with him. He gives a, he does not admit to the crime, he in fact denies it, gives an explanation a where he was when it happened but he gives some information I think ends up being very important for their continuing investigation of the case: he lets us know that he has an on-again, off-again girlfriend, maybe more than an off-again girlfriend, named Terri Lynn Johnson and that he was actually with her on June 17th on White Avenue over off of Herring Circle and that that is Ms. Johnson's mother's house, okay, he then states that he's homeless, he has clothes here, there and everywhere and that one of the places that he tells the police that he has clothes is behind Highway 9 or off of Highway 9 by Fatz, well Detective Clark goes out to that area, he canvasses it with other deputies and they find a clothes pile consistent with somebody who's living in woods, yes, they didn't swab him for DNA but it's where the defendant told him to go and where he'd been camping and they find a bag of clothes, well he's been doin' this for think twenty years he said, he's got plenty of experience investigating violent crimes and how somebody who's committed a crime may behave after they've committed that crime. His reasoning was this is a man that's told me that he's homeless, this is a man that told me that he's been out of work for months and he's literally living in the woods and if the, well the warrants that he signed are

correct he's come into six hundred dollars off of Mr. Williams' person, fifteen dollars off Ms. Smith, a gold watch that's been taken and forty-one hundred dollars that was removed at the SC Telco that Ms. Pennoyer testified to you about, that's a lotta money for somebody who just goes from being homeless and living in the woods, he said, you know, I'll check the nearest motel just on a hunch maybe see if he just walked over there, he said he doesn't have a car so he goes to the next closest place. He talked to you about speaking to Mike Doshi at the Days Inn and that he showed the picture that I showed you earlier of Donald Scott Robertson to Mr. Doshi and Mr. Doshi brings back and testified about the room registration for Terri Lynn Johnson, it was taken out on June 17th at 10:32, the defense made a issue about how far away it is, this crime's alleged to have occurred at about 11:15 in the morning, somewhere in the 11 to 12 area 'cause the, this is 11:15 when they're at here so I guess 10:30 to noon is the rough area it happened, so we're talking about ten and a half, eleven, twelve hours later in which they check in the Days Inn, that's plenty a time to get anywhere, could have gotten a ride, any number of explanations, the room is paid for in cash, maybe unusual for a hotel room, um, also doesn't indicate who paid for it but the room was paid for in cash, that is the defendant's admitted girlfriend, ex-girlfriend, acquaintance, friend, whatever it is who he actually admitted

to law enforcement he was with on the day that this crime happened and on the day that this crime happened that lady checked into the Days Inn, Mr. Doshi talked about how he checks with a photo identification, okay, then naturally like any investigator will do he would have the desire to speak to Terri Johnson because Mr. Robertson had said that he was with her, certainly needs to investigate whether she had anything to do with this crime or whether she knows anything about it, any evidence that she can offer so he contacts her, was able to get in contact with her on June 28th, four days after Mr. Ro -- Robertson has been arrested and there's some information that he told her that I think is important. He tells her that Mr. Robertson has been arrested on these charges and they come from June 17th, he said that he was with you, well they end their conversation and Ms. John -- Ms. Johnson leaves the sheriff's office, that same day she contacts Detective Clark again and they had a phone conversation and Detective Clark testified about how during that phone conversation he placed Ms. Johnson on hold, he contacted Mr. Williams, he was trying to contact Ms. Smith but Ms. Smith was outta town, he talked to Mr. Williams and asked if Ms. Smith owned a watch and then he asked him to describe it. He described it as a gold segmented watch, woman's watch with roses on it and a diamond at the top, I know you saw it earlier, he gets back on the phone with Ms. Johnson, they

conclude their phone conversation and the next day Terri Johnson shows up at the sheriff's office and hands Detective Tom Clark this (indicating) watch, the very watch that Mr. Smith Smith described as being taken from her on June 17th, it's his girlfriend who he said he was with on the date of the crime committed, that they came into cash, they rented a hotel room. I think it's important to note that she stays on White Avenue with her mom, well I was gonna hang out with my ex-girlfriend or my ex-girlfriend, probly not gonna hang out at mom's house if I've got four thousand dollars, we're gonna go get a hotel room and that's what they did.

Now, Mr. Shealy brought up points about fingerprints and DNA swabs and there's explanations for that. Both victims in this case testified not only that the defendant have a mask but he had gloves on during the entirety of the robbery so there shouldn't be any expectation that we would find fingerprints but the police checked anyway because sometimes you get lucky, uh, maybe a glove ripped or somethin', who knows. The DNA swabs. Ms. Smith testified about havin' a cigarette in the, in the room, she said that the defendant did not place the cigarette's there, she was actually hoping that he would but he did not. Those are things I'd like to emphasize about the State's case and now I'd like to talk briefly about what the law is on this, what we -- how you apply the facts and the evidence that we've introduced to what

he's actually charged with. He's charged with a number of distinct offenses; first, I'll go with burglary in the first degree. Burglary is the entering of a dwelling, that place this would be a house, they both testified that they live there without consent, Mr. Smith said he had no reason for Mr. Robertson to be there, Mr. Robertson to be there and that you would have an intent to commit a crime therein. The evidence shows there's obviously intent to commit a crime therein I think and originally the intent was just to steal things but then ultimately it turned into a kidnapping, armed robbery. Next is armed robbery -- oh, and the aggravated factors that make it a burglary first would be the fact that he had a weapon, that he moved weapons, whether you believe that he had a pistol or not, there's evidence that he moved weapons inside of the house, that alone would be enough to convict him of burglary first, that he threatened the use of a weapon, they both said that he made threats to them, sit on the sofa, do what he said or else or that Ms. Gail Moffitt testified about that he has two prior burglary convictions, certified convictions that are run through the clerk's office in regular course of business, that he's previously been convicted twice of burglary, that is an aggravating factor and one of those aggravating factors in combination with entry of a dwelling with an intent to commit a crime is a burglary first. Next is armed robbery and there's one count for Geri

and one count for Albert. Armed robbery is the forcible taking of goods with the intent to deprive the person of that and you use a weapon in the commission, that we are alleging that he used a weapon as both victims testified to a silver revolver with white grips. There is number of things that were stolen off of their person. Mr., uh, Williams testified about six hundred dollars cash, credit cards taken off of them, Ms., uh, Smith's I believe said she got fifteen dollars off of her and the gold watch, you also have the additional forty-one hundred dollars that was taken through force, with a weapon against Mr. Williams, those are armed robbery and kidnapping I know most people imagine, you know, being tied up, duct taped or something like that, that didn't happen in this case but there's no doubt that they were not free to leave at any point during this case, they were complying with everything he said because they feared that he would hurt them otherwise.

Now, there's one other charge is possession of a weapon by a person convicted of a crime of violence and you're gonna hear the judge talk about a stipulation that was entered into between the defense and the State and that is that he has a prior conviction for what's classified under our law as a violent felony, that's, you'll hear from the judge that that is true and you must accept that to be true and that if you believe that he possessed a weapon then he's guilty of that

charge as well.

Um, the judge is gonna talk to you about direct and circumstantial evidence and the differences between those two. Ms. Smith identifying him saying that's the person I saw, that's, she perceived it, that's direct evidence. Circumstantial evidence: watch, hotel room, these type of things, the the campsite in the woods, you know, Mr. Mr. Williams has direct evidence with what he saw about his arm, his tan, things like that. In this case I like that we have a combination of both because maybe maybe you question Ms. Smith's either how she came up with this sketch or the lineup or anything like that but you have other pieces to indicate, yeah, she is in fact right, she's not picking out the wrong person, she's not just -- has an erie recollection of what this guy looks like, there's other evidence that links him to this other than her recollection of what he looks like. Um, like I said, the first time I ever looked at this case, the sketch and then the picture of him outta the lineup is uncanny, I don't even know how I could describe somebody that well, she's obviously very good, the dete -- Detective Finley testified about how it was a much faster job than he normally is able to do because she was just very certain about her identification and he was there present when she picked him outta the photo lineup, also no hesitation. There is no way that we can prove anything beyond every possible doubt but

that's now what we have to do, we have to prove things beyond a reasonable doubt and I would submit to you the evidence is overwhelming that he did this crime, her identification of him alone with the certainty, the corroboration from Mr. Williams and what he saw about the defendant, the bank video, the Days Inn and ultimately the watch, the watch that is recovered off of the defendant's girlfriend who he said he was with on the day he committed this crime and I'd ask that you return verdict of guilty on all these charges. Thank you.

THE COURT: Thank you, sir. Mr. Shealy.

MR. SHEALY: Uh, Judge, if you'll bear with me one minute I'll set up my computer.

(Pause.)

(Whereupon, a discussion was held off the record.)

