

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KASHAUN BANKS,

APPELLANT

APPELLATE CASE NO. 2013-001036

RECORD ON APPEAL

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RECEIVED

JUN 10 2014

SC Court of Appeals

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CDD20111007069

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011038637

ARREST WARRANT NUMBER

M614275

DATE OF ARREST

October 15, 2011

ACTION OF GRAND JURY

TRUE BILL

ACTING FOREPERSON

Foreperson of Grand Jury

Date:

DEC 13 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1008069

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2011

THE STATE

vs.

KASHAUN SHED CHRISTIN BANKS

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

FILED

12/22/2011 11:27:20 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

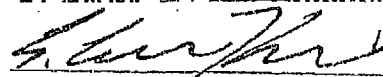
INDICTMENT

At a Court of General Sessions, convened on December 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about October 15, 2011, in Charleston County, South Carolina, at 3700 Rivers Avenue by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a pistol, the Defendant, KASHAUN SHED CHRISTIN BANKS, did take and carry away goods and/or monies from the person or immediate presence of Tenille Wilson with the intent to permanently deprive her of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

ARREST WARRANT

M-614275

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Charleston

THE STATE
against
Kashawn Shed Christin Banks

Address 2500 City Hall Lane
North Charleston, SC 29405

Phone 843-746-9822
Sex M Race B Height 6 Weight 165
DL State SC DL # 102647737
DOB 08/01/1980 Agency ORI # SCD190800
Prosecuting Agency North Charleston Police Department
Prosecuting Officer Craig McElhaneey - 0270
Offense Robbery/ Armed Robbery

Offense Code 0139
Code/Ordinance Sec 16-11-0330(A)

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of _____

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge _____
Date _____

RETURN

A copy of this arrest warrant was delivered to
defendant on _____

Signature of Constable/Deputy Constable _____

RETURN WARRANT TO:
General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL **ORIGINAL** **ORIGINAL** **ORIGINAL**

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Charleston

AFFIDAVIT

ORIGINAL Form Approved by
SC Attorney General
April 11, 2000
SCCA 618

Personally appeared before me the affiant Craig McElhaneey / M. Puder who
being duly sworn deposes and says that defendant Kashawn Shed Christin Banks
did within this county and state on or about 10/15/2011
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particulars
violate the criminal laws of the

DESCRIPTION OF OFFENSE: Robbery/ Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts
See Attached Affidavit

Signature of Affiant M. Puder

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Charleston

Affiant's Address 2500 City Hall Lane
North Charleston, SC 29405
Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 10/15/2011 defendant Kashawn Shed Christin Banks
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Charleston) as set forth below

DESCRIPTION OF OFFENSE: Robbery/ Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on 10/16/2011

Judge's Address 3870 Leeds Avenue, Suite 106
North Charleston, SC 29405-7469
Judge's Telephone (843) 746-9822

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL **ORIGINAL** **ORIGINAL** **ORIGINAL**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

Inv. # S. Hille

AFFIDAVIT

OCA# 2011038637

Personally appeared before me, a magistrate of this County, one M. Poulos
who first being duly sworn, deposes and says that

KASHAUN BANKS

did within this County and State on the 15th day of October, 2011, violate the criminal laws
of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
ARMED ROBBERY
VIOLATION OF SECTION
16-11-330

The affiant states there is probable cause to believe that the defendant named above did commit the
crime(s) set forth, and that such probable cause is based on the following facts:

That on October 15, 2011 at approximately 2150 hours, while at 3700 River Avenue
(Exxon), which is located in the City of North Charleston, County of Charleston, and State of
South Carolina, the defendant, **KASHAUN BANKS**, did commit the offense of **ARMED
ROBBERY** violation of section 16-11-330 of the South Carolina Code of Laws of 1976, as
amended. In that the defendant did willfully, unlawfully and feloniously rob a person by putting
fear by the use or threat of force and violence, and that the defendant alleged his actions or words
that he was armed by using representation of a deadly weapon which a person would reasonably
believe is a deadly weapon.

The defendant entered the business quickly from the rear entrance, armed with a large
brown and black pistol, pointed it at the clerk (victim, Keisha Holmes) who was tending the
register behind the counter and demanded money. In fear for her life the victim complied by
removing the cash drawer and the defendant grabbed the drawer which contained approximately
\$127.72 and fled the business on foot through the same door that he entered from. Keisha
Holmes, Tenille Wilson, SGT. S. Hille, MPO McAlhaney and MPO Cummins are witnesses to
prove the same. This incident was recorded by the business video surveillance system. All this
done against the form of the Statute and against the peace and dignity of the State of South
Carolina.

Sworn to and Subscribed before me
this 16 day of Oct
2011.

[Signature]
Signature of Judge

[Signature]
(AFFIANT)

Address: 2500 City Hall Ln
N. Charleston, SC 29406
Phone: (843) 554-5700

CDD20111007069

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011038637

ARREST WARRANT NUMBER

M614275

DATE OF ARREST

October 15, 2011

ACTION OF GRAND JURY

TRUE BILL

ACTING FOREPERSON

Foreperson of Grand Jury

Date: DEC 13 2011

VERDICT

Guilty

Marie R. Wiley

Foreperson of Petit Jury

4/23/13

Date:

INDICT

DOCKET NO. 2011 GSI008069

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2011

THE STATE

vs.

KASHAUN SHED CHRISTIN BANKS

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

FF
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N
C
O
A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

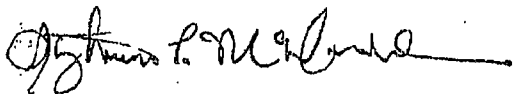
At a Court of General Sessions, convened on December 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

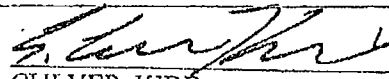
That on or about October 15, 2011, in Charleston County, South Carolina, at 3700 Rivers Avenue by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a pistol, the Defendant, KASHAUN SHED CHRISTIN BANKS, did take and carry away goods and/or monies from the person or immediate presence of Tenille Wilson with the intent to permanently deprive her of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

→ and Keisha Holmes

Amended 7/19/2012



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2011-GS-10-8069

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

KASHAUN BANKS)

Defendant.)
_____)

VERDICT

1. We, the Jury, find Kashaun Banks NOT GUILTY. ____

OR

2. We, the Jury, find Kashaun Banks GUILTY of Armed Robbery. X

I certify that this decision is the unanimous decision of the Jury.

Maria K. Wiley
Maria K. Wiley, Foreperson
April 25, 2013

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Kashaun Shed Christin Banks

AKA:

Race: BLACK Sex: M Age: 18DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(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:

Kidd, CulverSC Bar# 76671

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$; 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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 \$ § 56-5-299.5 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 75.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-3-2942(I) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 135.90Clerk of Court/ Deputy Clerk Whitney HockingCourt Reporter: Kelayne Volpe

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1008069A/W#: M614275Date of Offense: 10/15/2011S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSPTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/B beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge Christi HamiltonJudge Code: 2151Sentence Date: 4/25/13

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case No.: 2011-GS-10-08069
KASHAUN CHRISTIAN BANKS,)
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME I OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON APRIL 22, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

State versus Kashaun Banks
April 22, 2013
Jury Trial, Volume I of IV

Page 58

1 1:30.

2 (A lunch break is taken from 12:26 p.m. until
3 1:54 p.m.; at which time, the proceedings continue as
4 follows:)

5 (The Defendant is present in the courtroom with
6 his counsel.)

7 THE COURT: Mr. Kidd, whenever you're ready.

8 MR. KIDD: Thank you, your Honor. Like to
9 start with the Denno hearing if we may?

10 THE COURT: All right, sir.

11 MR. KIDD: The State calls Lieutenant Hill.

12 (The oath is administered by the Courtroom
13 Deputy Clerk, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: State your name and
16 spell your last name.

17 THE WITNESS: James Michael Hill, Jr., H-i-l-l.

18 THE COURT: Mr. Kidd.

19 MR. KIDD: Thank you, your Honor. May it
20 please the Court?

21 JAMES MICHAEL HILL, JR.,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

DIRECT EXAMINATION

1
2 BY MR. KIDD:

3 Q Good afternoon. Lieutenant Hill; correct?

4 A Yes, sir.

5 Q All right. Lieutenant Hill -- and I'll get
6 right to it -- do you recall being involved in an armed
7 robbery investigation on October 15th of 2011?

8 A Yes, sir.

9 THE COURT: I'm going to need you to speak up.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 Q (By Mr. Kidd) And the Defendant was
13 Kashaun Banks in that investigation?

14 A Yes.

15 Q And that was for the armed robbery that
16 occurred at 3700 Rivers Avenue, I believe; is that
17 right?

18 A It's the Exxon at Rivers and McMillan. I'm not
19 sure if the address is 3700.

20 Q The Exxon at Rivers and McMillan.

21 In the course of that investigation, did you
22 have the opportunity to interview the Defendant,
23 Kashaun Banks?

24 A Yes, sir.

25 MR. KIDD: And, your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 Q (By Mr. Kidd) I'm going show you what has been
4 marked as State's Exhibit Number 11 for identification
5 purposes.

6 (Document is handed to the witness.)

7 Q (By Mr. Kidd) Do you -- do you recognize that
8 document?

9 A Yes.

10 Q Can you tell the Judge what that document is?

11 A Yes, sir. The first document is North
12 Charleston Police Department Advice of Constitutional
13 Rights. I made a mistake on the first one. And the
14 second one is the same form, North Charleston Police
15 Department Advice of Constitutional Rights, where I
16 corrected my error and went through the Rights.

17 Q And you went over -- and would that be
18 common -- what we commonly refer to as the Miranda
19 warnings?

20 A Yes, sir.

21 Q And you went over those rights and those
22 warnings with the Defendant?

23 A Yes, sir.

24 Q And where are you when you are talking to
25 Mr. Banks?

State versus Kashaun Banks
April 22, 2013
Jury Trial, Volume I of IV

1 A At the North Charleston Police Department, City
2 Hall, and the Detective Bureau in the interview room.

3 Q And is that just kind of like a small room?

4 A Yes, sir.

5 Q Do you remember if he is handcuffed or not?

6 A I do not.

7 Q Is there a table in the room?

8 A Yes, sir.

9 Q Are you sitting across the table from him?

10 A Yes, sir, I am.

11 Q So you're sitting in the room with Mr. Banks,
12 and you go over that form with him. Do you -- does he
13 just read it, or do you read it to him? How does that
14 work?

15 A I fill out the top portion asking the
16 questions: His name, date of birth, age, grade
17 completed in school, whether he has a GED or diploma.
18 And then I'll ask the individual if they can read and
19 write. If they acknowledge that they can read and
20 write, then I generally turn the form upside down and
21 have them read it so that I know that they're
22 understanding what they are reading. But in his case,
23 he couldn't read.

24 Q Okay. So when you're first -- how old did --
25 was Mr. Banks at the time?

State versus Kashaun Banks
April 22, 2013
Jury Trial, Volume I of IV

1 A Seventeen.

2 Q He was 17 years old. And what did he state his
3 education was?

4 A Said he completed the tenth grade and did not
5 have a GED or diploma.

6 Q Okay. So he was a high school student at the
7 time; would that be the -- the assumption?

8 A I would assume. I don't know.

9 Q But he told you he could not read; is that
10 accurate?

11 A Yes, sir.

12 Q So when you went over the form with him,
13 because he said that, you didn't just give it to him to
14 read it; is that right?

15 A Correct.

16 Q So you actually, then, would read each of the
17 warnings from the form to Kashaun?

18 A Yes, sir.

19 Q And did he seem to understand each of those
20 Rights as you read them to him?

21 A Yes, sir.

22 Q And would you have him to initial each one of
23 those after you went over that particular Miranda Right
24 with Mr. Banks?

25 A Yes. He initials at the end of each Right.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

State versus Kashaun Banks
April 22, 2013
Jury Trial, Volume I of IV

1 Q And based on your conversation with him, did he
2 seem to understand and comprehend that conversation that
3 you were having with him?

4 A Yes, sir.

5 Q And when you were talking with him, was
6 it -- did he seem to have any emotional -- like
7 emotional or mental disorders or anything like that that
8 gave you pause to wonder if he understood the context of
9 your conversation?

10 A No, sir.

11 Q So the conversation you were having with him
12 was an intelligent conversation?

13 A Yes, sir.

14 Q Okay. And after you advised Mr. Banks of his
15 Rights, or throughout that process and throughout his
16 interview, did he eventually confess to committing the
17 armed robbery to you?

18 A Yes.

19 Q Did you threaten him in any way to obtain that
20 confession?

21 A No, sir.

22 Q Did you make any promises to him that, for
23 instance, if you confess to this, I'll do this, or make
24 any promises to him like that?

25 A No, sir.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

- 1 Q Did you lay a hand on him in any way or get
2 physical with him?
- 3 A No, sir.
- 4 Q How long did this whole interview process last?
5 Approximately, if you recall?
- 6 A I do not.
- 7 Q Would it be accurate to say the interview can
8 be kind of broken down in a few segments?
- 9 A His particular interview, yes, sir.
- 10 Q So there was a first segment in which he denied
11 any involvement with the crime?
- 12 A Yes, sir. Correct.
- 13 Q Would that have lasted 20, 30 minutes,
14 something in that range?
- 15 A I'm not sure.
- 16 Q And then after that, did you take a break?
- 17 A Yes, sir.
- 18 Q And did you reinitiate contact at some point?
- 19 A I did.
- 20 Q When you reinitiated contact, did you re-advise
21 him of his Rights?
- 22 A No, sir. I asked him if he understood the
23 Miranda form, that we'd already went over, if those
24 Rights Still applied to him.
- 25 Q So you advised him that he was still -- you

State versus Kashaun Banks
April 22, 2013
Jury Trial, Volume I of IV

1 reminded him of his Rights?

2 A Yes, sir.

3 Q And then you began talking to him again?

4 A Yes, sir.

5 Q Okay. And then sometime during -- and during
6 that conversation is when he ultimately confessed to the
7 crime?

8 A Yes, sir.

9 MR. KIDD: Your Honor, I would like to play a
10 couple of segments of that interview, if I could, if the
11 Court will --

12 THE COURT: You may. And, just for the record,
13 for purposes of this hearing, I've reviewed the
14 entire -- listened to the entirety of that interview
15 prior to this hearing.

16 MR. KIDD: And I would -- at this point, I'd
17 like to move State's Exhibit Number 11 as -- into
18 evidence as an exhibit for the purposes of this hearing,
19 which is the Advisement of Rights form, which I have
20 handed Lieutenant Hill a moment ago.

21 MR. GRIMES: No objection, your Honor.

22 THE COURT: All right. Thank you.

23 (State's Exhibit Number 11 is admitted into
24 evidence.)

25 MR. KIDD: And I would also like to mark this

1 audio CD and have it admitted as a State's Exhibit for
2 the purposes of this hearing as well. If I can --

3 THE COURT: Let's mark that -- since I've
4 listened to it, we'll just mark it as Court's 1 for the
5 purposes of this hearing.

6 (Court's Exhibit Number 1 is marked for
7 identification.)

8 MR. KIDD: May I approach?

9 THE COURT: You may.

10 Q (By Mr. Kidd) Lieutenant Hill, I'm going to
11 play you what has been marked as Court's Exhibit
12 Number 1. Have you had an opportunity to listen to the
13 interview with the Defendant at some point since it
14 occurred?

15 A Not recently, no, sir.

16 Q Not recently. But you've heard it before?

17 A Yes, sir.

18 Q And would you recognize it when you hear it?

19 A Yes, sir.

20 Q All right.

21 (Court's Exhibit Number 1 is played.)

22 Q (By Mr. Kidd) I'm going stop that for a
23 minute, for time purposes. But do you recognize that
24 conversation?

25 A Yes, sir.

1 Q And that was the interview with the Defendant,
2 Kashaun Banks; is that correct?

3 A Yes, sir.

4 Q And shortly after that is when you would have
5 gone through each of his warnings with him from that
6 Advice of Rights form that I showed you, State's Exhibit
7 Number 11?

8 A Yes, sir.

9 Q I'm going to jump ahead to -- Court's
10 indulgence -- to the end -- or towards the end of that
11 first segment of the interview and ask you to listen to
12 this, please.

13 (Court's Exhibit Number 1 is played.)

14 Q (By Mr. Kidd) I'll stop it one moment. Ask
15 you a couple of questions about the segments that we've
16 just heard. The first is going to be -- I'd like to ask
17 you about a little bit of the conversation you had with
18 him about his plans to go into the military. Do you
19 recall that segment, towards the beginning of that audio
20 clip that we just played?

