

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Thomas W. Cooper, Jr., Circuit Court Judge

RECEIVED
MAR 20 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANDRE DECOSTA,

APPELLANT

APPELLATE CASE NO. 2011-196666

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEXi

PRETRIAL HEARING DATED JULY 25, 2011 1

TESTIMONY

 OFFICER GONZALEZ

 Direct Examination by Mr. Thornton.....6

 Cross Examination by Mr. Walker.....19

 Redirect Examination by Mr. Thornton39

 Recross Examination by Mr. Walker40

TRIAL TRANSCRIPT DATED JULY 26-27, 201163

TESTIMONY

 JULIAN THOMAS

 Direct Examination by Mr. Thorton.....75

 TRISHA BRUBAKER

 Direct Examination by Mr. Thorton.....78

 JOHN DESTASIO

 Direct Examination by Mr. Thorton.....81

 Cross Examination by Mr. Walker.....84

 CLIFFORD LIGATO

 Direct Examination by Mr. Thorton.....87

 Cross Examination by Mr. Walker.....90

 CHRIS GONZALES

 Direct Examination by Mr. Thorton.....91

 Cross Examination by Mr. Walker.....101

 JAMES DUKE

 Direct Examination by Mr. Thorton.....108

 Cross Examination by Mr. Walker.....125

 ANTHONY COTTON

 Direct Examination by Mr. Thorton.....126

 Cross Examination by Mr. Walker.....133

HUE TANG	
Direct Examination by Mr. Thorton.....	141
Cross Examination by Mr. Walker.....	143
 DANIEL RUSSELL	
Direct Examination by Mr. Thorton.....	144
Cross Examination by Mr. Walker.....	154
 JOSEPH BABKIEWICZ	
Direct Examination by Mr. Thorton.....	159
Cross Examination by Mr. Walker.....	171
Redirect Examination by Mr. Thorton.....	203
 RENEWED <u>JACKSON V. DENNO</u> MOTION.....	205
 DIRECTED VERDICT MOTION.....	236
 VERDICT.....	243
 SENTENCING.....	251
 POST TRIAL TRANSCRIPT DATED JULY 28, 2011.....	260
 MOTION FOR NEW TRIAL.....	264
 STATE'S EXHIBIT #24 (Statement).....	267
 INDICTMENTS AND SENTENCING SHEETS.....	270
 CERTIFICATE OF COUNSEL.....	276

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #3 (In Car Recording)

STATE'S EXHIBIT #22 (Map)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010 GS 07 2482-2485

State of South Carolina,
Plaintiff

VS

Andre DeCosta,
Defendant

TRANSCRIPT OF RECORD

July 25, 2011
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS COOPER, Judge.

DEBORAH E. EVERETT
Court Reporter

 ORIGINAL

A P P E A R A N C E S

SEAN THORNTON, Attorney at Law
Assistant Solicitor for the State of South Carolina

MATTHEW WALKER, Attorney at Law
Attorney for the Defendant

Court Reporter's note:

- indicates incomplete phrases
- indicates interruption
- ... indicates trailing off; unfinished sentences

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Officer Gonzalez	6	19	39	40

Certificate of Reporter Page 62

EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Court's Exhibit

Page

C-6 MAP

9

SUPPRESSION HEARING

(Whereupon hearing began at approximately 2:00 p.m.)

THE COURT: Thank you, ladies and gentlemen. You may be seated. Good afternoon. All right, this is a Motion to Suppress. Mr. Walker, this is your motion. I'll be glad to hear from you.

MR. MATTHEW WALKER: Thank you, Your Honor. My motion to suppress based on improper stop. There being no probable cause or even articulable suspicion to stop the vehicle in this case. Motion to suppress to be coupled with a motion to suppress intangible evidence from the stop as well as any confession's following from.

THE COURT: All right. Mr. Thornton, are you prepared to respond on that basis or do you need more information on the motion?

MR. SEAN THORTON: No, sir. I understand the motion, Judge. I think the best thing to do is -- is to put up testimony at this time.

THE COURT: All right, you can call your witness.

MR. THORNTON: Thank you, Judge. The State calls Officer Gonzalez to the stand.

THE COURT: Come forward, Officer Gonzalez and be sworn please.

1 First being duly sworn, **OFFICER GONZALEZ**
2 testified as follows:

3 MR. THORNTON: Thank you, Your Honor.

4 **BY MR. SEAN THORNTON:**

5 Q Officer Gonzalez, are you a Sargent with Bluffton
6 Police Department?

7 A Yes, I am.

8 Q Sir, were you operating as an employee or as an
9 Officer at the Bluffton Police Department on or
10 about November the 29th of 2010?

11 A Yes, sir.

12 Q And did you respond out to any particular scenes
13 on that night, sir?

14 A Yes, sir.

15 Q All right. And where -- where did you go that
16 night?

17 A Uhh, responded to two locations. One would be
18 Dan's Fan City. And the second would be Ligato's
19 Jewelry Store.

20 Q And just to be clear for the record -- I said,
21 'That night', would this actually be early in the
22 morning hours of November the 29th, 2010?

23 A Yes, sir.

24 Q About what time was it, sir?

25 A Approximately 2:39.

1 Q And was that the first call-out you received?

2 A Yes, sir.

3 Q And where did you go in response to the call-out
4 at 2:39?

5 A Dan's Fan City.

6 Q And what was the -- what was going on at Dan's Fan
7 City that morning?

8 A There was a structure that was on fire.

9 Q And was it Dan's Fan City that was actually on
10 fire?

11 A Yes, sir.

12 Q And what is Dan's Fan City?

13 A It's a retail store that sells fans.

14 Q All right. And where is it located?

15 A It's located in a shopping center on Highway 278.
16 Plantation Park.

17 Q And did you receive any other calls shortly
18 thereafter?

19 A I did ---

20 Q Okay -- go ahead.

21 A I received a call for a 10-90, which is an alarm
22 at Ligato's Jewelry Store.

23 Q All right. And where is that located?

24 A It's located in Bluffton Commons at 80 Baylor
25 Drive in Bluffton.

1 Q Officer Gonzalez, what did you do when you got to
2 Dan's Fan City -- let's back up to your first
3 call. What did you do when you got there?

4 A Umm, I instructed -- I'm the supervisor for the
5 patrol and I advised my officer's to stay alert in
6 case of a diversion that would occur having a
7 burglary in reference to fires in prior cases.

8 Q And uh, what happened after you got to the scene?

9 A I got to the scene, uh, there were approximately
10 ten units and and uh, we had a jewelry store alarm
11 glass break.

12 Q Now let me ask you this, were you -- maybe
13 expecting is not the right word but were you
14 shocked that there was a burglary call-out right
15 after an arson?

16 A Uhh, no, I wasn't. Prior to this incident we had
17 two other occasions that the first one was at
18 Easy-Own, then we had USA Riders and through my
19 experience I believe it was going to be a
20 diversion.

21 Q Is that what had happened at two previous
22 occasions?

23 A Yes, sir.

24 Q And again, I'm not trying to put words in your
25 mouth, but just to sum up what you just said, You

1 had two prior occasions where there's an arson and
2 then right after that there's a burglary alarm --
3 or burglar alarm go off?

4 A Yes, sir.

5 Q All right. So is that what happened in this case?

6 A Yes, sir.

7 Q And is the -- you mentioned a jewelry store?

8 A Jewelry store, yes. In 80 Baylor Drive, Bluffton
9 Commons which is in the middle -- I mean it's in
10 the end of where the incident took place.

11 Q All right. Your Honor, Courts' indulgence for
12 one moment, please?

13 THE COURT: Sure.

14 MR. THORNTON: Sorry for the delay, Your
15 Honor.

16 THE COURT: That's okay.

17 MR. THORNTON: Your Honor, may I approach?

18 THE COURT: Please.

19 BY MR. THORNTON:

20 Q Officer Gonzalez, can you identify what I've
21 handed you; it's been marked for identification as
22 Court's exhibit number 6?

23 A May I stand up?

24 MR. THORNTON: Your Honor?

25 THE COURT: Yes, sir.

1 BY MR. THORNTON:

2 Q Can you identify it?

3 A Yes. It's a map of uh, the locations where this
4 incident took place.

5 Q All right.

6 MR. THORNTON: If you would, Your Honor, the
7 witness identified ---

8 BY MR. THORNTON:

9 Q Can you identify on that map where the fire -- the
10 arson was -- Dan's Fan City and when you do it if
11 you could show the Judge.

12 A Right there.

13 THE COURT: On the dot?

14 WITNESS: Yes, sir.

15 THE COURT: The purple dot?

16 WITNESS: Yes, sir. It's right off of
17 Plantation Park Drive, off of Highway 278.

18 THE COURT: Okay.

19 BY MR. THORNTON:

20 Q And where -- is that -- is there anything else
21 represented on that map?

22 A Yes, sir.

23 Q And what is the other...

24 A There is a -- this is another green dot where the
25 burglary took place.

1 Q All right. About how far apart are those two
2 locations?

3 A I'm gonna say a mile.

4 Q Now, uh, after -- if you would just set that down
5 next to you. I'm going to ask you to refer back
6 to it in just a minute.

7 MR. THORNTON: Your Honor, I'd ask for
8 purposes of this hearing that that be introduced as
9 Court's Exhibit 6.

10 Your Honor, we are going to get the easel out
11 in just a second. It may make it a little easier to
12 deal with.

13 THE COURT: Mr. Walker, any objections?

14 MR. WALKER: No, Your Honor.

15 THE COURT: Thank you. Without objection.
16 Court's 6.

17 BY MR. THORNTON:

18 Q Officer Gonzalez, after hearing the alarm call
19 for, I believe you said, Ligato's Jewelry Store,
20 what did you do then?

21 A I left the arson incident location and immediately
22 responded to the -- where the alarm went off.

23 Q All right. What did you do when you got there?

24 A I instructed my officer to quickly determine if
25 somebody got inside the front glass and I was

1 driving to the back of the building to see if we
2 could catch somebody on the inside.

3 Q And uh, did they -- did you get -- were you
4 provided information that somebody had -- looked
5 like access had gotten to the door?

6 A As I was riding to the back of the building, my
7 officer advised me that they did get in and I
8 asked him, Did they take anything? He said, They
9 did. So I immediately responded back out onto
10 Buck Island Road to locate a vehicle.

11 Q All right. And about what time, again, was this?

12 A This was at approximately 2:50.

13 Q And uh, did you see a vehicle?

14 A I did.

15 Q All right. Can you identify on State's exhibit --
16 or excuse me, Court's exhibit six, can you
17 identify uh, where it was that you saw the
18 vehicle?

19 A Yes, I can.

20 MR. THORNTON: Your Honor, with permission,
21 may he step down?

22 THE COURT: Yes, sir.

23 BY MR. THORNTON:

24 A It was Westbury Parkway, off of 278, where the
25 Circle is. It was at the intersection of 278 and

1 Westbury Parkway.

2 Q All right. So would it be fair to say, roughly,
3 in the middle -- between the two -- between the
4 two incident locations?

5 A Yes.

6 Q Uh, was there a lot of other traffic on the road
7 at that time?

8 A No, sir.

9 Q All right. You can have a seat. Thank you, sir.
10 Now, I notice you made mention of the road and
11 where that road intersected with 278, what road is
12 that again?

13 A Westbury Park Drive.

14 Q And does that road connect with both incident
15 locations?

16 A It does. At that time it wasn't fully completed
17 but there was a road. You have access from both
18 points.

19 Q All right. Was there any other car in the
20 vicinity that you saw once you left, uh, Ligato's?

21 A There was a vehicle I saw prior to Ligato's and
22 when I came back out to 278 it was gone. And then
23 I looked down 278 to check for the vehicle and
24 that's when I saw the vehicle coming out of that
25 Westbury Park Drive.

1 Q When you say, Coming out of Westbury Park Drive,
2 was there anything unusual about the way -- other
3 than it's three o' clock in the morning, was there
4 anything unusual about the way -- the way that the
5 driver was operating that vehicle?

6 A When I -- when I pulled up to the intersection,
7 the vehicle was kinda slowly driving forward.
8 Umm, at a real slow speed.

9 Q All right. And then what -- then what did the
10 vehicle do?

11 A Uh, it turned right onto Highway 278 in lane
12 number two. I took a right turn at Buck Island
13 Road and tried to catch up with them.

14 Q And did you, in fact, catch up with them?

15 A Yes, sir.

16 Q All right. What did you do when you caught up to
17 it?

18 A Umm, I notified dispatch, uh, to run the tag on
19 the vehicle. And then I activated my patrol
20 lights to conduct a stop.

21 Q Now, after you stopped it, were you relayed
22 information about the tag?

23 A Yes, sir. The vehicle pulled into Wal-Greens.
24 They advised me that the tag was suspended.

25 Q All right. But that was after the stop, is that

1 correct?

2 A Yes, sir.

3 Q Uh, had -- now, once you stopped the car, what did
4 you do then, sir?

5 A I advised dispatch, from my location, I made
6 contact with the vehicle and umm, you want me to
7 keep going?

8 Q Keep going. What happened when you made contact
9 with the vehicle?

10 A I approached the vehicle from a passenger side
11 traffic stop. I didn't want the driver to see me
12 coming from an angle. As I walked up to the back
13 window, that's generally what I do so I can look
14 in, I looked down and there was a subject laying
15 down in the backseat of the car, which was Andre
16 DeCosta. And I then jumped back because he
17 alarmed me. I advised him to sit up and put his
18 hands where I could see them.

19 Q Anything unusual about the way Mr. DeCosta and or
20 the driver was dressed?

21 A Yes, they were dressed in all black, umm, I did
22 ask them about that and ---

23 Q All right. Don't get into what they talked --
24 what they told you at that point. Did you notice
25 anything specifically about them? Did they seem

1 calm? Were they nervous?

2 A They were very nervous. They actually where real
3 nervous about the stop. Umm, when I was asking
4 them questions, they were like telling me certain
5 things, stuttering. They appeared to be very
6 nervous.

7 Q At some point, did you pull them out of the car?

8 A I did.

9 Q Okay and uh, who did you pull out of the car
10 first?

11 A I pulled Mr. Hamilton out of the vehicle and uh,
12 advised him he was under investigative detention
13 at this time. Prior to that I told him why I
14 stopped him.

15 Q And why did you tell him that you had stopped him?

16 A I told him that I stopped him because I was
17 investigating a crime that just occurred, umm, at
18 Dan's Fan City.

19 Q Did you, at some point, request a consent from the
20 driver to search the vehicle?

21 A Yes, I did.

22 Q And did he consent to you?

23 A Yes, he did.

24 Q And uh, did you then look inside the vehicle?

25 A I did.

1 Q And what did you see upon looking inside the
2 vehicle?

3 A Uh, when I looked in the back seat, I walked to
4 the driver's side rear door and I leaned in.
5 Lifted up the brown jacket that I saw Mr. DeCosta
6 straddling and saw jewelry, watches, that appeared
7 to have come from our incident location. Then I
8 saw an axe on the floor.

9 Q What did you do when you saw these items?

10 A I immediately got out of the car. Advised the
11 officer to -- We are going to arrest them and
12 secure the scene for investigation.

13 Q When you advised Mr. DeCosta, the defendant in
14 this case, that you were detaining Mr. Hamilton
15 and him, did he do anything unusual?

16 A Yes, sir. He told me he was not being detained
17 and jumped out of the rear passenger seat of the
18 vehicle. He had to be put on the ground, asked to
19 get on the ground by a deputy.

20 Q And this is going to be an obviously ridiculous
21 question, Officer Gonzalez, where did -- what
22 county did all this occur in?

23 A This occurred in Beaufort County, the town of
24 Bluffton.

25 Q All right. So to recap, Officer, is it fair to

1 say it was the car on the road at 3 a.m., driving
2 what you considered a suspicious manner, when you
3 pulled it over?

4 A Yes, sir.

5 Q And within, just a -- I mean, how -- I think you
6 said it was 2:29 or 2:39 when you were called out?

7 A The initial was at 2:38.

8 Q Okay.

9 A There was about ten or fifteen minutes in between.

10 Q So ten to fifteen minutes of two calls ---

11 A Yes ---

12 Q Two separate calls which matched previous calls
13 that you had worked on?

14 A Yes, sir.

15 Q Officer Gonzalez, how long have you been a police
16 officer?

17 A Fifteen years.

18 Q All right. What kinds of things have you done
19 for the various police departments you've worked
20 for?

21 A Uh, I've been a traffic officer, Beaufort City
22 Police Department. School Resource Officer in
23 Beaufort. I've been an investigator with Bluffton
24 Police Department. I've been a Sargent over
25 investigations. I currently am a Patrol Sargent

1 of Patrol Team D.

2 Q All right. Taking all of that into account as an
3 experienced officer, is that why, based on the
4 things you've already testified to, is that why
5 you pulled the car over, containing Mr. DeCosta?

6 A Yes, sir.

7 MR. THORNTON: Your Honor, Courts' indulgence
8 for just one moment?

9 THE COURT: Go ahead.

10 MR. THORNTON: Thank you very much, Your
11 Honor. I have no further questions. Sargent Gonzalez,
12 please answer any questions Mr. Walker has for you.

13 THE COURT: Mr. Walker, you can cross-examine.

14 MR. WALKER: Thank you, Your Honor. Before we
15 get started I would like to try and fire up this
16 monitor over here and if y'all bare with me, I haven't
17 used it before. I was kind of hoping the Solicitor
18 would show something where I could piggy back on what
19 he did.

20 Your Honor, I'm going to have my law clerk sit
21 up here and manipulate the computer while I'm asking
22 questions, if that's all right.

23 THE COURT: Okay.

24 BY MR. WALKER:

25 Q Good afternoon.

1 A Good afternoon.

2 Q I want to start kinda' going in the same
3 chronological that the Solicitor did. And maybe
4 replaying back some of your testimony, also, how
5 you, in your report -- I'm a little confused
6 because, um, you just testified that you went to -
7 - went to Dan's Fan City, which would be the
8 purple spot on the map you indicated before right?

9 A Yes.

10 Q Satisfied that's indicated by the A section here
11 on the Google maps that we pulled up on the
12 screen, which is 22 Plantation Park Drive. And
13 then B would be -- well, the jewelry store.

14 A Yes.

15 Q That's a distance of -- you said about a mile?
16 Google has it 1.1 mile so you are right on there.
17 And you went here first, correct?

18 A Yes.

19 Q Then you went -- after getting a call three or
20 four minutes later -- three or four minutes later
21 you got a call about going to Ligato's Jewelry?

22 A Yes.

23 Q And you left immediately on getting the call?

24 A Yes.

25 Q Okay. And is this the route you took to get to

1 the jewelry store?

2 A 278 to Buck Island Road.

3 Q That's the route you took?

4 A Yes.

5 Q Which is actually a longer route of 1.2 miles.

6 According to you, right?

7 A Yes, sir.

8 Q Now, the car that you stopped with the defendant
9 in it, did you see that car on the way to the
10 jewelry store?

11 A No, sir.

12 Q Okay. You remember writing an incident report --
13 supplemental incident report regarding this,
14 correct?

15 A Yes.

16 Q I'm handing you a copy of the Supplemental
17 Incident Report and ask you to read umm, the
18 sentence that is in blue brackets.

19 A I then redirected back to Buck Island Road where I
20 observed a vehicle I had passed on my way to the
21 scene.

22 Q All right. So are you talking about the vehicle
23 that had the defendant in it in that sentence?

24 A No, sir.

25 Q So you are talking about the first vehicle you are

1 talking about?

2 A Yes, sir.

3 Q Which you did not see when you came back out?

4 A That's correct.

5 Q Now you were looking for that vehicle when you
6 came back out?

7 A Yes sir.

8 Q So when you left -- you arrive at the jewelry
9 store, your officer you're with looks in the front
10 and says, Yeah, they've been and gone. You flip
11 around and you are looking for a car you have
12 already passed?

13 A Yes, sir.

14 Q And that wasn't the defendant's car?

15 A No, sir.

16 Q Had you seen that first car, you would have
17 stopped that one, isn't that correct?

18 A Yes, sir.

19 Q Now, you testified -- you testified that this is
20 the route you took to the jewelry store, did you
21 take that same route back?

22 A Yes, sir.

23 Q And you were just trying to re-trace your steps?

24 A I just responded to that Buck Island Road when I
25 saw the vehicle.

1 Q When you -- when you saw the vehicle, were you at
2 the circle here?

3 A No.

4 Q Where you on Buck Island?

5 A Yeah -- I was on Buck Island.

6 Q And you saw the vehicle that you stopped turn
7 right?

8 A No. I don't know which vehicle you are talking
9 about.

10 Q With Mr. DeCosta and Mr. Hamilton?

11 A No, sir. He was on a different road.

12 Q Where was he?

13 A He was on Westbury Park Road.

14 Q And where is that on -- on this -- either map?

15 A I can't see the words. Can I step down?

16 THE COURT: Yes, you can step down.

17 BY MR. WALKER:

18 A Your Honor, he was -- he was coming out of West
19 park Way which is right here.

20 Q Okay.

21 A In between the two locations.

22 Q And where were you when you saw him?

23 A I was at the intersection right here. Observing
24 him coming out of there.

25 Q So he was turning right out of this road and you

1 were up here and you saw him turn on 278?

2 A Yes, sir.

3 Q Okay. And just so we're consistent, can you point
4 that out on this map here?

5 A The Westpark Way, Your Honor, and 278 -- came out
6 here and turned right... I was out at Buck Island
7 Road and 278.

8 Q Please have a seat, thank you. And when you saw
9 them pull out, you accelerated to connect -- to,
10 to be able to stop them for investigatory
11 purposes?

12 A Yes, sir.

13 Q All right. Now, it's safe to say you had no
14 information about who had committed the burglary
15 at this time?

16 A That's correct.

17 Q You don't know if it was committed by someone on
18 foot, is that correct?

19 A That's correct.

20 Q Or bicycle?

21 A That's correct.

22 Q And -- or, as it turned out, in a car?

23 A Yes, sir.

24 Q And the -- the road -- and you say you saw them
25 and they were making a right hand turn, and the

1 road they are coming off of, is that a major road
2 that they were turning on, 278?

3 A 278, yes.

4 Q The road that they were coming off of, is that a
5 major thoroughfare?

6 A It's a private road.

7 Q So you wouldn't expect to see someone flying down
8 that road, is that correct?

9 A (no response)

10 Q Speed -- driving at a high rate of speed on that
11 road would be improper?

12 A Correct.

13 Q What is the speed limit on highway 278, do you
14 know?

15 A I think it's 55 in that area.

16 Q Okay. Now, uh, can see we've pulled up another
17 map on the computer -- Google map. We've got a
18 track from where you say you saw the vehicle
19 turning onto 278 back to the jewelry store
20 location. Do you agree with that map?

21 A Is that Westpark?

22 Q It's coming out of the circle there and turning
23 onto 278 is what you said, right?

24 A I'd have to refer to that map up there. If this
25 is Westpark Way, that would be the road.

1 Q I mean that's Buck Island Road, that's where you
2 just said that you saw -- you had turned, you saw
3 them turn off there ---

4 A Yes, sir, that's Westpark Way. That would be the
5 route.

6 Q So you agree that that's .7 miles from the
7 location to where you saw the vehicle?

8 A Yes.

9 Q All right, thank you. And umm, in your report
10 that I just had you read where you said, Then re-
11 directed back to Buck Island Road where I observed
12 a vehicle that I passed on my way to the scene.
13 And uh, you actually didn't observe but you were
14 looking for that vehicle?