MR. SHEALY: Alright, ladies and gentlemen of the jury, I promised ya a bizarre case and I think I brought you a bizarre case. Now I didn't expect Mr. Williams to testify that he had had the armed robber locked in the vehicle and then let him out, didn't expect that to happen but that's what he testified to, so I'm gonna start with the fact that this, I've been doin' this for a while, this was the most civil armed robbery that I have ever seen now except for the very beginni7ng where they say that he threw her on the ground, other than that there was absolutely no violence; in fact, for giant portions of it they don't even know if he has a gun or not, that's what

they testified to so initially whenever Mr. Williams comes in and sees the gun he backs up but he doesn't back outta the house, he backs into the house and that's when he alle -- then the robber grabs Geri and pulls her inside at which point they apparently sit down and hang out for thirty minutes. She offers him a cigarette, she has him smoke one, she smokes one, keeps saying that those two butts and cigarette in the ashtray were not the robber's but they also only testified two cigarettes got smoked and that no smoking was allowed in Mr. Williams's house, Mr. Williams doesn't smoke, that's what they testified to and yet they did no testing on those and I understand she told them don't do testing on them but why would she tell them that, because again there are two cigarette butts, only one a her.

MR. SMITH: Your Honor, object.

THE COURT: See the lawyers.

(Whereupon, a bench conference was held off the record.)

MR. SHEALY: Alright, and then at that point after they have smoked their two cigarettes they walk in a single file line to the car and they say that, Mr. Williams says that he may have taken his ski mask off at that point, they don't know if he's still got the gun in his hand or not 'cause they don't look at him even though they get into the vehicle. Now the robber has to get into the passenger or the si -- the rear driver door, has to get in right next to Mr. Williams but

Mr. Williams doesn't see his face, doesn't see the ski mask, doesn't see anything 'cause he's been told not to look at him so he's not been lookin' at. When they get into the car, Mr. Williams immediately flips the mirror up, there's no prompting for that, there's no insistence on that but he does it anyway and then this robber says, No, no, that's fine, you go ahead and just put it back. Now ya'll have all driven in cars, ya'll have all used rearview mirrors, ya'll have all done this before and ya'll know just as well as I do that if you look in a rearview mirror to drive you can see the people in the back but I guess Mr. Williams was just too polite to look at this man's face. Now they also say that he he who said, Don't look at me, don't look at me, don't look at me, don't look at me but they were all so comfortable with each other that he wants to show off a scar while he has his mask off, so he's taken his mask off and I get, I don't know if he's trying to flirt with her or what they're alleging but he's like, Look at this cool thing I got on my arm, does that make any sense? He's gone to all these great extent, these great lengths for them not to look at his face but he says, Look at this scar. Now we don't know if it's a scar 'cause she couldn't remember that, she couldn't remember the tattoos, so far as I can recall she didn't testify to any tattoos that are on my client's arm where presumably she's looking but, man, she got a look at that face and they want you to believe

that.

Now throughout that video, we're gonna talk more about the video, I'm gonna show you some spots on video. He's mess, Mr. Williams is messing with the center console and again, ya'll can watch that video just as often as ya'll would like, I'm gonna show you some spots where if if he's not lookin' back, I don't know where he's lookin'. He's messin' with the center console, there's no way he can possibly not see the person who's sitting allegedly right behind him, it's just not possible and again, you can watch the video and they're not distraught. Ms. Smith's drinkin' out of a water bottle, smokin' a cigarette, one point it looks to me like she's playin' on the phone, I'm not entirely sure what it is in her hands but there's somethin' in her hands that she is engrossed in, so they come back to the house at this point where Mr. Williams gets out and and initially he testifies that she got out, there was a problem with the doors and she starts yelling, Let the guy out, and so he does, Mr. Williams clicks the, because the child locks were on and so he had to let the guy in the back seat out, the one that's robbing them, now he tried to fix it by saying, Oh, well, I mean, Geri was maybe in the car and so I was afraid that he might shoot her or something like that but and that she was stuck too I believe he, at one point he tried to say but we've all, again, been in cars, we know how child locks work. Child locks don't work on

the passenger door, least I've never seen a child lock on a passenger door, in the back sure, you can get those, but I'm unaware of any passenger seat, front passenger seat door that opened or that locks based on a child lock, so after they've let him out that's when we have the the big break where he gets, where Wayne gets in and closes the door and locks out the robber but what was odd, and he testified to this twice, Mr. Williams says that he opens the glass door with keys in his hand to get in to open the door, the robber let him lock his door, that's the only conclusion you can draw from that line testimony, so the robber was so concerned that on the way to the bank Mr. Williams's possessions be protected that he let him lock the door and I even asked him it was, I would asked him if he had left, if he had needed to unlock the door, open the door, get inside and he answered yes, does that make any sense? Again, this is all much more civil than I've ever heard an armed robbery be. So they call the police at that point which I don't know what phones they use because they testified he took all their cell phones but maybe it's the one that Geri, that Ms. Smith is playing on in video, I don't know, but somehow they call 9 and they get an officer out there, so these officers come out and there no fingerprints, there's no DNA, there's no anything that links my client to this house, we've got cigarette butts but, again, we didn't test those. And Mr. Smith made a big deal of them testifying

about gloves, that well they both testified that he had gloves on so he wouldn't have left fingerprints, well that may be true but they had to recall Ms. Smith to testify to that, she didn't testify to it to begin with so what a difference two days of testimony can make, she testified to it when they recalled her and I think that suggests some duplicity and if ya look on these various exhibits, they're -- I'm gonna show 'em to you in just a little bit, that the hammers and the chisels and the safe and all of this stuff, he admitted that they didn't take any finger, they didn't even ty -- try to take fingerprints, Mr. Smith just told ya they did and maybe they tried to take a finger print off of a car or something but they didn't dust all of these tools, they didn't dust the point of entry, they didn't dust the front door, they didn't dru -- dust the glass door, didn't dust any a those things, they didn't swab any a these things, they recovered these cigarette butts, no testing was done and now they do get this (indicating) watch and this watch kind of appears because Ms. Johnson didn't testify so we don't know why -- where she got the watch from, we don't why she gave it to the police, we don't know anything about that, all that we know is that twelve da -- or eleven days after the incident she shows up. Eleven days in a watch's life is a very long time. A watch can be turned over, particularly a gold one, any number of times. I don't know if ya'll ever been a approached by folks

in a parking lot, you can buy these things, it's very easy. I ha -- I've had other clients who like I say could get rid a that watch lickety-split and there's really no proof even that my client was in the room that they have offered you with Ms. Johnson with the exception of his telling the police, I was with Ms. Johnson. There's no proof he provided the cash for this room; in fact, I assume that the person who has to give the cash is the one that has to register otherwise why do they have to register, why bother, if you can just buy it for cash then what do ya need that information for 'cause you don't know who's rentin' the room, so they want you to believe part of his what he told the police but not all of what he told the police and does that make sense? They both vouch for and then attack his credibility and it just doesn't make any sense; further, when they get to this place, believe it's State's Exhibits 19, State's Exhibits 19 then State's Exhibit 20 are closer-up pictures, what they actually found are a pair a jeans in what looks like a trash bag off the side of a road, not just any road but Highway 9, is that surprising that ya found a bag of clothes, a bag of apparently trash off the side of Highway 9 and they've testified that, and Detective Clark actually said that these pictures and this information has no evidentiary value, meaning it isn't evidence of anything but we put eight pictures of it in so thank goodness for that.

Now what they didn't find in that area or a Days Inn hotel room or anywhere else is a gun, they didn't find these gloves, they didn't find a ski mask, they didn't find a lime green t-shirt, I guess they found some faded jeans but we don't even know what size those jeans are so we don't know they even fit my client, didn't find any boots, didn't find anything except for apparently some stuff in a trash bag yet they attribute it to Mr. Robertson and if ya attribute it to Mr. Robinson -- Robertson then I will point out you got no instrumentalities of these crimes, you got no clothing that was used in these crimes, this is Mr. Robertson's stuff then where are these things? And so then we have an identification, so once we've got the investigation goin' on we got an identification, she draws this (indicating) picture and she picks him out of a lineup but when she draws this picture, when she picks him out of a lineup, when she describes him to Detective Clark, nowhere does it mention facial; in fact, her description of his face is different from Mr. Williams' description of his face. She says he's got a ski mask on, it's got a mouth hole, it's got eye holes and it's got red around those holes, now what Mr. Williams testified to is that he's got eye holes but it's rolled up so he can breath and he can see all of this (indicating) and it's three to four days of facial hair growth, he's got three to four days of growth but that wasn't anywhere on the sketch and

Detective Finley or Officer Finley testified that nowhere did she mention facial hair, that that box wasn't checked, that that code wasn't given and; further, they say that he got -- she got such a good view of him, and I've already talked a little bit about this, in this glance into the back seat which is what she said it was, she says she looks, she doesn't see the gun, she doesn't see a scar, she doesn't see the tattoos, she sees nothin', nothin', other than allegedly his face, that's it, and again, that doesn't make sense and it doesn't, it's not consistent to what she testified earlier to which was that, I was paying most attention to the gun, so either the mask had eye and mouth holes or it didn't, either he had on boots as she says or he had on tennis shoes, either he had tattoos or he didn't have tattoos, they're asking you to believe these two people who have described different people, they're just not the same and, ladies and gentlemen, I would submit to ya that if Mr. Robertson's arms, I'm not sure that I'm seeing him, I'm gonna put up State's Exhibit 17 which Mr. Smith showed ya, talk about this tan line 'cause, ya know, it's not like we're in South Carolina and anybody's got a farmer's tan. They testified that Mr., that the robber was jacked, he had big arms, if that guy's got big arms then I'm huge, that's what they testified to and it doesn't match, they have described two different people and neither of those people are Mr. Robertson.