21 A Yes, sir.

22 Q And in that conversation you had with
23 Mr. Banks, did he -- he indicated to you that he had
24 plans of going into the military; is that correct?

25 A Yes.

1 Q And I believe you told him that was unlikely
2 with a robbery conviction?

3 A Yes, sir.

4 Q Why -- can you tell the Judge why you were
5 encouraging him to -- to come clean at that point?

6 A Because I was trying to get him to tell us what
7 occurred at the -- at the Exxon.

8 Q And do you think telling the truth is the best
9 course of action -- for not only Mr. Banks, but anyone
10 that you are interviewing?

11 A Yes, sir.

12 Q And why is that?

13 A It's just in my values. I believe that telling
14 the truth is always going to help.

15 Q And towards the end of that conversation you
16 were having with Mr. Banks about going in the military,
17 I believe you said: Let's do this real simple. Did you
18 go to the Exxon and point the BB gun at those clerks?

19 I believe he responded: No, sir.

20 And you said: And is that your final word?

21 And he said: That's my final word.

22 What did you interpret Mr. Banks to mean by
23 saying "that's my final word"?

24 A That he was saying that was his final word,
25 that he didn't go into the store with the BB gun.

1 Q So, like, that's his story, and he's sticking
2 to it sort of --

3 A Yes.

4 Q -- understanding?

5 And then right after that, he said: I can
6 literally take this wherever you want to go. I just
7 want to continue on with my wife life. Can I call my
8 sister and let her know about my whereabouts?

9 And you replied: When you get to the county
10 jail, you can call your sister.

11 And he said: Well, what's holding me up?

12 And you said: I would like you to tell me why
13 you went into that store and why you did that.

14 And he replied: I just told you clear, and you
15 weren't listening, so it's not going anywhere. Can we
16 continue?

17 How did you interpret what he meant by "can we
18 continue"?

19 A Can we continue to talk.

20 Q I mean, move on, continue?

21 A Move past asking me whether I went into the
22 store.

23 Q Okay. I'm going to play another segment
24 towards the very end of that initial interview.

25 (Court's Exhibit Number 1 is played.)

1 Q (By Mr. Kidd) When you asked him if he had
2 anything else he wanted to say right there at the end,
3 and he said no, how did you -- how did you interpret --
4 what were you looking for out of that question: Did you
5 have anything else that you'd like to say?

6 A I was hoping that he'd come around and confess
7 to the crime.

8 Q So by asking him, Do you have anything else
9 that you'd like to say, you were asking him if he wanted
10 to expand on the story that he was giving you?

11 A Yes.

12 Q And he said no to that; correct?

13 A Correct.

14 Q And so by saying, no, he was saying, Nope,
15 that's my whole story?

16 A That's the way I took it, yes, sir.

17 Q And at that point you concluded the interview?

18 A Yes.

19 Q Or the first part of that interview; is that
20 right?

21 A Yes.

22 Q And then -- and I believe you said it was 12:14
23 when you concluded that first segment of the interview?

24 A Correct.

25 Q And I would like to play. . .

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1 (Court's Exhibit Number 1 is played.)
2 Q (By Mr. Kidd) And so that would have been the
3 beginning of the second segment; is that correct?
4 A Yes, sir.
5 Q So that was 12:25?
6 A Yes, sir.
7 Q So that's approximately ten minutes later?
8 A Yes, sir.
9 Q Is that accurate?
10 So about ten minutes after you walked out of
11 the room, you walked back in to talk to him?
12 A Yes, sir.
13 Q What was occurring with Kashaun during that ten
14 minutes?
15 A I'm sorry?
16 Q What was occurring with the Defendant during
17 that ten minutes? Was he in the room by himself?
18 A Yes, sir.
19 Q So no one was in there threatening him or
20 talking to him or questioning him that wasn't on the
21 audio --
22 A Correct.
23 Q -- is pretty much what I'm getting at?
24 A Correct.
25 Q Thank you.

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1 And I'm just going to play one more segment.

2 (Court's Exhibit Number 1 is played.)

3 Q (By Mr. Kidd) Stop it for one second.

4 And I think this might just evidence your
5 interpretation further. When you first said -- went
6 back in there, you said: Are you sure that's the
7 -- what -- that's the story you want to stick with? Is
8 that kind of what you said right there at the beginning?

9 A Yes, sir.

10 Q And that -- you phrase it like that and you say
11 that, because when he said, That's my final word, and
12 when you asked him if that's your story and you're
13 sticking to it, or is there anything else you want to
14 add, and he said no; when you asked those things, it's
15 because of that question right there, which mirrors what
16 you were saying, that, Are you sure you want to stick
17 with the story you gave me?

18 MR. GRIMES: Objection, your Honor.

19 MR. KIDD: Is that accurate?

20 MR. GRIMES: Mr. Kidd is simply testifying,
21 your Honor, and leading the witness.

22 THE COURT: Overruled.

23 Q (By Mr. Kidd) I mean, is that kind of an
24 accurate example of your understanding of those
25 comments, which is kind of depicted in that opening

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1 question to Kashaun?

2 A You've got to start over.

3 Q I'm sorry. That was a pretty compound and
4 confusing question. That probably -- I'll move on past
5 it. I'm sorry. I don't know how to phrase that in a
6 way that makes a lot of sense.

7 A If I could explain to you, Mr. Kidd?

8 Q Please, please.

9 A At the time of this interview, we're in a new
10 building at the City Hall in North Charleston. They're
11 going through sorting out getting video systems for the
12 interview rooms. And we, at that point, had not been
13 recording audio or video interviews. So there had not
14 been any defined line of how we were going to conduct
15 our interviews, whether we were going to leave a tape
16 running continuously in there, whether we were going to
17 stop the tapes and start the tapes, because we didn't
18 have video. Of course, with the video, it runs
19 continuously so you can see what's going on. So we
20 hadn't had any direction yet as to how they wanted us to
21 do the interviews and whether to start and stop the
22 tapes. So at that time, I would start a tape and stop a
23 tape during my interview if I went back in there. Does
24 that ---

25 Q Yeah.

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1 A -- kind of explain?

2 Q No, that's fine. That's not really what I was
3 getting at. It was more -- it was more about the
4 context of that first, kind of, question. When you went
5 back in the room, you reminded him he was under his
6 Miranda, and your first question to him was: Are you
7 sure you want to stick with the story that you just
8 gave?

9 And the question I was asking you was: Trying
10 to parallel that question to some of the statements that
11 Kashaun had made in the original segment of the
12 interview which I had just played you. Specifically,
13 what I was getting at was -- and like I say, it's
14 a -- sort of a compound question and almost a little bit
15 of a leap -- but, mainly, when that first segment that I
16 played you. . .

17 (Mr. Kidd speaks with Ms. Riddle off the
18 record.)

19 MR. KIDD: Beg the Court's indulgence? I'm
20 sorry.

21 Q (By Mr. Kidd) Basically, when you said -- when
22 you asked him: Is that your final word, and when I
23 asked you the first time what that meant to you, you
24 -- and he said: That's my final word; it meant that was
25 the end of my story. That's -- you know, that's

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1 everything that I have to tell you about my story. And
2 what I was doing was trying to understand that that was
3 the same sort of question that you were opening with in
4 that second interview?

5 A I was picking up where we left off in between
6 the break and then going back in there.

7 Q All right. I'm going to finish playing
8 that.

9 (Court's Exhibit Number 1 is played.)

10 Q I'm going to skip ahead to the point where
11 he sort of comes clean a little bit.

12 (Court's Exhibit Number 1 is played.)

13 Q I'm going stop it there. Was that how you
14 recall that -- the confession -- or the conversation
15 going?

16 A Yes, sir.

17 Q At any time throughout your conversations
18 with Kashaun Banks, did he say anything to you that made
19 you think that he wanted an attorney to be present with
20 him?

21 A No, sir.

22 Q Did he ever say anything to you that made you
23 think -- when you were there talking to him, did he ever
24 say anything to you that made you think he was invoking
25 his right to remain silent?

1 A No, sir.

2 Q In your conversations with him, he seemed to
3 be intelligent and understanding what he was saying and
4 what he was doing there that evening?

5 A Yes, sir.

6 Q And you didn't make any promises to him or
7 threats to get him to confess?

8 A No, sir.

9 MR. KIDD: Court's indulgence?

10 Q (By Mr. Kidd) And I might have already asked
11 you this. Did he appear to be under the influence of
12 any drugs or alcohol that evening?

13 A No, sir.

14 MR. KIDD: And, Judge, I'm assuming that
15 the disc is in as a Court's Exhibit. I do not need to
16 enter it, is that correct, for the purpose of this
17 hearing?

18 THE COURT: Correct. But I need it back. I
19 need it up here marked.

20 MR. KIDD: Yes, ma'am.

21 I have no further questions for Lieutenant Hill
22 at this time.

23 THE COURT: Mr. Grimes.

24 MR. GRIMES: Thank you, your Honor. May it
25 please the Court.

CROSS-EXAMINATION

2 BY MR. GRIMES:

3 Q Good afternoon, Lieutenant Hill.

4 A How are you, sir?

5 Q I'm pretty good. Last time we spoke about this
6 case you were sergeant?

7 A Yes, sir.

8 Q Congratulations on the promotion.

9 A Thank you.

10 Q Couple of things that were said that struck me
11 of interest on the audio tape -- I don't recall exactly
12 where it was at, but I think it was either the first or
13 second interval Mr. Kidd played for you where you said:
14 I run this. Do you recall that?

15 A Yes, sir.

16 Q Isn't it true that the purposes of Miranda is
17 to let the Defendant run how the interrogation goes?

18 A In that particular segment where I was telling
19 him: I run this; I wasn't going to let him overtalk me
20 in this interview. I was going to conduct the
21 interview, and I was letting him know that I'm running
22 this interview, not him.

23 Q And under Miranda, if he wants to communicate
24 with you through counsel, he has to tell that, but
25 that's his decision; correct?

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- 1 A Yes, sir.
- 2 Q And he runs that part of it; correct?
- 3 A If he asks for an attorney, yes, sir.
- 4 Q And if he wants to remain silent, he runs that
- 5 part; correct?
- 6 A Yes, sir.
- 7 Q And if he wants to give part of the statement
- 8 and stop, he runs that part?
- 9 A That's his choice, yes, sir.
- 10 Q And that's why you -- since you advised him,
- 11 you read him his Miranda Rights; correct?
- 12 A Correct.
- 13 Q That he does have a right to remain silent; is
- 14 that correct?
- 15 A Yes, sir.
- 16 Q That he can assert that right at any time?
- 17 A Yes, sir.
- 18 Q Are there any magic words he has to say to
- 19 assert that right or any certain words that he has to
- 20 say to assert that right?
- 21 A Just stop communicating with me, if you're
- 22 talking about remaining silent. Is that what you're
- 23 asking me?
- 24 Q The -- perhaps in a way.
- 25 Or if he says -- if he's been talking with you

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1 or a suspect in general has been talking with you and
2 they want to stop talking, how do they assert their
3 right to remain silent?

4 A Just to remain silent.

5 Q So if they said: No, I don't want to say
6 anything else, that wouldn't be asserting their right to
7 remain silent?

8 A As long as they're continuing talking to me,
9 then I don't feel that they're asserting their right to
10 remain silent.

11 Q If someone said: That's my final word; I don't
12 want to talk anymore, they can -- that's not an
13 assertion of the right to remain silent, in your
14 opinion?

15 A No, not if they're continuing talking to me
16 after they say that.

17 Q And you can -- we can agree that no means no;
18 correct?

19 A Yes, sir.

20 Q And so when you asked Mr. Banks whether he had
21 anything else to say -- I believe -- 25 of our Exhibit
22 A -- I think you said: Do you have anything else that
23 you want to say?

24 And he said: No.

25 And then you said: Okay. At this time, it's

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1 about 12:14 a.m., and we're concluding this interview of
2 Kashaun Banks.

3 Do you recall that?

4 A Yes, sir.

5 Q And so after that, you understood that he
6 wanted to stop because you stopped the interview?

7 A Stopped the interview for that -- that portion,
8 yes, sir.

9 Q And he wasn't communicating with you anymore,
10 was he?

11 A He just said he wasn't going to tell me anymore
12 about that. He was sticking to that particular story
13 that he was giving me throughout that entire segment
14 that we had talked.

15 Q And you asked him specifically: Do you have
16 anything else that you want to say?

17 And he said: No.

18 A Correct.

19 Q It wasn't about a particular story you asked
20 him about, was it?

21 A He said no.

22 Q You didn't ask him: Do you have anything else
23 that you want to say about this particular robbery; did
24 you?

25 A No, sir, not specifically. We --

1 Q You didn't -- you weren't specific. You were
2 very broad when you said "anything else"; correct?
3 A Correct.
4 Q And he said: No?
5 A Correct.
6 Q And you stopped the interview?
7 A I did.
8 Q And he did not reinitiate the interview, did
9 he?
10 A No.
11 Q You walked back in there about 11 minutes
12 later; correct?
13 A Yes, sir.
14 Q Advised him that he was -- reminded him of his
15 Miranda Rights?
16 A Yes, sir.
17 Q And started to question him again?
18 A Yes, sir. Asked him if he wanted to change his
19 story.
20 Q Now, I want to ask you a few questions about
21 what Mr. Kidd asked you about, so the -- sort of the
22 final word comment and about continue. Do you recall
23 that -- that tape -- that portion of the tape being
24 played for you?
25 A I'm not sure what you're asking me on that one.

1 Q Mr. Kidd asked you a series of questions about
2 what Mr. Banks meant by "continue" after he said:
3 That's my final word.

4 A I think he was asking me what I -- I'm
5 misunderstanding. I -- I take that line of questioning
6 Mr. Kidd asked me as different from what you're
7 implying.

8 Q Well, you recall asking him about -- I think it
9 was about 16-and-a-half minutes through the first part
10 of the interview, and you asked if he went in the Exxon
11 with a BB gun.

12 And he said: No, sir.

13 And then you said: That's your final word?

14 And he said: That's my final word.

15 Then you said: And you're ready here to live
16 with that?

17 And he said: I can literally take this
18 wherever you want to go. And then he asked about
19 calling his sister.

20 Do you recall that portion of the tape being
21 played?

22 A I remember what you're talking about now, yes,
23 sir.

24 Q Okay. And several times, sounds like he had --
25 it's my understanding, that if he wanted to call his

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1 sister, he had to make that call from the county jail?

2 A Correct.

3 Q And he wouldn't be allowed to make that call
4 from the North Charleston Police Station?

5 A No, sir.

6 Q So when he said: Can we continue, that could
7 have been continue on to the county jail; correct?

8 A I'm not sure what you're -- you're asking
9 whether he was meaning, Can we continue to the county
10 jail?

11 Q When Mr. Banks said, We can -- for example, he
12 said: I'm not guilty of anything, so I'm going on about
13 my day. Can we please continue?

14 And then you said: Are you sure this is what
15 you want to do?

16 He said: Sir, can we please continue?

17 And then you said: There's nothing to continue
18 if you have nothing to say.

19 You recall that?

20 A I believe I remember where you're talking
21 about, yes, sir.

22 Q And by "continue," you think that Kashaun was
23 meaning, Can you take me to the county jail so I can
24 call my sister?

25 A No, sir, that's not what I took that as.

1 Q I believe you testified that you took it as he
2 wanted to keep talking?

3 A Yes, sir. Continue on past asking me whether I
4 stepped into the Exxon with a BB gun.

5 If that's the segment you're talking about?
6 Which I believe that's where you are at in the tape.

7 Q Yes, sir. But there is a -- at that portion of
8 the tape, there's a fair conversation about going to the
9 jail so he can call his sister; correct?

10 A He did ask if he could call his sister.

11 Q Several times; correct?

12 A Yes. And Detective Lacher told him that he
13 would afford him the courtesy of calling his sister for
14 him. Our policy is not to allow people to make phone
15 calls at our office. It's for safety reasons.

16 Q And when I asked you some questions about
17 whether you made promises toward Mr. Banks or you gave
18 him any hopes of leniency, can we agree that a hope of
19 leniency is different than a promise?

20 A Yes, sir.

21 Q And you told -- you knew he wanted to go in the
22 military; correct?

23 A I think he was in military school, and then
24 potentially trying to go into the military, yes, sir.

25 Q Tell him that if he had any aspiration of going

1 into the military that a robbery conviction would keep
2 him out of the military? Correct?