15 A Right.

16 Q And then you said, I checked Buck Island Road and
17 Highway 278 for the vehicle and met with negative
18 results?

19 A Yes, sir.

20 Q And that's when you saw the defendant's vehicle?

21 A Correct.

22 Q Okay. And at that point you accelerated and
23 caught up with the vehicle, pulled them over
24 without any -- I mean, they didn't try to flee or
25 anything like that?

1 A No, sir.

2 MR. WALKER: Court's indulgence?

3 THE COURT: Yes, sir.

4 BY MR. WALKER:

5 Q And you -- when you pulled the vehicle over, and
6 you did so using blue lights, and they responded
7 immediately, correct?

8 A Yes, sir.

9 Q And you hadn't called in the tag number when you
10 turned on your blue lights, is that correct?

11 A I hadn't -- I can't recall if I -- I believe I
12 called it in when I first saw the vehicle.

13 Q All right.

14 A And then when I stopped, they returned with the
15 information.

16 Q So you don't recall whether you already attempted
17 a stop or not when you called the tag in but you
18 do recall that you didn't have any information
19 about the tag until you had stopped the car?

20 A I did -- I did attempt to stop the vehicle and
21 then I got the information.

22 Q I'm talking about when you called the tag in.

23 A After I activated my blue lights.

24 Q Okay, and then once they did stop that's when you
25 heard back that the license was suspended?

1 A Yes, sir.

2 Q Okay. Umm, we can switch gears here and play for
3 you -- your car is equipped with an in-car video,
4 correct?

5 A Yes, sir.

6 Q (playing video) I'm going to stop there. Can you
7 see the screen all right?

8 A Yes, sir.

9 Q I'm going to refer to it. Can you determine if
10 this is your in-car video by the video I've got
11 playing on the screen?

12 A Not by that but it looks like it.

13 Q Do you see where it says in the video program the
14 officer's name?

15 A That's mine.

16 Q Okay. And you see the incident date and time; 11
17 29 2010, four in the morning?

18 A Yes, I see that.

19 Q So this would be the video from the incident in
20 question?

21 A That's the video.

22 Q Okay.

23 MR. WALKER: Court's indulgence. I'm going to
24 try and get some sound so that we can all hear.

25 THE COURT: Okay.

1 MR. WALKER: I apologize, the time is 2:52 in
2 the morning. This was the length of the video so if
3 you give me one moment, maybe we can get a mike or
4 something over here.

5 Looks like there will be no sound.

6 BY MR. WALKER:

7 Q (video playing) This is the suspect vehicle that
8 you stopped?

9 A Yes, sir.

10 Q All right. Did you just see another vehicle as
11 you were getting ready to turn right?

12 A Yes.

13 Q Saw a vehicle stop at that stop light?

14 A Yes, sir.

15 Q All right. Umm, go ahead and play. (video
16 playing) All right. Where are we right now?

17 A Walgreen's parking lot.

18 Q Okay and did you just see a vehicle in your field
19 of view when you pulled in there?

20 A Yes I did. That's the pharmacist.

21 Q The pharmacist working there?

22 A Yes.

23 Q Okay, keep playing. (playing video) There was a
24 vehicle here in the frame in front of the car you
25 are stopping, correct?

1 A Yes.

2 Q And there's a truck over here, right?

3 A Yes, sir. I believe that's what that is.

4 Q You don't have to agree with me but...

5 A Looks like a sign to me.

6 Q Okay. (playing video) Did you see a car pass?

7 A Honestly I can't say -- I'm sorry.

8 MR. THORNTON: To keep from having to replay
9 it, the State will stipulate that it appeared a car
10 with headlights are going by, down the road just a
11 second ago.

12 THE COURT: Okay. Will you accept that
13 stipulation?

14 MR. WALKER: I'll, I'll accept that and I
15 wonder if the State will stipulate that there is 18
16 more in the next ten minutes?

17 THE COURT: Okay?

18 MR. THORNTON: I don't know if there's 18. I
19 think there probably is more than one or two so that's
20 fine, Judge.

21 THE COURT: Okay.

22 MR. WALKER: I won't stop it again with the
23 stipulation the Court can see traffic on that road.

24 BY MR. WALKER:

25 Q (playing video) And I don't want to sound like a

1 broken record but there goes another car from the
2 direction of the burglary. And another one. And
3 another one going towards the burglary.

4 THE COURT: Can you tell me what the time
5 counter says on that? I can't see it.

6 MR. WALKER: Umm, 2:52 and 52 seconds, Your
7 Honor and on the 29th.

8 THE COURT: Okay.

9 BY MR. WALKER:

10 Q (video playing) And just more cars going by in the
11 background. And here again, him just reiterating
12 it's purely a fishing expedition on this vehicle,
13 Your Honor. Now you said when you approached you
14 saw they were wearing black clothes and you were
15 suspicious. You didn't see what the drivers were
16 wearing when you first pulled over the vehicle, is
17 that correct?

18 A That's correct.

19 Q And you didn't see -- even though the one person --
20 -- you didn't see -- how many people in the vehicle
21 when you first saw it?

22 A I saw one at first.

23 Q Okay. So when you first saw the vehicle you saw
24 one person driving it?

25 A The other person was laying in the back.

1 Q Well, you didn't know that until you walked up to
2 the car?

3 A I didn't.

4 Q All right. All right. So we agree that where you
5 saw the vehicle was .7 miles from where the
6 burglary occurred, is that correct?

7 A If that's what you showed me on the -- I agree
8 with it.

9 Q Okay. And you said that the speed limit on
10 highway 278 was 55 miles an hour, right?

11 A Yes, sir.

12 Q A car -- I'm getting ahead of myself. Let me walk
13 through your time line one more time. So you
14 respond to an arson report at Dan's Fan City at
15 2:39.

16 A Yes, sir.

17 Q And you -- how long you think you are staying
18 there?

19 A Not very long.

20 Q Okay.

21 A Maybe a minute.

22 Q But you got a call some period after that -- do
23 you know when you got the call about the burglary?

24 A At approximately 2:50 -- approximately 2:50.

25 Q I -- I saw you referring to something. Do you

1 have your incident report up there -- your
2 supplement report up there?

3 A Yes.

4 Q Okay, well that makes it easier. If you will
5 actually look on the third paragraph of your
6 supplemental report, second sentence -- end of the
7 second sentence. Umm, would you say that dispatch
8 came out about a burglary at 2:48?

9 A Number three, which line is that?

10 Q Uhh, second line, end of it, On 11-29-10 at
11 approximately 2:48 Officer Distazio (sp) was
12 dispatched to 80 Baylor Dr?

13 A It says, 2:48, yes sir.

14 Q Okay. So alarm goes off at 2:48, burglary is
15 happening at 2:48?

16 A These are approximate times.

17 Q Okay. Well, certainly -- I mean how approximate?
18 How did you come up with the number if it's
19 approximate?

20 A Just being there through the times. Writing down
21 some times.

22 Q So it could have happened earlier than this?

23 A Possibly.

24 Q All right. It's really your best guess about what
25 time it happened?

1 A Approximately, yes, sir.

2 Q Going on your report, at 2:48, you hear about a
3 burglary?

4 A Yes, sir.

5 Q And so you head over there to check it out?

6 A Yes, sir.

7 Q And we've already seen it's about 1.2 miles on the
8 route you took?

9 A I believe so.

10 Q Okay.

11 A Those were the numbers.

12 Q So you drove 1.2 miles to the burglary location
13 and you drove around back and the other officer
14 went to the front?

15 A Yes, sir.

16 Q And then you had a conversation with him about, it
17 was a burglary, stuff was taken and then you left
18 that scene?

19 A Yes, sir.

20 Q And you have -- and you arrive there, 2:50, is
21 that right?

22 A Yeah, it is approximately.

23 Q Okay. So you think that from the time the call
24 went over the radio, two minutes later you were on
25 scene, about 1.2 miles away?

1 A Give or take some time.

2 Q Okay. So you are 1.2 miles away in two minutes.
3 You have a conversation with the officer. Y'all
4 do your check. You have another conversation with
5 the officer to confirm the results of your check
6 and then you leave?

7 A Yes, sir.

8 Q So would that take two or three minutes?

9 A Seems shorter than that.

10 Q Adrenaline is pumping and things are going, you
11 know but physically if you are going to have a
12 conversation about how to approach the scene, both
13 of you are going to maneuver in a position. One
14 officer is going to investigate the scene and
15 report back to you what he finds. ---

16 A That was all over radio.

17 Q But its still got to happen?

18 A While I'm driving.

19 Q So I'm just trying to see how long that took.

20 A About a few minutes, a minute.

21 Q Okay. Well, a few minutes, one minute ---

22 A I can't -- I don't recall ---

23 Q Okay ---

24 A Could have been sixty seconds -- it was pretty
25 quick. I drove in out and came back. It didn't

1 take me thirty seconds, actually.

2 Q All right. Take away your cruiser and give you a
3 cape here in a second. Umm, so you come -- so
4 some period of time from a few minutes to thirty
5 seconds you check out the scene and you come back
6 out?

7 A Yes, sir.

8 Q All right. Then you uh, scan the area for another
9 vehicle that you are looking for, right? And then
10 you make contact with the defense vehicle?

11 A Yes, sir.

12 Q Okay. So that takes a minute or two, right?

13 A No.

14 Q No. Okay.

15 A I was looking for the vehicle on Buck Island Road
16 as I was driving 278, that probably took a whole
17 ten seconds at the speed I was driving.

18 Q Okay so you covered a whole half a mile in ten
19 seconds?

20 A From Lipito's Jewelry Store to Buck Island Road,
21 it took pretty good time ---

22 Q Okay. And we've already -- so when you came out
23 looking for the vehicle, did you come out 278 or
24 you came back to where you came in?

25 A Buck Island Road.

1 Q So you are here on Buck Island Road and you are up
2 here and that's where you see the Defendant's
3 vehicle?

4 A Yes, sir.

5 Q Okay so you've gone -- this was .7 miles from here
6 to here. So you went approximately half a mile in
7 ten seconds or you think it might have been --

8 A I don't know what the distance from ---

9 Q That's the beauty of modern technology is we can
10 find out.

11 (To his law clerk) Can you pull that up?

12 (To witness) That's the way you went, .6 miles.

13 A .6 miles.

14 Q .6 miles. So it took you more than ten seconds?

15 A A few seconds.

16 Q You would have to have a top fuel drag car to do
17 that distance in ten seconds.

18 A I was doing it.

19 Q (laughter) All right. So let's ballpark, since
20 that seems to be how we are operating. Burglary
21 happens, you get the call at around 2:48. Isn't
22 that the time you gave us?

23 A Yes, sir.

24 Q And you say you got there at fifty and saw them
25 shortly thereafter, let's say, uh, in your actual

1 report you say is around 2:52 is when you saw the
2 defendant's vehicle, right?

3 A (looking at report)

4 Q That's the next -- fourth paragraph -- 2:52
5 approximately. And again it's just
6 approximations. So that's forty-nine, fifty,
7 fifty-one -- four minutes, at least, after the
8 burglary happens, is when you see defendant's
9 vehicle?

10 A Yes, sir.

11 Q And you said that the speed limit on 278 there is
12 55? Right?

13 A I believe so.

14 Q So 55 miles an hour, divide by 60, is .91 miles,
15 sound right?

16 A Yes, sir.

17 Q So to find out how far a car would travel in four
18 minutes we multiply that by four. So in four
19 minutes the car at 55 would travel 3.66 miles.
20 Does that sound right to you?

21 A Yes, sir.

22 Q Okay. You observed the car .7 miles away?

23 A Yes, sir.

24 Q All right.

25 MR. WALKER: Court's indulgence.

1 THE COURT: All right, sir.

2 BY MR. WALKER:

3 Q I'm going to switch out now to your in-car video
4 and let you listen to something else. I don't
5 have anything else. Thank you. I'm just going to
6 leave that up there a moment in case there's a re-
7 direct. But otherwise I will move it.

8 THE COURT: All right. Mr. Thornton?

9 MR. THORNTON: Yes, sir. Just one question.

10 BY MR. THORNTON:

11 Q Detective -- excuse me, Sargent, earlier you
12 testified -- actually you testified for me and
13 also in response to a question Mr. Walker asked
14 you about, the car, before it turned onto 278, was
15 driving very slowly?

16 A Yes.

17 Q How slowly?

18 A Umm, like a mile -- two miles -- I mean, it just
19 looked like it was driving real slow.

20 Q Was it driving slow enough that it gave you some
21 pause?

22 A Yes.

23 Q All right. And did -- was that suspicious to you?

24 A Yes.

25 Q All right. I don't have anything further.

1 THE COURT: Any follow up to that Mr. Walker.

2 MR. WALKER: Just briefly. Because I was
3 remiss in not covering that.

4 BY MR. WALKER:

5 Q Umm, you weren't behind the vehicle when you first
6 encountered it?

7 A Was I behind it?

8 Q You weren't behind it?

9 A No, sir.

10 Q So you were this distance apart?

11 A Yes, sir.

12 Q And you testified that you saw it turning right?

13 A Yes, sir.

14 Q So how much of his driving did you see on the road
15 other than his turning right?

16 A It was a very short distance.

17 Q Okay. So you saw him a short distance before he
18 turned or after?

19 A Before he turned.

20 Q Okay and that's when you saw him drive slowly?

21 A Yes, sir.

22 Q Is there a stop sign right there?

23 A There is.

24 Q Okay. I don't have anything else.

25 THE COURT: Mr. Thornton?

1 MR. THORNTON: No, sir. I have nothing
2 further from Officer Gonzalez.

3 THE COURT: Okay Officer Gonzalez, you may
4 step down. Thank you, sir. Mr. Thornton, you have
5 more witnesses?

6 MR. THORNTON: No, sir. Officer Gonzalez was
7 by himself when he did the stop, Judge.

8 THE COURT: All right. Thank you. Mr.
9 Walker?

10 MR. WALKER: Thank you, Your Honor. I'll
11 begin my argument on the law with pretty much the most
12 recent Court's position on the law on 4th Amendment
13 stops is State versus Taylor, from June 24th, 2010, 6
14 second 10 (?) It basically says, Officer must have
15 reasonable, articular suspicion in order to have a
16 stop. I don't believe that you've heard any suspicion
17 about this -- this car, or at least not reasonable
18 suspicion. You've already heard testimony that he was
19 actually looking for another car and would have, in
20 fact, stopped it had he, uh, come across it. That he
21 randomly came across this one.

22 Umm, as far as slow driving to a stop sign and
23 turning onto 278, I don't know that approaching a stop
24 sign slowly and then turning onto a highway is
25 suspicious.

1 Umm, there is -- in all the case law that I've
2 looked at this, there is either some independent
3 traffic violation or there's a description of a subject
4 or a vehicle that is being sought. Neither are present
5 in this case. In fact, the officer tells them, We just
6 had a burglary, what do you guys know about it?

7 Umm, a stop without reasonable suspicion is per se
8 in violation of the 4th Amendment and uh, you know, I
9 think just happening to be within .7 miles of a crime
10 scene, late at night, is not reason to pull over a car.
11 You, yourself, saw that's a busy part of town. Cars
12 going back and forth. There are people working at that
13 time of night. This is a light industrial area.
14 People pull into a store where pharmacist is working.
15 There's other cars as we watched the truck in the
16 parking lot gets up and leaves. There's plenty of
17 traffic in this area. It's not like it's out in the
18 middle of the country where that's the only thing for
19 miles and miles.

20 According to Officer -- constantly changing what -
21 - admits to guesstimates of time space. Any car
22 within, you know, probably 180 degrees sway in front of
23 him that was in a four and a half mile radius in that
24 section of 278 and subject to being stop by him -- and
25 that certainly cannot be reasonable under the 4th

1 amendment.

2 And I will start with that and then I guess any
3 response from the State ---

4 THE COURT: Before you leave that point, Mr.
5 Walker, if you will address under head note number 4,
6 is a listing of factors that lead to reasonable
7 suspicion and it lists several of them. One of them,
8 of course, is the circumstance of the location. In
9 other words, this particular case, in the vicinity of a
10 crime, which has occurred in the late hour of night,
11 and it says, That in and of itself, clearly, cannot
12 give rise to a stop. That means anybody who happens to
13 chance along that way would be subject to a stop for no
14 reason at all.

15 The -- the fact that criminal activity had
16 occurred, however in close proximity to this, seems to
17 be another issue that can be taken into account. The
18 lateness of the hour, for example. As far as traveling
19 there in the middle of the day, four o' clock in the
20 afternoon, something of that nature, clearly there
21 would be nothing to raise suspicion. But if three o'
22 clock or thereabouts in the morning, while the traffic
23 on 278, of course as you pointed out, is always moving.
24 I have never known, in my limited experience, 278 to be
25 devoid of traffic, day or night. But the streets

1 behind the neighborhood off of 278 that were mentioned,
2 would you concede that they would have to -- a
3 different standard would have to be applied to those in
4 determining whether or not the level of activity -- the
5 level of traffic or the lack of level of traffic was
6 something that would warrant suspicion under the
7 circumstances? Would you mind addressing those?

8 MR. WALKER: I would -- I would be happy to,
9 Your Honor. Of course I would not concede in this case
10 the side streets would necessarily would warrant a
11 different level of scrutiny. We are talking about an
12 elapsed time period after this event occurred off of a
13 busy highway, late at night.

14 For all the officer -- and again, for all this
15 officer knows -- for all anybody knows, a car -- I
16 missed my turn. I've got to turn around and go back.
17 It's something about the vehicle. We are talking about
18 the Taylor case. In Taylor, we did have an actual
19 report of a crime. It wasn't just hanging out in high
20 crime area.

21 THE COURT: If you have an anonymous tip
22 that's what it was ---

23 MR. WALKER: Yes, sir, Yes, sir. But -- my
24 point is, they were actually responding to something
25 versus just checking it out.

1 THE COURT: But now, were they not responding
2 to a burglar alarm in this area?

3 MR. WALKER: Yes, that's why I think Taylor is
4 close because it gets to the credibility of this guy
5 and -- I'll just come to the two factors that are
6 present like Taylor in here.

7 First, obviously there's either -- we can --
8 and yes, I can see a crime has been committed. And
9 that alone is not enough. The case law is there to say
10 itself. You've got to have other factors. And then
11 the only other factor the State had, which would be
12 close, the Lender factor -- the lateness of the hour.

13 And I think what we can do is differentiate
14 Lender very easily. And (long pause) We can
15 differentiate Lender, the Supreme Court case. I don't
16 have the cite, I'm sorry. I actually have a copy but
17 I've only got one. I have it if you like it. I'm
18 sorry. Here's Lender.

19 So Lender's officer is familiar with -- that's
20 his regular patrol area. He drives by and see's a
21 group of six guys and he see's Lender. He see's the
22 defendant standing in a group of guys with his hand
23 out. Looks like a transaction is going on. We can
24 distinguish it because there's other factors, the ? was
25 one of many factors that got Lender over the hump.

1 But Lender -- actually the police had observed
2 Lender himself doing something that was suspicious and
3 that to me, is key. Umm, there were also a group of
4 men standing around the street corner, so there were
5 other people involved in suspicious activity.

6 Also Lender was on foot. Something we might not
7 expect to see from people at 1 a.m. in this versus it's
8 perfectly common -- you, yourself said, On 278, a
9 vehicle.

10 THE COURT: True.

11 MR. WALKER: And umm, also Lender
12 exhibited evasive conduct to the officer. Umm, you
13 know, and -- and that furthered the suspicion. Here,
14 when signaled to do so, Mr. Hamilton pulled the car
15 over. There's no -- there's no other context except
16 it's in the area, at night. Which we've already
17 determined from the Officer's own testimony that, I was
18 happy to pull over another vehicle based on in the area
19 at night. Or any vehicle he saw and we've seen -- we
20 saw the video, from the narrow part that we can see,
21 multiple vehicles going by, any of those are in danger
22 of being pulled over randomly by Officer Gonzalez and
23 the 4th amendment doesn't allow that.

24 As to again, you know that something I'm
25 quoting from, To prevent hindsight and coloring the

1 evaluation of the reasonableness of search and seizure,
2 and here, that's what we have. Good police work. He
3 had a hunch. It paid off but you know the 4th
4 amendment doesn't let us say, Well, good job on that
5 hunch or overlook the improper nature of the stop.

6 And I've also handed up, not as presidential,
7 but having an excellent discussion of the 4th
8 amendment, US v. Burke, District Court Maryland, the
9 lengthy discussion of multiple issues, some of which
10 are pertinent to this case. I had, frankly, just the
11 way he lays out the analysis. I think deals less with
12 -- but that's just if the Court wants to read it at
13 some point.

14 Umm, have I addressed your questions, Your
15 Honor?

16 THE COURT: You have to a certain extent
17 but here's the situation. If you've got a crime that
18 occurs at a given location at 2:58 -- was that it?

19 MR. WALKER: Yes, sir,

20 THE COURT: 2:48?

21 MR. WALKER: They got the call at 2:48.

22 THE COURT: Alarms are going off at the
23 jewelry store at 2:48. So 2:48 in the morning. You've
24 got vehicles leaving from that area and that's all
25 you've got. You've got a police officer who goes and

1 he sees a vehicle leaving the vicinity of the location
2 with a crime. That's all you got. There might be one.
3 There might be other vehicles. Apparently there was
4 two in the vicinity. One that he said he would have
5 stopped if he'd gotten to first.

6 Are you saying that's the -- 4th amendment
7 does not allow the officer to stop that vehicle to --
8 to determine whatever he needs to determine, in other
9 words, that there's no reason to suspect -- that
10 there's nothing to raise the level of suspicion, which
11 I think is the language in the Lender case, that the
12 officer should not be suspicious of that sort of
13 activity in the vicinity of the crime at this time of
14 the morning?

15 MR. WALKER: Well, Your Honor I will
16 address that -- say first of all, I think each case is
17 a factual case.

18 THE COURT: Right.

19 MR. WALKER: You know you have to look at
20 the totality of the facts and in this case, umm, I
21 think that we've argued this is a busy, highly-traveled
22 area. I would argue that seven-tenths of a mile away
23 from the location is not in the vicinity. Had the
24 officer said, I saw them pull out of the parking lot
25 where it occurred ---

1 THE COURT: Right ---

2 MR. WALKER: That we would say, Yeah,
3 it's in the vicinity. And he's already said, I was
4 gonna stop this other car just to see because I passed
5 him on my way in. He hadn't even seen the defendant's
6 car until he's out driving around just looking for this
7 other car.

8 THE COURT: Right.

9 MR. WALKER: And to say, this car is
10 seven tenths of a mile away, I'll stop it and see what
11 I get, I don't thing in anyway he can justify it as
12 saying that is in the vicinity.

13 Again, everyone of these cases is --
14 there is some observed behavior of the defendant that
15 allows the stop. There's a traffic violation. There's
16 some behavior that is suspicious. There is a
17 description, be on the look out for a blue SUV,
18 something that says, Hey, that's the guy. I haven't
19 seen any case that says, Hey, this is okay. Umm, I
20 think ---

21 And again, I want to say the facts with
22 the vicinity, not only, Hey, he's not coming out of the
23 parking lot. Again, if you are out in the country and
24 the farms are two miles apart. Maybe your vicinity is
25 a little bigger but not a heavily traveled business

1 area where business areas are open at this time of
2 night. People going to and conducting business. I
3 don't see how -- the area, if you take that out and
4 it's over a mile I don't think it gets there.