Okay, now as to this bank video, not, we're not gonna watch the whole thing I promise, ya'll can though, ya'll can watch as often as you want, can watch it however you want, ya'll can stop it, you can pause it, you can move it, you can manipulate, you do it, do whatever you need to do with this bank video so that ya'll are confident in your verdict but I'd like to point out some things, that he initially puts, that Mr. Williams initially puts things into this (indicating) tube at about 11:10 on the, on the video, alright, he also does some other things, he puts his hand on the roof a the vehicle which apparently doesn't make the robber dumb, he's concerned about the mirror but doin' this (demonstrating) on the roof, that's fine. At 11:10:48 it looks to me as though he takes his ID out of his wallet and he puts that wal -- that ID into the tube, now that's crucial because he testified that he didn't, that that was the mistake that he made, he had forgotten to give them the ID and that's why it looks like there are two transactions on this video and as I told ya at various times Geri appears to be drinking out of a water bottle, she also appears as I told ya to be playing on her phone. Just bear with me.

(Pause.)

She seems to be laughing at that (indicating) point and then it looks like she's got somethin' in her hands, I can't tell what, it looks to me like a phone quite frankly but as

I've said I can't tell. At 11:13 he takes out what appears to be an envelope, at 11:13:07 it appears that he has money in his hand to me, as I've said let me skip forward, and there again he's messin' in the center console but still he says he didn't see the alleged robber. At 11:13 he looks back so that he can see, right there (indicating), I apologize I'm not as skilled at this as Mr. Smith is, but he appears to look into the back seat, he also appears to hand something back to the back seat so it's the exact same motion that he makes at the point that Mr. Smith is so interested in telling ya about but all of this is when he has taken the tube out the first time when he said he didn't get any money and as I told ya we're not gonna watch the whole thing. So, ladies and gentlemen, as I told ya that bank video does not even suggest they're telling the truth, they're not under any stress, he's -- it -- they just aren't. They're smoking cigarettes, they're drinking water, that she seems to laugh at one point, he's reaching in the back seat but he's looking in the back seat as well, he's messing in the center console and again which you don't see after he takes the tube out the second time what I'd failed to see was where he puts his ID in, I also am not entirely sure that I see where he's signing the check. He's messin' on the center console for a little while but if ya look at the signature on the back a the check the endorsement, what he says he didn't do, in nice big, crisp letters, they're

not the scratch of a person who is under a time crunch, they're not the concerned scribble of someone who is under some kind of of pressure, that he just isn't, and and as I told ya this, these are just, it just doesn't make any sense, this case doesn't make any sense the way that they've told it. This is kinda like, I don't know if ya'll ever seen but there's a cartoon of a dog in front of a dam and the dam springs a leak, he puts his paw on the leak then it springs another leak, he puts his paw on that leak, he springs a third leak, he puts a paw on that leak and the leaks gets progressively worse and he's trying to cover them all up but ultimately he's swept away by the water, they keep trying to explain things and it just makes it worse. They say that Mr. Robertson went into a house he had never been in previously for forty-five minutes to an hour assuming he went into that house immediately after Mr. Williams and Ms. Smith left. If ya assume that he was waiting on them to leave and he went to the house at that point then he apparently had time to walk through the house, discover State's Exhibit No. 11, all of these (indicating) tools, State's Exhibit 12, that (indicating) safe and that (indicating) ball-peen hammer, these (indicating) three rifles, move those three rifles to the bed, do that (indicating) to the safe, and State's Exhibit 10 is a closer version of that safe, he did all of that, he then heard them arrive, he managed, I guess he woulda pulled

on the ski mask at that point, pulled his gun out, gone to the front door because this was apparently not in the front door, waited on them, oh, and by the way he also had found their ledger, gone through their ledger at the kitchen table, put a gun on the kitchen table, so he's waiting -- he -- they come in, he then armed robs 'em, all of this in a house he's never been in and he's able to find all of this stuff, move it hither an yon throughout and still conceal his identity, get to the fronta the house and then hold them hostage, they further say that Wayne hadn't seen him in fifty years, he couldn't recognize his fa -- his cousin's voice despite the fact that he's been in Spartanburg for nineteen, for since 1985, now I can't go through Bi-Lo without seein' at least two clients but he can go through, what's this, thirty years of life, thirty-two years of life without having ever seen his second cousin despite the fact that his second cousin's mother lives at [redacted] Gossett Road which is a couple of miles down the road from this trailer but they've never seen and as I've said they say that he took their cell phones but they called 911, he took all their cards but he made them drive to the bank, they say he broke the back door window in order to get in, that's gonna be State's Exhibit 27, 28 and 29, that's (indicating) 27, that's (indicating) 28, that's (indicating) 29. First, he broke the window while wearing, at some points they testified he's wearing gloves, sometimes he didn't or

they didn't testify to that but if he's wearing gloves he's certainly wearing a lime green t-shirt and he reaches over through that window, unlocks the door, opens the door without slicing all of this (indicating) of his arm and anybody who's ever broken a window knows no, uh, window forever breaks clean, ever. And then they say that this foil packet doesn't matter, State's Exhibit No. 29, that's a close-up view of it, and ordinarily I probably agree with, what does a foil packet have to do with an armed robbery? Well they didn't testify he was armed with a toaster pastry, with a Pop-Tart and yet that foil wrapper is on the top of the alleged broken glass, it can't get on top of broken glass unless it happened second, if that is what they're alleging, it is impossible, it's simply not possible.

Okay, and as I've told ya they re -- had to recall Ms. Smith which again, I've been doin' this for a while, doesn't happen very often, that she needed to clean up this glove thing, she also needed to clean up this cigarette butt thing 'cause they took these butts into evidence, never tested, I think we've covered that sufficiently.

Now, we've also talked about the the shiftings of these masks. So he puts, he has the mask on and then he takes the mask off then it's unclear to me whether he puts the mask back on for the trip back from the vehicle to the house because, remember, Wayne has to let him out of the car, he has to

unlock the car to see and the robber has to get outta the back seat, how does he not see his face then, well nobody testified to that but why would he put the mask back on having already shown his face allegedly to Ms. Smith? Why would he roll it back on? He asked if Wayne a -- has a safe, he's already supposedly been workin' on this safe for minutes and, uh, possibly up to half an hour. When Wayne calls the bank on speaker, Geri says it's conversation with a real person or they're askin' whether it's what the limit to withdraw money is on a check if you're outside, Wayne says it's an automated teller system, it's just a verification of the balance but out of all of these thing the oddest thing is where Mr. Williams testified that I told him that my bank was SC Telco, being from Spartanburg I assumed he would know the area, how does he know that person that he's never seen was from this area? Why would he assume such a thing?

Now we're taught in law school to be decisive, you gotta decide what the facts are but I'll be honest with ya I got no idea what to make of this case, none of this makes any sense to me. The only thing that seems clear and consistent is what Detective Clark says my client told him which was, I was with Ms. Johnson so I don't know, I didn't do this. Now when I, when I got it and I read through it it read quite frankly like some kinda weird drug deal to me, now it makes sense 'cause if they know Wayne's cousin is homeless they can blame him, they

can draw him and then they don't have to blame a drug dealer, a drug dealer doesn't get arrested. I don't know that that's what's happened here 'cause forty-one hundred dollars is a lotta money in a drug deal or it may just be that they wanted the money, they got forty-one hundred dollars back from the bank tax free. The bank reimbursed them all of this money, now it took a couple a months, s -- I believe it was seven months total, but she testif -- Ms. Pennoyer testified that all ya need is a police report, they don't look into that stuff, so long as they get those police reports they're happy, they're insurance will pay for it and while seven months may be a while to wait for forty-one hundred dollars, it's not that long if you've kept the cash and, ladies and gentlemen, I'll tell ya I don't have to know what happened but ya'll have to be convinced of it beyond a reasonable doubt, ya'll have to determine a set a facts beyond a reasonable doubt then apply those facts to the law as the judge gives it to ya and that reasonable doubt is the doubt that would make a reasonable person hesitate and if you can't determine what happened beyond a reasonable doubt then ya have to find my client not guilty. Now what is a reasonable doubt? My dad used to tell this reasonable doubt story, it's if you go to for instance a Bi-Lo or a Food Lion or somethin' like that, you go to the meat section and in the meat section they usually have some kind of special, it's got a sticker on it that says reduced

for qui -- quick sale, now ya look at it, reduced for quick sale obviously means it's old, that it's gettin' towards its expiration date, ya look at it, now maybe ya buy it maybe ya don't buy it but that doesn't matter, the fact is ya hesitated to buy it because you didn't know if you wanted it or not because it might not be any good anymore. If you hesitate to act in this case and if you hesitate to act on the facts, not just the law, on the facts then you have to find Mr. Robertson not guilty, you can't do anything other than that.