3 A Yes, sir.

4 Q And I think you went on to, basically, tell him
5 that by telling the truth, he could get past this?

6 A I believe I said that at one point, yes, sir.

7 Q Okay. Well, how do you get past -- if he tells
8 the truth, in your opinion, that would be confessing to
9 robbing the Exxon; correct?

10 A Correct.

11 Q And he would be certainly convicted of the
12 robbery; correct?

13 A I can't assume that he would be convicted, no,
14 sir.

15 Q Well, if he told the truth about robbing an
16 Exxon, how would he get into the military?

17 A I can't tell you that he would or he wouldn't.
18 And I never told him that he would or wouldn't. I told
19 him he wouldn't get in the military if he had a robbery
20 conviction.

21 Q And by trying to get a confession from him,
22 you're trying to get a conviction on him; correct?

23 A I'm just trying to get him to confess to the
24 crime. I don't determine the conviction, sir.

25 That's --

1 Q That's Kidd's job?

2 A That's the judicial system, sir.

3 Q Okay. So by telling him if you have any hope
4 of getting past this by telling the truth, that might
5 give someone who's 17 years old with a learning
6 disability a belief that by telling the truth, he might
7 be able to get into the military; correct?

8 A You're asking me to assume what he's believing,
9 and I didn't ask him. So I can't say that.

10 Q Well, you, I think, testified to Mr. Kidd that
11 he was very -- understood everything; correct?

12 A I believe he understood everything that we were
13 talking about, yes, sir.

14 Q And you gave him the impression of by telling
15 the truth that can help -- help out his situation;
16 correct?

17 A I believed him telling the truth about what he
18 had did is his best course of action, yes, sir.

19 Q And if he told the truth, you might be able to
20 go to the prosecutor and tell him that?

21 A No. If he told me the truth, I would go to a
22 prosecutor and tell the prosecutor what he said that --
23 you know, if I felt that his accounts of the event were
24 accurate. With his incidents, we had evidence to
25 support what I thought occurred. So, then, yes, sir, of

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1 course, I would go to Mr. Kidd and tell him that he told
2 the truth.

3 Q And then he asked you questions: And if I
4 don't tell the truth, it doesn't look good on me, or on
5 my behalf. Do you recall that?

6 A I think -- I think there was some context of
7 that, but you would have to play it for me to say
8 exactly what occurred.

9 MR. GRIMES: Would you pull it up around the
10 23-minute mark?

11 22:15. It's page 23 on Exhibit A, if that
12 helps.

13 (Court's Exhibit Number 1 is played.)

14 Q (By Mr. Grimes) Does that refresh your memory?

15 A Uh-huh.

16 THE COURT: Is that a yes?

17 THE WITNESS: I'm sorry. Yes, ma'am.

18 MR. GRIMES: Sorry, your Honor.

19 Q (By Mr. Grimes) And you said "exactly";
20 correct?

21 A He was talking. I was just going with him,
22 letting him talk.

23 Q And -- well, you agreed with him that didn't
24 look good if he doesn't tell the truth?

25 A I was going with what he was saying. I wanted

1 him to keep talking.

2 Q You wanted to encourage that belief that it
3 doesn't look -- by not being truthful, it didn't look
4 good. By encouraging that belief, you would hope he
5 would switch stories and tell you what you wanted to
6 hear?

7 A My ultimate job in that interview was to get
8 him to confess. You're asking more of an opinionated
9 question, I think. I mean, I can give you my opinion,
10 if you would like.

11 Q No. I think you said -- your job was to get
12 him to confess. That answers the question.

13 I want to go back to the beginning of the
14 interview. Follow up some questions Mr. Kidd asked you
15 about Mr. Banks' background.

16 You said you kind of observed to see if he was
17 under the influence of drugs or anything.

18 A Visually, yes, sir.

19 Q And you didn't notice him to be under the
20 influence of anything?

21 A He didn't appear to be, no, sir.

22 Q Nothing was affecting his mental ability -- did
23 you look to see if anything -- to observe if anything
24 was affecting his mental ability?

25 A He seemed to comprehend what our discussions

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1 were about. I'm not sure if I can look to see what his
2 mental capabilities are. I mean, he understood the
3 questions I was asking. You know, he told me he
4 couldn't read, you know, so. . .

5 Q And then based on that, you would read the
6 Rights to him rather than, just in this case, give him
7 the form; correct?

8 A Correct.

9 Q And he told you he had a learning disability or
10 reading disability; correct?

11 A I believe it was reading, yes, sir.

12 Q Did you try to inquire how that disability may
13 affect his ability to understand his Rights?

14 A No, sir. I didn't ask him any questions on
15 that.

16 Q Or his ability to knowingly and intelligently
17 waive his Rights?

18 A As we went through the Rights, he was basically
19 right behind me telling me what that meant. So I felt
20 that he knew exactly what his Rights were.

21 Q And he was 17 at the time?

22 A Yes, sir.

23 Q And his mom wasn't there?

24 A No, sir.

25 Q And his -- none of his other family members

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1 were there?

2 A No, sir.

3 MR. GRIMES: May I have one moment, your Honor?

4 THE COURT: Take all the time you need.

5 MR. GRIMES: Thank you.

6 (Mr. Grimes speaks with Ms. Ehrlich off the
7 record.)

8 MR. GRIMES: Thank you, your Honor. I have no
9 further questions.

10 MR. KIDD: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. KIDD:

13 Q Mr. Grimes indicated that, you know, almost
14 like no matter what he said you would have continued
15 questioning him. But that's not quite accurate, is it?

16 A No, sir.

17 Q If he had asked for a lawyer, what would you
18 have done?

19 A I would have stopped the questioning.

20 Q And you would have left?

21 What if he had said to you, I don't want to
22 talk to you anymore?

23 A I would have continued to talk to him.

24 Q You would have continued talking?

25 What if he said, I want to invoke my Fifth

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1 Amendment Right to remain silent?

2 A I would have stopped talking.

3 Q What if he had said -- I mean, I could go
4 through, I guess, a lot of examples. But if he had
5 articulated his intention to cease giving that statement
6 and to quit talking to you, would you -- would you have
7 not terminated that interview?

8 A If he would have ceased talking to me, I would
9 have terminated the interview, yes, sir.

10 Q If he had said, I don't want to talk to you
11 anymore, and then not responded to you, you would have
12 terminated the interview?

13 A If he would not have responded to any of my
14 follow-up questions from that point on, I would have
15 terminate -- I would have took that as he's not going to
16 speak to me, period.

17 MR. KIDD: No further questions.

18 THE COURT: Mr. Grimes?

19 MR. GRIMES: No further questions of
20 Sergeant Hill.

21 THE COURT: Lieutenant, right?

22 MR. GRIMES: I'm sorry. Lieutenant Hill.

23 THE COURT: You may step down. Thank you.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Is he released?

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1 MR. KIDD: For today, yes, your Honor.
2 THE COURT: Is he to be back tomorrow?
3 MR. KIDD: He will be back tomorrow, yes,
4 ma'am.
5 THE COURT: And he knows when?
6 MR. KIDD: Oh, I will tell him.
7 THE COURT: Thank you.
8 We're going to take a very short comfort break.
9 We'll be right back.
10 Who's your next witness?
11 MR. KIDD: As to the first -- this Denno
12 hearing, that would be --
13 THE COURT: Do you have any witnesses?
14 MR. GRIMES: Well, we -- we have two prongs in
15 our argument.
16 THE COURT: Okay.
17 MR. GRIMES: I think our witnesses would go to
18 the second prong, the involuntariness of his statements.
19 THE COURT: All right.
20 MR. GRIMES: More so on that, and --
21 THE COURT: All right. I'll hear from you when
22 we get back. About five minutes.
23 (A break is taken from 2:47 p.m. until
24 2:52 p.m.; at which time, the proceedings continue as
25 follows:)

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1 THE COURT: All right. Mr. Grimes.

2 (The Defendant is present in the courtroom.)

3 MR. GRIMES: I was just thinking aloud, maybe a
4 way to save the Court some time, I think on the
5 invocation issue, I think the record is probably fairly
6 well-developed on that issue. The Court may be able to
7 rule on that. If the Court agreed to our position, then
8 we wouldn't need to have the second part of the hearing.

9 THE COURT: All right. And so tell me what
10 your position is just so I'm clear that I understand it.

11 MR. GRIMES: That Mr. Banks invoked his right
12 to remain silent; but at the end of the first part of
13 the interview, Detective Hill said: Is that your --
14 anything else you want to say? -----

15 Mr. Banks said: No.

16 Mr. Hill -- or excuse me, Lieutenant Hill then
17 said: All right. This interview is concluded.

18 I think --

19 THE COURT: What time is that?

20 MR. GRIMES: I think roughly about -- probably
21 the 25-minute mark.

22 THE COURT: At the 12:14? This time is 12:14,
23 and we're concluding the interview?

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: So you want me to make what

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1 finding?

2 MR. GRIMES: I think at that point, Mr. Banks
3 clearly invoked his right to remain silent in an
4 ambiguous and clear manner, and that right was not
5 scrupulously honored. I mean, Lieutenant Hill came back
6 in 11 minutes later and began the interrogation again.

7 And that the Kennedy case that we cited, I
8 think, provides very strong support for that. I think
9 the Kennedy case, the person said, Well, I think I need
10 a lawyer. And then the solicitor who was doing the
11 interview stopped right then and there, went -- and left
12 the interview room. And the court said that based upon
13 the words and the solicitor's actions, that there was a
14 clear indication of invoke of right to counsel.

15 Here, Mr. Banks' statement's even stronger than
16 to say in the Kennedy. He said: No. There's no
17 equivocation in it at all; that, No, I want to make a
18 phone call or, No, can we continue to the jail or, No, I
19 don't want to talk about this anymore; I want to talk
20 about this. Just, no means no.

21 And then Detective Hill recognized that, and
22 that's why he concluded the interview. And I think
23 that's essentially how Judge McDonald viewed it last
24 year.

25 THE COURT: All right. Mr. Kidd?

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1 MR. KIDD: Thank you, your Honor.

2 A few points to make. First being that, with
3 all due respect to Judge McDonald, I'm fairly confident
4 she made a mistake in that ruling. And all I ask is
5 that you -- and I know you'll do -- is just look at the
6 facts and law and make your own decision.

7 The Kennedy case, completely different; very
8 easy to distinguish. In the Kennedy case, he says, I
9 think I might need a lawyer. The solicitor in the room
10 at that time exits the room because the solicitor
11 understands that he is invoking his right and asking for
12 a lawyer.

13 What's important is what the actors in the
14 room understood. That's the importance of whether
15 something's ambiguous or not ambiguous. It's
16 unambiguous when the solicitor in the room leaves the
17 room and understands that he's asking for a lawyer. And
18 that's the whole point of why the invocation of one's
19 rights must be unambiguous. The detective -- the
20 testimony from Lieutenant Hill indicated that he did not
21 for a second believe that Mr. Banks was invoking his
22 right to remain silent or wished to cease communication
23 for that interview. And when you listen to the
24 transcript and you take everything that's said in
25 context, it mirrors exactly on point with the State v.

1 Aleksey (phonetic) case. I mean, I couldn't have asked
2 for a case more on point than that where in that case,
3 the appellant's statement says: That's all I've got to
4 say. He says: That's all I've got to say. Meaning,
5 that's my final word, or do you have anything else to
6 say: No. That's all I've got the say, is what he
7 says. And the Court concluded that that was not an
8 unequivocal invocation of his right to discontinue
9 questioning. And it is exactly what we have going on
10 here. He says -- the lieutenant asked him: Is that
11 your final word?

12 That's my final word.

13 Do you have anything else you want to say about
14 that?

15 No. Meaning, he doesn't wish to expand on the
16 context of their conversation. He didn't have anything
17 else to add.

18 That's very different than saying: I don't
19 want to talk to you anymore because I want to invoke my
20 right to remain silent. And I just don't think that
21 there could be anymore case law closer on point than
22 -- than what we have there. And, you know, I could
23 distinguish every case that -- that Mr. Grimes cites in
24 his memo, and none of them are even closely as on point
25 as Aleksey is.

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1 And so, Judge, I just think that when you
2 listen to the interview and you take the words in
3 context with how he said them, and, most importantly,
4 how Lieutenant Hill understood them for what they were
5 and what they meant at the time, it does not rationally
6 appear that it was an invocation of his Rights. And
7 even if it were, it wasn't unambiguously made. And,
8 therefore, it shouldn't be deemed an invocation of his
9 right to remain silent.

10 THE COURT: All right.

11 MR. GRIMES: Brief reply, your Honor.

12 I think Mr. Kidd's Redirect Examination of
13 Lieutenant Hill shows Lieutenant Hill doesn't really
14 understand Miranda. I think Mr. Kidd first asked: So
15 what if Mr. Banks said I don't want to talk anymore?

16 And Lieutenant Hill said: Well, I would keep
17 questioning him.

18 Lieutenant Hill almost poses a requirement
19 that Kashaun give him the silent treatment, just sit
20 there and be mum in order to invoke his right to remain
21 silent or say the magic words, like, under Miranda, I
22 hereby invoke my Fifth Amendment for purposes of
23 self-incrimination before he would honor it -- or he
24 would see it as a request for invocation for the right
25 to remain silent.

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1 And when you look at Miranda and the purposes
2 of it, it's per the suspect's ability to control how
3 they communicate with police. If in any manner,
4 whatsoever, indicate the right to remain silent that it
5 be honored. And here he is very clear in the third
6 attempt, in my opinion, he's clear in the second
7 attempt, and throughout the interview, you -- you see
8 him -- put everything together, you see he's trying to
9 invoke his right to remain silent. He finally does.
10 Lieutenant Hill realizes that; that's why he concludes
11 the interview. His actions show that he believed that
12 Kashaun was invoking his right to remain silent. That's
13 why he stopped the interview. Otherwise, he would have
14 kept doing his job. And, like he said, his job was to
15 get a confession.

16 Thank you.

17 THE COURT: All right. Mr. Grimes, let me hear
18 from you on your next argument.

19 MR. GRIMES: Our next argument would be on the
20 voluntariness of his confession. We would call
21 Mr. Banks at this time. We have several witnesses on
22 that -- that argument, your Honor.

23 THE COURT: All right. Mr. Banks, please come
24 forward.

25 MR. GRIMES: Excuse me.

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1 MS. EHRLICH: Your Honor, I think we're going
2 to call the representative from the school district
3 first, so she can get out of here.

4 THE COURT: Okay. Great.

5 MS. EHRLICH: Her name's Monica Tudder.

6 THE COURT: I'm sorry. I thought I heard
7 Mr. Grimes saying he was calling Mr. Banks.

8 MR. GRIMES: I did.

9 THE COURT: Okay. Thank you.

10 MR. GRIMES: Again, your Honor, I apologize. I
11 was jumping the gun there.

12 THE DEPUTY CLERK OF COURT: Please your left
13 hand here and raise your right hand.

14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)

16 THE WITNESS: I do.

17 THE DEPUTY CLERK OF COURT: Please have a seat
18 and state your full name, spelling your last name.

19 THE WITNESS: My full name is Monica
20 Cataris (phonetic) tudder, T-u-d-d-e-r.

21 MONICA TUDDER,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon her oath
25 as follows:

DIRECT EXAMINATION

1
2 BY MS. EHRLICH:

3 Q Ms. Tudder, where do you work?

4 A Dorchester School District Four.

5 Q And what's your job title there?

6 A I'm the Director of Programs for Exceptional
7 Children.

8 Q And what does that mean in kind of laymen's
9 terms?

10 A I'm the special education director. I oversee
11 the programs for students with disabilities.

12 Q Okay. And how long have you been the director?

13 A Eight years.

14 Q And do you have an education background that --
15 in psychology as well?

16 A I have a background in school psychology.

17 Q Okay. Do you know the Defendant, Mr. Banks?

18 A I do.

19 Q Okay. And as the Director of Special
20 Education, have you had an opportunity to review his
21 records?

22 A I have.

23 Q And was he receiving special education
24 services?

25 A He was.

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1 Q Did he at some point have a psycho-educational
2 evaluation?

3 A He did.

4 Q And what is a psycho-educational evaluation?

5 A It's an evaluation to determine whether or not
6 a student has some sort of disability under South
7 Carolina State law and needs special education services.

8 Q And when was he evaluated?

9 A January 6th of 2006.

10 Q Okay. And as part of that evaluation, was
11 there an IQ testing done?

12 A There was.

13 Q And what was his Full Scale IQ?

14 A A 68.

15 Q And does that put him into the -- what category
16 does that fall under?

17 A The mildly mentally disabled range.

18 Q Okay. And were the ultimate findings of the
19 evaluator that he also had a learning disability?

20 A He was classified as a student with a specific
21 learning disability, yes.

22 Q Okay. And also mildly mentally disabled?

23 A No. His classification was a specific learning
24 disability.

25 Q Okay. But the IQ testing resulted in falling

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1 below, I guess, what you would consider the borderline
2 range?