5 Thank you.

6 THE COURT: Thank you, Mr. Walker. Mr.
7 Thornton?

8 MR. THORNTON: Thank you, Your Honor.
9 First I would go to the Taylor case that Mr. Walker has
10 been kind enough to point out, also some of the things
11 that Your Honor has already brought up.

12 In Taylor, Your Honor, it's my understand that
13 there actually wasn't an independently verified crime
14 that occurred. What they got was an anonymous tip that
15 somebody may have dealt drugs. I believe it's what it
16 is, Your Honor.

17 On Yes. July 25th, 2006, between 10:30 and 11,
18 Florence County's Sheriff's Deputy receives an
19 anonymous tip indicating a black male on a bicycle was
20 possibly selling dope and the Court goes into great
21 detailed to talk about it -- and Your Honor certainly
22 knows better than I do, the history of anonymous tips
23 and by themselves they aren't enough to -- to create
24 anything. Certainly not probable cause or reasonable
25 suspicion.

1 However, Judge, in this case, this actually
2 goes further than even what they talk about about the
3 high crime area, uh, being something you can consider.
4 This is a case, Judge, where they had actual
5 independent verification that two crimes had been
6 committed within a mile of each other at three o' clock
7 in the morning. All of this stuff occurs within five
8 or six minutes. So it goes way beyond, uh, Taylor.
9 Because not only -- it's not a tip. You have, Hey,
10 there's an arson and the police drive out and
11 independently verify that there is an arson. They
12 then get a burglar alarm that they go independently
13 verify that there is somebody that gained access to the
14 building. Officer testified that his partner told him
15 that, Yeah, they got in. Looks like stuffs been taken.

16 Within two minutes, I think or less, and I
17 understand it's all approximations but on the car
18 counter it's 2:52, he sees this vehicle and pulls it
19 over. He says it's driving so slowly that it raises a
20 suspicion in his mind and the other thing I have a
21 problem with, Judge, is Mr. Walker acts like this has
22 to be a mutually exclusive situation. I think he could
23 have pulled the other car over for reasonable
24 suspicion, too. I think any of the cars he saw on the
25 side street less than a mile -- I mean, again Judge, I

1 don't think it would have mattered if it was a mile to
2 each location. You are actually talking about half
3 mile 'cause the two locations are only 1.1 mile -- it's
4 probably shorter than that how the crow flies. If you
5 are talking about a mile and he sees them dead center,
6 so a half mile away at three o'clock in the morning,
7 driving in a manner he and his 16 odd years of
8 experience considered suspicious, it's not mutually
9 exclusive. The State's position is he could have
10 pulled over any of the vehicles he saw on those side
11 streets when a crime that they independently verified -
12 - two crimes had been freshly committed.

13 I think the fact that you have independent
14 verification of not one but two crimes, it's 3 o'clock
15 in the morning and he's -- he sees this vehicle, along
16 with another vehicle, but see's this vehicle and pulls
17 the defendant over in within a half mile and two
18 minutes of the last call out, Judge, I think is more
19 than a reasonable suspicion.

20 And without belaboring the point, Judge, as
21 you well know it's a totality of the circumstances
22 test. Uh, there was a Supreme Court case that came out
23 in 2002 and forgive me for butchering the name on this
24 one, Judge, it's uh, US v. uh, ARVIZU, which I will
25 spell. It's A-R-V-I-Z-U.

1 Your Honor, that case talks about Sopelo, it
2 talks about several of the other cases. It talks about
3 several of the other cases. It talks about the fact
4 that it's a totality of the circumstances test and it
5 is -- that you shouldn't look at it in a context of
6 what your average citizen considers suspicious. That
7 you should take into account what an officer with
8 experience takes into account as being suspicious.

9 And I would respectfully ask the Court to deny
10 Mr. Walker's motion on that basis. I mean, Judge,
11 there is a lot more than what would be required in this
12 case to form a reasonable, particular suspicion and I
13 would ask the Court, respectfully, to deny the motion.

14 THE COURT: Mr. Walker, it's your motion so
15 you've got the last word.

16 MR. WALKER: Thank you, Your Honor. If I
17 could have just a moment to review the case.

18 Your Honor, after I look a little bit
19 backwards to scan this case, it seems to stand for the
20 general principle that it's the totality of the
21 circumstances, any one issue is that later you have to
22 look at them together. All of these 4th Amendment
23 cases have language that any innocent factors by
24 themselves combined could be enough and I think that's
25 what that stands for. I don't think there's anything

1 fatal. We'll concede they've got two and it's not
2 enough.

3 I'll back up and make -- first and to the most
4 outrageous point I find is it's the State's position
5 they have the right to pull over any vehicle within 1.4
6 miles circumference of where this incident happened
7 because they want to check them out. I can't think of
8 any support for that in case law, Your Honor.

9 Umm, and then he makes a big deal about it's
10 really in between two crime scenes so it's not --
11 they've got two independent crimes and that -- that
12 makes a difference. But you know, Officer Rodriguez
13 testified, I think, responding to the burglary --
14 that's the incident that he's there to respond to and
15 then again, if he had gone the other way and found them
16 he would have stopped them is what he is saying.

17 THE COURT: I think the other significance of
18 that -- of that is most of the cases speak of a high
19 crime area, of course, obviously there would be one
20 standard, I think, applied to a high crime area which
21 is a very subjective standard. It's another thing to
22 say, Two crimes were committed and you know they were
23 committed in the same area. It's not a high crime
24 area. At that point in time, subject to a subjective
25 test, here we have an objective test where no crimes

1 have been committed now what constitutes reasonable
2 suspicion.

3 MR. WALKER: I think, Your Honor, you are
4 letting hindsight color your analysis because we could
5 over to the apartments on Friday night and we could
6 have a drug sale and a distribution of marijuana and,
7 you know, and you know, an assault and battery in three
8 different apartments confirmed and they are not related
9 to each other. If we don't know crime -- things in a
10 high crime area, we don't know until after the fact
11 that they are related.

12 THE COURT: Well, the Officer testified that
13 they had two other similar experiences -- with two
14 other crimes related and an arson diversionary, a
15 burglary some distance away. As a matter of fact, he
16 alerted his -- his other units in that area of that
17 very same thing. So ---

18 MR. WALKER: I'm not going to belabor the
19 point. I -- I'm willing to concede that crimes are
20 occurring ---

21 THE COURT: Right.

22 MR. WALKER: And, you know, I just -- I think
23 it is one factor but I don't think that factor alone
24 justifies randomly stopping people ---

25 THE COURT: Right ---

1 MR. WALKER: Without something that says a
2 particularized indicia that this person or vehicle is
3 involved or commits some independent new crime that
4 justifies the stop.

5 Umm, and we can go to, really, the Officer's
6 actions to decide the other -- you know there are --
7 there was reasonable, particular suspicion because if
8 he's responding to a burglary and he passes the car and
9 he has a suspicion that -- a reasonable, particular
10 suspicion that that car is involved, he doesn't need to
11 go to the burglary. He can stop it right there. But
12 he didn't do that. He went out and then he started
13 randomly stopping people.

14 And then finally, the Solicitor makes an issue
15 about, Well, this isn't like terrorists or an anonymous
16 tip. And I can see there is a crime that's happened
17 and I think, uh, that was something that made the case
18 weaker against Taylor, if Mrs. Smith had said, Joe
19 Taylor is calling, then that would be a reason to go
20 out there and maybe check him out. But that would be a
21 situation where we have individual description or name
22 that this person committed this crime. And again, they
23 are on a fishing expedition and they can't just
24 randomly stop people that are over a half a mile away
25 from the incident location.

1 THE COURT: Can you help me with this factual
2 matter 'cause I -- I missed it in your initial factual
3 presentation. Was the vehicle that Officer Gonzalez
4 had attempted to stop to begin with, was that farther
5 away or closer to the scene of the burglary than the
6 defendant's car.

7 MR. WALKER: I don't think it was ever
8 actually testified to, um, directly. I believe from
9 where he testified he was looking for the vehicle, that
10 that would have been closer because the road that he
11 was on, um, and if I can approach the map I can show
12 you ---

13 THE COURT: Yeah.

14 MR. WALKER: The incident happens here. He
15 testified he comes back around here and is looking for
16 that vehicle here and gets to this intersection and
17 sees defendant's vehicle coming out right here.

18 THE COURT: Right.

19 MR. WALKER: So if he's looking here I'm
20 assuming that the vehicle would have been in this area
21 when he passed it but it was not -- to my recollection,
22 directly testified to.

23 THE COURT: All right. Thank you. Gentlemen,
24 give us a few minutes. Uh, we'll take fifteen minutes.
25 I'll read these cases a little bit more. And we'll be

1 back at ten minutes to the hour.

2 MR. THORNTON: Thank you, Your Honor.

3 (Whereupon a break was taken at 3:25 p.m.)

4 (Whereupon back on the record at 4:08 p.m.)

5 THE COURT: Folks, thank you for your
6 patience. The defendant has moved to suppress the
7 evidence obtained as a result of what he contends is an
8 illegal stop, that is one devoid of reasonable
9 suspicion and that all of the evidence that rose out of
10 that alleged illegal stop should be suppressed.

11 The motion is respectfully denied. It is, of
12 course, under the law and totality of circumstances
13 question that we have to look at. The Linder case has
14 said that the mere hunch of a law enforcement officer
15 is not enough to weigh the likelihood of criminal
16 activity. I think that's one of the cases that was
17 cited, however, the evidence need not arise to the
18 standard of probable cause, or certainly not proof by
19 the greater weight of the preponderance of evidence,
20 our case law calls for the whole picture -- that we are
21 required to look at the whole picture. It is then a
22 question of degree, not only in this but in every case
23 of the closeness in time and space of a stop to the
24 criminal activity in question.

25 Most of the cases speak in terms of arrests or

1 stops that are made in a high crime area. And as we
2 suggested a few minutes ago, on the record, high crime
3 area is a very subjective standard and therefore,
4 justifiably, a great degree of scrutiny should be
5 applied anytime. Reasonable suspicion is based on
6 activity in a high crime area.

7 However, the commission of an actual crime
8 itself is a far more objective standard. The question
9 then, of course, becomes one of degree. That is the
10 proximity of the actual crime itself to the location of
11 the stop. Proximity and time as well as in space. In
12 this particular case, the time between the crime itself
13 and the stop arguably from 2:48, at the time the alarm
14 -- notice of the alarm was received and 2:53, or
15 thereabouts, the time that the shop -- five minutes, it
16 could have been six, it could have been seven, but
17 somewhere in that general time frame. Less than the
18 time it would take me to complete my ruling in given
19 this particular case.

20 So we then look at the distance between the
21 crime itself and the stop. Six tenths of a mile, in
22 this particular case, several blocks, as was shown on
23 the maps that were given to me.

24 Now, when we look at those two factors, that
25 is the proximity in time and space of the crime and the

1 stop, if we are to examine the totality of the
2 circumstances, we're required to look at the time of
3 day, that is, the lateness of the hour and the traffic
4 in this area. And either the area of Buck Island Road,
5 Baylor Drive or any of the other streets that were
6 mentioned in the testimony.

7 These are streets that go off of Highway 278.
8 We all know about traffic on 278 but at three o'clock
9 in the morning, or there about, the traffic on those
10 streets, which apparently are largely commercial,
11 certainly would be extremely limited and so the number
12 of vehicles using those streets at that hour of the
13 night -- morning, is certainly a factor that should be
14 taken into account in determining the matter of
15 reasonable suspicion.

16 As Taylor said, that an individual's innocence
17 and lawful actions, made in certain situations, combine
18 to suggest criminal activity, citing the Illinois
19 versus Wardlaw case. ? State v. Taylor.

20 An example of conduct justifying a stop being
21 ambiguous and susceptible of the defendant's
22 explanation, in other words. Specifically, Terry v.
23 Ohio recognized the officers could detain the
24 individuals to resolve the ambiguity of their actions.

25 Ambiguity in this particular case is not only

1 the location of where they were stopped, the time they
2 were stopped, the traffic in the area where the crime
3 was committed, that is, in the area of the shopping
4 center and the method of their driving extremely slowly
5 -- the officer said, Practically hardly moving. All of
6 those things, in my view, constitute a totality of
7 circumstances in which reasonable suspicion justifiably
8 existed in this particular case for the Officer to make
9 a stop and question. And therefore the motion to
10 suppress is respectfully denied.

11 I'll note, Mr. Walker, your exception to that,
12 of course which means the record will be preserved for
13 Appellate Review.

14 MR. WALKER: Thank you, Your Honor.

15 (Whereupon Hearing concluded at 4:16 p.m.)

16 ----- END OF TRANSCRIPT OF TESTIMONY -----
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Deborah E. Everett, Court Reporter and Notary Public for the State of South Carolina at large, do hereby certify:

That the foregoing testimony/dialogue was taken before me on the date at the time and location stated on page 1 of this transcript; and that the foregoing transcript of that testimony/dialogue is a true, accurate, and complete record to the best of my ability.

I further certify that I am neither related to nor counsel for, nor employed by any party to the investigation, nor am I financially interested in the investigation.

The original of this transcript and any copy of same is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature April 8, 2014.



DEBORAH E. EVERETT
Notary Public, State of South Carolina
My Commission Expires 8/9/2022

Deborah E. Everett
Court Reporter and Notary Public
State of South Carolina at Large
My Commission Expires:
August 9, 2022

 ORIGINAL

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF BEAUFORT) 2010 GS 07 2482; 2483; 2484

3

4 STATE OF SOUTH CAROLINA)
)
 5)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 ANDRE DeCOSTA)
)
 9 Defendant)

10

Beaufort, South Carolina
 July 25, 2011/July 27, 2011

11

12 B E F O R E :

13 HONORABLE G. THOMAS COOPER, Judge

14

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

16 For the State:

C. RANKIN, Esq.
 S. THORNTON, Esq.
 Assistant Solicitors

17

18 For the Defendant:

M. WALKER, Esq.

18

19 Reporter::

DEBORAH EVERETT

19

20

21

HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 Summerville, SC 29485

22

23

24

25

I N D E X

	Direct-Redirect	Cross-Recross
1		
2		
3	Motion	8
4	CHRISTOPHER GONZALES	
5	By Mr. Thornton	8
6	(Portion not available	
7	for transcription,	
	afternoon of 7 25 2011)	
8	Waiver of Jury	12
9	Motion	16
10	JULIAN THOMAS	
11	By Mr. Thornton	17
12	No Cross Exam.	
13	TRISHA BRUBAKER	
14	By Mr. Thornton	20
15	No Cross Exam.	
16	JOHN DeSTASIO	
17	By Mr. Thornton	23
18	by Mr. Walker	26
19	CLIFFORD LIGATO	
20	By Mr. Thornton	29
21	By Mr. Walker	32
22	CHRIS GONZALES	
23	By Mr. Thornton	33
24	By Mr. Walker	43
25		

	Direct-Redirect	Cross-Recross
1 INDEX CONTINUED:		
2		
3 JAMES DUKE		
4 By Mr. Thornton	50	
5 by Mr. Walker		67
6 ANTHONY COTTON		
7 By Mr. Thornton	68	
8 By Mr. Walker		75
9 HUE TANG		
10 By Ms. Rankin	83	
11 By Mr. Walker		85
12 DANIEL RUSSELL		
13 By Mr. Thornton	86	
14 By Mr. Walker		96
15 JOSEPH BABKIEWICZ		
16 By Mr. Thornton	101-145	
17 By Mr. Walker		113
18 Discussion re		
19 voluntariness of		
20 statement	147	
21 Ruling by the		
22 Court	182	
23 Discussion with		
24 Defendant	183	
25 Court's verdict		
on csae	185	

1 INDEX CONTINUED:

2:

3 Motions 192

4 Sentence of
5 the Court 200

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	EXHIBITS			
			For ID	IN EV.
1				
2				
3	S-1	Computer disk		
4	S-2	VCR tape from Ligato's		52
5	S-3	Disk from Car Camera		42
6	S-4	Black tee shirt		57
7	S-5	Black ski mask		58
8	S-6	Black gloves		58
9	S-7	Head scarves		59
10	S-8	Gloves		60
11	S-9	Black ski mask		60
12	S-10	Two lighters		61
13	S-11	Wallet		62
14	S-12	Ax		55
15	S-13	Glass piece from ax		
16	S-14	Brown jacket		63
17	S-15	Clothing		64
18	S-16	Photo of clothing		65
19	S-17	Photo of clothing		66
20	S-18	Cell phone	66	67
21	S-19	Photo of fire		88
22	S-20	Photo of fire		88
23	S-21	Disk photos of jewelry	31	32
24	S-22	Map	37	50
25	S-23	SLED Forensics Report		85

	EXHIBITS		
		For ID.	IN EV.
1			
2			
3	S-24 SLED Miranda form		90
4	and statement		100
5	S-25 Bluffton Police		
6	Miranda form		123
7	S-26 Interview affidavit		
8	Bluffton Police		104
9	S-27 Redacted transcript		
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 EXHIBITS CONTINUED

2 Court's Exhibit 9 Transcript of

3 interview. p. 110

4 10 CDs of interview 181

5 11 Matthew Walker notes 182

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The within matters came before the Court on July
2 26, 2011)

3 THE COURT: Solicitor, is the State ready?

4 MR. THORNTON: The State's ready.

5 THE COURT: Is the Defense ready?

6 MR. WALKER: Defense is ready.

7 THE COURT: Call your case.

8 MR. THORNTON: We did have a couple of pre-trial
9 matters.

10 THE COURT: Let's put on the record what we did.

11 MR. THORNTON: Thank you, Judge. May it please the
12 Court?

13 The State is prepared to go forward on the case of
14 the State versus Andre DeCosta, Indictment Numbers 2010
15 GS 7 2482, 2483 and 2484, charging him with grand lar-
16 eny, Ten Thousand Dollars or more, burglary in the sec-
17 ond degree, violent, and arson in the third degree,
18 respectively.

19 Your Honor, those are the Indictments.

20 THE COURT: The Court has been advised of the pre-
21 vious conferences with the Defendant, and that the De-
22 fendant, with the consent of the State, intends to waive
23 his right to a jury trial and to be tried by the Judge
24 alone.

25 Rule 14 of the Rules of Criminal Procedure provide

1 such a waiver can be done only with approval of the
2 Solicitor and the Trial Judge.

3 Of course, I need to inquire, Mr. DeCosta, of you
4 as to your knowledge of a waiver of your right to a
5 jury trial.

6 Mr. DeCosta, would you please stand and be sworn?

7 (Whereupon, the Defendant, Andre DeCosta, was sworn
8 by the Clerk)

9 THE COURT: You can be seated, Mr. DeCosta.

10 Mr. DeCosta, do you understand you have an absolute
11 right to a jury trial in this case?

12 DEFENDANT: Yes, sir.

13 THE COURT: In fact, in a jury trial the jury
14 would be instructed that in order to find you guilty
15 all twelve of the jurors have to be convinced beyond a
16 reasonable doubt of your guilt in this case, before they
17 can find you guilty?

18 DEFENDANT: Yes, sir.

19 THE COURT: And if any one of the jurors does not
20 think that you are guilty beyond a reasonable doubt,
21 they cannot find you guilty. Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: So the burden is on the State at a jury
24 trial, as you know, to convince all twelve members of
25 the jury.

1 You do not have to convince the jury of anything.
2 The burden is on the State to convince a jury that you
3 are guilty, all twelve members of the jury.

4 When you are tried by a Judge alone, like me, they
5 only have convince one person, not twelve, of your
6 guilt beyond a reasonable doubt.

7 So that is the implication involved in a waiver of
8 your right to a jury trial. Do you understand that?

9 DEFENDANT: Yes.

10 THE COURT: Are you willing to give up that right
11 to a jury trial and have this case tried by the Judge
12 alone, by me?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you understand the rights I have
15 explained to you?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions you want to
18 ask me about those rights?

19 DEFENDANT: No, sir.

20 THE COURT: Do you freely and voluntarily waive
21 your right to a jury trial in this case?

22 DEFENDANT: Yes, sir.

23 THE COURT: Has anyone promised you anything or
24 threatened you or forced you in any way to get you to
25 waive your right?

1 DEFENDANT: No, sir.

2 THE COURT: Thank you. Mr. Thornton, for the re-
3 cord, does the State also concur in the waiver of his
4 right to a jury trial?

5 DEFENDANT: Yes, Your Honor.

6 THE COURT: A couple of pre-trial matters before we
7 continue in this regard.

8 I know that there's cameras in the Courtroom, and
9 that's fine. We welcome you here. My only concern is
10 that in cases of any nature that the cameras do not in-
11 trude into the attorney-client privilege, either of the
12 Defense, or in conferences involving the State in this
13 regard.

14 Certainly you are free to capture anything that
15 goes on in the Courtroom. There is no jury in this par-
16 ticular case that you would normally be prevented from
17 showing.

18 I'm just concerned and want to make sure that you
19 don't zoom on any notes that might be given. I don't
20 know what your audio capacities are but don't eavesdrop
21 on any audio conversations between any of the counsel
22 and their witnesses or the client in this regard.

23 As long as you follow those rules then you are wel-
24 come and we are glad to have you.

25 Mr. Walker, you told me in Chambers this morning

1 that you had a few more matters that you wanted to put
2 on the record regarding the motion to suppress yesterday
3 that you did not discuss at that time, and I will allow
4 you to complete the record in that regard.

5 MR. WALKER: Thank you, Your Honor.

6 Your Honor, just to note a continuing objection on
7 the matters that I had, and I just want to flesh out
8 the matters that I would be objecting to, just so it is
9 all clear for the record.

10 We object to anything that was obtained as a result
11 of the stop, to include anything out of the vehicle, any
12 evidence that was obtained from the stop of the vehicle.
13 Also, any statements by my client that we don't believe
14 would have been obtained without a stop of the vehicle.

15 Also, as far as they may be indirectly referenced
16 by anyone testifying, we would object to any statements
17 by the Codefendant who was the driver of that vehicle.

18 Also, there were some things taken from the vehicle
19 pursuant to a search warrant that was obtained via the
20 statements that were obtained.

21 So anything that was obtained from the vehicle or
22 came out of the vehicle, and evidence that they gained
23 by either my client or the other Defendant, and that is
24 what we would assume would be the continuing objection.

25 THE COURT: Madam Court Reporter, the record should

1 reflect that is protected in that regard, the record is
2 protected in that regard, the matters just raised by Mr.
3 Walker or that he has alluded to.

4 So we will go forward, subject to his objection,
5 without the necessity of him making a continuous objec-
6 tion as to those matters.

7 Of course, any other matters and objections he can
8 raise at the appropriate time.

9 MR. WALKER: Thank you.

10 THE COURT: Any other matters from the Defense,
11 Mr. Walker? Or from the State, Mr. Thornton?

12 (Negative response from both counsel)

13 THE COURT: Are you ready to proceed?

14 MR. THORNTON: Yes, Your Honor, this is a trial, and,
15 to start with, the State would waive any opening and go
16 straight to the case.

17 MR. WALKER: We don't have an opening.

18 MR. THORNTON: The State calls Juliann Thomas.

19 JULIANN THOMAS, being duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. THORNTON:

23 Q. Ms. Thomas, just make sure you speak into the mi-
24 crophone so the Court can hear you.

25 Who do you work for?

J. THOMAS ON DIRECT

1 A. The County Sheriff's Office in communications.

2 Q. And what is your title with the Sheriff's Depart-
3 ment?

4 A. Telecommunicator, dispatcher.

5 Q. What are your duties?

6 A. Answer phone calls and send out emergency help for
7 police, fire and ambulance.

8 Q. Did you work for Beaufort County in this capacity
9 as a dispatcher on or about November
10 29, 2010?

11 A. Yes.

12 Q. Did you -- when I say November 29th of 2010, in
13 the early morning hours, about two thirty to three
14 o'clock in the morning?