Now the judge is also gonna explain to ya, and this will be the last thing that I mention, about circumstantial evidence. Circumstantial evidence it's a very, it's a specific charge, it requires all the facts be consistent with themselves and point conclusively to the defendant's guilt, if it's just suspicious, if ya just think as one a my friends would say that it sounds hinky, that's not enough, you have, it's got to believe, again, point conclusively to that guilt and, ladies and gentlemen, as I've told ya I don't know what to make of this, I don't see how any reasonable person could find facts as the State has alleged them and that's their burden is to prove the facts as they've alleged them, hold them to that burden, if you do that you have no choice but to find my client not guilty. Thank you.

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, you have seen and heard the evidence presented in this

case as well as the arguments of the lawyers and it's now my duty and obligation to instruct you, uh, in this case, on the law in this case and it will be your duty to begin your deliberations, through this process you will apply the facts, the law as I instruct it and render a fair and an impartial verdict. It is your job and your job alone to determine what the facts are in this case, you do that by applying your common sense to the testimony and the evidence presented during this trial. You twelve jurors alone will decide what effect, value and weight is to be given to any particular testimony or evidence received, quite simply, ladies and gentlemen, your job, your obligation is to give both the State and this defendant a fair and impartial trial based on the evidence presented and the law in this case.

The indictments charge this defendant with the offenses of two counts of armed robbery, possession of a weapon during a violent crime, possession of a firearm or ammunition by a person convicted of a violent crime, two counts of kidnapping and first degree burglary, specifically it is alleged that on June 17 of 2016 this defendant Donald Scott Robertson did in Spartanburg County, South Carolina while armed with a deadly weapon, being a handgun, or while alleging through actions or words that he was armed while using a representation of a deadly weapon or any object which a person presented during the robbery reasonably believed to be a deadly weapon did in

Spartanburg County, South Carolina feloniously take from a person or presence of Albert, uh, Williams by means of force, violence and/or intimidation goods or monies, such goods or monies being described as U.S. currency with the intent of depriving him permanently of the property in violation of law, it's also specifically alleged that he did this and did in Spartanburg County, South Carolina while armed with a deadly weapon, that being a handgun, while allegedly through actions or words that he was armed while using a representation of a deadly weapon or object which a person present during a robbery reasonably would believe to be a deadly weapon did this county and state feloniously take from the person of Geri Smith by means of force, violence and/or intimidation of goods or monies, that being U.S. currency, with the intent of depriving her permanently of the property in violation of law, it is further alleged that this defendant Donald Scott Robertson did in Spartanburg County, South Carolina on or about June 17 of 2016 possess or physically displayed a handgun during commission of a violent crime, that is, armed robbery in violation of state law. It's alleged in the indictments that Donald Scott Robertson did in Spartanburg County, South Carolina on or about June 17 of last year have possession of a handgun after having previously been convicted of a violent felony as defined by state law, it's specifically alleged that Donald Scott Robertson did Spartanburg County,

South Carolina on or about June 17 of 2006 wilfully and unlawfully with criminal intent seize, confine, kidnap, abduct or carry away Albert Williams without authority of law, in violation of state law, it's also alleged that this defendant did in Spartanburg County, South Carolina on or about June 17 of 2016 wilfully and unlawfully with criminal intent seize, confine, kidnap, abduct or carry away Geri Smith without authority of law, in violation of state law and it's alleged that this defendant Donald Scott Robertson did in Spartanburg County, South Carolina on or about June 17 of 2016 commit the crime of burglary in the first degree in that he entered a dwelling located in this county and state without consent and with the intent to commit a crime therein and that he did enter dwelling and/or while inside the dwelling and/or while in immediate flight from the dwelling either armed himself with a deadly weapon and/or used or threaten the use of a dangerous instrument and/or cause physical injury to a person who was not a participant in the crime or displayed what is or appeared to be a handgun or other firearm and additionally that he has two or more prior convictions for burglary or housebreaking or a combination of both in violation of state law.

Once again, Mr. Foreman, ladies and gentlemen, I remind you and charge you that the defend -- the fact the defendant was arrested, charged and indicted is not evidence in this

case and cannot be considered by you as evidence of guilt nor does it create a presumption of inference of guilt, the indictments are simply written instruments which bring the case before the Court, defendant has entered a plea of not guilty to each and every, uh, charge in the indictments and he is presumed innocent of those charges.

Now the indictments, uh, the indictments in this case allege, uh, the kidnapping of Geri Smith, kidnapping of Albert William [sic], first degree burglary, armed robbery of Geri Smith, the armed robbery of Albert Williams, possession of a weapon during the commission of a violent crime and possession of a firearm or ammunition by a person previously convicted of a violent crime, each indictment, ladies and gentlemen, is a separate and distinct offense, you must decide each indictment separately on the evidence and the law applicably to it uninfluenced in your decision as to any other indictment. Defendant may be convicted or acquitted on any or all of the offenses, you will be asked to write a separate verdict of guilty or not guilty for each indictment against this defendant.

The burden of proof, that the defendant has entered a plea of not guilty and the, that puts the burden of proof squarely on the State a South Carolina to prove his guilt beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove

himself innocent. I charge you it is a cardinal, important, vital rule of law that in all criminal trials no matter what the seriousnesses of the charge may be for which he stands charged a defendant is always presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of guilt beyond a reasonable doubt, this presumption of innocence does not end when you begin your deliberation but it accompanies this defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of guilt beyond a reasonable doubt. The presumption of innocence has been described as a robe of innocence placed about the shoulders of the defendant which remains with every defendant from the moment of his arrest and continues until it has been stripped from his shoulders by evidence satisfying you of the defendant's guilt beyond a reasonable doubt. A presumption of innocence is not legal theory nor is it a legal phrase, it is a substantial right to which every defendant is entitled unless you twelve jurors are satisfied from the evidence of his guilt beyond a reasonable doubt.

The State alleges this defendant is the perpetrator of the crimes charged, the State a South Carolina has the burden of proving identity beyond a reasonable doubt. Identification testimony is the expression or belief or impression by a witness. You may consider the opportunity of a witness, uh,

to observe the alleged offender at the time of the offense and thereafter make an identification, it is for you, the jury, to determine the accuracy of the identification of the defendant. You must consider the credibility of each identification witness in the same way as any other witness. You can consider that witness's, uh, tr -- uh, testimony as well as the capacity, opportunity and circumstances of the observation of the matters about which that witness testified.

Now, ladies and gentlemen, a stipulation is an agreement, an admission or a concession made in judicial proceeding by the parties or their lawyers, stipulations are binding upon those who make them. A stipulation is an agreement, an understanding, the Court and the jury must accept stipulations as binding and if counsel for the parties have stipulated to any fact or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making stipulation for admission. In this case the State and defense have stipulated the defendant has previously been convicted of a violent crime defined by law, this stipulation should only be considered for the purpose of determining whether or not a defendant is guilty of Indictment 2017-3586 which is possession of a firearm or ammunition by a person convicted of a violent crime and for no other purpose, the State has also offered evidence that this defendant has been convicted of two prior burglaries, the defense, the

defense has not stipulated to this fact, this evidence should only be considered in determining whether or not the defendant is guilty of Indictment 2016-5530, burglary in the first degree. You are only to consider these convictions to determine whether the State has met its burden to prove the elements of the crimes of possession of a firearm or ammunition by a person convicted of a violent crime and first degree burglary, you are not to consider prior, these prior convictions as evidence that this defendant committed the crime for which he is currently on trial or should you consider the convictions as character evidence. You should not conclude that because this defendant has been previously convicted of burglary or a violent, uh, crime that he is likely to have committed these offenses, you are to consider his prior convictions simply as a part of the elements that the State must prove in order to make a charge of possession of a firearm or ammunition by a person convicted of a violent crime and first degree burglary.

I remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial and additionally I have the duty to rule on admissibility of evidence offered, you are to consider only the evidence that you have, uh, received here in this courtroom. If any testimony was ordered stricken, you must disregard that, you are to consider only

the testimony which has been presented in this witness -- from this (indicating) witness stand and the exhibits which have been made part of the record and any stipulations by the lawyers. It is your duty to find facts from all the evidence admitted, to those facts you must now apply the law as I give it to you, it's your duty to apply the law exactly as I give it to you whether you agree with it or disagree with it. You must not be influenced by any personal likes or dislikes, prejudices or sympathy, that must me -- that means you must decide this case solely on the evidence presented, uh, before you and according to the law, you will recall that you took an oath previously to do so. In following my instructions you must follow all instructions and not single out some, ignore others, they're all equally important. You must not interpret any of my instructions or anything else I have said or done as a suggestion regarding your verdict you as a jury should return, that is a matter entirely for you twelve jurors.

State a South Carolina has the burden of proving this defendant guilty beyond a reasonable doubt. Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of this defendant's guilt. I tell you and charge you there are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. A reasonable doubt may be described as the kind of

doubt that would cause a reasonable person to hesitate to act, if you have such a doubt as to the guilt of this defendant, he is entitled to a verdict of not guilty. Reasonable doubt may arise from evidence in this case or from the absence or lack of evidence in a case. Based on your consideration of the evidence if you are firmly convinced this defendant is guilty of crimes charged, you must find him guilty; on the other hand, if you think there's a real possibility he is not guilty, you must give him the benefit of the doubt and find him not guilty, you twelve alone must make determination of whether or not reasonable doubt exists as to the guilt of this defendant.

There are two types of evidence that the law recognizes: direct evidence and circumstantial evidence. Direct evidence proves the existence of a fact and does not require deduction, circumstantial evidence is proof of a chain of facts indicating the existence of a fact. Crimes may be proven by circumstantial evidence, the law makes no distinction between the weight or value to be given either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond reasonable doubt, if these circumstances merely portray the defe -- defendant's behavior as suspicious, proof has failed. The

State has the burden of proving the defendant guilty beyond a reasonable doubt and this burden rests with the State regardless of whether the State relies on direct or circumstantial evidence or a combination of two.

Now under the Constitution of South Carolina you twelve jurors are the finders of fact, in deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. It is your duty as jurors to analyze and evaluate the evidence and determine which evidence is convincing to you. In determining the believability of witnesses who have testified, you may believe one over several or several over one, you may believe all of what a witness says or some a witness says or you may believe none of what a witness says. In deciding what to believe may consider a number of factors including but not limited to witness's ability to see, hear or know the things about which he or she has testified, quality of that witness's memory, the witness's manner while testifying, whether or not the witness's testimony is, uh, at trial is contradicted by anything the witness said or wrote before the trial or how reasonable the witness's testimony is when considered in light of all the evidence, whatever your good judgment and common sense tells you is the most believable testimony is the testimony you should accept and reject other testimony.

I instruct you and emphasize the fact this defendant did

not testify is not a factor to be considered any way during your deliberations or consideration on the question of guilt or innocence, it must not be considered by you in the jury room. A defendant has the Constitutional right to remain silent and the assertion of this right must not be considered in your deliberations, the fact this defendant did not testify should not be discussed in the jury room. As I've told ya previously the burden of proof is on the State a South Carolina, a defendant is not required prove his innocence but proof or the burden of proof remains with the State.

Criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt, criminal intent is a matter that must be determined by the jury from circumstances, uh, surrounding the situation. Ladies and gentlemen, there is no way to prove to a mathematical, uh, prove criminal intent by a mathematical certainty, there's no way medical science can take a person's brain and determine what that person had in mind so the law says that criminal intent, criminal intent may be inferred from the circumstances shown to have existed. Criminal intent is a state of mind which when operated jointly with an act is the commission of a crime. Criminal intent is a mental state, it's a conscious wrongdoing so it's up to you, the jury, to determine what this defendant intended to do based on the circumstances shown to have existed. I tell you the State

must prove criminal intent beyond a reasonable doubt just as it must prove every element beyond a reasonable doubt. It is not necessary to establish by direct and positive evidence but the criminal intent may be established by inference the same way as any other fact, while the State may prove motive, it's unnecessary for the State to do so but State must prove criminal intent.

The defendant is charged with armed robbery, now in order to prove this offense the State must prove beyond a reasonable doubt that this defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is in -- within that person's reach, inspection, observation or control so that the person could if not overcome with violence or permitted by fear keep possessions of his or her property, State must also prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner of the property and keep the property for his own use. I tell you the slightest removal of property or complete possession even for an instant by this defendant would be sufficient to make a showing that or a taking and carrying away of the property. Taking and carrying away must have been done with violence or by putting the owner of the property in fear of violence. And, finally, the State must prove beyond a reasonable doubt defendant was armed with a deadly weapon

during the robbery or that he was armed while using a representation of a deadly weapon or object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily injury. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case but I tell you the following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, knife, metal knuckles, a gun may be a deadly weapon even if it's not operating. Also included within the offense of armed robbery is a lesser included offense of strong-armed robbery. If you find that the State failed to prove defendant was armed with a deadly weapon, you may then consider whether the State proved beyond a reasonable doubt that this defendant committed strong-armed robbery. In order to prove strong-armed robbery, State must prove beyond a reasonable doubt all elements that I previously explained except he was not armed with a deadly weapon.

Defendant is charged with possession of firearm during the commission of a violent crime in violation of state law which provides if a person is in possession of a firearm or visibly displays what appears to be a firearm during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined by our law,

he is guilty of this crime. A firearm is defined as any machine gun, rifle, revolver, pistol or any weapon which will or is designed to or would be readily converted to expel a projectile. Section 16-160 in our code of laws provides that armed robbery is a violent crime. For you to find the defendant guilty of a separate offense of possession of a firearm during the commission of violent crime, you must first find him guilty of committing a violent crime or attempting commit a violent crime, in this case the crime of armed robbery of Albert Williams. If you find the defendant guilty of armed robbery of Albert Williams, you must then determine whether the State has proved beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during commission of the violent crime. Now possession means more than simply having an object in his possession, conviction of possession requires proof of possession, actual or constructive, coupled with the knowledge of the firearm's presence. Possession can be shown by either actual possession or constructive possession. Actual possession occurs when the firearm is in the actual physical custody of person charged, constructive possession along with knowledge of the presence of a firearm is sufficient to support conviction. To prove constructive possession State must show the defendant had dominion or control or the right to exercise dominion or control over the

firearm. Constructive possession may be established through either direct or circumstantial, uh, evidence, possession requires again more than mere presence.

The defendant is charged with possessing a firearm or ammunition having been previously convicted of a violent crime in violation of state law, the State must prove beyond a reasonable doubt that this defendant did possess a firearm and that the defendant has previously been convicted of a violent crime as defined by law, this matter the State and the defense have stipulated the defendant has previously been convicted of a violent crime. Evidence of the defendant's prior convictions should not -- should only be considered determining whether the defendant is guilty of this individual charge. Do not consider evidence of prior convictions as evidence of this defendant's character or and that he acted in this instance in accordance with prior character.

Now defendant is charged with kidnapping Albert Williams, State must prove beyond a reasonable doubt that this defendant knowingly and unlawfully seized, confined, kidnapped, abducted and carried away another person without authority of law. Do a thing unlawfully is to do it willfully and against the law, knowingly means with knowledge, consciously, not accidentally; seized means take hold of or suddenly suddenly and forcibly; confine means to limit, restrict or enclose within bounds or shut up or keep; kidnap is to remove a person against his or

her will; abduct means to carry carry off secretly or by force or illegal purpose; carry away means to remove. State does not have to prove that this defendant did all of things, instead if you find beyond a reasonable doubt this defendant did any of these things you may find this defendant guilty of kidnapping of Albert Williams.

In the indictment he's charged with kidnapping of Geri Smith, State must prove beyond a reasonable doubt that this defendant knowingly and unlawfully seized, confined, kidnapped, abducted or carried away of Geri Smith without authority of law. Again, define means to limit, restrict or enclose; kidnapping means to remove a person against her will by unlawful force or by fraud; abduct means to carry off secretly or by force; carry away means to remove. Once again the State does not have to prove that this defendant did all those things but instead you find beyond a reasonable doubt that he did any of these things, you may find this defendant guilty of the kidnapping of Geri Smith.

Defendant's charged with burglary in the first degree and what is burglary in the first degree? Person is guilty of burglary in the first degree if a person enters dwelling without consent and with intent commit a crime in the dwelling and either when effecting entry or while in the dwelling or its immediate flight that he is armed with a deadly weapon or causes physical injury to a person not a participant or uses

or threatens the use of a dangerous instrument or displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or any other firearm or the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both. Under the statute State must prove the following four elements: entry into a dwelling. State must show there was an entry, that is, that this defendant actually went inside the dwelling or some part of it. Entry is not defined to intrusion of the whole body, the slightest entry is sufficient and it may be consistin' of the insertion of any part of the body or any instrument under the defendant's control, no force need to be used to gain entry, literally entry is the act going into the place but the word has a broader significance in the law, uh, burglary for the entry may be accomplished by merely putting through a portion of the body into the dwelling. Place must be a dwelling. A dwelling is any house, apartment, building, shed or box in which there sleeps a proprietor, a tenant, watchman, clerk, laborer or any person who lodges there with a view to protection of property, also means the living quarters of a building which is used or normally used for sleeping, living or lodging by a person, must be without consent, entry must be without consent of the owners, proprietors, tenants, entry of building without consent, without consent of the person who is in lawful

possession of that property, must be with intent to commit a crime, any crime, a felony or misdemeanor whether or not a crime is actually committed. The mere entry into a dwelling without consent is not sufficient to constitute burglary first degree, there must have been intent to commit a crime once inside. To convict the defendant of first degree burglary, you must find that at the time he entered the dwelling a defendant intended to commit a crime once they're in.