3 A His Full Scale IQ fell in the mildly mentally
4 disabled range, yes.

5 MS. EHRLICH: Permission to approach the
6 witness, your Honor?

7 THE COURT: You may.

8 (Document is shown to the Solicitors.)

9 Q (By Ms. Ehrlich) Can you identify this
10 document?

11 (Document is handed to the witness.)

12 A That's a psycho-educational evaluation
13 conducted by the school psychologist in our district.

14 Q Is that the one that was done in 2006?

15 A Yes.

16 Q Thank you.

17 MS. EHRLICH: Your Honor, I'd like to admit
18 this in for purposes of this hearing. It's a
19 psycho-educational evaluation.

20 THE COURT: Defendant's 1.

21 (Defendant's Exhibit Number 1 is admitted into
22 evidence.)

23 Q (By Ms. Ehrlich) Mr. Banks also had an IEP?

24 A He does. He did.

25 Q And what is an IEP?

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Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

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1 A It's an Individualized Education Program.

2 Q And what is that really -- what does that mean
3 in kind of --

4 A It outlines the type of special education
5 services that a student with disabilities will be
6 receiving.

7 Q Okay. And what's the reason that he was
8 receiving services according to his IEP?

9 A He was classified as a student with a specific
10 learning disability and needed specialized and
11 individualized instruction in the areas of language arts
12 and reading, specifically.

13 Q And does the IEP reflect what his reading level
14 was?

15 A It does. He continued to function on a
16 kindergarten reading level.

17 Q Okay. And was one of the special
18 assistance -- some of the assistance required that he
19 get oral administration of his tests to him?

20 A Correct.

21 MS. EHRLICH: Permission to approach the
22 witness, your Honor?

23 THE COURT: You may.

24 Q (By Ms. Ehrlich) Is this the most recent IEP
25 that the school has?

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1 A It is.
2 MS. EHRLICH: Your Honor, at this time I'd like
3 to move to enter into evidence for the purposes of this
4 hearing.

5 THE COURT: Mr. Kidd?

6 MR. KIDD: This is the IEP?

7 MS. EHRLICH: The IEP.

8 MR. KIDD: That's fine. No objection.

9 THE COURT: Defendant's 2.

10 (Defendant's Exhibit Number 2 is admitted into
11 evidence.)

12 MS. EHRLICH: Court's indulgence?

13 We have no further questions, your Honor.

14 THE COURT: Mr. Kidd?

15 CROSS-EXAMINATION

16 BY MR. KIDD:

17 Q This was done when he was 12 years old; right?

18 A I beg your pardon?

19 Q This was done when he was 12 years old, all of
20 this; is that right?

21 A Which part are you referring to?

22 Q The Dorchester school -- the psychological
23 evaluation.

24 A The psycho-education evaluation. Yes, he
25 was 12.

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1 Q And was the IEP done at a different time?

2 A The most recent IEP was dated January 19th,
3 2011, where he was, I believe, 16.

4 Q Okay. But all the first things y'all discussed
5 about when -- when he -- his IQ, and his performance
6 those were all when he was 12?

7 A The IQ was related -- came straight from the
8 psycho-educational evaluation. She asked me the reading
9 level based on the IEP.

10 Q Okay. So the IQ came from when he was 12?

11 A Correct.

12 Q And reading level at a kindergarten level was
13 when he was 16?

14 A Correct. That was -- a present level of
15 performance assessment done March 5th, 2010.

16 Q March 5th, 2010. So that would have been 14?

17 A You're asking me to do the math from 2010 to
18 1996?

19 Q 14, 15, in that range, I guess?

20 A Ninth, tenth grade.

21 Q Ninth, tenth grade.

22 MR. KIDD: I have no further questions, Judge.

23 MR. EHRLICH: I don't have any further
24 questions, your Honor.

25 THE COURT: Is this witness excused?

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1 MR. EHRLICH: She is.
2 THE COURT: Any objection?
3 MR. KIDD: No, ma'am.
4 THE COURT: Has she fulfilled her subpoena for
5 tomorrow?
6 MR. EHRLICH: Your Honor, I think that depends
7 on how you rule.
8 THE COURT: Okay. You may step down. I
9 believe you are still under the subpoena so make sure
10 you comply with that subpoena. Just because you came
11 today, does not release you from the subpoena unless --
12 She's under your subpoena?
13 MR. EHRLICH: She is.
14 THE COURT: -- unless the Defense releases you.
15 THE WITNESS: Okay.
16 THE COURT: Thank you. You may step down.
17 Call your next witness.
18 MR. EHRLICH: Your Honor, we would call
19 Mr. Banks now.
20 THE COURT: All right. Mr. Banks.
21 (The oath is administered by the Deputy Clerk
22 of Court, and the Defendant answers as follow:)
23 THE DEFENDANT: Yes.
24 THE DEPUTY CLERK OF COURT: Please have a seat
25 and state your full name.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

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1 THE DEFENDANT: Kashaun Christian Banks,
2 B-a-n-k-s.

3 KASHAUN CHRISTIAN BANKS,
4 having been first duly sworn by the Deputy Clerk of
5 Court to tell the truth, the whole truth, and nothing
6 but the truth, was examined and testified upon his oath
7 as follows:

8 DIRECT EXAMINATION

9 BY MS. EHRLICH:

10 Q Okay. How old were you when you got arrested?

11 A I was 17 years old.

12 Q And you need to talk a little bit louder so
13 everybody can hear you.

14 How old are you now?

15 A I am 19.

16 Q And have you been in jail since you got
17 arrested?

18 A Yes, ma'am.

19 Q Were you in school when you got arrested?

20 A No, ma'am, I was not.

21 Q When were you last in school? Do you remember?

22 A I was last in school in my tenth grade year.

23 Q And where did you go to school?

24 A Woodland High.

25 Q Where is that?

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1 A St. George, South Carolina.

2 Q Do you remember what grade you were in?

3 A I was in the tenth grade at the time.

4 Q And did you have some sort of other plan for
5 school at the time that you got arrested?

6 A Yes, ma'am.

7 Q What was that plan?

8 A I was attending -- I was planning to go to the
9 Youth Challenge Academy.

10 Q And I know what Youth Challenge Academy is, but
11 for the Judge, why don't you explain to her a little bit
12 what that program is.

13 A The Youth Challenge Academy is a school program
14 where it helps you get your GED, and it's military-
15 structured, run by the -- I guess it would be the Coast
16 Guard. Not the Coast Guard --

17 Q Is it run by the National Guard?

18 A National Guard. Sorry. It's been a long time.

19 Q And when you did go to the regular school, what
20 type of classes did you receive?

21 A Resources and regular classes.

22 THE COURT: I'm going to need you to speak up,
23 sir.

24 THE WITNESS: Resources and regular classes.

25 THE COURT: Thank you.

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1 Q (By Ms. Ehrlich) And do you know why you took
2 resource classes?

3 A I had a reading disability.

4 Q Okay. And have you always had trouble reading?

5 A Yes, ma'am.

6 Q Have you always gotten extra help in school?

7 A Yes, ma'am.

8 Q And explain to the Court a little bit -- what
9 type of extra help you get in school?

10 A All my classwork and tests had to be read by a
11 teacher.

12 Q I need you talk a little bit louder. If you
13 want to, you can lean into the microphone if it'll help.

14 A I said all my classwork and tests had to be
15 read by my teacher.

16 Q Okay. And when you say read by your teacher,
17 was it always by somebody that you knew?

18 A Yes, ma'am.

19 Q Okay. And so you already kind of trusted them
20 at that point?

21 A Yes, ma'am.

22 Q What was your favorite class in school?

23 A ROTC.

24 Q Why is that?

25 A I love military.

1 Q All right. And you've heard, and we've
2 listened to your tape. Do you remember the part of the
3 tape where they ask you to spell your name?

4 A Yes, ma'am.

5 Q Did you have trouble at any point?

6 A Yes, ma'am.

7 Q What part do you have trouble spelling?

8 A I cannot spell my middle name, Christian.

9 Q Is that related to your disability?

10 A Yes, ma'am.

11 Q What is it like for you not to read well?

12 A It's a challenge.

13 Q Explain that.

14 A I always have to have assistance when it comes
15 to reading or writing.

16 Q Okay. And when you're in a situation where
17 you're depending on somebody to read to you, how do you
18 react?

19 A Sometimes I become a smart-mouth.

20 Q Okay.

21 A I get upset.

22 Q All right. And is -- why is that?

23 A Because it makes me feel like I'm dumb and I'm
24 stupid.

25 Q Do you feel like people view you different when

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1 they find out?

2 A Yes. They look at you in a particular way.

3 THE COURT: I'm going to need you to speak up.

4 THE WITNESS: I said they look at you in a
5 particular way.

6 Q (By Ms. Ehrlich) And at the time that you were
7 interviewed by the police, do you remember -- do you
8 know what grade level you were reading on?

9 A Probably a second-grade level.

10 Q And because of your disability, do you
11 sometimes pretend to understand things more than you
12 really do?

13 A Yes, ma'am.

14 Q Why is that?

15 A Makes me fit in a little bit.

16 Q Okay. Before you got arrested in this case on
17 the armed robbery charge, had you ever had criminal
18 charges before?

19 A Yes, ma'am.

20 Q When you were arrested previously, did you ever
21 get taken to the police station for an interview?

22 A No, ma'am.

23 Q What would happen when you would get arrested?

24 A They just took me to the jail.

25 Q Okay. So have you ever been interviewed by the

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- 1 police before this incident?
- 2 A No, ma'am.
- 3 Q When you got arrested and stopped at Horizon
- 4 Village, how were you feeling?
- 5 A Scared and nervous.
- 6 Q Okay. Did they handcuff you?
- 7 A Yes, ma'am.
- 8 Q Did they tell you you were under arrest?
- 9 A Yes, ma'am.
- 10 Q Did they tell you why?
- 11 A No, ma'am.
- 12 Q Did you think at that point you could leave the
- 13 area if you wanted to?
- 14 A No, ma'am.
- 15 Q What happened after they first put you in
- 16 handcuffs? Where did they take you?
- 17 A Before they put me in handcuffs?
- 18 Q After they put you in handcuffs.
- 19 A They put me in the police car.
- 20 Q Okay. And did you think that you could leave
- 21 the police car?
- 22 A No, ma'am.
- 23 Q And what was going on through your head while
- 24 you were in the police car?
- 25 A I was scared, and I wanted to know what was

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1 going on.

2 Q Did you know -- did you think that you could
3 leave the car or just walk away at that point?

4 A No, ma'am.

5 Q Where did the police end up taking you?

6 A To a police station.

7 Q And where did they take you inside the police
8 station?

9 A They took me inside of a room.

10 Q And describe that room for the Court.

11 A Probably 10 by 11. It had a table with four
12 chairs. It had a window in the back, and it had a
13 camera with a bowl covered over it.

14 Q Was there a phone in the room?

15 A No, ma'am.

16 Q A clock?

17 A No, ma'am.

18 Q Were you still handcuffed?

19 A I had one hand -- I had one arm free and the
20 other hand -- the other hand was handcuffed to the
21 chair.

22 Q What was going on through your head at that
23 point?

24 A I was scared.

25 Q Okay. And do you know how long you were in the

1 room before the police officers came in?

2 A No, ma'am, I do not.

3 Q When the officers came in the room, how many
4 were there?

5 A There were two officers at the time.

6 Q And where were they sitting?

7 A One was sitting right next to me and the other
8 officer was sitting across from me.

9 Q Do you remember who was who, or who was sitting
10 where?

11 A The officer that was just on the stand, he was
12 sitting right beside me.

13 Q Okay. And the other officer was across from
14 you --

15 A Sitting across, yes, ma'am.

16 Q And do you remember them going over the Rights
17 form that we've been talking about today?

18 A Yes, ma'am.

19 Q Were you still handcuffed at that point?

20 A Yes, ma'am.

21 Q And were you able to read that form?

22 A No, ma'am, I could not.

23 Q Is that when they asked you to spell your name?

24 A Yes, ma'am.

25 Q And did you tell them that you had trouble

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1 reading?

2. A Yes, ma'am, I did.

3 Q Did you make any attempt to read the form?

4 A No, ma'am.

5 Q Why?

6 A Because I couldn't understand what was on the
7 form. And I was scared at the time.

8 Q Okay. And when they read you what was on the
9 form, did you just have to take the officer's word for
10 it?

11 A I always have to take peoples' words when they
12 read stuff to me.

13 Q And since you got arrested, you and I have
14 probably gone over that form before?

15 A Yes, ma'am, we did.

16 Q As well as Mr. Grimes?

17 A Yes, ma'am.

18 Q And so you've learned a little bit more about
19 your Rights since then; right?

20 A Yes, ma'am, I did.

21 Q Do you remember them asking you if you wanted
22 to waive your Rights at any point?

23 A I believe so. I'm not too sure.

24 Q Okay. Did you know at the time what "waived"
25 meant?

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1 A No, ma'am, I did not.

2 Q Okay. When you signed the form, did you think
3 that you had a choice to sign it, or did you just sign
4 it?

5 A I -- no, I did not have a choice. I felt like
6 I had to sign it.

7 Q Did you know that if you didn't sign the form
8 they wouldn't talk to you?

9 A No, ma'am, I did not know that.

10 Q And at that point, did you know how to get a
11 lawyer?

12 A No, ma'am, I did not.

13 Q Okay. When you gave the first statement, that
14 entire time, were you handcuffed?

15 A Yes, ma'am.

16 Q Okay. And did you -- why did you answer
17 questions?

18 A I felt like I had to.

19 Q Okay. Did they make any sort of threats to you
20 or anything?

21 A No, ma'am, they did not.

22 Q Why did you feel like you had to talk to them?

23 A Because I wanted to -- because -- I -- when he
24 asked me questions, he asked me what was going on, and
25 then I asked him: Can I have a phone call?

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1 And he said: No. And then he said -- before
2 you gives -- he said I couldn't get a phone call. He
3 would ask me some questions.

4 Q Okay. Do you remember them talking to you
5 about the military?

6 A Yes, ma'am, I do.

7 Q And what was the big deal about the military
8 for you?

9 A I've always wanted to go into the military.

10 Q And why did you want to go into the military?

11 A My grandfather was in the military, and it was
12 always something that I wanted to do.

13 Q And what was your relationship like with your
14 grandfather?

15 A He was a father figure in my life.

16 Q When they were talking to you about the
17 military, was it your impression that they might be
18 trying to help you at that point?

19 A Yes, ma'am.

20 Q Okay. Did you feel like if you talked to them
21 further they might help you out with that?

22 A Yes, ma'am.

23 Q When you first got to the police station and
24 they went over your Rights, you asked for a phone call?

25 A Yes, ma'am.

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1 Q Why did you want a phone call?

2 A I was calling for help.

3 Q Okay. Did they give you that phone call?

4 A No, ma'am.

5 Q Why did you want help? What type of help were
6 you trying to get?

7 A To get help because of the situation. I didn't
8 really know what to do, so I was calling for help.

9 Q Okay. And who were you trying to call?

10 A I was trying to call my sister, but --

11 THE COURT REPORTER: I'm sorry. You'll have to
12 repeat.

13 THE WITNESS: I said, I told him to call my
14 sister, but I remembered her phone was off, so I said
15 call my fiancée.

16 Q (By Ms. Ehrlich) Okay. And you at first told
17 the police, that Danielle was your sister, but really
18 she's your fiancée -- or was your fiancée?

19 A Yes, ma'am. Yes, ma'am.

20 Q And why didn't you tell them at first?

21 A Because she was -- I was 17, and she was 27 at
22 the time.

23 Q Okay. When they didn't let you call anybody,
24 throughout your time at the police station, did you
25 believe that meant that you had to keep talking to them?

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- 1 A Come again, please?
- 2 Q When they refused to let you use the phone, did
3 you believe that meant you had to keep talking to them?
- 4 A Yes, ma'am.
- 5 Q Did they ever -- when you asked for the phone
6 call, did they stop the interview?
- 7 A No, ma'am.
- 8 Q Okay. When you were talking to the officers,
9 do you remember trying to stop the interview?
- 10 A Yes, ma'am.
- 11 Q Okay. How did you do that?
- 12 A I said, No; then I told them that was my final
13 word; and then I said, Let's continue.
- 14 Q Okay. And did you also ask them what was
15 holding up from taking you to the jail?
- 16 A Yes, ma'am.
- 17 Q Why did you ask that?
- 18 A Because I was ready to go.
- 19 Q Okay. And when you told them it was your final
20 word, did they stop talking to you?
- 21 A No, ma'am, they did not.
- 22 Q And when you say, Let's continue, what does
23 that mean to you?
- 24 A I'm ready to go.
- 25 Q Go where?