15 A. Yes, sir.

16 MR. THORNTON: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. THORNTON:

19 Q. I'm going to show you what's been marked for iden-
20 tification as State's Exhibit Number 1. Can you iden-
21 tify that?

22 A. It's a computer disk.

23 Q. Did you review this disk at my request this morn-
24 ing?

25 A. Yes.

J. THOMAS ON DIRECT

1 Q. And what is on this disk?

2 A. A copy of the nine one one call to dispatch, an
3 audio recording.

4 Q. And did you review that this morning at my request?

5 A. Yes, sir.

6 Q. And is that an accurate reflection of the calls
7 you received in regard to an arson at Dan's Fan City on
8 November 29, 2010?

9 A. Yes, sir.

10 Q. Has it been altered or changed in any way?

11 A. No, sir.

12 MR. THORNTON: Your Honor, I would ask that State's
13 Exhibit 1 be moved into evidence.

14 MR. WALKER: No objection, Your Honor.

15 THE COURT: Without objection.

16 (Disk of nine one one call entered in evidence
17 without objection as State's Exhibit 1)

18 MR. THORNTON: We'd like to play it for Your Honor.

19 THE COURT: All right.

20 (Whereupon, nine one one disk played for the Court)

21 BY MR. THORNTON:

22 Q. Ms. Thomas, is that an accurate reflection on or
23 about November 29, in the early morning hours, 2010?

24 A. Yes, sir.

25 Q. All right, and the fire they were talking about, the

J. THOMAS ON DIRECT

1 area they were referencing, what county is that in?

2 A. Beaufort County.

3 Q. Thank you very much, maam.

4 MR. THORNTON: Your Honor, I have no further ques-
5 tions.

6 MR. WALKER: No questions.

7 MR. THORNTON: Your Honor, I'd ask that she be ex-
8 cused.

9 (Witness excused by the Court without objection)

10 MR. THORNTON: The State calls Ms. Brubaker.

11 TRISHA BRUBAKER, being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. THORNTON:

15 Q. Officer Brubaker, who do you work for? I see you
16 are in uniform.

17 A. The Town of Bluffton Police Department.

18 Q. What do you do for them?

19 A. I'm a patrol officer.

20 Q. Did you work for the Town of Bluffton on or about
21 November 29, 2010?

22 A. Yes, sir.

23 Q. Did you respond on any particular calls on November
24 29, 2010?

25 A. Yes, sir.

20

T. BRUBAKER ON DIRECT

1 Q. In the early morning hours of November 29, 2010?

2 A. Yes, sir.

3 Q. And what did you respond to?

4 A. To 22 Plantation Park Drive, Suite 108, Dan's Fan
5 City.

6 Q. Where is that?

7 A. That's located in the Town of Bluffton, South
8 Carolina.

9 Q. What did you do when you got there? What was the
10 call-out for?

11 A. The call was in reference to a fire, inside the
12 business. A passer-by said he had seen flames in one
13 of the businesses by the Dairy Queen when he called it in.

14 Q. Did you respond to that?

15 A. Yes.

16 Q. Did you see any flames?

17 A. Yes.

18 Q. Where was it?

19 A. It was Dan's Fan City.

20 Q. Once again, that's in what County?

21 A. The County of Beaufort.

22 Q. Now, when you got there, what did you see?

23 A. As I was approaching before I turned into the Plaza
24 I saw a small line of flames at the front of the roof,
25 on the top of the roof.

T. BRUBAKER ON DIRECT

1 Q. So no question but that there was a fire when you
2 got there?

3 A. No, there was a fire. As I turned into the Plaza
4 I went toward the back, and as I went towards the back
5 I noticed the back portion of the business was completely
6 engulfed in flames.

7 Q. When you got there and went toward the back and saw
8 the fire, what did you do at that point?

9 A. As I went toward the business, I advised dispatch
10 to have fire respond quickly to the adjacent businesses.

11 Q. So describe the building?

12 A. It's kind of adjacent businesses on these buildings.
13 They're next door to one another. It's like a strip
14 mall.

15 Q. So business after business?

16 A. Yes, like a strip mall. Businesses adjacent to one
17 another, small businesses, a large building.

18 Q. So one large building with stores in between?

19 A. Yes, sir.

20 Q. So you had fire come out quickly because you were
21 afraid of fire spreading to other business, is that cor-
22 rect?

23 A. Yes, sir.

24 Q. What did you do then?

25 A. Once I advised dispatch to have them respond, I

T. BRUBAKER ON DIRECT

1 then -- my supervisor responded on the scene, and I just
2 stood by until the fire department had taken care of
3 what they needed to take care of, sir.

4 Q. And was that -- were you in any investigation at
5 that time?

6 A. No.

7 Q. So you were on scene to try to protect the scene,
8 and did you do anything else in regard to this case?

9 A. Yes, sir. After the fire department had finished
10 putting the flames out, I put crime scene tape up around
11 the perimeter of the scene and stood security to make
12 sure no one entered the business.

13 Q. After that day or after that morning, did you do
14 anything else in this case?

15 A. No, sir.

16 Q. All right, thank you.

17 MR. THORNTON: I have nothing further.

18 MR. WALKER: I have no questions.

19 (Witness excused from stand)

20 MR. THORNTON: Call Officer DeStasio.

21 JOHN DeSTASIO, being duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q. Officer DeStasio, who do you work for?

J. DeSTASIO ON DIRECT

1 A. Bluffton Police Department.

2 Q. Did you work for the Bluffton Police Department
3 back on November 29, 2010?

4 A. Yes, sir.

5 Q. And did you respond to any particular calls that
6 day?

7 A. I responded out to an active alarm. In this parti-
8 cular case it was a burglary.

9 Q. All right.

10 A. At the scene I saw that a window or windows in the
11 business were broken, and I parked my patrol car and
12 exited my vehicle. I went to the front of the business
13 and saw that several jewelry cases were smashed with
14 items missing.

15 I notified my supervisor, waited on the scene un-
16 til the key-holder arrived. Once Mr. Ligato arrived on
17 the scene -- after that I secured the scene until detec-
18 tives arrived.

19 Q. So you were there when the key-holder opened the
20 business, Mr. Ligato?

21 A. Yes, sir.

22 Q. And he allowed you entry into the business?

23 A. Yes, sir.

24 Q. Now, was it obvious there had been somebody there?
25 We heard you reference some items missing. Was it pretty

J. DeSTASIO ON DIRECT

1 obvious there had been some type of disturbance?

2 A. Yes, sir.

3 Q. Describe for me what it looked like.

4 A. The front left window next to the door was smashed
5 and when we got inside there were several jewelry cases
6 that were broken. There was glass on the floor inside
7 the business, outside the business, and items all over.
8 Items that were on the shelves.

9 Q. Then so it was obvious someone had been in there
10 and rummaged around in the jewelry cases?

11 A. Yes, sir.

12 Q. What did you do after you said you notified your
13 supervisor?

14 A. Called Sergeant Gonzales.

15 Q. And did he respond to the scene?

16 A. He responded. He checked the rear of the business,
17 checked to make sure that door was secure.

18 Then I waited for the backup to arrive.

19 Q. What did you do after that?

20 A. Two Beaufort County Sheriff's Officers, deputies,
21 arrived on the scene. Once Mr. Ligato arrived on the
22 scene, he unlocked the door for us; me and one of the
23 deputies cleared the business.

24 After the business was cleared, Mr. Ligato waited
25 outside the front of the business until Detective Duke

J. DeSTASIO ON DIRECT

1 arrived on the scene.

2 Q. And what did you do at that point? What was your
3 role at that point?

4 A. Turned the scene over to him for processing.

5 Q. After the detective got on the scene, officer, did
6 you do anything else with regard to this case?

7 A. I met up with the officer over at Walgreen's, Offi-
8 cer Babkiewicz, where the vehicle was stopped, and I
9 transported Mr. Hamilton.

10 Q. I have no further questions. Officer, please
11 answer any questions Mr. Walker may have.

12 A. Yes, sir.

13 THE COURT: Mr. Walker, Cross Examination.

14 MR. WALKER: Thank you, Your Honor. May it please
15 the Court?

16 CROSS EXAMINATION

17 BY MR. WALKER:

18 Q. Were you the first person at the scene?

19 A. Yes.

20 Q. Were you in the company of any other officers?

21 A. No, sir.

22 Q. You were in your own patrol car?

23 A. Yes, sir.

24 Q. Did the call you got that night -- had you been
25 called to the fire?

26

J. DeSTASIO ON CROSS

1 A. No, sir.

2 Q. So the only dispatch you received was to go
3 directly to an alarm sound?

4 A. Yes, sir.

5 Q. Were you at the scene of the burglary when Officer
6 Gonzales was there?

7 A. I arrived first. He pulled into -- he pulled in
8 after I did.

9 Q. And you all had-- did you all coordinate with each
10 other when you were there?

11 A. No, sir. I went to the front of the building. He
12 came and checked the rear of the building. Once I told
13 him entry was made in the front of the building, he came
14 in and he checked the back of the building and he left
15 the area.

16 Q. Do you remember what time you got the dispatch
17 call to go to the alarm sounding?

18 A. Two forty-seven A.M.

19 Q. And do you recall what time you actu-
20 ally arrived at the jewelry store?

21 A. About two fifty-eight.

22 Q. And when you arrived at two fifty-eight, describe
23 for me what you did when you arrived?

24 A. When I arrived at the front of the business I saw
25 that the front window was smashed. I got out of my

27

J. DeSTASIO ON CROSS

1 patrol car, walked in front up to the business, and
2 that's when I saw display cases broken inside the bus-
3 iness.

4 Q. And you also had some contact with officers via
5 radio after you had viewed the business?

6 A. Yes.

7 Q. How long after you arrived there did you talk to
8 the other officer?

9 A. Once I got out of the car and made my way to the
10 front of the business, that's when I informed Sergeant
11 Gonzales.

12 Q. Did he have any information to relate to you?

13 A. Not at that time.

14 Q. Do you know what he did after you told him it was
15 broken into?

16 A. I believe he went to check the area for any ve-
17 hicles leaving.

18 Q. And you stayed there at the jewelry store for how
19 long?

20 A. Just under an hour.

21 Q. You said you arrived right before Officer Gonzales.
22 Was he right on your heels? Were you all pretty much
23 there at the same time or were you waiting around for
24 him?

25 A. He was probably about five minutes behind me.

J. DeSTASIO ON CROSS

1 Q. So almost simultaneously?

2 A. Almost simultaneously, yes, sir.

3 Q. And the only thing you reported to him was the win-
4 dow was smashed and it looked like somebody had been in
5 there?

6 A. Yes, sir..

7 Q. I don't have anything else.

8 THE COURT: Any Redirect?

9 MR. THORNTON: No, sir. Nothing, Judge.

10 (Witness excused from stand)

11 THE COURT: Call your next witness.

12 MR. THORNTON: We would call Clifford Ligato.

13 CLIFFORD LIGATO, being duly
14 sworn, testified as follows:

15 MR. THORNTON: There are a few things we need to
16 get pre-marked, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. THORNTON:

19 Q. Mr. Ligato, where do you work?

20 A. Ligato's Fine Jewelry.

21 Q. And where is that located?

22 A. At 80 Baylor Drive in the Publix Shopping Center
23 in Bluffton.

24 Q. And is that in the County of Beaufort?

25 A. Yes, sir.

C. LIGATO ON DIRECT

1 Q. Mr. Ligato, I realize some of the questions I'm
2 going to ask you may sound silly, but did you own Ligato's
3 on or about November 29, 2010, and in the early morning
4 hours of November 29, 2010?

5 A. Yes.

6 Q. And at that time did you respond out to the store
7 after being notified by law enforcement?

8 A. I did.

9 Q. And what did you find when you got there?

10 A. One of the front windows was smashed. One of the
11 shelf cases were busted out and a lot of watches and
12 things were missing.

13 Q. Mr. Ligato, did anybody have permission to go in
14 your store and move any merchandise in the early morn-
15 ing hours prior to your arrival?

16 A. No.

17 Q. What time do you normally close the business?

18 A. Five thirty.

19 Q. So this was obviously when the business -- this
20 obviously occurred when the business was closed and
21 locked. Is that correct?

22 A. Yes, sir.

23 Q. How much in the way of jewelry, Mr. Ligato, did
24 an inventory reveal?

25 A. Close to Fifteen Thousand.

C. LIGATO ON DIRECT

1 Q. So Fifteen Thousand Dollars worth of jewelry was
2 missing?

3 A. Yes, sir.

4 Q. And did you get a lot of that merchandise back?

5 A. Yes, sir.

6 Q. Mr. Ligato, I'm going to hand you what's been
7 marked State's Exhibit 21, sir. Do you recognize that
8 disk?

9 A. I've never seen that disk before.

10 Q. Let me ask you this, did you review some photographs
11 on a computer disk this morning?

12 A. Yes, I did.

13 Q. And are those -- were those photographs of things
14 taken from your store?

15 A. Yes, sir.

16 Q. All right.

17 MR. THORNTON: Your Honor, since there is no jury
18 in the room -- I thought Mr. Ligato had actually viewed
19 this, the CD itself.

20 I'm going to need to let him view this before pub-
21 lication to Your Honor.

22 WITNESS: They look alike.

23 (Brief pause in the proceeding)

24 MR. MATTHEWS: I wouldn't have any objection to the
25 foundation if these were items . .

C. LIGATO ON DIRECT

1 THE COURT: I understand.

2 MR. THORNTON: At this time I would ask that these
3 photographs be moved into evidence as State's Exhibits
4 21.

5 THE COURT: State's 21 in evidence, subject to
6 objection.

7 BY MR. THORNTON:

8 Q. Mr. Ligato, does your business have a security
9 system or a video camera?

10 A. It does.

11 Q. On that night or early morning of November 29,
12 2010, did you turn over a VCR tape from your security
13 camera to the Bluffton Police Department?

14 A. I did.

15 Q. Other than conversations with my office, did you
16 have anything else to do with this incident?

17 A. No.

18 Q. Thank you. I have no other questions.

19 CROSS EXAMINATION

20 BY MR. WALKER:

21 Q. Good morning, Mr. Ligato. You said there was about
22 Fifteen Thousand Dollars worth of merchandise taken?

23 A. Yes.

24 Q. And when you say Fifteen Thousand, I'm assuming
25 that is the retail value?

C. LIGATO ON DIRECT

1 A. Yes, sir.

2 Q. And what is mark-up generally?

3 A. Watches come pre-marked-up. It all depends. It
4 could be double.

5 Q. And so retail value of Fifteen thousand and approxi-
6 mate wholesale Eight Thousand?

7 A. Sounds about right.

8 Q. And if you got most of that back, and you said you
9 had, was there anything you didn't get back?

10 A. A lot of stuff I got back that was stolen had been
11 damaged. Crystals on the watches were busted. They
12 were no good to me.

13 Q. I was just trying to see if any items were unac-
14 counted for. You got it back but it was damaged?

15 A. Yes, sir.

16 Q. I don't have any other questions.

17 MR. THORNTON: No further questions.

18 THE COURT: You may step down.

19 (Witness excused from stand)

20 MR. THORNTON: Call Sergeant Gonzales.

21 CHRISTOPHER GONZALES, being
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q. Sergeant Gonzales, who do you work for?

C. GONZALES ON DIRECT

- 1 A. Bluffton Police Department.
- 2 Q. And what do you do for them?
- 3 A. I'm a patrol sergeant for Team D.
- 4 Q. What did you do for the Bluffton Police Department
- 5 back on November 29, 2010?
- 6 A. I was the patrol supervisor.
- 7 Q. And did you respond on any particular calls that
- 8 day?
- 9 A. Yes, I did.
- 10 Q. And what call did you respond to, or calls?
- 11 A. The first call I responded to was a structure fire,
- 12 and the second one was a burglar alarm.
- 13 Q. Where was the structure fire?
- 14 A. At 22 Plantation Drive, Dan's Fan City, in the Town
- 15 of Bluffton.
- 16 Q. And what did you see when you got there?
- 17 A. I saw the back of the building fully engulfed in
- 18 fire.
- 19 Q. And what did you do, if anything, at that scene?
- 20 A. First at that scene I parked toward the entrance,
- 21 and Officer Brubaker was closer to the fire, just to se-
- 22 cure it.
- 23 Q. What next?
- 24 A. I secured the scene and another call come out.
- 25 Q. What was that call for?

C. GONZALES ON DIRECT

1 A. That was a ten ninety, an alarm. Prior to that I
2 advised Officer DeStasio to stay alert in case this
3 fire was a diversion for an alarm.

4 Q. What did you do upon receiving this second call?

5 A. I left the fire scene and then I headed to the
6 alarm at Ligato's Jewelry Store.

7 Q. Let me ask you this question. About what time was
8 it approximately when you got the first call?

9 A. First call was approximately two thirty-eight.

10 Q. And what time did the second call come in?

11 A. Approximately two forty-eight.

12 Q. Did you respond down to Ligato's Jewelry Store at
13 that time?

14 A. I did.

15 Q. What did you see when you got there?

16 A. I drove to the back and I saw DeStasio up front.
17 He advised me that somebody had gained entry and that
18 stuff was missing.

19 Q. Did you -- were you at the front of the store or
20 the back?

21 A. I was at the rear.

22 Q. When you were having this conversation with the
23 other officer was this via radio?

24 A. It was radio.

25 Q. What did you do upon being given information that

C. GONZALES ON DIRECT

1 it looked like a break-in in the jewelry store? An en-
2 try into the store?

3 A. What I did was I saw another vehicle by McCullom
4 Road, so I was trying to expedite going to the rear and
5 getting assist from Officer DeStasio to locate the ve-
6 hicle on McCullom Road.

7 Q. And did you see that vehicle?

8 A. I did not.

9 Q. Did you see any other vehicles?

10 A. Yes, I did.

11 Q. And what other vehicle did you see?

12 A. When I came up to 278 McCullom Road, I looked left
13 and right on 278 and I observed a vehicle coming out of
14 Westberry Park for approximately a mile real slow, which
15 drew my attention to it in the area that it was.

16 So I tried to catch that vehicle to investigate
17 it.

18 Q. Now, how long after -- and I realize these are
19 approximate times -- approximately how long afterward
20 then did you see this vehicle on State's 22 here?

21 A. Within a couple of minutes.

22 MR. THORNTON: Your Honor, the Court's indulgence
23 for one moment.

24 (Brief pause in proceeding)

25 MR. THORNTON: Your Honor, just to put it on the

C. GONZALES ON DIRECT

1 record, I have marked for identification purposes a map
2 of the Bluffton area, which I'll get into in a minute.

3 Just for identification, State's 22.

4 BY MR. THORNTON:

5 Q. Sergeant, I'm going to ask you to look at what's
6 been marked for identification as State's 22. Do you
7 recognize that, sir?

8 A. Yes, sir.

9 Q. What is it?

10 A. It's an area map of Bluffton, a certain area of
11 Bluffton off of 278.

12 Q. Do you need me to move it closer for you to see?

13 A. I can see it.

14 Q. Okay, there are some marks on that. It looks like,
15 for lack of a better word, a green pentagon and a purple
16 circle.

17 Can you tell me what those marks are?

18 A. The green mark is Ligato's Jewelry Store at 80
19 Baylor Drive, and the purple one is 22 Plantation Drive,
20 Dan's Fan City.

21 Q. So are those -- does that accurately represent the
22 two crime scenes that you responded to on the morning of
23 November 29, 2010?

24 A. Yes, sir.

25 Q. Can you tell me on the map approximately where you

C. GONZALES ON DIRECT

1 saw the car that you referenced?

2 A. Half a mile approximately, or less. -- Right at
3 the circle there, at Westberry Park.

4 Q. The circle -- would that be about halfway between
5 these two crime scenes?

6 A. Yes, sir.

7 Q. I know we went into this at a pre-trial yesterday,
8 but about how far is it between Dan's Fan City and
9 Ligato's?

10 A. Half a mile, approximately.

11 Q. Is it about half a mile from the crime scenes, from
12 Ligato's to Dan's Fan City?

13 A. Yes, sir.

14 Q. Is it about half a mile to where you saw the sec-
15 ond vehicle?

16 A. Yes, sir.

17 Q. And is that second vehicle the vehicle you stopped?

18 A. Yes, sir.

19 Q. Tell me about what you did in relation to the
20 stop?

21 A. I was at McCullom Road and 278 when I observed a
22 vehicle that appeared or was suspicious to me through
23 my years of experience in the strategic location of the
24 incident, and I proceeded down 278, drove up to the ve-
25 hicle, started running the tag, and then I activated my

C. GONZALES ON DIRECT

1 blue light at 278 Simmonsville Road and we got to the
2 Walgreen's parking lot.

3 Q. When you got -- you pulled the vehicle over?

4 A. Yes, sir.

5 Q. And after you pulled the vehicle over, did you re-
6 ceive any information about the tag?

7 A. Yes, sir. It was suspended.

8 Q. Did you at that point -- what did you do after that?
9 After receiving that information?

10 A. I proceeded to do a rear side passenger stop on the
11 vehicle.

12 Q. What does that mean?

13 A. That means I traditionally go to the rear side at
14 an angle for officer safety.

15 Q. Was there anything unusual?

16 A. Yes, sir, there was a subject laying in the back
17 seat who was later identified as Andre DeCosta.

18 Q. Do you see Mr. DeCosta in the Courtroom?

19 A. He's right over there.

20 Q. You indicated the young man seated next to Matthew
21 Walker, his attorney?

22 A. Yes.

23 Q. Where was he at, sir?

24 A. He was laying in the back seat. It alarmed me and
25 I jumped back and ordered him to sit up and put his hands

C. GONZALES ON DIRECT

1 up where I could see them.

2 Q. What happened after that?

3 A. After that I started obtaining information from
4 both the subjects. I also observed he was straddling
5 something in the middle with a brown jacket over it.

6 I started getting their names and their informa-
7 tion, and I advised them why I stopped them.

8 Q. Now, let me ask you a question. Was there anything
9 unusual about the way they were dressed?

10 A. They were all dressed in black. Both of them were
11 sweating, appeared to be very nervous, and the way he
12 was sitting in the back, laying down, that drew my at-
13 tention.

14 So I requested for back-up.

15 Q. Who was laying down in the back?

16 A. Andre DeCosta.

17 Q. And after you radioed for backup what did you do?

18 A. After back-up came, I was investigating the situa-
19 tion. I asked them where they were coming from and the
20 driver, Anthony, told me that he had picked Andre up.

21 Q. Officer, don't say what Mr. Hamilton or anybody
22 else said. Only the Defendant.

23 A. He told me he was at work in Beaufort.

24 Q. Who is he?

25 A. Andre DeCosta.

C. GONZALES ON DIRECT

1 Q. And what happened after that?

2 A. I asked him his name and he told me his name was
3 Michael Scott. I ran an RMS check on both of the sub-
4 jects and then I asked for consent to search the vehicle.