Now what's criminal intent mean? Again, criminal intent state of mind which operates jointly with an act or omission, in the commission of a crime, criminal intent is a mental state, it's a conscious wrongdoing. Must be presence of aggravating circumstance. If you find the defendant entered the dwelling without the consent and with the intent commit a crime, you much then reach the question and find whether the presence of at least one of the following circumstances, aggravating circumstances in order to convict. The aggravating circumstances are when entering or while in the dwelling or in fleeing the scene the defendant either was armed with a deadly weapon or caused physical injury, uh, to a person not a participant or used or threaten the use of a dangerous instrument or displayed what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or firearm or that the burglary was committed by a person with prior record of two or more convictions for burglary or housebreaking or a

combination of both. Evidence of defendant's prior convictions should only be considered in determining whether the requisite aggravating circumstances are met, do not consider evidence of any prior convictions as evidence of this defendant's character or evidence that he acted in accordance with his prior conduct.

Ladies and gentlemen, you twelve have been selected as fair and impartial jurors sworn to impartially try the criminal facts in this case and your are to decide this case according to the testimony you have heard and seen along with the evidence introduced. Mr. Foreman, ladies and gentlemen, your verdict must be a unanimous verdict. Mr. Foreman, when the jury reaches a verdict, you will indicate your verdict in space provided on verdict forms and I'm gonna explain momentarily here, sign your name as the foreperson of the jury, knock on the door, tell the bailiff you've reached a verdict and we'll return you to the courtroom to receive your verdict. Now, Mr. Foreman, the jury must be together when it's deliberating. If someone needs to use the facilities, someone needs to smoke and I hope they don't, I'll keep sayin' that, hate cigarettes, but someone needs to be, uh, absent, the jury must suspend its deliberations until all twelve are back together then resume your deliberations, again all twelve must be together at all times during deliberations, you certainly may take a break, uh, use facilities, do whatever

you do, if you do so suspend deliberations until that individual is once again back.

Now, Mr. Foreman, this (indicating) is the jury verdict which I speak, my clerk, uh, here seated with me all week prepares this in every criminal case that I do, it is merely a form, that you're gonna have seven separate pieces of paper, remember, you have seven different verdicts that you, seven different offenses, you must reach a verdict on each and every one. The first one says, it has the caption a the case and number, that means nothing other than goes with these indictments, it says, We, the jury, unanimously find the defendant Donald Scott Robertson on the charge of armed robbery, let's see, Albert William, not guilty or guilty. I tell ya there is no significance to whether not guilty comes first or guilty comes first, I simply put 'em in this order on every case that I try. Whatever the verdict of the jury, unanimous verdict of the jury is, Mr. Foreman, it is your duty to write a check mark, an "x," initial, it matters not to me, mark that signifies whichever verdict it is, it also says, If if if you have reached a verdict of not guilty on question 1, please answer question 2 and that is, We, the jury, unanimously find the defendant Donald Scott Robertson on the lesser offense of strong-armed robbery not guilty or guilty then you certify that's decision of jury. You will not answer question 2 if you answer question 1 guilt, uh, guilty, it's a

lesser included offense so it says, If you've reached not guilty, proceed to question 2, otherwise once the decision's made sign your name and sign has a place for the date. The next form says, If you reach the verdict of guilty on the armed robbery of Albert Williams, please answer the following question: We, the jury, unanimously find the defendant Donald Scott Robertson on the charge of possession of a weapon during the commission of violent crime not guilty or guilty and sign. Again, pay close attention please, it says, If you've reached a verdict of guilty of the armed robbery, otherwise you will not answer this question. 2006, I'm sorry, hey, that's right, 5531, We, the jury, unanimously find the defendant Donald Scott Robertson on charge of armed robbery, let's see, Geri Smith not guilty or guilty and it has the same instructions about the lesser included; We, the jury, unanimously find this defendant Donald Scott Robertson on the charge of burglary first degree not guilty or guilty, sign on behalf a jury; We, the jury, unanimously find the defendant Donald Scott Robertson the charge of kidnapping of Geri Smith not guilty or guilty; we, the jury, unanimously find defendant Donald Scott Robertson on the charge of kidnapping Albert Williams guilty or not guilty and; finally, we, the jury, unanimously find defendant Donald Scott Robertson charged with possession of a firearm, ammunition by a pers -- person previously convicted not guilty or guilty. Again, Mr. Foreman, ladies and

gentlemen, your verdicts on each and every offense must be unanimous and I tell ya once again you may find him guilty of some, guilty of all, not guilty of any, you have seven different questions, uh, to ask -- answer.

Mr. Foreman, I'm about two seconds here, little over, I'm gonna release you from the courtroom, please do not begin your deliberation. I practiced law many years, twenty-five years before I came up here, it is so very easy to be a lawyer practicing down there, walk over and pick up one a these exhibits which belong to you, use it in closin', show it to ya, walk back to counsel table, now you got evidence missing, that evidence belongs to you and I let you, when I ask you to leave the courtroom, I'm gonna ask these lawyers to come up here, get with my court reporter, she has a list, they're gonna ensure that every piece of evidence is present, nobody has is it layin' on the table, don't mean to do it, I I've done it countless times, I wanna make sure it's all present, once that's accounted for which'll just take a matter couple minutes the bailiff is gonna bring all a this (indicating) to you along with this (indicating), my two alternates, ladies, the bailiff comes with the evidence for the jury, you two will leave with my bailiff, you'll no longer be in jury room, only twelve will be there at that time, they'll have a place for you to sit, uh, comfortably, get you some refreshments or whatever you might need while the jury deliberates but you

will not be in the room so that'll be your signal to leave with my bailiff when he brings this to Mr. Foreman and the jury. Mr. Foreman, if you'll please take jury out.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the State?

MR. SMITH: No, Your Honor.

THE COURT: From the defense?

MR. SHEALY: No.

THE COURT: Gentlemen, ladies, please, if you'll look at the evidence and see if we have it all.

(Pause.)

(Whereupon, a discussion was held off the record.)

THE COURT: Okay, let me see, we got everything? Everything's ready?

MR. SHEALY: Yes, sir. Yes, sir, ---

THE COURT: Okay.

MR. SHEALY: --- everything's there.

MR. SMITH: Yes.

(Whereupon, a discussion was held off the record.)

(Whereupon, the jury began deliberating at 11:21 a.m.)

(Whereupon, a recess was taken.)

(Whereupon, the jury reached a verdict at 1:36 p.m.)

(Whereupon, a discussion was held off the record.)

THE COURT: See the lawyers up here real quick.

(Whereupon, a bench conference was held off the record.)

THE COURT: Ready for our, ready for the jury?

MR. SMITH: Yes, the State's ready, Your Honor.

THE COURT: Okay, we need to talk to everybody, there'll be no celebratings, not the time with celebration or jubilation or otherwise, understand? Okay, alright, we'll have our jury.

THE BAILIFF: Yes, Your Honor, and, Your Honor, may I approach, ---

THE COURT: Yeah, ---

THE BAILIFF: --- please.

THE COURT: --- yeah.

(Whereupon, a bench conference was held off the record.)

(Whereupon, a discussion was held off the record.)

(The following takes place in the presence of the jury.)

THE COURT: Mr. Foreman, I'm told the jury has reached a verdict, is that true?

JURY FOREMAN: Yes, Your Honor.

THE COURT: Would you give those to the bailiff, please.

(Whereupon, the jury foreman complied.)

THE BAILIFF: Permission to approach?

THE COURT: Yeah.

(Whereupon, the bailiff handed the verdict to the Court.)

THE COURT: Madam clerk, will you publish the verdicts of the jury, ---

THE CLERK: Yes, sir.

THE COURT: --- please.