1 A To the jail.

2 Q Did you want to continue answering questions?

3 A No, ma'am, I did not.

4 Q Why did you keep answering questions?

5 A Because I felt like I had to.

6 Q Okay. When you told them that you didn't have
7 anything else to say, were you trying to end the
8 interview?

9 A Yes, ma'am.

10 Q When you told them it was your final word, did
11 you want to keep answering questions?

12 A No, ma'am, I did not.

13 MS. EHRLICH: Court's indulgence?

14 THE COURT: Take your time.

15 (Ms. Ehrlich speaks with Mr. Grimes off the
16 record.)

17 MR. EHRLICH: Please answer any questions that
18 the State has for you.

19 THE WITNESS: Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MR. KIDD:

22 Q You understood that you didn't have to say
23 anything without a lawyer present; correct?

24 A Yes, sir.

25 Q And by understanding that, you still continued

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1 to answer questions. Why?

2 A Because I felt like I had to.

3 Q You just said you understood that you didn't
4 have to.

5 A Yes, sir. If he would have let me make the
6 phone call, maybe Danielle could have called me an
7 attorney at the time. I was calling for help. That was
8 the purpose of the phone call.

9 Q But you understood you didn't have to say
10 anything without an attorney present?

11 A Yes. And I felt like I had to because he kept
12 questioning me, and he wouldn't let me go.

13 Q Those things don't match. You can't understand
14 that you don't have to, but also feel like you have to.

15 A He kept questioning me. He wouldn't let me go,
16 so I felt like I had --

17 Q Well, you were under arrest. He wasn't going
18 to let you go.

19 A I was ready to go to the jail, sir.

20 Q I'm sure you were.

21 You understood all of the questions
22 Ms. Ehrlich asked you here today, right, and all of
23 our conversations and everything that's going on here;
24 right?

25 A Yes, sir.

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1 Q And everything that was discussed on that
2 video and all of that, interview and the conversations
3 with Lieutenant Hill, you understood all that was said
4 today?

5 A Yes, sir. Some of the words you used, I didn't
6 understand, but, yes, sir, I understood.

7 Q But you've got the general idea of everything
8 that's gone on today so far; right?

9 A Yes, sir.

10 Q And a lot of what's gone on today is replaying
11 what happened back then; right?

12 A Back when? The first --

13 Q Back on your interview. I mean, all we've
14 talked about here today is the context of your
15 conversation with Lieutenant Hill; right?

16 A Yes, sir.

17 Q And you understood all that; right?

18 A Yes, sir.

19 Q So if you understand it today, you also
20 understood it then; right?

21 A No. Because he kept questioning me, and I felt
22 like I had to. I didn't understand --

23 Q What did him questioning you have to do --

24 THE COURT: Please don't talk over him. Thank
25 you, Mr. Kidd.

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1 MR. KIDD: I apologize, Judge.

2 THE COURT: Did you finish your statement?

3 THE WITNESS: I said I didn't know what waiving
4 my Rights mean. In that conversation, I did not know if
5 I did not sign the paper that I had -- that he wouldn't
6 question me, sir.

7 THE COURT: Thank you, Mr. Kidd.

8 Q (By Mr. Kidd) And what has changed between
9 now and then that has caused you to understand that?
10 Because you understand that now; right?

11 A Mr. Grimes and Ms. Ehrlich explained to me what
12 my Rights were at that time, sir.

13 Q But you also said you knew you had the right
14 to remain silent and to have a lawyer present? You
15 explained that to -- to Lieutenant Hill on that
16 audiotape; didn't you?

17 A Yes, sir. But I still felt like I had to.

18 Q You felt like you had to explain to him what --
19 that you understood what your Rights were?

20 A When he kept questioning me, I felt like I had
21 to talk at the time, sir.

22 Q And your mental disability is with reading; is
23 that right?

24 A Reading and writing, sir.

25 Q Reading and writing?

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1 A Yes.

2 Q But you're pretty good at communicating, like
3 we are now; right?

4 A To a certain extent, sir.

5 Q To a certain extent. But you can understand
6 things we're saying? I mean, you understand the
7 conversation we're having right now?

8 A Yes, sir.

9 Q You understand the importance of it?

10 A Yes, sir.

11 Q And have you had any formal training between
12 now and two years ago? Or a year ago?

13 A As far as?

14 Q My point being, that when -- when you listened
15 to yourself on that audiotape, you had a pretty
16 cognizant conversation with Lieutenant Hill then too;
17 right?

18 A If that's what you would say, sir.

19 Q I'm asking you. I mean, when you hear that
20 conversation, does it sound like you didn't know what
21 was going on?

22 A I didn't. I only knew -- I only knew he
23 was asking and I was scared at the time and I kept
24 answering --

25 Q I understand you were scared. I would have

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1 been scared too. That's natural. But the issue is
2 not whether you were scared. The issue is, did you
3 understand? Do you understand what the words mean: You
4 have a right to remain silent?

5 A Yes, I understand. But I felt like I had to
6 when he kept questioning me, sir.

7 Q I understand that. But you know what those
8 words mean: The right to remain silent?

9 A Yes. And I still felt like I had to when he
10 kept questioning me, sir.

11 Q And you know what it means to have a right to
12 an attorney?

13 A Yes, sir.

14 Q Okay. So you understood your Rights?

15 A How was I supposed to get an attorney if he
16 didn't let me get a phone call?

17 Q You ask for one.

18 A I did. I didn't get one.

19 Q You didn't ask for one.

20 A Yes, I did. I did ask for a phone call. I
21 asked for help, sir.

22 Q And you said when you were arrested you were
23 scared. You wanted to know what was going on.

24 A Yes, sir.

25 Q So you didn't know what was going on?

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1 A I didn't know what I was being arrested for,
2 sir, no.

3 Q You had no idea what you were being arrested
4 for?

5 A No, sir, I did not.

6 Q Well, how come on the second part of the
7 interview, you confessed?

8 A I only told them what they wanted to hear, sir.

9 MS. EHRLICH: Objection, your Honor. I think
10 we're getting beyond the scope of the hearing. He's
11 trying to get into --

12 THE COURT: It gets kind of tricky. I'm going
13 to give him just a little bit of latitude on that one.

14 Thank you.

15 Q (By Mr. Kidd) I understand what you're saying,
16 but you answered questions that you wouldn't have had
17 answers to otherwise?

18 A And I told them how I knew those answers, sir.

19 Q How did you know them?

20 MR. EHRLICH: Objection, your Honor.

21 THE COURT: Rephrase your question, Mr. Kidd.

22 MR. KIDD: I'll withdraw, Judge.

23 Court's indulgence?

24 (Mr. Kidd speaks with Ms. Riddle off the
25 record.)

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1 MR. KIDD: No further questions, Judge.

2 MR. EHRLICH: Court's indulgence?

3 THE COURT: Take your time.

4 (Ms. Ehrlich speaks to Mr. Grimes off the
5 record.)

6 MR. EHRLICH: Your Honor, I don't have any
7 other questions for Mr. Banks.

8 THE COURT: All right. You may step down,
9 Mr. Banks. Thank you.

10 Call your next witness.

11 MR. GRIMES: The Defense has no further
12 witnesses, your Honor.

13 THE COURT: All right.

14 Anything further, Mr. Kidd?

15 MR. KIDD: As to the Denno hearing, I don't
16 have any further witnesses, Judge.

17 THE COURT: All right.

18 MR. KIDD: I would like to be heard at the
19 appropriate time as to the voluntariness.

20 THE COURT: All right. Mr. Grimes, just so I
21 understand your argument, could you articulate your
22 argument again for me?

23 MR. GRIMES: Yes, your Honor.

24 May it please the Court. We are moving to
25 suppress the statement that Kashaun made on October

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1 16th, 2011, where he incriminates himself in the robbery
2 of the Exxon gas station.

3 First, moving for -- first position is that the
4 Court should grant our motion because Lieutenant Hill
5 obtained this statement in violation of Miranda versus
6 Arizona. Lieutenant Hill did advise Kashaun of his
7 Rights. And Kashaun subsequently invoked his Rights,
8 specifically his right to remain silent. I believe he
9 invoked his Rights in two ways. First one was he said,
10 This is the final word -- my final word, and then asking
11 to be brought to the jail so he can make a phone call.
12 And the statements Mr. Kidd made on the continuing
13 comments, making it -- that request ambiguous. When you
14 look at the context of the interview, Detective Hill
15 knows that he's trying to get to the jail, that's why
16 they have this long -- oh, excuse me, Lieutenant Hill
17 knows he's trying to get to the jail, that's why they
18 have a long conversation about making the phone calls.
19 And Lieutenant Hill thought if he just wanted to talk to
20 someone else, he could have asked him, by a different
21 part. For example: Where did he put the cash register
22 at? Where did he put the shirts at? How did he get
23 away? Where is the BB gun at? That kind of stuff.
24 Rather than going into that stuff, he's asking about
25 phone calls, calling his sister, and trying to keep him

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1 at the station house so he could get a confession.

2 And then at the -- at the end of the first part
3 of this interrogation, Lieutenant Hill specifically
4 asked Kashaun: Do you have anything else that you want
5 to say.

6 Kashaun says: No.

7 And Lieutenant Hill testified, no means no.
8 And if you take the State's arguments here to a logical
9 extension, why was CSC case if a girl says no? Or -- or
10 other stuff -- a plea offer, for example, if the Court
11 was to ask someone, Do you accept the plea offer, and he
12 says no? Does that mean no, they don't accept the plea
13 offer, or yes, they do, or is that ambiguous? It just
14 sort of opens a Pandora's box if you take -- accept the
15 State's position here that no does not mean no.

16 And I think we provided plenty of case law that
17 shows that no does mean no. I know, there being a
18 transcript, Judge McDonald did her own research and
19 didn't find anything that contradicted our position and
20 simply did not accept what the State's position in
21 Aleksey. If you carefully read Aleksey, you have a
22 re-initiation after that. So it's part of that opinion
23 probably could be considered dicta.

24 Our second part of the argument is that Kashaun
25 did not knowingly and intelligently waive his Rights,

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1 because the statement was obtained by hopes of leniency.
2 We're not saying Detective -- excuse me, Lieutenant Hill
3 promised him anything. For example, if you tell me
4 this, I promise to go to the Judge and talk to the Judge
5 on your behalf. It's not as strong as that. It's the
6 hope of leniency. And Lieutenant Hill on
7 Cross-examination recognized there is a difference
8 between a promise and a hope of leniency. And courts
9 have noted that hopes of leniency can also make a
10 statement involuntary.

11 I think I've cited a lot of cases talking about
12 so how -- telling the truth, don't -- how things make
13 you look good by telling the truth can be considered a
14 hope of leniency and can render a statement involuntary.
15 And you combine that with Kashaun --

16 THE COURT: What was the promise of leniency?

17 MR. GRIMES: Hopes of leniency. Like I said,
18 I'm not saying he made a promise. I'm saying he was
19 giving him hope.

20 THE COURT: And what was that hope?

21 MR. GRIMES: The strongest one that jumps out
22 to me is, if you want to get past the robbery to get
23 past -- if you want to get in the military, you can't
24 get in the military with a robbery conviction. By
25 telling the truth, you can get past this. So by saying,

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1 if you tell the truth, you can get past this, that's
2 giving him hope that maybe he can get into the military,
3 and it wouldn't be a conviction for robbery. And by
4 telling the truth, he might go to Mr. Kidd and put in a
5 good word for him and do whatever the prosecution
6 thinks --

7 THE COURT: Is that -- were those statements
8 made, or is that what you're inferring, Mr. Grimes?

9 MR. GRIMES: I think the parts about -- it's
10 probably a combination, your Honor. There's -- you
11 know, certainly he said -- they do play upon his desire
12 to go into the military. They use words, if you have
13 any aspiration of going into the military, a robbery
14 conviction will keep you out. That's --

15 THE COURT: That's a true statement, though,
16 isn't it?

17 MR. GRIMES: Yes, ma'am.

18 And then he also says: If you any hope of
19 getting past this, you need to tell us the truth. And
20 that's where the hope of leniency comes in, your Honor.
21 And then you have to look at case law, so you look at
22 the suspect's background, and, you know -- and you heard
23 from Ms. Tudder, heard from Kashaun of why he would --
24 wants to go in the military, what his past issue in the
25 military was, is sort of limited --

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1 THE COURT: Mr. Grimes, is he saying to get
 2 past this, or -- that's not quite how I recalled what
 3 the statement was made. We've got to remember, I don't
 4 have an official transcript, so my notes from the video
 5 may have been -- from the CD may be different from
 6 yours.

7 MR. GRIMES: Thank you, your Honor.

8 I think -- let me 16-30 -- the notes said "we
 9 have," and you realize they're not verbatim, and it's
 10 not certified as being 100 percent accurate.
 11 Detective Hill said: Okay. Well, I'm telling you the
 12 military will not going to take you with the robbery
 13 convictions.

14 Mr. Banks: Okay.

15 Detective Hill: So, okay, your best hope --
 16 Uh-huh.

17 Detective Hill: -- of getting past that --

18 Kashaun says: And --

19 And Detective Hill says: -- is to tell the
 20 truth in here.

21 So what we're saying -- I think when you look
 22 at that -- that exchange, I think it's reasonable for
 23 Kashaun and, as he testified, I believe, that by telling
 24 the truth, he could help get himself in the military, or
 25 Detective Hill might be able to do something to help him

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1 get into the military.

2 THE COURT: But the transcript -- the line of
3 questioning that I'm referring to, that I just want
4 to -- that you gave me the copy, which is not a
5 certified transcript, but it is the line of questioning
6 where the detective -- you will never get in the
7 military so your best chance of ever recovering from
8 this incident --

9 Banks: Uh-huh.

10 Is that where you are?

11 MR. GRIMES: Let me --

12 May I have one moment, your Honor?

13 THE COURT: Take all the time you need.

14 MR. GRIMES: Thank you, your Honor.

15 I think -- the part that you're reading from
16 is, I think, pages 11 through 12?

17 THE COURT: My pages are not numbered.

18 MR. GRIMES: Does it start around --

19 THE COURT: It's right before --

20 MR. GRIMES: -- the 12-minute mark?

21 THE COURT: 12:26. 11:58 to 12:26.

22 MR. GRIMES: I thought there was a second place
23 where they had a similar exchange. I was trying to find
24 that.

25 MR. KIDD: 16:15.

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1 THE COURT: 16:15, Mr. Kidd?

2 MR. KIDD: Yes, ma'am.

3 MR. GRIMES: Thank you, Mr. Kidd.

4 They have -- the first section that your Honor
5 specified, and then the second section that Mr. Kidd
6 helped me find.

7 (Respite.)

8 MR. GRIMES: I think those are the two big
9 examples of trying to get -- Lieutenant Hill trying to
10 give Kashaun some hope by going -- being able to get
11 into the military if he was to tell the truth in there.

12 Again, I think it's noted, again, on the
13 Cross-examination of Detective Hill. There's also an
14 exchange where he said, you know, he could go and tell
15 the solicitor that Kashaun, being truthful, if he was
16 truthful, and Kashaun's reaction to that was, Well, if
17 I'm not truthful, that makes me look bad. And according
18 to our listening to it, it sounds like Detective Hill
19 agreed with him. And on Cross-examination, he said he
20 was going along with what Kashaun said, that it would
21 look bad upon him. That's sort of where those line of
22 cases we cited about not being truthful could increase
23 someone's punishment, shows that if you're truthful --
24 basically, in a nutshell, if you're truthful, we can
25 help you get in the military; if you're not truthful,

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1 it's going to look bad on you.

2 And that's our, sort of, position in a nutshell
3 in that, your Honor, we believe the cases we've cited to
4 support that, and when you look at Kashaun's background,
5 his education level, his desire to go in the military
6 because of his grandfather being in the military, is
7 making arrangements to go to a military school, I think
8 that just the totality of the circumstances show that
9 his statement was involuntary.