5 Q. Who did you ask for consent to search?

6 A. Anthony Hamilton.

7 Q. And did he give you consent to search?

8 A. Yes.

9 Q. Did you start a search of the vehicle?

10 A. I went to the driver's side, pulled Mr. Hamilton
11 out and detained him; advised him he was under arrest.
12 After I pulled him out, advising him he was detained,
13 Mr. Andre DeCosta said he wasn't going to be detained.
14 He jumped out of the vehicle, the rear of the vehicle,
15 and the deputy that was assisting me had to run over
16 to that side of the car and throw him on the ground
17 with a Taser for officer's safety.

18 Once we got him secured, I went to the vehicle.

19 Q. What did you see in there?

20 A. I went to the back seat and lifted the jacket up.
21 There was watches and jewelry in the back.

22 Q. Watches and jewelry -- do you remember how many
23 watches? A couple or several?

24 A. I saw a bag full of jewelry that was sitting there.

25 Q. What did you do at that point?

C. GONZALES ON DIRECT

1 A. I exited the vehicle and advised the deputy to
2 pick him up and let's put him in the car, and then I ad-
3 vised him, you're under arrest.

4 Then I secured the vehicle for a search warrant.

5 Q. Did you do any further search at that time?

6 A. I did not.

7 MR. THORNTON: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. THORNTON:

10 Q. I'm going to show you what's been marked State's 3.
11 Do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. A traffic in-car camera from that traffic stop.

15 Q. And is this an accurate representation of what oc-
16 curred?

17 A. Yes, sir.

18 Q. Has it been altered or changed in any way?

19 A. No, sir.

20 Q. This is the same as was shown in a pre-trial hear-
21 ing?

22 A. Yes, sir.

23 MR. THORNTON: Your Honor, I'm going to ask that
24 State's Exhibit 3 be moved into evidence.

25 THE COURT: Subject to objection.

C. GONZALES ON DIRECT

1 MR. THORNTON: I'm just going to place it with the
2 Court Reporter. You have already seen this video.

3 Thank you.

4 Your Honor, Court's indulgence for one moment.

5 (Brief pause in proceeding)

6 MR. THORNTON: I have no further questions.

7 THE COURT: Mr. Walker.

8 CROSS EXAMINATION

9 BY MR. WALKER:

10 Q. Good morning, Sergeant Gonzales.

11 A. Good morning.

12 Q. I'll jump right into it. Hopefully not too much.

13 First, I want to try to go into something you just tes-
14 tified to, that the officer who was assisting you threw
15 down Mr. DeCosta with the use of a Taser.

16 He didn't Tase Mr. DeCosta?

17 A. No, he didn't.

18 Q. He just had it out so he would lay on the ground?

19 A. Yes, sir.

20 Q. Okay, and the pronoun just means to lay down flat?

21 A. Until we placed him in custody.

22 Q. Just so everybody is clear as to the sequence of
23 events, and also about the stop -- you just testified
24 that you obtained consent to search, and this was after
25 you had pulled over the vehicle, using your blue lights?

C. GONZALES ON CROSS

1 A. Yes.

2 Q. Was Mr. Hamilton handcuffed when you asked him
3 this?

4 A. No, sir.

5 Q. You just testified that you had told, I think, Mr.
6 Hamilton and Mr. DeCosta -- you told Mr. Hamilton he
7 was being detained?

8 A. Yes, sir.

9 Q. At some point?

10 A. Yes, sir.

11 Q. But not under arrest?

12 A. Yes, sir.

13 Q. And that's when Mr. DeCosta got out of the car?

14 A. Yes, sir.

15 Q. And so you asked Mr. Hamilton for consent to search
16 the car before you detained him or made the statement
17 that caused Mr. DeCosta to become agitated?

18 A. Yes, sir.

19 Q. Okay, and was Mr. Hamilton free to leave if he had
20 so chosen at that point?

21 A. No, not at that time.

22 Q. What is your usual practice if you pull over a car
23 and it has an expired tag or invalid tag, the offense for
24 which the tag came back after you ran it?

25 Would they receive a ticket for it?

C. GONZALES ON CROSS

- 1 A. Yes, sir.
- 2 Q. A blue ticket?
- 3 A. A driving ticket.
- 4 Q. A blue ticket would be taken to a lower court?
- 5 A. Yes.
- 6 Q. And would you normally let them drive the car away?
- 7 A. No, sir.
- 8 Q. They'd have to get another ride?
- 9 A. Yes, sir.
- 10 Q. And then tow the car?
- 11 A. Yes, sir.
- 12 Q. And the car in question was not registered to either
- 13 Mr. Hamilton nor Mr. DeCosta?
- 14 A. That's correct.
- 15 Q. You also testified just now when Mr. Thornton was
- 16 kind of going through just a narrative of what happened
- 17 that you were looking for one car and didn't find it,
- 18 and then you saw the car driven by Mr. Hamilton that had
- 19 Mr. DeCosta in it, and you said that it was driving
- 20 slowly which brought your attention to it. Is that cor-
- 21 rect? Do you remember testifying . .
- 22 A. Yes, sir, I saw it.
- 23 Q. You only saw two cars?
- 24 A. No, that's not true.
- 25 Q. So you saw other cars in the area?

C. GONZALES ON CROSS

1 A. I saw that vehicle on McCullom Road prior to this
2 vehicle.

3 Q. And you were looking for that car?

4 A. Yes, sir.

5 Q. But you couldn't find it?

6 A. That's correct.

7 Q. And then you saw Mr. Hamilton's car?

8 A. That's correct.

9 Q. And that's the only other car you saw?

10 A. Yes, sir.

11 Q. Coming out of Westberry?

12 A. Yes, sir.

13 Q. And there was no other car to draw your attention
14 to at the time you saw Mr. Hamilton's car?

15 A. It drew my attention for the speed he was going.
16 The way he was coming out of . . .

17 Q. Had he been driving faster, you would have ignored
18 him completely?

19 A. No, not necessarily.

20 Q. Do you recall giving testimony in here yesterday?
21 I'm not going to belabor all that, but I just want to
22 go over a couple of things.

23 Hopefully your memory is good enough to remember,
24 so we don't have to bother with looking things up.

25 Do you remember testifying yesterday the distance

C. GONZALES ON CROSS

1 between the arson was one point two miles to the jewelry
2 store?

3 A. Briefly.

4 Q. And do you remember testifying that the distance
5 between the burglary to where you saw Mr. Hamilton's
6 car turning onto 278 out of Westberry Road is point
7 seven miles?

8 A. Yes.

9 Q. Now, Westberry Park Road, looking at State's Ex-
10 hibit 22 here -- if you come back down Westberry Park
11 Road, two blocks, and isn't this all residential?

12 A. If you come down Westberry and cross 278, there
13 is a large subdivision.

14 Q. With a golf course, isn't that correct?

15 A. I believe so.

16 Q. And there is also a lot of commercial activity as
17 it is a major thoroughfare?

18 A. Not at two thirty in the morning, but there is al-
19 ways cars going on 278.

20 Q. And in fact you pulled over Mr. Hamilton's car
21 into a Walgreen's parking lot at two thirty in the
22 morning?

23 A. Yes, sir.

24 Q. And it was open for business?

25 A. Yes, sir.

C. GONZALES ON CROSS

1 Q. The pharmacy is there?

2 A. Yes, sir.

3 Q. Cars coming in and out of the parking lot where
4 you had him pulled over?

5 A. I don't remember.

6 Q. Would you be surprised if the video indicated ac-
7 tivity?

8 A. No, sir.

9 Q. I'm not super familiar with Bluffton but this is a
10 large golf course. What's the name of it?

11 A. I believe it's Bellfair.

12 Q. And the actual entrance into Bellfair is where
13 you were?

14 A. Correct, turning onto 278.

15 Q. And this -- behind Westberry Park, does this resi-
16 dential area have a name?

17 A. Westberry Park Subdivision.

18 Q. It's gated though? There's a gate and a name of
19 Westberry Parkway?

20 A. Yes.

21 Q. The gated subdivision, so everybody leaving this
22 gated subdivision would have to have gone down Westberry
23 Parkway to get out?

24 A. I believe so.

25 MR. WALKER: I don't have -- beg the Court's

C. GONZALES ON CROSS

1 indulgence.

2 (Brief pause)

3 BY MR. WALKER:

4 Q. The last thing I'll ask is you had the tape of
5 Hamilton and DeCosta, and you actually specifically told
6 Andre DeCosta he wasn't under arrest; he was being de-
7 tained?

8 A. No. I told that to Anthony Hamilton.

9 Q. You're absolutely correct on that. I mis-remembered
10 my hearing of the tape. The video has DeCosta in the
11 frame but you are hearing the conversation with Hamilton
12 on the frame from your lapel mike. Is that correct,
13 on the video?

14 A. Can you repeat the question?

15 Q. There is a large portion of the video where it is
16 showing DeCosta being detained and watched over by your
17 supporting officer, while you were having a conversation
18 with Hamilton off-screen?

19 A. That's correct.

20 Q. But you can hear that conversation because of your
21 lapel mike?

22 A. I can hear it because I was there.

23 Q. I'm talking about that we were hearing your lapel
24 mike, were we not?

25 A. On the video.

C. GONZALES ON CROSS

1 Q. When you are saying you are being detained you
2 were talking to Hamilton, but we are seeing DeCosta?

3 A. Correct.

4 Q. When you looked in the car and lifted up the jacket
5 to see what was under there, neither had been placed
6 under arrest at that point?

7 A. That's correct.

8 Q. I have no further questions.

9 MR. THORNTON: Just one thing. I apologize. If
10 I did not, I would ask that State's Exhibit 22 be admit-
11 ted into evidence.

12 MR. WALKER: No objection.

13 (Map entered in evidence without objection as
14 State's Exhibit 22)

15 (Witness excused from stand)

16 MR. THORNTON: Officer Duke.

17 JAMES E. DUKE, JR., being
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q. Mr. Duke, who do you work for?

22 A. Bluffton Police Department.

23 Q. What do you do for them?

24 A. I'm a police officer assigned to the criminal
25 investigation division as detective.

J. DUKE ON DIRECT

1 Q. Detective, did you work for Bluffton on or about
2 November 29 of 2010?

3 A. Yes, sir.

4 Q. And did you respond to any particular scenes on
5 that day in the early morning?

6 A. Yes.

7 Q. Did you have any connection to the case we are
8 here about today?

9 A. Yes.

10 Q. What was your connection?

11 A. I was called out to 80 Baylor Drive. We got a
12 call to process a crime scene.

13 Q. And when you got to the scene at Ligato's, what
14 did you see?

15 A. Officer DeStasio was on the scene, and Mr. Ligato
16 was in the door about to let us go into the business.

17 Q. What did you see when you saw it?

18 A. Shattered display cases.

19 Q. And did there appear to be items moved around or
20 missing?

21 A. Yes.

22 Q. Now, did you receive any security footage while
23 you were there?

24 A. Yes, sir.

25 MR. THORNTON: Detective, I'm going to hand you

J. DUKE ON DIRECT

1 -- may I approach?

2 THE COURT: Yes, sir.

3 BY MR. THORNTON:

4 Q. Detective, I'm going to hit you with State's Exhibit
5 2 and ask if you can identify that?

6 A. Yes, the VHS tape from Mr. Ligato's store.

7 Q. Did you review that with me this morning?

8 A. Yes, sir.

9 Q. And is it in the same condition was when you re-
10 trieved it?

11 A. Yes, it is.

12 Q. On the 29th?

13 A. Yes.

14 Q. Has it been altered or changed in any way?

15 A. No.

16 MR. THORNTON: Your Honor, I would ask that State's
17 Exhibit 2 be admitted into evidence.

18 MR. WALKER: No objection.

19 (Tape of security footage admitted as State's 2,
20 without objection)

21 MR. THORNTON: I will play it for you.

22 (Exhibit played for the Court)

23 BY MR. THORNTON:

24 Q. I realize the first portion is kind of hard to see
25 but the other one, the left one, is that the front window?

J. DUKE ON DIRECT

1 A. Yes.

2 Q. The front window that has been referenced as being
3 broken?

4 A. Yes, sir.

5 Q. Obviously, Detective, that is time-lapsed photogra-
6 phy. The next images were of a person in uniform check-
7 ing out the business, is that correct?

8 A. Correct.

9 Q. And is that security footage actually from the cam-
10 eras, is that correct?

11 A. Right, yes.

12 Q. Detective, did you go to any other scenes that
13 morning?

14 A. No, sir.

15 Q. Did you have any other duties involving this case?

16 A. Yes.

17 Q. All right, did you do any search warrants or
18 search anything in this case?

19 A. Yes.

20 Q. And what was that?

21 A. The vehicle that was from the traffic stop of Ser-
22 geant Gonzales.

23 Q. Is that the vehicle that Mr. DeCosta was laying in
24 the back seat of?

25 A. Yes, sir.

J. DUKE ON DIRECT

1 Q. And when you searched the vehicle, what did you
2 see?

3 A. Inside the vehicle was items to include a bag full
4 of jewelry, an ax, pieces of clothing.

5 Q. Let me ask you a quick question. I'm going to hand
6 you what has already been moved into evidence as State's
7 Exhibit 21. Did you review the photographs of this disk
8 with me this morning?

9 A. Yes.

10 Q. What were those photographs of?

11 A. Items of jewelry.

12 Q. Those were the pieces of jewelry, the watches and
13 such, that you actually recovered from the car Mr.
14 DeCosta was in?

15 A. Yes, sir.

16 Q. What else did you find? You said you found an
17 ax, is that correct?

18 A. Yes, sir.

19 Q. I hand you what's been marked for identification
20 only as State's Exhibit Number 12
21 and ask you if you would see if you can identify that
22 for me?

23 A. This is the ax that was recovered.

24 Q. Would you take it out, please, and actually hang
25 on just a second. Is that ax in the same condition as

J. DUKE ON DIRECT

1 when you pulled it out?

2 A. When we removed it from the vehicle there was a
3 piece of glass embedded in it. The glass was removed
4 and packaged separately.

5 Q. Other than that, has it been altered or changed
6 in any way?

7 A. No, sir.

8 Q. And that is the ax that you pulled out of the car
9 Mr. DeCosta was in?

10 A. Yes, sir.

11 MR. THORNTON: At this time I would ask that State's
12 Exhibit 12 be admitted into evidence.

13 THE COURT: Subject to objection.

14 (State's Exhibit 12, an ax, admitted subject to
15 objection by Defense)

16 MR. THORNTON: I would publish this.

17 BY MR. THORNTON:

18 Q. Detective, I'm going to hand you what has been
19 marked for identification as State's Exhibit 13, and
20 ask if you can identify that?

21 A. Yes, sir. This is the piece of glass removed from
22 the ax.

23 Q. And was that boxed -- is it inside a box?

24 A. Yes, sir.

25 Q. Was it boxed and sealed when you got it this morning?

J. DUKE ON DIRECT

1 Was the box sealed when you got it this morning?

2 A. Yes, sir.

3 Q. Did you -- was the seal popped in your presence?

4 A. Yes.

5 Q. And is that glass substantially in the same con-
6 dition as when you pulled it out of the ax?

7 A. Yes, sir.

8 MR. THORNTON: Judge, I ask that State's Exhibit
9 13 be admitted.

10 THE COURT: Subject to objection.

11 (State's Exhibit 13, piece of glass, admitted in
12 evidence subject to objection)

13 BY MR. THORNTON:

14 Q. I'm going to hand you what has been marked for
15 identification as State's Exhibit Number 4. Can you
16 identify that?

17 A. Yes, sir.

18 Q. What is that?

19 A. It's some of the black tee shirt that was recovered
20 from the vehicle.

21 Q. Is that something you recovered or that was recov-
22 ered in your presence from the vehicle?

23 A. Yes.

24 Q. And is it in substantially the same condition as
25 when you retrieved it?

J. DUKE ON DIRECT

1 A. Yes, sir.

2 Q. Has it been altered or changed in any way?

3 A. No, sir.

4 Q. And the seal on the bag, was it popped this morning
5 in your presence?

6 A. Yes, sir.

7 MR. THORNTON: I'd ask that State's Exhibit 4 be
8 admitted into evidence.

9 THE COURT: Subject to objection, State's 4 in
10 evidence.

11 (State's Exhibit 4 from black tee shirt admitted
12 as State's Exhibit 4 subject to objection)

13 BY MR. THORNTON:

14 Q. Detective, I'm going to hand you what's marked for
15 identification as State's Exhibit 5. I ask if you can
16 identify that?

17 A. Yes, sir, a black ski mask recovered from the ve-
18 hicle.

19 Q. Is this in substantially the same condition as it
20 was when it was pulled out of the vehicle?

21 A. Yes, sir.

22 Q. Has it been altered or changed in any way?

23 A. No, sir.

24 MR. THORNTON: Your Honor, I'd ask that State's
25 Exhibit 5 be admitted into evidence.

J. DUKE ON DIRECT

1 THE COURT: Also subject to objection, State's 5
2 in evidence.

3 (Ski mask admitted in evidence subject to objec-
4 tion as State's Exhibit 5)

5 BY MR. THORNTON:

6 Q. Is this what you recovered?

7 A. Yes.

8 Q. I hand you what's been marked as State's Exhibit
9 Number 6 for identification. Can you identify this?

10 A. A pair of black and white gloves that were recov-
11 ered from the vehicle.

12 Q. Are they in the same condition as when it was taken
13 from the vehicle?

14 A. Yes, sir.

15 MR. THORNTON: Judge, I'd ask that State's Exhibit
16 6 be admitted in evidence.

17 THE COURT: Subject to objection.

18 (Pair of gloves admitted subject to objection as
19 State's Exhibit 6)

20 BY MR. THORNTON:

21 Q. I hand you what's been marked for identification
22 as State's Exhibit Number 7, and ask you if you can
23 identify that?

24 A. Head scarves found in the vehicle.

25 Q. Is that in the same condition as they were when

J. DUKE ON DIRECT

1 you pulled them out?

2 A. Yes, sir.

3 Q. Have they been changed or altered in any manner?

4 A. No, sir.

5 MR. THORNTON: Judge, ask that State's Exhibit 7
6 be placed in evidence.

7 THE COURT: Subject to objection.

8 (Scarves admitted in evidence subject to objection
9 as State's Exhibit Number 7)

10 BY MR. THORNTON:

11 Q. From lack of a better word, these are bandannas,
12 head scarves?

13 A. Yes, sir.

14 Q. And these are -- one is all black and one is black
15 and white?

16 A. Yes, sir.

17 Q. And I hand you what's been marked for identifica-
18 tion as State's Exhibit Number 8, and ask if you can
19 identify this?

20 A. Yes, a pair of gloves from the vehicle.

21 Q. Are they in the same condition as when you pulled
22 them out of the vehicle?

23 A. Yes, sir.

24 Q. Have they been altered or changed in any way?

25 A. No, sir.

J. DUKES ON DIRECT

1 MR. THORNTON: I'd ask that State's Exhibit 8 be
2 admitted in evidence.

3 THE COURT: Subject to objection.

4 (Pair of gloves admitted in evidence subject to ob-
5 jection as State's Exhibit 8)

6 BY MR. THORNTON:

7 Q. These would appear to be very similar other than
8 color?

9 A. Yes, sir.

10 Q. Detective, I'm going to hand you what has been
11 marked for identification as State's Exhibit Number 9.
12 Can you identify it?

13 A. Another black mask from the vehicle.

14 Q. Is it in the same -- has it been altered or changed
15 in any way?

16 A. No, sir.

17 MR. THORNTON: I'd ask State's 9 be admitted into
18 evidence.

19 THE COURT: Subject to objection, State's 9 is in
20 evidence.

21 (Mask admitted in evidence subject to objection as
22 State's Exhibit 9)

23 BY MR. THORNTON:

24 Q. This appears to be very similar to the other one,
25 the ski mask, is that correct?

J. DUKES ON DIRECT

1 A. Yes, sir.

2 Q. I hand you what's marked for identification as
3 State's 10. Can you identify what's in that bag?

4 A. Two yellow lighters from inside the vehicle.

5 Q. Has it been altered or changed in any way?

6 A. No.

7 Q. Is it in the same condition as it was when you
8 pulled it out of the vehicle?

9 A. Yes, sir.

10 MR. THORNTON: Your Honor, I'd ask that State's 10
11 be moved into evidence.

12 THE COURT: Subject to objection, in evidence.

13 (Lighters admitted in evidence subject to objec-
14 tion as State's Exhibit 10.

15 BY MR. THORNTON:

16 Q. Detective, I hand you what has been marked as
17 State's Exhibit Number 11, and ask if you can identify
18 that?

19 A. It's a wallet with miscellaneous contents.

20 Q. Did you examine that wallet that night?

21 A. Yes, sir.

22 Q. Was there any identification in that wallet?

23 A. Yes.

24 Q. Who did the wallet belong to?

25 A. The identification was Andre DeCosta.

61

J. DUKES ON DIRECT

1 Q. You want to pull that wallet out and make sure the
2 contents -- is there actually an identification card or
3 some identification in it?

4 A. Yes, sir.

5 Q. And what name is in it?

6 A. Andre Leon DeCosta.

7 Q. Is that wallet and the contents thereof in the
8 same condition as it was when you pulled it out of the
9 vehicle?

10 A. Yes, sir.

11 Q. Have they been changed or altered in any way?

12 A. No.

13 Q. And, again, this wallet was found where?

14 A. In the vehicle.

15 Q. In a vehicle where this jewelry and other evidence
16 was found?

17 A. Yes, sir.

18 MR. THORNTON: I'd ask that State's Exhibit 11 be
19 moved into evidence.

20 THE COURT: Subject to objection, 11 is in evi-
21 dence.

22 (Wallet and contents admitted subject to objection
23 in evidence as State's Exhibit 11)

24 MR. THORNTON: Court's indulgence for one moment.

25 (Brief pause in procedure)

J. DUKES ON DIRECT

1 BY MR. THORNTON:

2 Q. Detective, I'm going to hand you what's been
3 marked for identification as State's 14. Can you open
4 that and please tell me what's in it?

5 A. It's a brown jacket that was collected from the
6 vehicle.

7 Q. Has it been altered or changed in any way?

8 A. No, sir.

9 Q. Is it in the same condition it was when you retrieved
10 it from the vehicle?

11 A. Yes, sir.

12 MR. THORNTON: I'd ask that State's 14 be admitted
13 in evidence.

14 THE COURT: Subject to objection, State's 14.

15 (Jacket admitted in evidence subject to objection
16 as State's Exhibit 14)

17 BY MR. THORNTON:

18 Q. I'm going to hand you, Detective, what's been
19 marked as State's Exhibit Number 15 and ask if you can
20 identify what is in that bag, and feel free to use a
21 glove if you need to?

22 A. This is the clothing collected from the detention
23 center worn by DeCosta and, I believe, also Hamilton.

24 Q. Has it been altered or changed since it was pulled
25 off the Defendants?

J. DUKES ON DIRECT

1 A. Yes, sir.

2 MR. THORNTON: I'd ask that State's Exhibit 15
3 be moved into evidence.

4 I understand that is the Defendant and the CO-
5 Defendant's clothing.

6 THE COURT: Subject to objection.

7 (Bag of clothing admitted subject to objection as
8 State's Exhibit 15)

9 BY MR. THORNTON:

10 Q. Without pulling it all out, have you looked at
11 this clothing?

12 A. Yes, sir.

13 Q. What color is it?

14 A. Dark in color clothing.

15 Q. And is it dark like the gloves and the mask?

16 A. Yes, sir.

17 Q. And I hand you two photographs marked as State's
18 Exhibits 16 and 17 for identification. Can you identify
19 what that is?