THE CLERK: In the court of general sessions Case Number 2016-GS-42-5532, State of South Carolina vs. Donald Scott Robertson, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of armed robbery of Albert Williams guilty, this is signed by the foreperson and dated today's date; Indicted 2016-GS-42-5532, um, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of possession of a weapon during commission of a violent crime guilty, this is also si -- signed by the foreperson and dated today's date; in Case Number 2016-GS-42-5531, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of armed robbery of Geri Smith of guilty, this is signed by the foreperson and dated today's date; Case Number 2016-GS-42-5530, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of burglary first degree guilty, signed by the foreperson and dated today's date; Case Number 2016-GS-42-5528, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of kidnapping Geri Smith guilty, signed by the foreperson and dated today's date; Case Number 2016-GS-42-5529, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of kidnapping Albert Williams guilty, signed by the foreperson and dated

today's date; and Case Number 2017-GS-42-3586, we, the jury, unanimously find the defendant Donald Scott Robertson on the charge of possession of a firearm by ammunition by a person convicted of a violent crime guilty, also signed by the foreperson and dated today's date. Ladies and gentlemen of the jury, if these are your verdicts and still your verdicts, please raise your right hand. So say you all.

THE COURT: Polling a the jury by the State?

MR. SMITH: No, Your Honor.

THE COURT: By the defense?

MR. SHEALY: We would ask for that, Your Honor.

THE COURT: Yes, ma'am, Madam clerk.

THE CLERK: Ladies of t -- a jury of, of the jury, I will pose a question to you after which I will call your name out individually and ask you to stand and answer my question, the question being is this your verdict and still your verdicts. Number 122, Kristen O'Shields.

JUROR NUMBER 122: Yes, ma'am.

THE CLERK: Thank you. Number 21, Trevis [sic] Campbell-Boozer. Will you answer out for me, please.

JUROR NUMBER 21: Ma'am?

THE CLERK: Will you answer the question openly for me, please.

THE BAILIFF: Out loud.

THE BAILIFF: Out loud.

JUROR NUMBER 21: Oh, yes.
THE CLERK: 273, May Vang.
JUROR NUMBER 273: Yes.
THE CLERK: Number 210, John Fowler.
JUROR NUMBER 210: Yes, ma'am.
THE CLERK: Number 149, Goble Shackelford.
JUROR NUMBER 149: Yes.
THE CLERK: Number 102, Joshua Mayes.
JUROR NUMBER 102: Yes, ma'am.
THE CLERK: Number 138, Courtney Rice.
JUROR NUMBER 138: Yes, ma'am.
THE CLERK: Number 27, Thomas Coats.
JUROR NUMBER 27: Yes, ma'am.
THE CLERK: Number 277, John Wilber.
JUROR NUMBER 277: Yes, ma'am.
THE CLERK: Number 223, Katrena Jones.
JUROR NUMBER 223: Yes, ma'am.
THE CLERK: Number 221, Nelson Hunter.
JUROR NUMBER 221: Yes, ma'am.
THE CLERK: And Number 238, Cassandra McDonald.
JUROR NUMBER 238: Yes, ma'am.
THE COURT: Your Honor, the jury has been polled.
THE COURT: Thank you. Other matters from the State?
MR. SMITH: No, Your Honor.
THE COURT: From the defense?

MR. SHEALY: No, ---

THE COURT: Mi ---

MR. SHEALY: --- not while the jury's here.

THE COURT: Yes, thank you. Mr. Foreman, uh, your l -- one of your last acts, next to the last last act as a foreperson is you must come forward and sign the indictments for madam clerk so if you would come up to madam clerk, she's gonna ask you to sign the indictments, please, that's important.

(Whereupon, the jury foreperson came forward.)

(Pause.)

THE COURT: Everything?

THE CLERK: Yes, sir.

THE COURT: Mr. Foreman, ladies and gentlemen a the jury, thank you so very much for your service this week, uh, this is your courtroom, it belongs to you, belongs to me, I'm a Spartanburg County resident myself, can't always say that when I'm in ne -- another county but that, uh, this courtroom belongs to you, this courthouse belongs to you. I encourage you to come any time and see what's goin' on, this is your courthouse, your courtroom, I simply have the privilege of working here. Jury ob -- jury, uh, duty is both an obligation and a privilege and I thank you for your service, many of us in this room and maybe some on the jury too, I don't know, uh, carried a weapon for Uncle Sam so that you can serve our jury

so we thank you once again for your service, uh, with that we're gonna let ya go, uh, be excused, uh, and turn in your badges. I've got some news for ya, I don't know if it's good news or bad news, but, uh, this is the last jury of the week, everything else has pled because we get jurors here things happen so, uh, this is it, so your brothers and sisters who were back here earlier have been released, this will conclude your jury service, I'll be here tomorrow and I'll be here Friday but we be doin' other things besides, um, and I'll be here rest a the afternoon, we be doin' things that won't require a jury so this ends your service, having said that I have been asked in the past so I will tell you this that, uh, sometimes jurors ask if they can remain in the courtroom, uh, because they've been part of the the, uh, process for two or three days or or weeks long, answer to that is yes. Uh, if you choose to remain in the courtroom, I would ask that when you leave this room and turn in your badges, uh, the bailiffs will show you the way around to the public entrance on this (indicating) side and you're certainly welcome to come into the courtroom, uh, we're gonna proceed to motions and sentencing, uh, and you're we -- you're -- you are invited to do that if you like, you're not required to do that, I just sometimes have one or two that wanna see and so it's with that said, you'll turn in your badges, uh, you gonna mail their pay or do they need a armed guard?

THE CLERK: No, Gail ---

THE COURT: They will ---

THE CLERK: --- Gail will mail it.

THE COURT: Mail it?

THE CLERK: Mail, yes, sir.

THE COURT: Okay, gonna mail it and when you get it you're gonna need a law enforcement officer go with ya, cash it 'cause it's a million dollars ---

(Laughter.)

THE COURT: --- for you service so, uh, no, it's not but anyway we do appreciate your service so very much. Your last official act as foreman, Doctor, is to take your jury out at this time and let everybody be excused and you can be on your way, thank you again for your service.

(Whereupon, the jury left the courtroom.)

THE COURT: Matters from the State?

MR. SMITH: Nothing, Your Honor.

THE COURT: Matters from the defense?

MR. SHEALY: Judge, we would make a motion for a new trial based on all of the things that I've already said regarding the directed verdict motions as well as our other motions regarding, uh, believe that there was some evidence admitted incorrectly, uh, Judge, we believe that there was some testimony that was ad -- admitted incorrectly, we would make a motion, uh, for a new trial on that basis.

THE COURT: Solicitor.

MR. SMITH: Uh, Your Honor, he went on to reargue the motions or you ---

THE COURT: He's makin' a motion, he's movin' for, he's moving a motion for a new trial ---

MR. SMITH: And there's some ---

THE COURT: --- and the State is in opposition?

MR. SMITH: Um, yes, Your Honor, we think that the jury had a sound factual basis to uphold the verdict that they did.

THE COURT: Yes. Motion for a new trial is denied, uh, and that the record, uh, uh, has sufficient evidence from which the jury could have convicted this defendant, uh, and did, uh, do so and you're also, you're also renewing your previous objections ---

MR. SHEALY: All of ---

THE COURT: --- as well?

MR. SHEALY: Yes, Your Honor, ---

THE COURT: And for ---

MR. SHEALY: --- all ---

THE COURT: --- the same reason they, you are protected, for the same reason, uh, they are denied again as well.

MR. SHEALY: Thank you.

THE COURT: Anything further from S -- from the defense?

MR. SHEALY: No, Your Honor.

THE COURT: Okay, we'll proceed to sentencing. You got

some sheets? See the lawyers while she's printing that.

(Whereupon, a bench conference was held off the record.)

(Pause.)

MR. SMITH: Your Honor, as far as sentencing, the State, uh, filed a notice of intent to seek life sentence in this case back in January. He has convictions from May 16th of 2002 York County on Indictment 2002-GS-46-198, that was an indictment for kidnapping, it's a most serious offense and also 2002-GS-46-200, that was an indictment for armed robbery and pled as charged, that was also a most serious, we'd just ask that you impose the mandatory life sentence on all of the life cases, Your Honor, or most serious cases.

THE COURT: Mr. Shealy.

MR. SHEALY: Thank Your Honor. Judge, we would obviously retain our position that Mr. Robertson did not commit these crimes, understand the jury convicted him and is adamantly opposed to that conviction, uh, other than that we understand that there is that single sentence that can be imposed, uh, so understanding that I don't have a anything else but Mr. Robertson may wish to address the Court.

THE COURT: Certainly. Mr. Robertson, uh, like to speak?

THE DEFENDANT: (Nodded in the negative.)

MR. SHEALY: Uh, Judge, if I may just for the record purpose, Mr. MacDonald got onto this case, he's with our office, he's a young lawyer in our office, he got on this case

on I think Thursday, he didn't really, I gave him the discovery, he went over the discovery, we have discussed the case but any errors or good things that have happened are on me, not on him, again, he took some notes for me, he helped suggest cross-examination questions, he did not question any witnesses, he did not do an opening or closing, so again, any errors are strictly mine. Thank you.