10 Thank you, your Honor.

11 THE COURT: All right. Mr. Kidd?

12 MR. KIDD: Thank you, Judge. And I won't
13 completely rehash the first argument as to the
14 invocation.

15 THE COURT: You will or won't?

16 MR. KIDD: I wasn't planning on it --

17 THE COURT: Thank you.

18 MR. KIDD: -- unless you want me to repeat
19 myself, I can. But I will stay away and argue mainly on
20 the issue of the voluntariness at this point. I think
21 my argument's on the record as to the invocation issue.

22 As to the voluntariness of the statement,
23 Judge, I think anyone who hears that transcript and
24 listens to that audiotape, knows that Kashaun Banks
25 understood exactly what was going on there despite

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1 having some mental troubles, some learning disabilities,
2 his Rights were explained to him. He then was asked by
3 the officer what that meant, and then he gave a logical
4 explanation of what those Rights meant, and he was
5 accurate. He understood his Rights. This was a
6 relatively short -- while it's difficult to listen to
7 from beginning to end, this is about an hour. So this
8 isn't a long period of time. You listen to that tape,
9 Detective Hill was extremely nice to him and only
10 encouraged him to tell the truth.

11 This is not a case like State v. Pete in which
12 a promise was made in return for a confession. In that
13 case, it was, We won't seek the death penalty if you
14 confess. That's not what we have here. All we have
15 here is an officer saying, You need to tell the truth,
16 son. That's what's going to be best for you. And in no
17 way can -- can that -- can an encouragement to tell the
18 truth because the officer believes that's going to be in
19 his long-term best interest be interpreted as a promise.
20 And a promise in this vein of State v. Pete, according
21 to South Carolina case law, must be -- it only -- if
22 it's so connected with the inducement as to be a
23 consequence of the promise, meaning, that it's almost
24 like it has to be a bargained-for exchange. It can't be
25 just an open-ended encouragement to tell the truth.

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1 It has to be, If you tell the truth -- if you confess,
2 we won't seek the death penalty. If you confess, we'll
3 charge you with something less. It is that sort of
4 consequence and inducement that would make -- could make
5 a confession involuntary. And that's just not what we
6 have going on here. So an encouragement to tell the
7 truth and a truthful statement about a robbery
8 conviction potentially being a bar to being allowed to
9 enter the military is not something that's going to make
10 a subsequent confession involuntary.

11 And, Judge, and I know -- I know Mr. Grimes
12 keeps harping on how Judge McDonald ruled, but with all
13 due respect to her, Judge, she made mistakes, and we all
14 know -- Mr. Grimes and myself know it's a very tough job
15 being a Circuit Court Judge, and you have to make a lot
16 of quick rulings, and she just missed one. And I hope
17 we can look at the facts and the law and make a fresh
18 ruling.

19 I'd also like to point out that in the
20 procedural manner that everything took place in the last
21 trial, these all -- all these hearings were done after
22 the jury was sworn, which kind of tied my hands after
23 she made her rulings. So I just would -- I just would
24 like -- would like us to look exactly at the context of
25 that invocation issue, understanding that -- you know,

1 how Detective Hill interpreted each -- that
2 conversation, because I think that's the most important
3 objective standard to look at, and -- and apply the law
4 in Aleksey and Parker which are really on point to both
5 of these issues.

6 Thank you, Judge.

7 THE COURT: Mr. Grimes?

8 MR. GRIMES: I just want one brief reply about
9 Mr. Kidd's asking -- and procedural posture, and what
10 that's about. Mr. Kidd told Judge McDonald that he
11 wasn't even sure he going to use the confession, and
12 that it was his idea to swear the jury and have opening
13 statements before the Court even ruled. And I just want
14 that to be correct. I mean, it's in the transcript, and
15 I want -- I just felt that needed to be corrected.

16 THE COURT: All right. I didn't consider one
17 way or the other.

18 Anything further, Mr. Grimes?

19 MR. GRIMES: No, ma'am.

20 THE COURT: All right. Anything further,
21 Ms. Ehrlich?

22 MR. EHRLICH: No, your Honor.

23 THE COURT: Your first -- pursuant to your
24 motion that you filed, Mr. Grimes, I understand that
25 you are requesting that the entire -- all of the

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1 statements made to law enforcement from the time he was
2 placed -- or the interview with Lieutenant Hill; is that
3 correct?

4 MR. GRIMES: I think technically it would be
5 only after he invoked his right to remain silent, would
6 be the statements we would suppress. I don't know if we
7 would be able to use the pre-invocation rights or
8 statements at a trial because I think it would get
9 Mr. Kidd to introduce those.

10 THE COURT: All right. So your position is
11 that once -- that Mr. Banks did invoke his right to
12 remain silent; and once he did so, law enforcement did
13 not scrupulously honor that; is that correct? Do I
14 understand your argument correctly?

15 MR. GRIMES: Yes, your Honor.

16 THE COURT: Okay.

17 MR. KIDD: And if it helps to make anything
18 easier, I would concede to the scrupulously part. If
19 you determine that he invoked his Rights, I would think
20 at that point that it -- it would be in violation. My
21 argument is that invocation never occurred.

22 THE COURT: All right.

23 So I have been provided an uncertified copy of
24 the transcript. I don't know who transcribed it, but I
25 have listened to the actual audio of the interview, and

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1 I have observed Mr. Banks. I have listened to the
2 testimony by Mr. Banks, one of the most articulate
3 individuals and appropriate individuals that I've seen
4 in a while in my courtroom.

5 Based upon my review of listening to the
6 testimony -- or the exchange between, then Sergeant, now
7 Lieutenant Hill and Mr. Banks, some things kind of
8 popped to my mind that I focused on. One is, Mr. Banks
9 brought to Lieutenant Hill's attention that they should
10 have given him Miranda warnings when first arrested,
11 which they didn't. So he said -- there was a whole
12 discussion about that. So he understood what Miranda
13 meant and even in today's hearing, he indicated to
14 Mr. Kidd that he knew that he could stop talking at any
15 time and he could have requested an attorney and he
16 indicated that he did not do so.

17 The dialog -- the two different dialogues on
18 two separate occasions concerning the necessity to tell
19 the truth and hope that the Court has mercy on you, the
20 statement where -- that I think is in question is when
21 at the end of the first -- well, just turn to the first
22 interview that Mr. Banks indicates to the -- to
23 Lieutenant Hill's statement: Do you have anything else
24 you want to say, and Mr. Banks says, No, I find that
25 that statement, No, to Lieutenant Hill's, Do you have

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1 anything else you want to say, was not an unequivocal
2 invocation of his Rights to discontinue questioning. I
3 do find that the statement was ambiguous, and it could
4 have been interpreted to mean that the Defendant had
5 nothing further to say concerning that matter, not that
6 he had invoked his Rights under the Miranda to stop
7 talking.

8 Note your exception to that prong of the
9 ruling, Mr. Grimes.

10 So, then, that moves to us to what I understand
11 is the next basis, was that it was obtained -- the
12 statements were then obtained by promises of leniency.
13 So we have had, even in today's hearing, Mr. Grimes, you
14 agree that it is fairly common knowledge to somebody,
15 especially somebody that was in a military school -- and
16 he wanted to go into the military. -- it's very common
17 knowledge that a felony conviction makes it very
18 difficult, if not impossible, to get into the military.
19 The two back-and-forth exchanges about the military, I
20 do not find that they were promises of leniency, but
21 merely the detective indicating to Mr. Banks that his
22 requirement in that interview was to tell the truth.
23 And based upon that, I do not find that the statement
24 was induced by a promise of leniency and that it was so
25 connected with the inducement as to be a consequence of

1 a promise.

2 I have considered the age of Mr. Banks, his
3 lack of education or his intelligence, but as I
4 indicated, his demeanor here and on the audio were
5 impeccable. He answered and was articulate with the
6 Sergeant and the Detective and corrected him when he
7 needed to be corrected. There seemed to be a lot of
8 back-and-forth banter between the two. He was given his
9 Constitutional Rights. He had indicated that he knew
10 that he was entitled to be given them. It was a
11 relatively short interview, and I do not find
12 that -- that law enforcement obtained the statements
13 through promise of leniency. Your Motion to Suppress
14 the statement is denied.

15 MR. KIDD: To the Biggers hearing?

16 THE COURT: All right.

17 MR. KIDD: State would call Keisha Holmes.

18 THE COURT: Ma'am, please come forward and be
19 sworn. Thank you. Right there.

20 THE DEPUTY CLERK OF COURT: Place your left
21 hand here and raise your right hand.

22 (The oath is administered by the Deputy Clerk
23 of Court, and the witness answers as follows:)

24 THE WITNESS: Yes, ma'am.

25 THE DEPUTY CLERK OF COURT: Please have a seat

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1 foreperson in this case, and as such, you are the jury's
2 spokesperson. So if at any time, any of the other
3 members of the jury have any concerns or questions, if
4 you will please alert the bailiff, and they -- we will
5 take care of it promptly. You will also be responsible
6 for writing the verdict, but I will give you further
7 instructions regarding that matter during my charge on
8 the law.

9 Ladies and gentlemen, please give your strict
10 attention.

11 Ms. Riddle. Thank you.

12 MS. RIDDLE: Thank you, your Honor. May it
13 please the Court? Good morning.

14 JURY IN UNISON: Good morning.

15 OPENING STATEMENTS

16 MS. RIDDLE: Ladies and gentlemen, once again,
17 my name is Elizabeth Riddle. Culver Kidd and I are two
18 Assistant Solicitors for the Ninth Judicial Circuit, and
19 we serve Charleston County. I want to thank you for
20 serving as jurors today in this case. You've taken an
21 oath to render a true verdict, and all we ask is that
22 you be fair and unbiased and base your verdict on the
23 evidence.

24 Now, let me tell you a little bit about the
25 case. On October 15th, 2011, Ms. Keisha Holmes and

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1 Ms. Tenille Wilson left their homes to go to work. Just
2 like any other day, they said goodbye to their family,
3 and they went to work at the Exxon gas station and
4 convenient store. And that store is located at the
5 corner of Rivers Avenue and McMillan Avenue in North
6 Charleston, in Charleston County. Their shift was going
7 along as usual, when that man, Kashaun Banks, charged
8 into the store, pointing a gun at Keisha, yelling,
9 screaming at her, to give her [sic] the cash.

10 She did as she was told. She opened the
11 register, she handed the money and the cash tray, all
12 while staring down the barrel of a gun. And once the
13 Defendant had the money, he fled the store. Keisha did
14 what she should have done next, and she called the
15 police. And within minutes, North Charleston police
16 were on the scene. And from there, their investigation
17 began.

18 They set up a perimeter in the area, and they
19 called out a K-9 dog unit. You're going to hear
20 testimony from the officers on the scene, and you'll
21 hear testimony from the K-9 dog police officer. You'll
22 hear how he tracked the Defendant, and along that path
23 he found a pair of shoes and the hidden cash tray.

24 You're also going to hear testimony from the
25 officer who heard the Defendant jump a nearby fence and

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1 later took the Defendant into custody. Just 18 minutes
2 after Keisha called the police, the Defendant was in
3 custody. And when he was found, he had a backpack
4 containing gloves and a gun. You will see the gloves
5 and the gun on the Defendant, on the surveillance video
6 from the gas station.

7 I ask that you please use common sense, and
8 listen carefully to what the witnesses have to say
9 because the details in this case matter. We're focusing
10 on Kashaun Banks today. He is charged with armed
11 robbery. At the end of the trial, the Judge is going to
12 instruct you on the law of armed robbery, and you must
13 follow the law as she tells it to you, but let me just
14 give you an introduction.

15 The crime of armed robbery has several elements
16 the State must prove:

17 Number one, the Defendant took property from
18 the person in the presence of another person;

19 Number two, the Defendant carried the property
20 away intending to permanently deprive the owner and keep
21 it for his own use;

22 Number three, the taking and carrying away of
23 the property was done with force, threat, or
24 intimidation;

25 And, number four, the Defendant was armed with

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1 a deadly weapon, or the victim reasonably believed the
2 Defendant was armed with a deadly weapon.

3 Ladies and gentlemen, you know what armed
4 robbery is. When someone goes into a store or
5 restaurant with a gun and demands cash, that is armed
6 robbery. It is also armed robbery if the Defendant uses
7 a gun that you find has the appearance of a deadly
8 weapon, or it's believed to be a deadly weapon. And
9 that's important in this case. It's still armed robbery
10 even if it was unlikely that the gun could actually
11 kill. It's not a complicated crime, but the State must
12 prove these elements to you beyond a reasonable doubt.

13 And, again, the Judge is going to instruct you
14 on the law of reasonable doubt, but it -- beyond a
15 reasonable doubt does not mean beyond all doubt. If you
16 were able to know that Kashaun Banks committed this
17 crime beyond all doubt, you would not be a juror in this
18 case. You would be an eyewitness; you would be
19 testifying. Beyond a reasonable doubt means that you
20 must be firmly convinced that the Defendant,
21 Kashaun Banks, committed this crime. And the State is
22 going to prove that Kashaun Banks committed this crime
23 by presenting evidence.

24 And let me just explain the different types of
25 evidence. There's direct evidence and circumstantial

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1 evidence. Direct evidence is based on actual knowledge
2 and personal observation. A witness testifying about
3 something that she observed is direct evidence. There's
4 also circumstantial evidence. That's based on inference
5 or deduction. For example, if you go to bed at night
6 and the ground on your driveway is dry, but when you
7 wake up in the morning your driveway is all wet, then
8 you can infer that it rained overnight. The wet
9 driveway is circumstantial evidence that it rained.

10 The State is allowed to use both types of
11 evidence. And the law is, in this way, each crime of
12 evidence is the same and neither type is better than the
13 other.

14 Ladies and gentlemen, the evidence in this case
15 is clear-cut. You will see the robbery occur on the
16 surveillance video, you will hear from witnesses who
17 were there when the robbery occurred, and you will hear
18 from the officers who participated in the investigation.
19 You will see the gun and the gloves that were found on
20 Kashaun Banks when he was arrested.

21 Again, please pay attention to what the
22 witnesses say. You've been selected as jurors in this
23 case because you have a special role. You must carry
24 out justice, and you must not fail. You have no one to
25 reward in this case. You're here to determine the

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1 truth. And the truth is that Kashaun Banks is guilty of
2 armed robbery.

3 THE COURT: Mr. Grimes.

4 MR. GRIMES: Thank you, your Honor. May it
5 please the Court?

6 THE COURT: Yes, sir.

7 MR. GRIMES: Good morning, ladies and gentlemen
8 of the jury.

9 THE JURORS (in unison): Good morning.

10 MR. GRIMES: How is everyone doing today?

11 THE JURORS (in unison): Good.

12 OPENING STATEMENTS

13 MR. GRIMES: This is a case of how the State
14 will try to railroad a 17 year old into a conviction of
15 armed robbery. You'll hear the evidence that in October
16 of 2011, Kashaun was only 17 years old. And it's just
17 not railroading any 17 year old, but it's one who has a
18 learning disability. And you will hear evidence that
19 Kashaun, because of his learning disability, struggles
20 to read. His reading level -- he reads on a
21 kindergarten or second-grade level. And the way they're
22 going to try to railroad Kashaun is by his interaction
23 with the police after his arrest. Something Ms. Riddle
24 did not really talk about so much.

25 After Officer McAlhaney, in the blue uniform

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1 back here, arrested Kashaun, he was taken down to the
2 North Charleston police station, and he was interviewed
3 by Lieutenant Hill. And they were in the interview
4 room, along with Detective Wapner (phonetic), for over
5 an hour, and there were various statements made about
6 what happened, about what Kashaun was doing that night.
7 And I imagine the State is going to use that evidence in
8 the trial, but they didn't mention it in their opening
9 statement; so I may just wait until closing to address
10 that in more detail.

11 But the one detail, if you do hear that, is
12 what does no mean? Does no mean no? If someone asked
13 police officers to interrogate somebody, and he says, Do
14 you have anything else you want to say? The person
15 says, No. Is that the way you invoke your right to
16 remain silent? Should the questioning be stopped at
17 that time, or does it continue?

18 The State may take the position that no doesn't
19 mean no. It's kind of ironic, because I think if you
20 had a criminal sexual conduct case, or a consent issue,
21 and the woman says, no, well, there, no is very clear.
22 No means no. But when you are trying to railroad
23 somebody and get a conviction, no can mean anything they
24 want.

25 And the other way someone can be railroaded is

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1 by confusion. That may just be unintentional. There's
2 no doubt someone went into the Exxon and robbed it. And
3 the victim to that robbery, in the front row here, saw
4 someone come in, shirt over their head, pointing what
5 appears to be a real gun, but they found to be a BB gun.
6 But if you're in that situation, you're thinking it's a
7 real gun, you're not trying to stop and ask and try to
8 check it out if it's a BB gun. If there was a real gun,
9 a person might shoot you for doing that. And it's very
10 scary, and it raised confusion.