20 A. This is the bag that was removed from the vehicle.

21 Q. Just for record purposes, is that a photograph of
22 the bag?

23 A. Yes, sir.

24 Q. Where was the wallet, this jewelry?

25 A. Inside the bag.

J. DUKES ON DIRECT

1 Q. So the wallet of Andre DeCosta was actually found
2 in the bag with the jewelry?

3 A. Yes, sir.

4 Q. Is that a correct and accurate representation of
5 the bag as it appeared when you retrieved it from the
6 vehicle?

7 A. Yes, sir.

8 Q. Does it look like it has been changed or altered
9 in any way?

10 A. No, sir.

11 MR. THORNTON: I'd ask that State's Exhibit 16 be
12 moved into evidence.

13 THE COURT: Subject to objection.

14 (Photograph of bag admitted subject to objection
15 as State's Exhibit 16)

16 BY MR. THORNTON:

17 Q. Detective, I hand you again State's Exhibit 17,
18 and can you identify that for me?

19 A. This is a photograph of all the jewelry that was
20 removed from the bag and laid out on the table for in-
21 ventory purposes.

22 Q. Is that photograph a true and accurate representa-
23 tion of the jewelry in the bag on November 29, 2010?

24 A. Yes, sir.

25 Q. Has it been altered or changed in any way?

J. DUKES ON DIRECT

1 A. No, sir.

2 MR. THORNTON: I ask that State's Exhibit 17, a
3 photograph of the jewelry, be admitted.

4 THE COURT: Subject to objection.

5 (Photograph of jewelry admitted subject to objec-
6 tion as State's Exhibit 17)

7 BY MR. THORNTON:

8 Q. Detective, I'm going to hand you what's been marked
9 as State's Exhibit Number 18 for identification, and
10 can you identify that for me?

11 A. This is the LG cell phone. I need to check back
12 to see how we came to get it.

13 Q. Feel free to refresh with your notes.

14 A. Anthony Hamilton was in possession of this during
15 his interview.

16 Q. Who is Anthony Hamilton and what is his connection
17 with this case?

18 A. The driver of the stopped vehicle where all these
19 -- these masks, gloves and everything, the jewelry, was
20 found.

21 Q. And does that appear to be altered or changed in
22 any way?

23 A. No, sir.

24 Q. And is it still in fact sealed?

25 A. It is.

J. DUKES ON DIRECT

1 Q. And is that as it appeared when you retrieved it
2 on that date?

3 A. Yes.

4 MR. THORNTON: I would ask that State's Exhibit 18
5 be admitted.

6 THE COURT: Do you wish to object?

7 MR. WALKER: I do, Your Honor.

8 THE COURT: Subject to your objection, 18 is in.

9 (State's Exhibit 18, cell phone, admitted subject
10 to objection as State's Exhibit 18)

11 MR. THORNTON: If I could have the Court's indul-
12 gence for one moment?

13 (Brief pause in proceeding)

14 MR. THORNTON: Your Honor, at this time I have no
15 further questions.

16 THE COURT: Mr. Walker.

17 CROSS EXAMINATION

18 BY MR. WALKER:

19 Q. Did you process any of the items that you recov-
20 ered for fingerprints or DNA?

21 A. No, sir.

22 Q. No further questions.

23 (Witness excused from stand)

24 THE COURT: Let's take ten minutes and we'll start
25 back. Thank you.

1 (Whereupon, the Court took a brief recess and the
2 matter then resumed)

3 THE COURT: Mr. Thornton, you may call your next
4 witness.

5 MR. THORNTON: Thank you, Your Honor. The State
6 calls Officer Cotton.

7 ANTHONY COTTON, being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. RANKIN:

11 Q. Where do you work?

12 A. Bluffton Police Department.

13 Q. What do you do there?

14 A. I'm a detective.

15 Q. Detective, how long have you been working there?

16 A. Four years.

17 Q. Were you working there on November 29, 2010?

18 A. Yes, sir.

19 Q. Did you respond to a call at a fire on November 29?

20 A. Yes.

21 Q. What was the location of that fire?

22 A. Dan's Fan City.

23 Q. About what time did you arrive?

24 A. Approximately three thirty to four o'clock.

25 Q. What did you do when you arrived at the scene?

A. COTTON ON DIRECT

1 A. When I arrived on the scene I waited for the fire
2 department to make sure the fire was completely out.
3 Once they did, I secured the scene and photographed the
4 damage done at the location.

5 Q. What did you do to help secure the scene?

6 A. Well, there were officers on the front side of the
7 building. I stayed on the back side of the building to
8 make sure no one came into the crime scene.

9 Q. What did you do after you secured it?

10 A. After I secured the scene, I photographed the dam-
11 age to the building, notified Lieutenant Shealy from
12 SLED to come out. He informed me he would have a SLED
13 investigator first thing in the morning, at daybreak.

14 After that, I photographed like I said, and waited
15 for SLED to arrive.

16 Q. So you were actually on scene when SLED arrived?

17 A. Yes, sir.

18 Q. Do you remember about what time they got there?

19 A. SLED arrived at approximately 8:03 A.M.

20 BY SOLICITOR: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY SOLICITOR:

23 Q. I hand you what's been previously introduced as
24 State's 18. Do you recognize what I've handed you?

25 A. Yes, I do.

A. COTTON ON DIRECT

1 Q. Did you execute a search warrant on the contents of
2 that cell phone?

3 A. Yes, I did.

4 Q. What was the number that came back as the owner?

5 A. . . .

6 MR. WALKER: I have an objection, Your Honor.

7 THE COURT: Subject to your prior . . .

8 MR. WALKER: I think this may be an additional
9 ground, I promise, Judge. There was some mention in the
10 earlier part about a search warrant that was served on
11 a cell phone in Savannah, and that the Savannah Police
12 Department . . .

13 THE COURT: Is that the one? I would say that
14 would be invalid unless you can lay a foundation in
15 that regard?

16 BY SOLICITOR:

17 Q. Okay, you executed a search warrant on this. Can
18 you tell us about how you did it, about how you got the
19 search warrant?

20 A. After the search warrant was signed I went to the
21 Savannah Police Department to see Deputy Dison in their
22 Intelligence Division. She hooked the cell phone up
23 to their system and was able to retrieve data from the
24 cell phone. That is how. She gave me a report on the
25 data that was pulled from this phone.

A. COTTON ON DIRECT

1 Q. But the data was retrieved in your presence?

2 A. Yes.

3 MR. WALKER: Judge, we would challenge the execu-
4 tion of the search warrant which was conducted by the
5 police officer in Georgia.

6 I would believe a Georgia magistrate would have to
7 sign off on a seizure or a search that takes place in
8 Georgia using Georgia information.

9 Certainly they could have applied to a Georgia mag-
10 istrate for that information.

11 THE COURT: Madam Solicitor, what do you say to
12 the objection that the search across state lines is in-
13 sufficient?

14 SOLICITOR: Your Honor, the search warrant was exe-
15 cuted in Savannah, yes, but not using any kind of Georgia
16 information. This same cell phone -- it was no differ-
17 ent and technology has nothing to do with the fact it
18 was Georgia technology. Simply, just that it was tech-
19 nology that allowed the cell phone to be pulled.

20 I don't think it has anything to do with the fact
21 it was done in Georgia.

22 THE COURT: Can you tell me why it had to be done
23 in Georgia?

24 SOLICITOR: We don't have the technology to hook a
25 cell phone up and download it at the Bluffton Police

A. COTTON ON DIRECT

1 Department.

2 THE COURT: So the information that was derived,
3 was it information related to the State of Georgia, or
4 whatever came out of it?

5 I need to know if it was all information that was
6 related to the State of South Carolina?

7 SOLICITOR: Yes. The information that came off the
8 phone tells the telephone number, some games you can get,
9 the contact information -- just basic phone information.

10 It doesn't have anything specific to do with
11 Georgia, Judge.

12 THE COURT: So basically it is technology that you
13 did not have?

14 SOLICITOR: Yes, sir.

15 THE COURT: The search warrant related to the tele-
16 phone itself rather than to information in Georgia, is
17 that fair to say?

18 SOLICITOR: Yes, sir.

19 THE COURT: I'm going to overrule your objection.

20 MR. WALKER: Of course, it is part of the informa-
21 tion from the car.

22 THE COURT: I have already preserved your objection
23 to the phone itself when it came in, so that would pro-
24 tect you.

25 BY SOLICITOR:

A. COTTON ON DIRECT

1 Q. Did you pull a cell phone number?

2 A. Yes, maam.

3 Q. Can you give us that number?

4 A. It's 843 635 0952.

5 Q. And did you compare that number with the nine one
6 one records?

7 A. Yes.

8 MR. WALKER: Again, Your Honor, I don't want to be-
9 labor it, but I think I would object at this point to
10 asking the officer if he pulled it.

11 I think he testified earlier in an incident report
12 that a technician in Savannah was the one who pulled
13 all this information.

14 We would argue it was basically testifying to
15 hearsay at this point.

16 THE COURT: Was any sort of report generated? Was
17 any sort of printout retained or just information given
18 from that officer to this officer?

19 SOLICITOR: No, a report was pulled. The Detective
20 has a copy of that report as do I.

21 (Brief pause in the proceeding)

22 THE COURT: Madam Solicitor, the examination report
23 that you've given me -- I'm looking at page one of ten --
24 it indicates that the -- I believe that's the case number
25 and it indicates at the top examination report, the

A. COTTON ON DIRECT

1 examiner's name, and the department.

2 Then below that the phone examination. Can you
3 tell me whether or not that is a computer generated re-
4 port or was that typed in manually?

5 SOLICITOR: Your Honor, I believe that Detective
6 Cotton could better answer that information.

7 WITNESS: It was computer generated. She typed in
8 the information at the top and then when she hits the
9 processing button it spit out the report.

10 That information that you see in the middle -- all
11 that stuff just comes up as part of the report. It
12 takes all the information and puts it in the appropriate
13 spots.

14 THE COURT: Mr. Walker, I'm going to allow it sub-
15 ject to objection. It appears this is a computer gen-
16 erated record that was done in the presence of the offi-
17 cer himself.

18 It was not manually generated and, therefore, it
19 is not subject to human error. So I will allow that
20 information, subject to objection.

21 SOLICITOR: I would ask to have this marked as a
22 State's Exhibit for identification.

23 THE COURT: Madam Solicitor, if you would go back
24 and review the testimony that he had regarding that in-
25 formation?

A. COTTON ON DIRECT

1 The information that came from that report.

2 SOLICITOR: Yes, sir.

3 THE COURT: We're dealing with it as a matter of
4 law and I didn't get all of it down.

5 BY SOLICITOR:

6 Q. The question was what that number matched, I be-
7 lieve.

8 A. That's right.

9 Q. You said you pulled the number from the cell phone,
10 and can you give us that number again?

11 A. It's 843 635 0952.

12 Q. Did you check that with the records of dispatch
13 for the call that came out to Dan's Fan City?

14 A. To Dan's Fan City?

15 Q. Did that number you pulled from the cell phone
16 match the nine one one call to Dan's Fan City?

17 A. Yes, it did.

18 SOLICITOR: Beg the Court's indulgence.

19 (Brief pause in proceeding)

20 SOLICITOR: Thank you. That's all the questions I
21 have, Officer Cotton.

22 CROSS EXAMINATION

23 BY MR. WALKER:

24 Q. The Solicitor asked you if you compared the phone
25 number you received after the printout with the phone

A. COTTON ON DIRECT

1 number from dispatch. Is that something you personally
2 did?

3 A. Yes.

4 Q. And you had a printout that you -- a printout from
5 dispatch that you compared with the printout you got
6 from Savannah?

7 A. Yes, sir.

8 Q. I don't have anything else.

9 THE COURT: Redirect?

10 SOLICITOR: Nothing from the State, Your Honor.

11 (Witness excused from stand)

12 SOLICITOR: Jason Harbaugh.

13 JASON HARBAUGH, being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. RANKIN:

17 Q. Mr. Harbaugh, where do you work?

18 A. At SLED, the State Law Enforcement agency.

19 Q. What is your title?

20 A. Special Agent.

21 Q. What do you do at SLED?

22 A. Arson investigator, arson K-nine handler.

23 Q. How long have you been doing that?

24 A. I've been an investigator since January of 2008.

25 Q. How long have you been an arson K-nine handler?

J. HARBAUGH ON DIRECT

1 A. Since March of 2008:

2 Q. Can you tell me a little bit about your training
3 there to be an arson investigator?

4 A. I had on the job training when I started at SLED.
5 I was placed with another experienced agent, and then I
6 also attended two week classes at the South Carolina
7 Fire Academy in arson investigation.

8 Q. Can you tell me a little bit about the training
9 you had to take at the ATF in Virginia?

10 A. It's a twelve week program for the ATF, and the
11 training is everyday, including Saturday and Sunday.

12 Q. Have you ever testified in Court as an arson inves-
13 tigator or arson K-nine handler?

14 A. Yes.

15 Q. Have you ever been qualified as an expert?

16 A. No.

17 SOLICITOR: At this time I would move that Special
18 Agent Harbaugh be declared an expert in the field of
19 arson investigation.

20 MR. WALKER: Without objection.

21 THE COURT: All right.

22 BY SOLICITOR:

23 Q. Did you respond to a possible arson or suspicious
24 fire at Bluffon on November 29, 2010?

25 A. Yes.

J. HARBAUGH ON DIRECT

1 Q. And to what location?

2 A. Dan's Fan City at 22 Plantation Park in Bluffton,
3 South Carolina.

4 Q. Was anyone with you when you arrived on the scene?

5 A. Yes, Agent Russell was already there.

6 Q. Did you have your K-nine with you?

7 A. Of course, yes.

8 Q. Before we get into the particulars of this scene,
9 what I'd like you to do is kind of tell me the process
10 in handling a K-nine.

11 A. The first thing I do when I get there is I get out
12 and assess the scene, walk around the scene and look for
13 dangers, or any area that may affect the dog.

14 At that time, I may determine that we need to dig
15 the scene or clear it for glass or nails. We will do that
16 first typically unless there is another reason, like a
17 fatality, a dead body.

18 When it comes to running the dog, the first thing
19 I do is I would set up a location at the scene, perhaps
20 drop one drop of fifty percent unevaporated gasoline, and
21 this is my calibration point.

22 The reason I do that is that allows me to tell the
23 dog where to work at, and if he continues to work it
24 that calibration point will be used twice, once before
25 I work the dog and once after I work the dog.

J. HARBAUGH ON DIRECT

1 Again, so I know he's still wanting to work, my dog
2 is given a reward when the calibration point is found by
3 the dog. He does get paid with kibbles and dog food,
4 dry dog food.

5 When he does that, there is a process I use to com-
6 mand. Seek is the first command. That's the command
7 for him to go and find what he's trying to find which
8 is accelerants.

9 The second command is show me -- okay, show me,
10 and then I'll feed him again after I witness that.

11 That is what the process will be at the calibration
12 point, and at that point after he alerts on the calibra-
13 tion point I would work the scene.

14 Q. Can you kind of explain the calibration point fur-
15 ther?

16 A. That would be where I dropped the one drop of un-
17 evaporated gasoline, and that is the point that I want
18 him to go to so I know he's able to find fifty percent
19 of evaporated gasoline.

20 That's only a test site. That is something I can
21 control.

22 Q. Detective, you just told us of your training. Is
23 that consistent with your K-nine's training?

24 A. Yes.

25 Q. Now, when you began to process the scene, did you

J. HARBAUGH ON DIRECT

1 do it at Dan's Fan City, and did you do it consistent
2 with your training?

3 A. Yes, maam.

4 Q. The way you stated you would generally process a
5 scene?

6 A. Yes.

7 Q. Did your K-nine alert on any areas?

8 A. Yes, maam.

9 Q. What areas?

10 A. There was three main areas, and that is why we had
11 three samples of those accelerants. Do you want me to
12 explain each of them?

13 Q. Yes.

14 A. The first K-nine alert was in an area outside the
15 rear window of the business at the sidewalk area. The
16 K-nine alerts two, three, four and five were in the line
17 outside in the parking lot in the rear of the business
18 where the concrete joins to asphalt.

19 And then alerts six and seven were in the rear of
20 the show room area near that rear window but inside the
21 business.

22 Q. So how many total areas did your K-nine alert to?

23 A. Seven.

24 Q. When you and your K-nine finished processing the
25 scene, were you and your K-nine asked to search the

J. HARBAUGH ON DIRECT

1 Defendants?

2 A. What location?

3 Q. Did you search the Bluffton Police Department?

4 A. Yes.

5 Q. Do you know what time you arrived to search there?

6 A. I'd say approximately three to four o'clock P.M.

7 Q. What were the results?

8 A. Negative.

9 Q. What were you looking for in that search?

10 A. I was looking to see if a suspect were to have an
11 accelerant on their clothing. I was looking to see if
12 I could run the dog while they were still fully clothed
13 over their person, to see if the dog would alert either
14 on the clothing or the shoes or skin or whatever.

15 Q. Agent Harbaugh, in your opinion would at least an
16 eight hour time difference in whether or not accelerants
17 would still be on the Defendant -- is that unusual to
18 not find any?

19 A. It would depend on a number of factors that I would
20 think they could have had access to. If they were to
21 wash their hands or change clothes or something, it can
22 affect that.

23 If an accelerant were spilled on them, things that
24 are porous, things that they wear like on their shoes,
25 the fabric on their shoes, or maybe the fabric of their

J. HARBAUGH ON DIRECT

1 clothing, could hold an accelerant for that long.

2 Q. But if there was at least an eight hour time dif-
3 ference, would that make a difference on whether or not
4 it was found on their skin?

5 A. I would think so, through the form of sweating or
6 being able to wash their hands -- something like that.

7 Q. Thank you. I'm going to jump back a little bit
8 to when you were processing the scene. You said your
9 K-nine alerted to these areas.

10 Were samples taken from that?

11 A. Yes.

12 Q. Were they taken in your presence?

13 A. Yes.

14 Q. Who took them?

15 A. Agent Russell.

16 Q. Thank you. That's all I have.

17 CROSS EXAMINATION

18 BY MR. WALKER:

19 Q. Agent Harbaugh, none of the physical evidence you
20 examined or collected at the scene allowed you to iden-
21 tify anyone who started the fire, did it?

22 A. No, that's correct.

23 Q. Nothing further.

24 THE COURT: Redirect, Madam Solicitor.

25 SOLICITOR: No Redirect, Your Honor.

1 (Witness excused from stand)

2 MR. THORNTON: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Colloquy between counsel and the Court of the re-
5 cord at the Bench)

6 THE COURT: We'll be in recess until one thirty,
7 ladies and gentlemen.

8 (Whereupon, the Court was in recess for the lunch
9 period, after which the matter resumed)

10 THE COURT: All right, Madam Solicitor.

11 SOLICITOR: Thank you, Your Honor. The State
12 calls Hue Tang.

13 HUE TANG, being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. RANKIN:

17 Q. Mr. Tang, where are you employed?

18 A. South Carolina Law Enforcement Division.

19 Q. Is there a common name?

20 A. SLED.

21 Q. What do you do there?

22 A. Forensic scientist.

23 Q. What is your educational background?

24 A. Bachelor of science with major in chemistry, Uni-
25 versity of South Carolina.

H. TANG ON DIRECT

1 Q. Have you testified as a forensic chemist before?

2 A. Yes, maam.

3 Q. How many times?

4 A. At least one hundred sixty-five times.

5 Q. Have you ever been qualified as an expert in
6 forensic chemistry?

7 A. Yes, maam.

8 SOLICITOR: The State moves to have Mr. Tang admit-
9 ted as an expert in forensic science.

10 MR. WALKER: No objection.

11 THE COURT: So qualified.

12 BY SOLICITOR:

13 SOLICITOR: Thank you. May I approach?

14 Q. Mr. Tang, I'm going to hand you what is marked as
15 State's Exhibit 23. Do you recognize what I've handed
16 you?

17 A. Yes, maam, I do.

18 Q. What is it?

19 A. An official report that we issue once I complete
20 my analysis.

21 Q. So that's your report?

22 A. It's a copy of my report.

23 SOLICITOR: Your Honor, at this time I would move
24 State's Exhibit 23 into evidence.

25 MR. WALKER: No objection.

H. TANG ON DIRECT

1 THE COURT: Number 23 in evidence.

2 (SLED report admitted without objection as State's
3 Exhibit 23)

4 BY SOLICITOR:

5 Q. Can you tell us the results of your tests?

6 A. (Portion inaudible; witness reading rapidly from
7 report)

8 And this report goes back to this case of Anthony
9 Hamilton and Andre DeCosta.

10 Q. You just read the Defendants' names off of your
11 report, but your findings in no way indicate that the
12 -- my question is you do not know who put those acceler-
13 ants into those materials?

14 A. Not of my personal knowledge.

15 Q. Thank you. No further questions.

16 CROSS EXAMINATION

17 BY MR. WALKER:

18 Q. Mr. Tang, I would like to know where these things
19 came from, where these specimens came from. You identi-
20 fied number one came from the south side of the building,
21 and can you tell me as to where number two came from or
22 where was it found?

23 A. The can labeled as parking lot, south side. Item
24 three is a gallon can labeled as interior of building.

25 MR. WALKER: Beg the Court's indulgence.

H. TANG ON CROSS

1 (Short pause in proceeding)

2 MR. WALKER: No further questions.

3 SOLICITOR: Nothing further.

4 (Witness excused from stand)

5 SOLICITOR: We'd call Agent Russell.

6 DANIEL LEE RUSSELL, being
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION:

9 BY MR. THORNTON:

10 Q. Agent Russell, who do you work for?

11 A. SLED. South Carolina Law Enforcement Division.

12 Q. How long have you worked there?

13 A. As of August 17th, it will be four years.

14 Q. And who did you work for prior to that?

15 A. I lived at Winston-Salem. I was a Winston-Salem
16 police officer. I have twelve years experience there.

17 Q. So you have in excess of twelve years of law en-
18 forcement experience?

19 A. Yes, I started as an MP in the Marine Corps, 1980;
20 Maryland State Trooper in 1984; in 1988 I transferred to
21 the south, so actually it was thirty-one years.

22 Q. Agent Russell, what do you do for SLED?

23 A. Arson investigation.

24 Q. And on November 29, 2010, did you respond out to
25 any particular scenes?

D. RUSSELL ON DIRECT

1 A. I responded that morning of the 29th to 22 Planta-
2 tion in the City of Bluffton.

3 Q. Was it a fire scene?

4 A. Yes, sir.

5 Q. And what did you do when you got there?

6 A. When I arrived I met with Officer Cotton of the
7 Bluffton City Police Department, who gave me details of
8 the situation at hand.

9 Q. Were you able to view the scene at the time?

10 A. Yes, sir. As I pulled into the front parking lot
11 off of 278 I was able to see the building that have been
12 affected by fire.

13 MR. THORNTON: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. THORNTON:

16 Q. I'm going to hand you two photographs marked for
17 ID as State's 19 and 20. Can you look at those?

18 A. Yes, sir. Picture 19 is the south side or rear
19 of the building that was photographed by myself.

20 Photograph 20 is the interior of the building, and
21 also photographed by myself.

22 Q. And these photographs, are they a true and accurate
23 representation of how the Dan's Fan City, the building
24 that you went to on the morning of the 29th -- how it
25 appeared that day?