THE COURT: Thank you. Sir, on the 2016-5529 due to the seriousness this, of this, your prior record legislature has set aside the mandatory sentencing, I'm without discretion on that, uh, Mr. Robertson. 2016-5529 you're confined to State Department of Correction for life, that's without parole, all indictments are consecutive, I will give you credit credit for any time you served; 2016-5530 State Department of Correction for life, consecutive, credit; 2016-5528 State Department Corrections for life, consecutive, con -- and give you credit for time; 2016-5531, uh, the State Department Corrections for life, that is consecutive, credit for any time; 2016-5532 State Department of Correction for life, consecutive, uh, credit for time, that's on the, uh, armed robbery; on 2016-5532A, uh, there is no sentence pursuant to Section S 17-25-45; 2017-3586 State Department a Correction for 5 years, consecutive, credit for time. Very best a luck to ya, sir.

MR. SMITH: Thank you, Your Honor.

THE COURT: Thank you.

MS. WALTERS: Thank Your Honor.

347

WITNESSES

Spartanburg County Sheriff's Department

2. REPORT FILED ☒
3. CARD FILED ☐
4. INDICTMENT ☐
5. CAPIAS ISSUED ☒
6. ☐
7. ☒

ARREST WARRANT NUMBER

2016A4210102281

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: OCT 28 2016

VERDICT

Guilty

John Britt Fowler

Foreperson of Petit Jury
Date:

DOCKET NO. –

16-GS-42-5528

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

OCT 31 2016

TERM

THE STATE
vs.

Donald Scott Robertson

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

SC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 NOV -4 AM 9:58
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 2 8 2016, the Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That Donald Scott Robertson did in Spartanburg County on or about June 17, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Geri Smith, without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Assistant Solicitor

329

WITNESSES

Spartanburg County Sheriff's Department

ARREST WARRANT NUMBER

2016A4210102280

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: OCT 28 2016

VERDICT

Guilty

John Brian Fowler
Foreperson of Petit Jury
Date:

DOCKET NO. 16-GS-42-5529

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

OCT 31 2016 **TERM**

THE STATE
vs.

Donald Scott Robertson

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

DC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 NOV -4 AM 9:58
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 2 8 2016, the Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That Donald Scott Robertson did in Spartanburg County on or about June 17, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Albert Williams, without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Assistant Solicitor

331

WITNESSES

SCSO

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ARREST WARRANT NUMBER

2016A4210102277 (AMENDED)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: JUL 21 2017

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET I

16-GS-42- 5530

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 24 2017

TERM

THE STATE
vs.

Donald Scott Robertson

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUL 21 2017

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

That the Defendant, Donald Scott Robertson, did in Spartanburg County, on or about June 17, 2016 enter the dwelling located at 1899 Cannons Campground Road, Spartanburg, SC, without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling, and/or while inside the dwelling, and/or while in immediate flight from the dwelling either:

(1) arm himself with a deadly weapon; and/or

(2) use or threaten the use of a dangerous instrument; and/or

(3) cause physical injury to any person who is not a participant in the crime; and/or

(4) display what is or appears to be a handgun or other firearm

Also, the Defendant has two or more prior convictions for Burglary or Housebreaking or a combination of both, in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

338

WITNESSES

Spartanburg County Sheriff's Office

2. [illegible]

ARREST WARRANT NUMBER

2016A4210102279 (Amended)

ACTION OF GRAND JURY

True Bill

QE JUL 21 2017

Foreperson of Grand Jury
Date:

VERDICT

Guilty

John Brian Fowler

Foreperson of Petit Jury
Date:

DOCKET NO.
16-GS-42- 5531

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

JUL 24 2017

TERM

THE STATE
vs.

Donald Scott Robertson

Indictment for

ARMED ROBBERY
SC Code: 16-11-330 (A)
CDR Code: 139
Class FELA

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 21 2017, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE---ARMED ROBBERY

That Donald Scott Robertson, did in Spartanburg County on or about June 17, 2016, while armed with a deadly weapon, being a handgun, or while alleging, through actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the robbery reasonably believed to be a deadly weapon, did feloniously take from the person or presence of Geri Smith, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a sum of U.S. currency and/or wristwatch, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

335

WITNESSES

Spartanburg County Sheriff's Office

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]

ARREST WARRANT NUMBER

2016A4210102278- Count One

(Direct Indictment)- Count Two

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: OCT 28 2016

VERDICT

Guilty

John Brian Fowle

Foreperson of Petit Jury

Date

DOCKET NO. 16-GS-42-5532

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

OCT 31 2016

TERM

THE STATE
vs.

Donald Scott Robertson

Indictment for

ARMED ROBBERY AND POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME

SC Code: 16-11-330 (A): 16-23-490
CDR Code: 139: 549
Class FEL/A: FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2016 NOV -4 AM 9:58

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 28 2016, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE---ARMED ROBBERY

That Donald Scott Robertson, did in Spartanburg County on or about June 17, 2016, while armed with a deadly weapon, being a handgun, or while alleging, through actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the robbery reasonably believed to be a deadly weapon,did feloniously take from the person or presence of Albert Williams, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a sum of U.S. currency, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO---POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME

That Donald Scott Robertson, did in Spartanburg County on or about June 17, 2016 possess or visibly display a handgun during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

347

WITNESSES

Spartanburg Sheriff's Office

2.

3.

4.

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ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: JUL 21 2017

VERDICT

Guilty

John Brian Fowler

Foreperson of Petit Jury
Date:

DOCKET NO. **17-GS-42-3586**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

JUL 24 2017

TERM

THE STATE
vs.

Donald Scott Robertson

Indictment for

POSSESSION OF A FIREARM OR AMMUNITION BY PERSON CONVICTED OF A VIOLENT CRIME

SC Code: 16-23-500 (A)
CDR Code: 3434
Class FEL/F

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 21 2017 the Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF A FIREARM OR AMMUNITION BY PERSON CONVICTED OF A VIOLENT CRIME

That Donald Robertson, did in Spartanburg County on or about June 17, 2016, have in his possession a handgun after having previously been convicted of a violent felony as defined by §16-1-60, in violation of Code §16-23-500 (A), *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205529
A/W#: 2016A4210102280
Date of Offense: 6/17/2016
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Kidnapping / Kidnapping (0-30)

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ SMITH, SPENSER H 101370 SC Bar# _____ Defendant _____ Attorney for Defendant 77724 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of life days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____
Presiding Judge _____
Judge Code: 2165
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

340

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS ✓

INDICTMENT/CASE#: 2016GS4205528
A/W#: 2016A4210102281
Date of Offense: 6/17/2016
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Kidnapping (0-30)

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: SMITH, SPENSER H | 101370 SC Bar# | Defendant | Attorney for Defendant | 77724 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of Life days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk C. Tinsley
Court Reporter: K. Wood
Presiding Judge R. Keith Kelly
Judge Code: 2163
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205530
A/W#: 2016A4210102277
Date of Offense: 6/17/2016
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree (15-Life)

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ SMITH, SPENSER H SC Bar# _____ Defendant _____ Attorney for Defendant 77727 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of life days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: _____
Court Reporter: _____
Presiding Judge: _____
Judge Code: 2165
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

342

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS ✓

INDICTMENT/CASE#: 2016GS4205531
A/W#: 2016A4210102279
Date of Offense: 6/17/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon (10-30yr)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 101370 _____ _____ 77727
SMITH, SPENSER H SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of Life days/months/years or ☐ under the **Youthful Offender Act** not to exceed ____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: _____
Court Reporter: _____
Presiding Judge: _____
Judge Code: 2165
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205532
A/W#: 2016A4210102278
Date of Offense: 6/17/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon (10-30yr)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] 101370 [signature] [signature] 7772
SMITH, SPENSER H — SC Bar# — Defendant — Attorney for Defendant — SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of life days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: ____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ ____ plus 20% fee: ____ $ ____
Payment Terms: ____
☐ Set by SCDPPPS ____
Recipient: ____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP ____
____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other: ____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: [signature]
Court Reporter: [signature] Woods
Presiding Judge: [signature] Keith Kelly
Judge Code: 2165
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

344

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Donald Scott Robertson)
AKA:)
Race: Sex: M Age: 59)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4203586
A/W#: 2017GS4203586
Date of Offense: 6/17/2016
S.C. Code § : 16-23-0500(A)
CDR Code #: 3434

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of Firearm or Ammunition by Person Convicted of Violent Felony (0-5yr)

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: SMITH, SPENSER H | 101370 SC Bar# | Defendant | Attorney for Defendant | 77724 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ___ years
and/or to pay a fine of $ ___; provided that upon the service of ___ days/months/years and/or payment
of $ ___; plus costs and assessments as applicable*; the balance is suspended with **probation** for ___
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: M Woods
Court Reporter: _____
Presiding Judge: _____
Judge Code: 2165
Sentence Date: 26 July 2017

SCCA/217 (07/2016)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2018.

RECEIVED
DEC 05 2018
SC Court of Appeals