11 And you have a bunch of officers who are
12 responding. At least 10, 12 officers, and they are
13 searching different parts of the area. You have Exxon,
14 and then you have McDonald's. And kind of go out that
15 area, you have the Home and Loans (phonetic), and you
16 keep going down Rivers Avenue, and you eventually come
17 to Horizon Apartments, or Horizon Village. If you go
18 down the other way, I believe it's McMillan, it's the
19 Naval Hospital, there's a -- there's Stayover Lodge,
20 which I think most officers would agree that's probably
21 not the best place to be. Probably a lot of drug crimes
22 there, along with other crimes. The strip mall. You
23 have a bank. That intersection, there's been a number
24 of shootings there. You have a couple of lounges across
25 the street from the bank. If you walk -- go down

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1 Spruill Avenue, you pass Great Tabernacle Choir, along
2 with Harris (phonetic) School, and then you get to
3 Horizon Villages.

4 So you have a bunch of officers out there
5 trying to secure a perimeter, trying to find a robber,
6 and you get various descriptions going out on the radio.
7 And Officer McAlhaney hears someone -- somebody jumping
8 the fence or coming through a hole in the fence or
9 perhaps going through a gate, and he goes and checks it
10 out, like any good officer would, and he sees Kashaun.
11 And he goes to him quickly. Well, if you're 17 years
12 old and you've got a police officer coming in quickly
13 for -- you don't know why -- you might run. That's what
14 Kashaun did, according to Officer McAlhaney.

15 And Officer McAlhaney caught him, and as
16 Ms. Riddle noted, found him with a book bag -- or sort
17 of carry a bag, I guess, and it had BB gun in there, and
18 it had the gloves. Obviously, very incriminating
19 evidence. But where -- that's where the assumptions
20 come in. Let's assume he has a bag, with a gun, with
21 the gloves. He fits the general description: a black
22 male, I guess the term will be 15 to 24, that is the
23 range is given; runs from police; he must be our man.

24 And you won't hear any evidence in a true
25 follow-up investigation. No DNA testing on the gloves.

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1 See the actual order. And my old boss used to say
2 something about: trust, but verify. Well, they got
3 these clues, trust your instincts, trust your judgment,
4 but go ahead and verify, investigate, and follow up on
5 this stuff. Make sure that you are -- you have the
6 right person, and that you're not sending an innocent,
7 17 year old, only son to his mother, to jail. We're
8 asking you today to stop the railroad, to find Kashaun
9 innocent. Thank you.

10 THE COURT: Call your first witness.

11 MR. KIDD: State calls Tenille Wilson.

12 DEPUTY CLERK OF COURT: Please place your left
13 hand here and raise your right hand.

14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)

16 THE WITNESS: Yes, I do.

17 DEPUTY CLERK OF COURT: Please have a seat.
18 State your full name, spelling your last name for the
19 record.

20 MR. KIDD: Court's indulgence for one moment,
21 please?

22 THE COURT: Please state your full name for the
23 record and spell your last name for me.

24 THE WITNESS: My name is Tenille Wilson.
25 Wilson, W-i-l-s-o-n.

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1 THE COURT: Thank you.

2 TENILLE WILSON,

3 having been first duly sworn by the Deputy Clerk of
4 Court to tell the truth, the whole truth, and nothing
5 but the truth, was examined and testified upon her oath
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. KIDD:

9 Q Good morning, Ms. Wilson.

10 A Good morning.

11 Q Can you tell the jury where you were employed
12 on October 15th, 2011.

13 A The Exxon on McMillan and Rivers.

14 Q Do you still work there?

15 A Yes.

16 Q Can you tell the jury how -- what happened that
17 day?

18 A Well, it was going good to, like, around
19 -- around 9:55, I went to the bathroom. And on my way
20 coming back from the bathroom, the young man came in
21 with a gun, talking about, give him the money out of the
22 register. And I just told Keisha to give him the money,
23 because I didn't want nothing to happen.

24 Q When he came in, was he using a low voice or
25 was he --

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1 THE COURT: All right. Anything before we
2 bring in the jury? Mr. Kidd?

3 MR. KIDD: No, ma'am.

4 THE COURT: Mr. Grimes?

5 MR. GRIMES: No, ma'am.

6 THE COURT: All right.

7 (The jury is escorted into the courtroom at
8 2:44 p.m.)

9 THE COURT: Thank you. Please be seated.

10 Ladies and gentlemen, we have reached the stage
11 of the trial that you will hear closing arguments on
12 behalf of counsel. After that, I will instruct you on
13 the law applicable to this case. Ladies and gentlemen,
14 just as I told you, what was contained in opening
15 statements is not to be considered evidence, neither is
16 what is contained in closing arguments. It's simply the
17 attorney's contention is as to what the evidence has
18 shown you throughout the progress of this trial. Please
19 give your strict attention.

20 Mr. Grimes?

21 CLOSING ARGUMENTS

22 MR. GRIMES: Thank you, your Honor. May it
23 please the Court.

24 Good afternoon, ladies and gentlemen of the
25 jury. In opening, we talked a little about how do you

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1 railroad somebody? Well, one example -- one way to try
2 to railroad somebody is take somebody who's 5-7, 5-8,
3 and try to make them six feet; or take someone who's six
4 foot making him 5-7 and 5-8; or someone who weighs 135
5 pounds, saying they weighed 175 pounds. Maybe they had
6 that growth spurt or weight gain in 18 minutes from the
7 time of the robbery to the time Officer McAlhaney
8 arrested Kashaun and filled out his booking report; or
9 taking the robber who's wearing blue jeans and arrest
10 somebody who's wearing shorts; and, at last, what's
11 possible, based upon just the blue jeans, where are the
12 blue jeans at? We've had officers out here picking up
13 pennies. No one finding any blue jeans. We've had
14 K-9 Unit, given the best track ever, or one of his best
15 tracks ever, not finding any blue jeans, not finding
16 someone going to someone's house where he could change
17 clothes, not finding any of those. They have a blue
18 shirt that's -- covered the robber's face and gun.
19 Again, where's the blue shirt? All you've got was a
20 gray shirt. I think that's a little suspicious:
21 Kashaun wearing a gray shirt; the robber wearing a gray
22 shirt. Where are the sneakers at? We see Nike
23 flip-flops been picked up. But is someone going to go
24 do an armed robbery, is he going to be running -- going
25 around running in flip-flops. And if someone did go

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1 back and change, why didn't the K-9 find sneakers?

2 And then take a 17 year old, try to say
 3 or -- or turn him into a 23 year old, or vice versa,
 4 saying the person robbing you is 23, 24, but the person
 5 you arrested is 17. Obviously, sometimes people look
 6 older or younger than their actual age; that's a pretty
 7 big difference.

8 In my opening, talked a little bit about one
 9 way to railroad somebody is ignoring their rights. Now,
 10 like I said, the State can talk about certain things --

11 MR. KIDD: Objection, Judge.

12 THE COURT: Please remember, ladies and
 13 gentlemen, what is contained in closing arguments is not
 14 to be considered evidence in this case. I will instruct
 15 you on the law applicable to this case at the close of
 16 closing arguments. Thank you.

17 MR. GRIMES: Like I said in my opening
 18 statement, we talked about certain things. And we were
 19 going to wait and see how that happened, and nothing
 20 happened on it. Another way we can talk about
 21 railroading somebody is by confusion. Now, I'll be the
 22 first to admit, police did a good job. But they're
 23 probably overworked and underpaid like a lot of our
 24 folks in service. In North Charleston -- so if you read
 25 the paper, it seems to be a high crime area. I heard on

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1 the news about the finding of the body on Halston
2 (phonetic) Street. And for a while there, it seemed
3 like every other night there's a shooting on I-26. And
4 you heard Officer McAlhaney testify as to the -- this
5 area is a moderate crime area. He's probably out there
6 doing a lot of work, not getting paid a lot of money,
7 putting his life on the line for all of us. Never know
8 what will happen when you're out on duty.

9 But you do need -- when somebody's liberty's at
10 stake, you do need to present a good case; because if
11 you send the wrong person to jail, an innocent person,
12 well, you ruin that person's life, you ruin his mother's
13 life, and, more important, ruins other people's lives
14 because the real robber is still out there robbing,
15 causing mayhem. Who knows what else he may be doing?
16 He may be having -- shooting somebody. That's why it's
17 important to document everything so -- you work a lot of
18 cases. A lot of time goes by between an arrest date and
19 trial. And you want to remember everything; so they can
20 make a good case to you.

21 And, you know, they didn't try, you know,
22 question him a whole long time, but when I asked simple
23 questions like: How tall Kashaun was; he just took
24 forever to get there. But when the State asked him
25 simple questions, got there just like that. Even though

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1 he filled out a booking report that said Kashaun was six
2 feet and 175 pounds. I'm not sure why they did that.

3 And we have sort of time discrepancies on
4 dispatch times in that. And one reason that is so
5 important is a lot can happen in five minutes or three
6 minutes. I mean, I know when I was younger, in my 20s,
7 I was better shape, I'd run -- probably run a 6-minute
8 mile -- probably run a 4-minute mile. So if someone is
9 very excited on adrenaline and really running, they can
10 get up pretty far in five or six minutes. And the
11 officer doesn't respond and get out -- he didn't even
12 get the call five, seven minutes after the robbery, that
13 person could be long gone. And it takes them a few more
14 minutes to get to the perimeter; person could easily be
15 somewhere else. Horizon Village, for example. Maybe
16 one of those clubs.

17 And I think Officer McAlhaney's testimony just
18 shows a lot of confusion going on here. And one thing
19 that puzzled me was, he was pretty sure that Kashaun
20 came over that fence. He heard the fence rattle. A
21 wooden -- excuse me, a wire fence against the wood
22 fence. He didn't see him actually jump over a fence.
23 He cut behind the church. Before he got to the end of
24 the church parking lot, or the church building itself,
25 Kashaun saw him, looked each other in the eyes, Kashaun

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1 ran back.

2 Now, we have Officer Swagel's testimony. The
 3 dog kind of tracked at least 50 yards out past that.
 4 Well, Kashaun never made it past the church. How do you
 5 get 150 feet past? Now, he did say something about
 6 Vento being over-tried. What's important on that is,
 7 how far does he over-try it: 10 feet, 20 feet, 50 feet?
 8 I think the dog's -- Vento's training expertise probably
 9 he -- went beyond 50 feet not picking up a scent, he
 10 would have stopped. It goes three times past 50 feet.
 11 If -- if trying to do 50 yards.

12 And what's more curious is Officer Swagel
 13 testifies that traveling out Spruill Avenue and around
 14 to the church, rather than coming to the fence and over
 15 the fence or through a gate. And that's why I asked him
 16 the questions like: At any point during the search, did
 17 Vento kind of go back and forth like he couldn't get
 18 over the fence. He said, Nope. There's no fence to
 19 jump over. That's very important because Officer
 20 McAlhaney, he's out there keeping the perimeter; and if
 21 someone's walking down Spruill Street, in a totally
 22 different angle, he would have told you that.

23 So you have Vento tracking it seems like one
 24 person, and Officer McAlhaney seeing someone else. I
 25 think that is strong objective evidence that this leads

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1 to two people kind of on the same tracking pattern for
2 whatever reason, but the question is for you is, is
3 Kashaun one -- are they tracking him from the store,
4 from the pool, or is maybe he hanging out by the pool,
5 talking to his friends, calling a girl, trying to meet a
6 girl? Maybe she couldn't get out. And then sees
7 someone run by, throws down the bag, throws down the
8 cash register. Just being curious and being 17, goes
9 and looks in the bag. There's a BB gun. Kids like --
10 you know, young kids certainly like playing cowboys and
11 Indians. Older guys like to play Call of Duty,
12 something about gunpowder and guys, they just like to
13 play those games. Is -- the BB gun's there, picks it
14 up, goes on his way to Horizon Villages. He's going to
15 to see his sister, his mother. Don't know if it's -- we
16 all know what addresses are on the arrest warrants. The
17 only address on the incident report is 473 Meeting
18 Street, downtown.

19 And he runs into Officer McAlhaney, and he
20 makes a bad decision and runs, thinking, he's going to
21 arrest him. Seeing the gun, the gloves; obviously looks
22 very suspicious. And no one will blame Officer
23 McAlhaney for arresting him under those circumstances.
24 It's close in proximity to the armed robbery, same
25 general location, not super far away, and evidence from

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1 the robbery. I mean, that -- you know, I certainly
2 would have arrested him if I was a police officer.

3 And that's where the next step comes in of how
4 you railroad somebody by assumptions. That's what
5 happened in this case. The police apparently thought
6 they had an open-and-shut case, and that's why they did
7 no real follow-up investigation.

8 Now, we've heard some talk about fingerprints;
9 that was on the door, maybe it was the glove, cash
10 register. I'm not very sure why you fingerprinted a
11 door when the robber's using gloves. He's not going to
12 leave any. You might leave DNA material, touch DNA.
13 That's why officers always wearing gloves in the labs.
14 Or you might actually leave DNA inside the gloves. But
15 they didn't go test for fingerprints. Why don't you
16 test for DNA? If Kashaun's DNA was on the gloves,
17 open-and-shut case. You could probably -- wouldn't have
18 went to trial with something like that. You'd probably
19 be back in the jury room for five minutes and come back
20 out. And that's probably how long it'd take me to
21 decide it.

22 And they don't want to test for DNA. Why is
23 that? Why don't they assign a case officer or some type
24 of lead officer to the case and try and coordinate
25 everything? I think the ranking officer would be here

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1 to testify, Lieutenant Hill, was asking him how tall
2 Keisha Holmes was, he says, Who's Keisha Holmes? I
3 think I saw a couple of people on the jury laugh. Well,
4 I mean, she was the victim. She was the one that got
5 robbed. Why doesn't the lead detective -- not even here
6 anymore -- know who this victim is? Unless he's -- he's
7 not the lead detective, probably doesn't care about the
8 case that much. Just wants to close the case and move
9 on and send someone to jail. That's why he didn't do
10 any follow-up.

11 I mean, how thorough was a search was there
12 done for clothes out there? He had the CAD report back
13 there, and you see they found a backpack, did some
14 searching. That was after they already had Kashaun; so
15 they probably didn't do too much of a search.

16 Now, I know I introduced a lot of pictures.
17 Let's talk a little bit about that. One of the reasons
18 is that a Google Map is a way to bring it home to
19 people. I mean, you can see stuff on there, get a
20 general idea. But if you want to see the fence line,
21 that map isn't going to show you anything about the
22 fence line or how the fence is. Now, probably thinking
23 to yourself that I didn't get the pictures done soon
24 enough to show everything as it was back then before
25 they did the landscaping to the school, maybe made

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1 repairs to the holes or some of it was gone down. But,
2 you know, they didn't take pictures either, for whatever
3 reason. But we tried to bring something just so you can
4 see the church, see the fence line, see, like, where the
5 officers may have been, see what's around that Exxon or
6 how many people could be around there, where people
7 could go to, where people come back and forth from; try
8 to show you what buildings around there may have
9 cameras, what cameras were there. Very possible that
10 there's a camera by a gate near the church. Well, was
11 there a camera, or was there not a camera? If there was
12 a camera, why wasn't it checked? Was it because they
13 just assumed Kashaun was guilty since they found him
14 with the bag?

15 Now, it does sound a little odd for someone to
16 run from the police. I know when I was a kid, we had a
17 big snowball fight one time, and my friend threw a
18 snowball, and it hit this car. Well, everybody took off
19 running, because it was a pretty big guy that came up
20 chasing us. Now, I could have stayed there and said,
21 Well, I was just merely present. He -- someone else
22 threw it. Well, where I grew up, I -- you know, if I
23 did that, he'd probably beat the crap out of me, or my
24 dad would have.

25 Now, the Judge is going to charge you what mere

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1 presence is, and that's sort of -- just because you're
2 around the area doesn't make you guilty. Maybe a
3 suspicion, but suspicion by itself is not guilt. Have
4 to find someone guilty. But when you're 17, you make a
5 lot of dumb mistakes. And I can't really say I blame
6 Kashaun for running in this case. I think if you listen
7 carefully to Officer McAlhaney's testimony, you will
8 see, you know, he set up a perimeter, has his windows
9 down, he's listening, hears the fence rattle, sees
10 someone walking, pulls up, looks at him, and he gets out
11 chasing him or coming at him quickly -- I think that may
12 be what he said. Well, unless you know what quickly
13 means in police lingo, it means he was chasing him.
14 When you have a police officer chasing you for odd
15 -- well, you know, no reason. Maybe because he thinks
16 you're trespassing, you may run. And if you don't, you
17 know, at nighttime, about, you know, little after ten
18 o'clock, officer chasing you, you're 17, you have a
19 BB gun in your pocket, who knows where it came from, you
20 know it's going to look suspicious. It's natural for
21 someone to run in those circumstances. It doesn't make
22 him guilty of armed robbery. Maybe fleeing from police
23 or maybe he was trespassing at the church property or
24 St. Charles Place.