D. RUSSELL ON DIRECT

1 A. Yes, sir.

2 Q. Have those photographs been altered or changed in
3 any way?

4 A. No, sir.

5 MR. THORNTON: I would ask that State's 19 and 20
6 be admitted into evidence.

7 MR. WALKER: No objection.

8 THE COURT: Without objection.

9 (Photographs admitted into evidence without ob-
10 jection as State's Exhibits 19 and 20 and published)

11 BY MR. THORNTON:

12 Q. Do those photographs show the damage that was done
13 by the fire that day?

14 A. Correct.

15 Q. As a part of your arson investigation, sir, did
16 you take any samples?

17 A. Yes, sir, in conjunction with Agent Harbaugh and
18 the K-nine accelerant. He introduced the dog to the
19 scene, and as the dog searched the area, these particu-
20 lar areas he alerted on, . . .

21 Q. I believe he testified there were three general
22 areas. Are you the one who collected the samples?

23 A. Yes.

24 Q. And are those the three samples tested by Agent
25 Tang of your office?

D. RUSSELL ON DIRECT

1 A. Yes, sir.

2 Q. And when you collected those samples, did you seal
3 them up and enter them?

4 A. I sealed them and they remained in my possession
5 until I released them to SLED analysis in Columbia.

6 Q. So they were not altered or changed in any way?

7 A. No, sir.

8 Q. Now, what else did you do as a part of your inves-
9 tigation?

10 A. Of course I photographed the scene when I arrived.
11 Then we processed the scene, and when I say processed
12 the scene we started at the least damage and worked our
13 way to greatest damage through techniques that we have
14 been taught to process.

15 Q. All right. What are some of the things, if you are
16 investigating and trying to determine if something is
17 actually an arson as opposed to an electrical fire --
18 what are some of the things you look for?

19 A. You look for unusual patterns regarding how fire
20 travels. We observe the interior as well as the exter-
21 ior structures. If there is charring we shovel the
22 floor of the structure to see if there is any assistance
23 that can be found where something was poured or some-
24 thing was thrown through -- maybe we can find fragments
25 of what may have been thrown through.

D. RUSSELL ON DIRECT

1 So we try to shovel to where we can be comfortable
2 in what we are trying to look at.

3 Q. Would the use of an accelerant be indicative of
4 something that would be an arson?

5 A. Yes.

6 Q. And an accelerant was found on some of the materials,
7 was it not?

8 A. Yes, in that area.

9 Q. And I'm going to hand you what's been marked for
10 identification as State's Exhibit 24 and ask if you can
11 identify that three page document?

12 A. Yes, sir. This three page document -- the first
13 page is a South Carolina Law Enforcement Division Miranda
14 Advice of Rights form, and the next two sheets are a
15 voluntary statement on SLED forms.

16 Q. That Miranda Rights form and that statement -- was
17 that Miranda Rights form used in this case?

18 A. Yes.

19 Q. And who did you give those rights to?

20 A. Mr. Andre DeCosta.

21 Q. Could you point him out for me?

22 A. The gentleman seated next to his attorney with
23 the gray outfit on.

24 Q. So you are indicating the Defendant, Andre DeCosta,
25 seated with his attorney, Mr. Walker?

D. RUSSELL ON DIRECT

1 A. That's right.

2 Q. Now, without telling me what anyone else told you
3 other than Mr. DeCosta, were you provided information
4 that Mr. DeCosta had given a confession to the Bluffton
5 Police Department?

6 A. Yes, sir.

7 Q. And as a result of that information did you then go
8 and seek to get a statement from Mr. DeCosta?

9 A. Yes, sir.

10 Q. If you will look at State's Exhibit 24 for identifi-
11 cation, are those the -- the top page is that the Miranda
12 Rights form that you used when talking to Mr. DeCosta?

13 A. Yes.

14 Q. Did you fill it out?

15 A. No, sir. The only thing I filled out was the place,
16 date and time, and signed when the witness signed.

17 Q. All right, sir. Did you do that by going over each of Mr.
18 DeCosta's rights with him?

19 A. That's right, on December the third. I met him and
20 read his rights to him which he agreed to sign the sheet
21 as well as waive his rights.

22 Q. Would you please go over the rights. Did you do
23 it by memory or did you go by the sheet?

24 A. By the sheet.

25 Q. Would you please read that out so we can understand

D. RUSSELL ON DIRECT

1 exactly what you're talking about?

2 A. Before we ask you questions, you must understand
3 your rights.

4 You have the right to remain silent. Anything you
5 say can be used in Court as evidence against you.

6 You are entitled to a lawyer now and have him pre-
7 sent now or at any time during questioning.

8 If you cannot afford an attorney, one will be ap-
9 pointed for you without cost.

10 If you decide to answer questions now without a
11 lawyer present, you will still have the right to stop
12 answering at any time.

13 You also have the right to stop answering at any
14 time until you talk to a lawyer.

15 Do you understand these rights? Do you wish to
16 talk to us at this time?

17 Q. Now, Agent Russell, are there places next to each
18 right?

19 A. Yes.

20 Q. And is that a line where you can have the person
21 you're talking to initial?

22 A. Yes.

23 Q. And did he initial -- did Mr. DeCosta, the Defen-
24 dant in this case -- did he initial on those lines by
25 each right?

D. RUSSELL ON DIRECT

1 A. Yes, sir.

2 Q. And did he appear to understand -- when you were
3 talking to him, did he appear to understand?

4 A. Yes.

5 Q. Did he appear to be under the influence of alcohol
6 or drugs?

7 A. No, sir.

8 Q. When you talked to him and went over these rights,
9 did he at any point stop you and tell you he didn't
10 understand what you were saying?

11 A. No, sir.

12 Q. Was he able to communicate fairly effectively with
13 you?

14 A. Yes, sir.

15 Q. Now, there is no question he was in custody at the
16 time, is that correct?

17 A. He was.

18 Q. In fact, you went over to the jail to go and talk
19 to him?

20 A. Yes.

21 Q. And that is where this interview took place?

22 A. Yes.

23 Q. After reading him his rights, did he indicate he
24 wished to make a statement?

25 A. Yes.

D. RUSSELL ON DIRECT

1 Q. And let me ask you this. Were you by yourself,
2 Agent Russell?

3 A. I was by myself.

4 Q. So you were the only one present when this state-
5 ment was done?

6 A. Yes, sir.

7 Q. Did you threaten him in any way?

8 A. No, sir.

9 Q. Did you make any promises to him to get him to talk
10 to you?

11 A. No, sir.

12 Q. Did you tell him that you would sign him up for
13 any particular plea deal or anything like that?

14 A. No, sir.

15 Q. Did he indicate he would talk to you?

16 A. Yes, sir.

17 Q. And did he, at that point, talk to you?

18 A. Yes, sir.

19 Q. And he understood the waiver of rights and he
20 signed it?

21 A. Yes, sir, and we began to converse about this sit-
22 uation.

23 Q. At some point did he, with your assistance, write
24 out a statement?

25 A. Yes, I asked him to write the statement. As I put

D. RUSSELL ON DIRECT

1 in the report, his penmanship was not of good quality.

2 I did take it as he talked.

3 Q. Now, so you actually wrote the written statement
4 that is page two and three of State's Exhibit 24 for
5 identification?

6 A. Yes, sir.

7 Q. Now, is that your recollection of what he said or
8 is that what he said?

9 A. That was his response when I asked him to write it.

10 Q. So those -- let me rephrase the question.

11 Is that your recollection of what he said or are
12 those his words that you just wrote down?

13 A. That's what he said.

14 Q. That's what I'm asking. When you wrote the state-
15 ment, you weren't paraphrasing what he said in your own
16 words? You were using his words?

17 A. Yes, sir, the majority of his words. As he made
18 statements, I sort of put them to where they were in --
19 were coherent. In other words, the grammar.

20 I didn't change the context or content. It was
21 just the grammar aspect.

22 Q. I understand. When you got done writing the state-
23 ments, did you go over them with him?

24 A. Yes, word for word.

25 Q. And did you have him sign it?

D. RUSSELL ON DIRECT

1 A. Yes.

2 Q. Did you witness his statement?

3 A. Yes.

4 Q. And you said after you wrote the statement you read
5 it back to him?

6 A. Yes, I did, and I read it as I wrote it to make
7 sure. Then we had to go over it again, so I stopped
8 at every paragraph to make sure we were on the same
9 page.

10 Q. So the entire statement was read to him prior to
11 him signing?

12 A. That's right.

13 Q. Did he indicate that he needed to change anything?

14 A. No, sir.

15 Q. Can you publish that statement?

16 A. . .

17 MR. THORNTON: Actually, at this time, Your Honor,
18 I would ask that it be introduced into evidence. I
19 know there are going to be some objections and we'll have
20 to move into the next witness too.

21 MR. WALKER: How about I cross examine at this
22 juncture?

23 CROSS EXAMINATION

24 BY MR. WALKER:

25 Q. Agent Russell, were you aware that Mr. DeCosta had

MR. RUSSELL ON CROSS

1 given a previous statement to the police?

2 A. Yes.

3 Q. When were you made aware of that?

4 A. While at the scene I understood that he was in
5 custody at the Bluffton City Police Department, and
6 that's when I was aware of that.

7 Q. Did you obtain a copy of that statement?

8 A. I obtained a copy of the DVD which I did not look
9 at all the way through.

10 Q. Because it's quite lengthy?

11 A. Yes, it is.

12 Q. How much of it did you watch?

13 A. What I watched was at the police station itself as
14 they were just interviewing him.

15 Q. Let me back up. Were you at the police station
16 watching him or did you watch the tape?

17 A. I did both. After they gave me the DVD I watched a
18 portion of it and they still him at the Bluffton Police
19 Department, so I didn't stay in the whole interview with
20 him.

21 Q. About how much of it did you -- let me ask you, how
22 much did you observe of the person or the video?

23 A. In person maybe fifteen or twenty minutes. On the
24 DVD aspect of it, maybe twenty minutes. Not the whole
25 entire thing but just certain parts.

MR. RUSSELL ON CROSS

1 Q. In the statement you observed being taken, Mr.
2 Russell, was this on the 29th or the 30th?

3 A. The 29th.

4 Q. The written statement you took at the jail was
5 four days later?

6 A. Four or five days later.

7 Q. What did you tell Mr. DeCosta when you showed up
8 at the jail as to why you needed to talk to him?

9 A. That I was Agent Russell with SLED and I am inves-
10 tigating the arson.

11 Q. Did you specify what arson?

12 A. Yes, sir, the one from November 29th.

13 Q. And Mr. DeCosta talked to you about that?

14 A. Yes, sir.

15 Q. Did you all discuss the statement that he had al-
16 ready given on the 29th?

17 A. Not in detail. Just the fact that it had been
18 made.

19 Q. And did you characterize your contact with him as
20 follow-up to memorialize that statement in writing?

21 A. Not to memorialize but just to get the statement
22 down, the events that took place regarding the arson.

23 Q. But he had already given a statement regarding the
24 arson.

25 A. Yes.

MR. RUSSELL ON CROSS

1 Q. But you discussed the interview he had had with
2 Bluffton before he memorialized or gave a written state-
3 ment to you?

4 A. When you say discussed, what do you mean? I don't
5 understand what you're saying because it wasn't a lengthy
6 discussion about what he talked about with Bluffton.

7 Q. But you talked about the fact that the interview
8 in Bluffton had occurred?

9 A. Yes, sir, that's something we discussed.

10 Q. That he had talked to Bluffton?

11 A. Yes.

12 Q. That's the extent? That is the extent of it?

13 A. Yes.

14 Q. You didn't make any comment about what he said to
15 Bluffton?

16 A. No.

17 Q. Were you dressed as you are now when you were talk-
18 ing to him?

19 A. No, sir.

20 Q. How were you dressed when you talked to Mr. DeCosta?

21 A. We had a uniform with fatigue pants, green military
22 pants, black shirt with a SLED patch on the shirt.

23 Q. Did you talk to Mr. DeCosta about any reasons he
24 should give you a statement?

25 A. No, sir.

MR. RUSSELL ON CROSS

1 MR. WALKER: Court's indulgence.

2 (Brief pause in the proceeding)

3 MR. WALKER: Your Honor, that's all I have at this
4 point, and I would say my arguments on the voluntari-
5 ness of this confession is at least tied to the direct
6 confession.

7 It doesn't make a lot of sense that he'd just give
8 one to SLED. I think the voluntariness will tie in across
9 both.

10 Also, I would have an objection that he would be
11 in jail for SLED to talk to him.

12 THE COURT: You don't have to go back to that again.
13 The record is protected.

14 Insofar as the statement to Agent Russell, there
15 has been just minor reference to an earlier statement
16 he may have made, and I'm going to allow the statement
17 to come in.

18 I find that the Defendant was properly advised of
19 his rights, all of the rights required. He read them
20 from the sheet and they are the ones required by law.

21 In this particular case, I find that the statement
22 was freely and voluntarily made. However, Mr. Walker,
23 I will be glad to revisit this, if I find differently.

24 MR. WALKER: Thank you, Your Honor.

25 THE COURT: Please publish that.

MR. RUSSELL ON STAND

1 (Whereupon, statement of Defendant given to Mr.
2 Russell was published)

3 MR. RUSSELL: I, Special Agent Dan Russell, am
4 writing this interview for Andre Leon DeCosta on 12 3 2010
5 at five thirty P.M., at Beaufort County Detention Center.

6 (Statement read to Court in entirety, State's Ex-
7 24)

8 MR. RUSSELL: Signed by Andre DeCosta.

9 SOLICITOR: Thank you, sir. I have nothing further.

10 CROSS EXAMINATION CONTINUED

11 BY MR. WALKER:

12 Q. In his statement he said this was the only arson
13 he was involved in. Did you all have discussion about
14 others?

15 A. . .

16 Q. Unsolved arsons -- did you threaten to charge him
17 with other arsons in your discussion?

18 A. There was another arson in the area at Top Dollar
19 Pawn. He said he had nothing to do with that.

20 Q. Thank you. I don't have anything else.

21 (Witness excused from stand)

22 THE COURT: Call your next witness.

23 MR. THORNTON: The State would call Sergeant
24 Babkiewicz.

25 JOSEPH BABKIEWICZ, being duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THORNTON:

4 Q. Sergeant Babkiewicz, who do you work for?

5 A. The Bluffton Police Department.

6 Q. And what do you do for Bluffton?

7 A. I'm a Sergeant in charge of investigations.

8 Q. Does that mean you're a Detective?

9 A. Yes, sir.

10 Q. And were you an investigator or detective on or
11 about November 29th of 2010?

12 A. Yes, sir.

13 Q. And did you have any connection to the case involv-
14 ing Andre DeCosta?

15 A. Yes, I did.

16 Q. What was your involvement?

17 A. I was contacted by Sergeant Gonzales about an arson
18 and burglary that had just occurred. I responded out to
19 Sergeant Gonzales' location.

20 On my way to his location, I also spoke to two
21 other investigators, both Duke and Investigator Cotton,
22 to find out what they had on each scene they were at.

23 I went out to the scene with Sergeant Gonzales and
24 he briefed me on the situation.

25 Q. All right, sir. When you and -- at some point did

J. BABKIEWICZ ON DIRECT

1 you -- as the case officer you were participating in the
2 investigation, and did you at some point conduct an in-
3 terview with Andre DeCosta?

4 A. Yes, sir.

5 Q. And is that the same person who is seated at the
6 Defense table with Matthew Walker?

7 A. Yes, it is.

8 Q. And did you read him his rights?

9 A. Yes.

10 Q. I have the form right here. May I approach?

11 THE COURT: Yes.

12 BY MR. THORNTON:

13 Q. I'm going to hand you the document that is now
14 marked as a State's Exhibit. Is that an advisement of
15 Miranda Rights to Andre DeCosta?

16 A. Yes, sir.

17 Q. Is that the one you did with Mr DeCosta yourself?

18 A. Yes, sir, it has my signature on it, on the bottom.

19 Q. And did you read each of his rights to him?

20 A. Yes, and I also had him initial by each one of the
21 Miranda Rights.

22 Q. Would you give those to us?

23 A. The right to remain silent; anything you say can be
24 used against you in Court; the third one is you have
25 a right to talk to an attorney for advice before we ask

J. BABKIEWICZ ON DIRECT

1 you any questions.

2 If you cannot afford an attorney, one will be ap-
3 pointed for you. The last one is if you decide to answer
4 questions now without an attorney, you have the right
5 to stop answering at any time.

6 You have the right to stop answering at any time
7 until you talk to an attorney.

8 Did you read each of those rights to Mr. DeCosta?

9 A. Yes. I asked the first question, do you understand
10 each of these rights I've explained to you, and he ini-
11 tialled next to the yes.

12 Also, I asked him, having these rights, do you wish
13 to us now, and he also initialed yes.

14 Q. Did he do that in your presence?

15 A. Yes.

16 Q. And, Detective, as to State's -- I believe that's

17 . . .

18 REPORTER: Twenty-six.

19 Q. As to State's Exhibit 26, can you identify that?

20 A. That is the interview affidavit to find out if they
21 are under the influence of any alcohol or drugs.

22 Q. And can you recite that for us?

23 A. The first one is are you under the influence of
24 alcohol or drugs.

25 Q. You checked off no?

J. BABKIEWICZ ON DIRECT

1 A. Yes, sir, and the second question was when is the
2 last time you had any alcohol or drugs, and he said the
3 last time he drank beer was four or five days ago.

4 Finally, the third question, are you currently tak-
5 ing any medication, and he checked off no, and then he
6 signed at the bottom.

7 Q. While you were talking to him, Sergeant, did he
8 appear to understand what he was doing?

9 A. Yes, sir.

10 Q. Was there ever any issue of him being able to speak
11 or understand the English language?

12 A. No, sir.

13 Q. In addition to what he wrote down or initialed, did
14 he appear to you to be under the influence of alcohol or
15 drugs?

16 A. No, he did not.

17 Q. After reading him his rights and having him initial
18 next to each one, did you -- did he indicate to you -- indi-
19 cate he wanted to talk to you?

20 A. Yes, sir.

21 Q. And when you did this interview, were you what you
22 would call the primary person asking the questions?

23 A. Yes, sir.

24 Q. Was anybody else there with you?

25 A. On two separate occasions Captain Norbert came in

J. BABKIEWICZ ON DIRECT

1 briefly.

2 Q. And no question, he was in custody. Right?

3 A. Right, sir. He was in custody.

4 Q. No question he had been arrested and he was not
5 free to leave, so he was in custody?

6 A. No, sir, no question.

7 Q. And he was not free to leave?

8 A. No, sir.

9 Q. Where was this interview conducted?

10 A. At the Bluffton Police Department which at the time
11 was 39 Persimmon Street. It has since moved.

12 Q. So the interview was inside your police department?

13 A. Yes, sir.

14 Q. And this was a long interview, was it not?

15 A. It was a very long interview. A total of about
16 five hours.

17 Q. During the course of this interview, I want to talk
18 about some specific things. First of all, this was video-
19 taped so both Mr. Walker and I have access to it, is that
20 correct?

21 A. Yes, sir.

22 Q. Did you also look at a transcript that at my re-
23 quest was prepared by a Court Reporter?

24 A. Yes, sir.

25 Q. And based upon what you read, does that transcript

J. BABKIEWICZ ON DIRECT

1 appear to be an accurate depiction of what occurred?

2 A. Yes, sir.

3 Q. And it is on videotape as well, is that correct?

4 A. It is on videotape.

5 Q. When you were talking with the Defendant, did he
6 make any statements to you?

7 A. He did. He made several statements.

8 Q. Okay, now, let's take them one at a time.

9 MR. THORNTON: Your Honor, I'm going to stop for
10 a second in case Mr. Walker has any objection at this
11 time to this process since it is a little unusual.

12 Obviously I have to get into the meat of the state-
13 ment on some things that occurred, and Mr. Walker, when
14 he talks about voluntariness -- so I am strictly doing
15 this right now as a Jackson v. Denno issue and not ask-
16 ing to admit it into evidence as of yet.

17 THE COURT: Let's deal with the Jackson v. Denno.

18 MR. THORNTON: I should probably go into a few
19 other things first though.

20 BY MR. THORNTON:

21 Q. Without regard to specifically -- would it be fair
22 to say that Mr. DeCosta admitted some things fairly
23 quickly?

24 A. Yes, sir.

25 Q. And other things dealing specifically with the

J. BABKIEWICZ ON DIRECT

1 fire he did not admit probably until about four or four
2 and a half hours in?

3 A. Yes, sir.

4 Q. At some point I understand that you may have not
5 been in the room, but you have reviewed the whole video-
6 tape, have you not?

7 A. Yes. At some point Chief McCalister was in the
8 room.

9 Q. And the Chief talks about a similar arson case where
10 a young man got probation, is that right?

11 A. Correct.

12 Q. And the Chief indicates he wrote a letter for that
13 young man, and the young man was able to get probation.
14 Is that right?

15 A. Yes, sir.

16 Q. Does he also at some point indicate that you all,
17 for lack of a better, usually would package this together
18 or try to package it together and talk to the Solicitor
19 about packaging it together. Is that right?

20 A. Yes, sir.

21 Q. You mention several things and had extended discus-
22 sion with him about whether or not he was a serial arson-
23 ist and what the ramifications of that were, as opposed
24 to somebody that was just covering their tracks to com-
25 mit another crime. Is that right?

J. BABKIEWICZ ON DIRECT

1 A. Yes, sir.

2 Q. And that went on for a couple of hours, is that
3 right?

4 A. Yes, it did.

5 Q. And was he allowed at some point to have a cigar-
6 ette?

7 A. I believe he was.

8 Q. Was he allowed at some point to have a cup of
9 coffee?

10 A. Yes, sir.

11 Q. Was he allowed at some point to use the bathroom?

12 A. I don't recall if he used the bathroom but he
13 could have used it, yes.

14 Q. Did he leave the room at some point during the in-
15 terview?

16 A. I believe he did.

17 Q. And during the course of this interview, would it
18 be fair to say you are not questioning him the entire
19 time?

20 A. Yes.

21 Q. There are spots where he's out of the room and
22 there is spots where he's in the room by himself?

23 A. That's correct.

24 MR. THORNTON: Court's indulgence, Your Honor.

25 (Brief pause in proceeding)

J. BABKIEWICZ ON DIRECT

1 MR. THORNTON: Your Honor, I think the best thing
2 to do at this point -- there are parts of the statement
3 I don't think would come in and I wouldn't even seek to
4 introduce in this regard.

5 But I do think as a Court's Exhibit for voluntari-
6 ness purposes it is appropriate. So I would ask to make
7 this a Court's Exhibit for purposes of the record.

8 THE COURT: I haven't looked at it.

9 MR. THORNTON: This is a full transcript. It's two
10 hundred and seventy-three pages. I do not have a certi-
11 fication page on the back of it which I will try to find
12 in the next minute.

13 It was done by Beverly Cook.

14 THE COURT: All right.

15 MR. THORNTON: Again, Your Honor, you would also
16 have access to the videotape to back this up.

17 THE COURT: What's the number of the Court's Ex-
18 hibit?

19 MR. THORNTON: Number 9, Your Honor.

20 BY MR. THORNTON:

21 Q. I'm going to hand you what's marked as Court's
22 Exhibit Number 9, and you have also testified there is
23 a transcript from the hearing -- a transcript of the
24 statement, and if you would go to page 165, line 16.

25 A. Do you want me to read it for you?

J. BABKIEWICZ ON DIRECT

1 Q. Who is that line from?

2 A. From Andre DeCosta, and it says, all right, I'm just
3 ready to get -- so there is no guarantee that I will get
4 out of it.