25 I want to talk a little bit about the dog

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1 tracking. I think you heard Officer Swagel testify
2 that's one of the best tracks that he's done with Vento.
3 And I think one of the reasons was, he said it was
4 really light foot traffic out there, and it doesn't
5 interfere with it. When you get back in your jury room,
6 I just want you to look at the CAD report, or law agency
7 incident report, on page 6 at about 10:01, 10:02, and
8 you will see entries for heavy foot traffic in
9 St. Charles housing already and were advised heavy foot
10 -- looks like heavy foot traffic in the area of the
11 business.

12 That's why I was asking how long it took for
13 him to respond to get out there, because it could
14 create -- heavy foot traffic would create contamination
15 of the scene. And that's why I asked him about what
16 kind of training Vento had on distinguishing scents.
17 Now, it sounds like they were on the right track. He's
18 talking about finding the coins, leads them to the cash
19 register, or the area of the cash register. And Officer
20 testified -- Officer Swagel testified, first, he didn't
21 know if he dropped it or threw it down. And had to go
22 back to refresh his memory on that. And this one
23 introduced picture, said it looks like, it's not just
24 thrown, laying a little bit too good to be at the angle
25 to have been thrown. That's why he testified it was

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1 placed there. And I think Officer Bennett testified it
2 was placed there. Well, if it was placed there, the dog
3 should track right up to the register at least and maybe
4 went -- so backtrack, maybe done a circle. He never
5 tracked right up to the cash register.

6 And then around that area, he was -- he looked
7 at his head, sort of around. If you noticed, Ms. Riddle
8 didn't ask any questions about that on his Direct
9 portion. He didn't volunteer that information. And
10 when I asked him about it, he said, first, he couldn't
11 remember it. And then we had to go back and show him
12 his prior testimony, and then he remembered. Well, you
13 know, if he didn't remember all the answers to her
14 questions, stuff he's already answered her before,
15 almost a year ago, but he couldn't remember today to
16 tell you until his memory was refreshed. When you
17 evaluate the demeanor and credibility of witnesses,
18 just, you know, keep that in mind.

19 I want to talk a little bit about using your
20 common sense in this case. If somebody is going to do a
21 robbery -- Kashaun did a robbery -- and he changes his
22 clothes -- goes off and changes his clothes and changes
23 his appearance, and -- to go drop off the cash register
24 and try to get rid of the evidence, why would he carry
25 some of the most incriminating evidence on him? Why

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1 would he keep that bag with the gun and gloves? Why
2 not throw it in some bushes? Especially when Officer
3 McAlhaney sees him? If he went to someone's house and
4 changed his pants, why not leave that stuff there?
5 And the Solicitor may make a big deal about the
6 amount of money he had. Well, when you look at the
7 chain of custody reports, add up the money, compared to
8 what Officer McAlhaney testified to. You're going to
9 find there's a discrepancy in that. It's not a huge
10 discrepancy. I think five, ten dollars' worth,
11 but there's a discrepancy.

12 And then talk to you a little bit about
13 the change and some of the bills and all those
14 denominations. Well, how do you know he wasn't at --
15 Kashaun wasn't at McDonald's? Or maybe at the Stayover
16 Lodge? Maybe he went there and got some weed. Maybe
17 that's why he ran from the officers. Maybe he threw the
18 weed in the bushes. Maybe that's why he's got it in
19 those denominations. Maybe he went to the store and
20 bought a Sprite.

21 You know, why would the officer testify to all
22 this stuff that's in the bag and not say anything about
23 the Sprite to the prosecutor? And why would the officer
24 testify that one object that I said might be a condom.
25 He said, Yeah, it could be. That wasn't taken into

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1 evidence. Not on my chain of custody reports. But then
2 on Redirect, all the sudden it comes out, it's a -- be
3 like a ticket for a club or something. And where is the
4 chain of custody report for that? Where'd that evidence
5 come from?

6 And, quite frankly, that reminds me of a case I
7 had about two years ago, a burglary case. My client
8 told the police officer he had a key to the house.
9 About four months after the arrest, they wanted to try
10 him, going over the evidence, go through the guy's
11 pocket, and guess what I find? A key. Guess who got to
12 put in the chain of custody report? And guess what
13 happened to that burglary charge? Sometimes people just
14 miss stuff even though it's important, even though
15 you're told this stuff.

16 And -- but this case is two years old, and
17 he's -- still nothing in any supplemental report,
18 supplemental chain of custody about that ticket.
19 Where'd that come from? And then the belt. I went --
20 no chain of custody report on the belt.

21 You know, there's reasons for that, want to get
22 a chain of custody. You want to document all the
23 evidence: Where it came from; who it came from; where
24 it came from.

25 Now, in conclusion, you know, I realize that at

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1 first glance the case does look pretty strong against
2 Kashaun because of what's come in. That does raise a
3 suspicion. But the State's burden here is to prove the
4 case beyond a reasonable doubt. And there's probably,
5 like, three big standards of proof in court cases. One
6 is to lay out a preponderance of the evidence.
7 Basically, if you're suing someone for money, you've got
8 to show on the -- to get the scales of justice, kind of
9 tip them a little bit; and if the person tips it in
10 their favor, even by one percentage, then they win the
11 case.

12 This next one is sort of clear and convincing
13 evidence. For example, to terminate one's parental
14 rights, to take away their child. You have to show by
15 clear and convincing evidence that that person is just
16 an unfit parent, for whatever reason. If you do that,
17 you can take away someone's child.

18 And in a criminal case, the standard's even
19 higher. To show beyond a reasonable doubt that that
20 person committed the crime. Now, there was a crime.
21 The question is, who committed it? Was it Kashaun? Or
22 was it someone who went behind St. Charles Place, or
23 through St. Charles Place, behind Stayover Lodge, behind
24 the strip mall, behind the bank, coming out on Spruill
25 Avenue, going down past the church, towards the school,

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1 toward Horizon Villages? Who's made more reliable; the
2 dog, or Officer McAlhaney? And Officer -- and, excuse
3 me, Officer Swagel said part of his job is to interpret
4 what the dog is doing. Well, if he knows that dog is --
5 keep tracking, but they've got a suspect right there,
6 maybe he didn't -- did something -- some subconscious
7 interpretation or something that brings him back around.
8 He doesn't want his dog to be wrong. Dog's wrong on
9 something big like that, might lose his certification.
10 He would lose his pet. And I know how my dad would feel
11 if he lost his German Shepherd; he'd be pretty torn up.

12 So, at the end, when you go back there
13 deliberating, I ask you to be patient, go through all
14 the evidence, look at the pictures, see if everything
15 fits up to what the officers describe, see if there's an
16 explanation why a, you know, 17 year old might be out
17 there, might be curious enough to pick up a bag, keep
18 it, maybe go sell a gun or something. You notice he's
19 represented by the Public Defender's office, so he
20 doesn't have a lot of resources. He can make 5-, 10-,
21 \$25 selling a BB gun. He'd probably get a little break
22 with that. I mean, be good for him.

23 There's lots of reasons why he may have that
24 bag. What's the reasonable reasons? One, obviously, is
25 that the State will argue is that he committed the

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1 robbery. And I can probably come up with ten more
2 reasons. And I'm sure each of you can probably come up
3 with ten, 15 more reasons. That's why you go back and
4 deliberate, go back and talk about it, see what fits,
5 and then come back, you make a unanimous decision
6 whether the State has proved it's case beyond --
7 Mr. Banks beyond a reasonable doubt. And we submit they
8 haven't. They just found a 17-year-old black boy
9 walking down a church parking area, stopped him, he fit
10 the description. They could have been doing so many
11 other things. And when you have objective evidence,
12 it's not even him. Officer -- Vento showing you --
13 tracking somebody else.

14 So, ladies and gentlemen, I ask you to stop
15 this railroading and set Kashaun free and let him go
16 home with his mother. Thank you.

17 THE COURT: Mr. Kidd.

18 MR. KIDD: Thank you, your Honor. May it
19 please the Court. Mr. Grimes; Ms. Ehrlich.

20 CLOSING ARGUMENTS

21 MR. KIDD: Ladies and gentlemen, it's a common
22 saying I've heard that some men are the victims of
23 circumstance; but most men are the architect of their
24 circumstances. Kashaun Banks is the architect of the
25 circumstances he's in today. Concepts like truth and

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1 justice, respect, morality, honor, that's the fight
2 we're in. Lies, half truths --

3 MR. GRIMES: Objection, your Honor.

4 THE COURT: Sustained. Move on, Mr. Kidd.

5 MR. KIDD: The manipulation of the evidence is
6 what you have received from this table right here.

7 MR. GRIMES: Objection, your Honor. It's
8 burden shifting too.

9 THE COURT: Move on, Mr. Kidd. Thank you.

10 MR. KIDD: Let's talk about the things that
11 Mr. Grimes has told you: Asking you questions about
12 videos that don't exist; trying to convince you that
13 this is a condom; trying to make a story up that doesn't
14 exist.

15 MR. GRIMES: Objection, your Honor.

16 THE COURT: What's the basis, Mr. Grimes?

17 MR. GRIMES: Burden shifting and inaccurate
18 statement of the Defense position and undermining his
19 right to his Sixth Amendment Right to defense.

20 THE COURT: Overruled.

21 Ladies and gentlemen, please remember as I've
22 indicated to you, what's contained in closing arguments
23 is the attorney's contention as to what the evidence has
24 shown.

25 You may continue, Mr. Kidd.

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1 MR. KIDD: Thank you, your Honor.

2 Think about how he told you poor Kashaun Banks
3 is going to be railroaded today. And he's put in
4 evidence. You've seen photographs and documents that
5 he's put into evidence. There's not a single shred of
6 evidence that shows how he's been railroaded. And you
7 know if there was, he would be standing right here in
8 front of you waiving it around and jumping up and down.

9 MR. GRIMES: Objection, your Honor; burden
10 shifting.

11 MR. KIDD: Judge, may we approach?

12 THE COURT: You may.

13 (All four attorneys approach the bench for a
14 discussion off the record.)

15 THE COURT: You may continue.

16 MR. KIDD: The bottom line is that no such
17 evidence like that exists. And instead of concentrating
18 on the evidence that we don't have, that isn't here,
19 because nothing that I say and nothing that Mr. Grimes
20 says is evidence. It's not evidence. Evidence is what
21 you hear from the witness stand; evidence is these
22 exhibits that you'll have back there in your
23 deliberations. My word and Mr. Grimes' words, those --
24 that's not evidence. What about the evidence that we do
25 have?

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1 I mean, it's the gun and gloves. It's not
2 questionable. That's it. The gun and gloves. That's
3 evidence. Found in the backpack on Kashaun Banks' back
4 with Kashaun Banks' cell phone, which he asked Officer
5 Lacher to call his sister on. The money. What do those
6 denominations sound like? Thirteen quarters, nine
7 pennies -- sound like somebody making change? Maybe for
8 somebody buying a pack of cigarettes or a coke or
9 something from a convenience store?

10 Then it kind of struck me the other day, or
11 today, for that matter, when Officer Bennett was
12 testifying about all the change he found. He said a lot
13 of nickels and dimes and pennies. Do you know what's
14 not in Kashaun's pockets? Nickels and dimes.

15 (Publishing State's Exhibit Number 12.)

16 MR. KIDD: The K-9 track. Officer Swagel says
17 one of the best tracks he's seen. And that --

18 I'm sorry, that might be upside down from the
19 way we've been looking at it.

20 But what's he saying? From the Exxon to the
21 pool, doubles back, and continues around the fence over
22 to the church; up to the fence where the fence rattled,
23 back to the Defendant where he was in the car. Didn't
24 take his nose off the ground except for that pool where
25 he doubled back on himself, which is where the drawer

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1 was found.

2 The shirt. The same shirt that he's wearing in
3 the robbery is right here on his back. The belt. Why
4 is the belt important? Because he ditched his pants and
5 wanted to hang on to his belt. This case isn't about
6 what's not there; it's about what is.

7 Now, I'm not going to spend a lot of time
8 arguing the law with you, because the law in this case
9 is very simple: It's an armed robbery. You see the
10 armed robbery on the video, and I'll play it for you
11 again in a moment. There's no question that an armed
12 robbery occurred. All you must determine is if I proved
13 to you beyond a reasonable doubt that Kashaun Banks
14 committed it. And in 18 minutes, from the time of that
15 phone call -- actually, correct myself, under 18 minutes
16 from the time that phone call was made, Kashaun Banks
17 was arrested with -- around a mile away with the gun,
18 the gloves, and the money. Within 18 minutes.

19 Officer McAlhaney testified that when he made
20 that dispatch, they would have marked that 18-minute
21 mark, that was after he had had the confrontation with
22 Mr. Banks; so that would have lasted a minute or so for
23 him to chase after him, put him in handcuffs, pat him
24 down, secure him in his car, and then make the dispatch.
25 So you're looking at under 18 minutes to travel a mile,

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1 to change clothes, to ditch the register. It lines up
2 perfectly; makes perfect sense.

3 And when you're back in the deliberation room,
4 you're going to have all the exhibits, all the photos,
5 so I'm not going to show them all to you now. You'll
6 have the opportunity to look at them all. And you'll
7 have this back there, too, and you can play it and stop
8 it and pause it if you want. But I'm going to play it
9 one more time while I have you here.

10 (State's Exhibit Number 2 is played.)

11 MR. KIDD: There's two Kashaun Bankses.
12 There's this one, and there's this one. There's the
13 17-year-old kid that's being railroaded, and there's a
14 kid that will stick a gun in someone's face, yell at
15 them, terrify them -- terrify them and steal from them.

16 The one part that Mr. Grimes asked you to do
17 that I agree with is to use your common sense, because
18 that's all it is is common sense. And common sense
19 tells you, the evidence tells you, that Kashaun Banks on
20 October 15th of 2011 entered the Exxon gas station, put
21 a gun in their face, stole the money, fled, was tracked,
22 and was caught.

23 And it's natural for you to feel sorry for him
24 to some extent, because he is a young man. But you've
25 taken an oath to uphold the law, to apply the facts, to

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1 find the evidence, the witness testimony, the exhibits,
2 and to apply that evidence to the facts and to reach
3 that verdict. And the only verdict the evidence can
4 lead you to is that Kashaun Banks is guilty of armed
5 robbery.

6 And that's all I ask you to do, to deliver a
7 true verdict that the evidence demands, and that common
8 sense dictates. If you do that, you'll return a verdict
9 of guilty.

10 Thank you.

11 THE COURT: Ladies and gentlemen, I remind you
12 that during this trial, you and I have had certain
13 duties to perform. As the trial judge, it is my
14 responsibility to preside over the trial of this case,
15 and I also have the duty to rule on the admissibility of
16 the evidence offered during this trial.

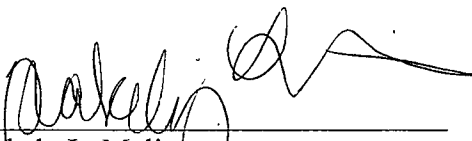
17 You are to consider only the competent evidence
18 before you. If there was any testimony ordered stricken
19 from the record, you must disregard that testimony. You
20 are to consider only the testimony that has been
21 presented from the witness stand, the exhibits that have
22 been made part of the record in this case, as well as
23 the stipulations of counsel.

24 I have the additional duty to charge you the
25 law applicable to this case. As the presiding judge, I

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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."



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ATTORNEY FOR APPELLANT

16
June 4, 2014

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

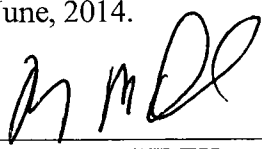
V.

KASHAUN BANKS,

APPELLANT

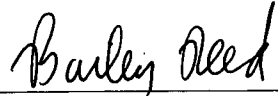
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Kristin M. Simmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of June, 2014.



ROBERT M. DUDEK

SUBSCRIBED AND SWORN TO before me
this 10th day of June, 2014.



Notary Public for South Carolina (L.S.)

My Commission Expires: October 24, 2021

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SC Court of Appeals