5 Q. Then what does -- who is in the room with him at
6 that time?

7 A. Chief McCallister.

8 Q. And what does the Chief say?

9 A. The Chief said, oh, there's no guarantee in life.
10 I'm not going to sit here and blow smoke.

11 Q. What is the next thing DeCosta said?

12 A. DeCosta said, you can't guarantee me probation.

13 Q. And what does the Chief say?

14 A. The Chief said, I can't guarantee you probation.
15 I can't guarantee you anything.

16 Q. If you will, turn to page 170 which obviously this
17 occurred just a few minutes later. Line three.

18 A. It's from Andre DeCosta, and he said, what the
19 Chief was telling me basically the same thing you guys
20 were telling me. He was just telling me what he would
21 do for me in the situation and still -- it's still not
22 a guarantee because I -- you know, I'm not looking for
23 no guarantee because I know it's still up to the Judge.

24 Q. And was there a response given?

25 A. Yes, sir. I responded, did he tell you about the

J.BABKIEWICZ ON DIRECT

1 arsonist, and Mr. DeCosta said yes, or yeah.

2 Q. Other than what the Chief told him about this other
3 man got probation and encouraged Mr. DeCosta to help
4 himself out, did you yourself other than that make any
5 promises about leniency or anything else?

6 A. I believe he said he didn't want to be labeled as
7 a serial arsonist, and I told him I'd talk to the Soli-
8 citors about that.

9 Q. Did you threaten him in any way?

10 A. No, sir.

11 Q. Did anyone outside of your presence after you re-
12 viewed the video -- did anybody threaten him in any
13 way?

14 A. No, sir.

15 MR. THORNTON: Court's indulgence.

16 (Brief pause)

17 MR. THORNTON: Your Honor, obviously I would have
18 a lot more questions once we make a voluntariness de-
19 termination.

20 BY MR. THORNTON:

21 Q. I would ask that you answer any questions Mr.
22 Walker may have on voluntariness.

23 A. Yes, sir.

24 MR. THORNTON: Judge, I would also point out and
25 show it to Mr. Walker -- I have the certificate I would

1 like to put on the back of Exhibit 9.

2 THE COURT: All right.

3 MR. WALKER: No objection.

4 THE COURT: Cross Examination.

5 MR. WALKER: Thank you, Your Honor. If I could
6 ask for the Court's indulgence for a moment?

7 The way I would like to proceed is to play portions
8 of the video and ask the Officer about it, and then play
9 the next portion, and kind of go chronologically here.

10 I think that will address some things the State has
11 been asking about. I know we will have to work out --
12 I think the Solicitor has a computer hooked up.

13 (Brief pause in proceeding)

14 CROSS EXAMINATION

15 BY MR. WALKER:

16 Q. Sergeant Babkiewicz, let me just ask you a couple
17 of preliminary questions.

18 Are you the lead detective that worked the case?

19 A. I'm a supervisor.

20 Q. The Sergeant in charge of the investigation?

21 A. Yes, sir.

22 Q. So you are the guy that is in charge of everything
23 that is done?

24 A. Yes, sir.

25 Q. You decide how investigations proceed?

J. BABKIEWICZ ON CROSS

1 A. Yes, sir.

2 Q. How long have you been in that position?

3 A. Since last July.

4 Q. Have you had any kind of schooling in investiga-
5 tory work?

6 A. Yes, sir, I have.

7 Q. Have you done any classes on interrogation tech-
8 niques?

9 A. Yes, sir, I have.

10 Q. How many classes?

11 A. Three. Two or three.

12 Q. Where did you take those classes?

13 A. I took one with the Reed Interview and Interroga-
14 tion Technique and then an interview class up in Connecticut
15 as well.

16 Q. Explain to me Reed Technique.

17 A. The Reed Technique is to develop a theme, and the
18 theme is to try to put that person at ease to get them
19 to try to tell you the truth as to what's going on.

20 You basically ask basic questions first and then
21 interrogate afterwards.

22 Q. And you were telling me some other classes?

23 A. Yes, sir.

24 Q. The Reed class and an interviewing interrogation
25 class?

A. Yes.

J. BABKIEWICZ ON CROSS

- 1 Q. Were there other police officers there?
- 2 A. Yes, sir.
- 3 Q. And is there a specific name for the other one?
- 4 A. No, sir.
- 5 Q. And this interview was at the Bluffton Police
- 6 Station?
- 7 A. Yes, sir.
- 8 Q. And Andre was not free to leave during that time?
- 9 A. No, sir.
- 10 Q. What time was it? Is that the time right there,
- 11 four twenty-six?
- 12 A. Yes. I have the time written here for the inter-
- 13 view, five . .
- 14 Q. And that's A.M., almost six in the morning?
- 15 A. Yes, sir.
- 16 Q. And the burglary happened about two fifty?
- 17 A. Yes, sir.
- 18 Q. So he has been in custody since then?
- 19 A. Yes, sir.
- 20 Q. And the interview was somewhere between four and a
- 21 half to five hours long?
- 22 A. Yes, sir.
- 23 Q. So it would have ended if it starts about six at
- 24 ten thirty, eleven o'clock, ballpark?
- 25 A. Yes, sir. A.M.

J. BABKIEWICZ ON CROSS

1 Q. On the twenty -- twenty what?

2 A. . . .

3 Q. And you testified you don't believe he went to the
4 bathroom?

5 A. I don't know if he did or not.

6 Q. Do you know if he went to the bathroom before you
7 began the interview?

8 A. I believe he did. I can't say for certain.

9 Q. You testified you believe he had a cup of coffee?

10 A. Yes, sir.

11 Q. Do you know how far into the interview he may have
12 had that cup of coffee?

13 A. I can't say for sure. I think it was right after
14 Chief McCallister came in.

15 Q. As far as a time frame, how long after that inter-
16 view began?

17 A. I think about halfway.

18 Q. You say he had a cigarette. Do you know when that
19 was?

20 A. I don't know.

21 Q. Was he asking you for cigarettes?

22 A. I believe at one point he did.

23 Q. Do you smoke?

24 A. I used to. Not any more.

25 Q. At the time did you smoke?

J. BABKIEWICZ ON CROSS

- 1 A. At the time, yes.
- 2 Q. Did you give Andre a cup of coffee the first time
3 he asked for it?
- 4 A. I believe so. We actually asked him if he wanted
5 anything to drink.
- 6 Q. What about cigarettes?
- 7 A. I don't know about the cigarettes. I don't know.
- 8 Q. You say that at the Bluffton Police Station at six
9 A.M. that this is an interview where there is a two way
10 mirror?
- 11 A. Yes, sir.
- 12 Q. You have to walk into the police station to get
13 into this room. Correct?
- 14 A. Yes, sir.
- 15 Q. And there's other officers out and about?
- 16 A. Not in the room.
- 17 Q. But in the building?
- 18 A. Yes.
- 19 Q. Did you ever let Andre leave the room? You said
20 he left to smoke a cigarette?
- 21 A. Again, I don't recall.
- 22 Q. So you don't remember if he left the room?
- 23 A. I can't recall.
- 24 Q. Isn't it true that you told Mr. DeCosta some false-
25 hoods during this interview?

J. BABKIEWICZ ON CROSS

1 A. Yes, sir.

2 Q. You told Mr. DeCosta that you had his DNA on the
3 rock at the crime scene?

4 A. Yes, sir.

5 Q. You told Mr. DeCosta that an eye scan had matched
6 him to an involvement in the crime?

7 A. Yes, sir.

8 Q. You told Mr. DeCosta that his Codefendant had con-
9 fessed and implicated him?

10 A. That was the truth.

11 Q. That the swab that was tested matched him to be a
12 part of the crime?

13 A. I don't recall that one.

14 Q. You don't recall a gas detection test that would
15 link him to the crime?

16 A. A gas . . .

17 Q. Do you recall promising him if he cooperated to talk
18 to the Solicitor and ask for leniency?

19 A. I remember telling him I would talk to the Solici-
20 tor about not labeling him as a serial arsonist.

21 Q. Do you recall you and the Chief promising him to
22 intervene in his behalf with the Solicitor's Office or
23 with the Judge?

24 A. . .

25 Q. Did the Chief intervene with the Solicitor or with

J. BABKIEWICZ ON CROSS

1 the Judge to your knowledge?

2 A. I don't know.

3 Q. Have you asked the Solicitor to go easy on Mr.
4 DeCosta?

5 A. I have not made any requests.

6 Q. So it's your opinion that it is okay to tell some-
7 one that you're questioning untruths as far as providing
8 false information to them?

9 A. No.

10 Q. Well, you didn't tell him the truth. You, in fact,
11 lied to him about having those tests?

12 A. Yes, sir.

13 Q. Do you think that's right?

14 A. Yes, sir.

15 Q. What other times is it okay to lie to someone?

16 A. I don't know. I don't have an answer for that.

17 Q. So the only time you ever misrepresent things is
18 when you are interviewing people in this room?

19 A. Well, a part of our training for the interrogation
20 -- if I may explain it a little?

21 It's that you are allowed to use a form of trick-
22 ery. An innocent person will not confess, no matter how
23 much trickery you use.

24 Q. Let me stop you there. Have you ever seen a docu-
25 mentary called Murder on a Sunday?

J. BABKIEWICZ ON CROSS

1 A. I have not.

2 Q. So it is your position that an innocent person would
3 not confess to a crime?

4 A. It's taught to us in interview interrogation.

5 Q. So the interrogation method that you use by law
6 enforcement personnel is taking as a matter of faith
7 that an innocent person would never confess to a crime?

8 A. That's right.

9 Q. And, therefore, it is fair game to do anything and
10 say anything to someone charged with a crime in order to
11 get them to confess?

12 A. To an extent. I mean, if you provide fictitious
13 evidence as it relates to that crime to see what their
14 reaction is.

15 Q. That is at least a standard tactic or operating
16 procedure for the Bluffton Police Department?

17 A. I think everybody uses different tactics but I've
18 used this before.

19 Q. To lie to people charged with a crime in order to
20 try to get them to confess?

21 A. Yes, sir.

22 Q. And that is the only time you ever tell lies?

23 A. I've told lies before.

24 Q. So when is it okay to tell a lie and when is it
25 not okay to tell a lie?

J. BABKIEWICZ ON CROSS

1 A. I don't have an answer for that. I don't know.

2 Q. Is it ever okay to tell a lie?

3 A. When we use it as a form of trickery I guess it's
4 okay.

5 Q. That's what I'm asking. When is it okay to lie
6 and when is it not okay?

7 A. . . .

8 MR. THORNTON: Objection. This is calling for
9 speculation. He's getting way beyond the bounds of a
10 voluntary confession, or the voluntariness of the con-
11 fession.

12 THE COURT: I think it goes to the techniques that
13 are used. I'll allow some further questioning. The
14 answers, if they are relative to the techniques, I'd
15 like to hear them.

16 BY MR. WALKER:

17 A. What were you asking again?

18 Q. You're the person in charge of the investigation
19 and you say you tell lies sometimes. I'm going to tell
20 lies to this Defendant.

21 When do you decide whether you are going to be hon-
22 est and truthful or you are going to be someone who is
23 not truthful and honest?

24 A. Well, you are looking at the body language, the
25 reaction of the people, so you can determine whether or

J. BABKIEWICZ ON CROSS

1 not that person is being truthful or not, and that is when
2 you can bring up some fictitious evidence.

3 When somebody is being honest and is not guilty of
4 a crime, they will continue to stay strong in their be-
5 liefs that they did not commit the crime.

6 Somebody who is guilty of the crime might start
7 feeling bad. You look at their body language and some-
8 times they reveal things to you.

9 Q. So you don't have a set standard of when you tell
10 the truth?

11 A. I tell the truth outside of interviewing somebody,
12 if that's what you are asking.

13 It's not okay to lie on the stand or anything like
14 that if that's what you're asking.

15 Q. That's good to know. I guess what I'm trying to
16 get at is what would you personally feel makes it okay
17 to lie to someone accused of a crime and not okay to
18 lie when you are on the witness stand.

19 A. Because at that time you are investigating a crime
20 and based upon . . .

21 Q. It's more than just a lie.

22 A. I don't get in there and just lie to someone. It
23 is based on the totality of the circumstances whether
24 that person is staying strong. When we have a general
25 idea based upon body language and other indicators, that

J. BABKIEWICZ ON CROSS

1 could make me believe he's not being truthful.

2 Q. And on the day we are talking about chronologically,
3 let me ask you some questions.

4 A. . .

5 MR. WALKER: Your Honor, I apologize. The transcript
6 you have was done by the Solicitor's Office. I was
7 given a copy yesterday.

8 We've gone through the video and time-stamped it
9 with the time stamps on the video, so that's how I will
10 have to reference it. It may take a couple of minutes
11 to find some things.

12 THE COURT: That's all right.

13 MR. WALKER: It may be quicker than we thought.

14 (Video being played as questions were asked by Mr.
15 Walker of witness)

16 BY MR. WALKER:

17 Q. And I think we've covered that, but that wasn't
18 true, was it?

19 A. That's correct.

20 (Video playing continued)

21 Q. We're going to skip ahead a little bit to approx-
22 imately time stamp twenty-forty. Starting about forty-
23 five.

24 (Video played)

25 Q. Would it be fair to say in this clip that you are

J. BABKIEWICZ ON CROSS

1 trying to induce Mr. DeCosta to make statements to you
2 that would be incriminating in exchange for the Chief
3 taking (portion inaudible)?

4 A. No, sir. I'm just simply telling him that being
5 honest to me would certainly look good for him in front
6 of the chief.

7 The fact that he's being truthful with us I think
8 would look good for himself, to show he is remorseful
9 for what he did.

10 Q. Why does he want to look good?

11 A. It's better than looking bad. He's already sitting
12 there in handcuffs in the police station. He's looking
13 pretty bad.

14 Q. Just as a housekeeping matter, we are playing this
15 off the Solicitor's computer. I had this on a series of
16 disks. This interview is on my disk too from the first
17 video on that disk, and I would make these Court's Ex-
18 hibits if there is no objection once we finish these
19 questions.

20 MR. THORNTON: No objection.

21 BY MR. WALKER:

22 Q. Approximately forty-two minutes in . . .

23 (Video playing)

24 Here you are trying to charge him with another
25 crime?

J. BABKIEWICZ ON CROSS

1 A. No, sir. We didn't charge him with that crime. We
2 just threatened him but we didn't charge him with that
3 crime.

4 Q. You said you did, the sixty inch TV?

5 A. I'm sure he didn't mean that literally.

6 Q. So you threatened him and said he would be charged
7 with a crime if he didn't provide information that he's
8 not currently charged with?

9 A. Yes, sir.

10 (Video playing)

11 Q. This was time-stamped forty-two ten.

12 He's asked you for a cigarette at this point?

13 A. Yes, sir.

14 Q. And you denied him the cigarette?

15 A. Yes, sir.

16 Q. And you previously said you'd given him a cigarette?

17 A. I don't recall me ever volunteering . .

18 Q. I'm not asking if you recall.

19 A. Apparently, yes.

20 MR. WALKER: Now, Your Honor, we'll skip to the
21 second video, and, again, I'll make those Court's Ex-
22 hibits.

23 This is about a minute and a half into the second
24 video.

25 (Video playing)

J. BABKIEWICZ ON CROSS

1 Q. What do you think Mr. DeCosta meant at this time?

2 A. I suppose he meant that he was done talking.

3 Q. On your Direct Examination what was the last right
4 that you read to the Defendant?

5 A. He had the right to stop answering.

6 Q. So it was his right to stop?

7 A. Yes.

8 Q. But this is only forty-five minutes into this part
9 of the interview?

10 A. I don't know the time. There's no way for me to
11 know.

12 Q. But you agree that you continued the interview af-
13 ter this point?

14 A. Yes, sir.

15 (Video playing)

16 Q. What is a serial arsonist?

17 A. Somebody that commits arsons on numerous occas-
18 ions.

19 Q. Was it one or two or three arsons?

20 A. I don't know.

21 Q. Was it bad to be known as a serial arsonist?

22 A. I don't know.

23 Q. Did you tell Mr. DeCosta that it was a categorical
24 degree or degree of difference or that it would be worse
25 being labeled a serial arsonist?

J. BABKIEWICZ ON CROSS

- 1 A. The perception to the public -- I believe I did.
- 2 Q. Or that he could be charged as a serial arsonist?
- 3 A. I don't recall.
- 4 Q. Or you could help him out? Right?
- 5 A. What did I say?
- 6 Q. We can play it again.
- 7 So he has to help himself out because you can't do
- 8 anything else for him unless he does. That's what you
- 9 said. Right?
- 10 A. That's what I said.
- 11 (Video playing)
- 12 Q. Time stamp eight thirty-seven on this disk, the
- 13 second video still.
- 14 Before we play it, is that . .
- 15 A. That's Captain Norbert.
- 16 Q. Why is he here and you're not?
- 17 A. I don't know. I don't know why he came in and
- 18 started talking to him.
- 19 Q. Well, you are the one in charge of the investiga-
- 20 tion, isn't that correct?
- 21 A. Yes, sir.
- 22 Q. You decide how investigations are going to proceed?
- 23 A. The power that be that are above me come in and
- 24 want to talk to him, I let them talk to him.
- 25 Q. Do you know where Captain Norbert was before he
- 127

J. BABKIEWICZ ON CROSS

1 A. I believe he was in the other room with the two way
2 mirror.

3 Q. So he had been observing this whole time?

4 A. I think so.

5 Q. So Andre is telling Norbert that he's told you
6 he's done talking?

7 He's free to go to jail. He don't want to talk
8 any more, but we're still talking?

9 A. Yes, sir.

10 Q. And you continued talking for quite a while?

11 A. Yes, sir.

12 Q. Now, what are you doing while Captain Norbert is
13 talking to Mr. DeCosta?

14 A. I believe I went back in that room and started to
15 watch.

16 Q. You come back into the screen later. What makes
17 you decide to come in?

18 A. I don't know. It might have been something he
19 said. I don't know.

20 Q. You don't have any signals between you as to when
21 to switch out?

22 A. No, we don't.

23 (Video playing)

24 Q. You said you were watching this from behind the
25 mirror, right?

J. BABKIEWICZ ON CROSS

1 A. I did watch some.

2 Q. Going down to twenty-seven O nine, approximately.

3 You've got a couple of untruths right there in that
4 section we've just seen. Is that right?

5 A. Yes, sir.

6 Q. First of all, you knew the Captain was there?

7 A. Yes, sir.

8 Q. And then you tell him you have the results of the
9 eye recognition test that proves Andre was involved?

10 A. Yes, sir.

11 Q. So he actually did want to see the evidence. Is
12 that right?

13 A. Yes, sir.

14 Q. And you didn't show it to him?

15 A. That wasn't me. That was the Captain, and the Cap-
16 tain showed it to him.

17 Q. But there wasn't anything to show him?

18 A. It was a picture of my eyes.

19 Q. At least it wasn't a blank sheet of paper, and, of
20 course, he's making more -- he's repeating a request
21 for a cigarette?

22 A. Yes, sir.

23 Q. And we've watched one video that was forty-something
24 minutes long, and we're thirty minutes into that -- so
25 now it's about seven thirty in the morning. Right?

J. BABKIEWICZ ON CROSS

1 A. I couldn't tell you what time it is. You said
2 -- approximately.

3 Q. And he's been up since at least two fifty?

4 A. Right.

5 Q. We'll keep going from there.

6 (Video playing)

7 Now we're going on thirty-three forty, same video.

8 Who is this coming in the room?

9 A. Sergeant Jones.

10 Q. Now, you testified earlier it was only Norbert who
11 came in, but we've got Gonzales . . .

12 A. I don't remember Gonzales coming in the room.

13 Q. Who are you talking to by the door?

14 A. I don't know.

15 Q. Now, you've promised him a cigarette thirty or
16 forty minutes ago?

17 A. Yes.

18 Q. And he never got a cigarette?

19 A. No, sir.

20 Q. Now he gets a drink of water . . .

21 A. Yes, sir.

22 Q. . . after he's been talking to you an hour and a
23 half, and you've got a cup of coffee in your hand?

24 A. Yes, sir.

25 Q. Do you remember if he gets any water?

J. BABKIEWICZ ON CROSS

1 A. I know he gets a coffee at some point. I don't
2 know -- I believe he got water first and then he got a
3 coffee. I don't remember when.

4 Q. . . Actually, would it surprise you or would you be
5 surprised if the video shows he never got any water and
6 didn't get a coffee until three and a half hours into
7 the interview?

8 A. It would surprise me, yes.

9 MR. WALKER: Court's indulgence.

10 (Brief pause in the proceeding)

11 BY MR. WALKER:

12 Q. Go to thirty-eight thirty-two.

13 A. I think I actually may have mis-spoken.

14 Q. He got a coffee three and a half hours into the
15 interview?

16 A. I remember him getting a coffee, and I think he did
17 get a water.

18 Q. . . Would you agree it is not contemporaneous to his
19 request that we just observed?

20 A. I don't know what the time frame is here. It's
21 not five minutes but it's not -- I don't remember how
22 much longer it was he got water after . . .

23 Q. So this is again about thirty-eight thirty-two on
24 the second video?

25 A. . .

J. BABKIEWICZ ON CROSS

1 Q. Can you describe who is coming into the room?

2 A. Sergeant Gonzales.

3 (Video playing)

4 Q. So Captain Norbert would come in just whenever he
5 wanted to come in because he's senior to you, is that
6 correct?

7 A. I believe he might have wanted to ask some ques-
8 tions I may not have asked. I don't think he's parti-
9 cularly senior to me.

10 Q. Sergeant Gonzales is the same rank as you as a
11 patrol officer?

12 A. Yes, sir.

13 Q. So he doesn't have anything to do with investiga-
14 tions?

15 A. No, but he was involved in the incident.

16 Q. But you are the one in charge of the investigation?

17 A. Yes, sir.

18 Q. So Sergeant Gonzales wouldn't come in and get in
19 the middle of your investigation without running it by
20 you. Right?

21 A. I don't know if we spoke beforehand or not. I be-
22 lieve we did speak beforehand.

23 Q. So when you were on the other side of this mirror,
24 he is right out in the hallway and there, and he's com-
25 ing in your direction?

J. BABKIEWICZ ON CROSS

1 A. Yes.

2 Q. In here?

3 A. Yes.

4 (Video playing)

5 Q. Let's go down to forty-four twenty-eight on the
6 same video.

7 So you took a smoke break before you came in?

8 A. Yes, sir.

9 Q. And he hasn't had a cigarette?

10 A. No, sir.

11 Q. And he's asked you a bunch of times for one?

12 A. Yes, sir.

13 Q. You've got a drink right there?

14 A. Yes, sir.

15 Q. And the last time we saw you on this video you
16 promised to bring him a water. Right?

17 A. Yes, sir.

18 Q. He didn't have a water?

19 A. He doesn't have a water. We're talking about
20 fires, man, stupid little fires. The kid set fires all
21 the time. It ain't a big deal.

22 (Video playing)

23 Q. I'm going to skip to fifty thirty on the same video.

24 So you are going to charge him as a serial arsonist?

25 A. Yes, sir, if he doesn't cooperate.

J. BABKIEWICZ ON CROSS

1 Q. Skip to the next video, six minutes. Six minutes
2 in.

3 Why are you stuck on the idea of serial arsonist
4 to be what he's to be charged with?

5 A. Well, he was stuck on the idea of serial arson as
6 what he didn't want to be labeled as.

7 Mr. Walker, you seem to be stuck right there as
8 well.

9 Q. Yes, the theme is that you're going to go the
10 serial arsonist route if he doesn't cooperate?

11 A. No, I never said I was going to charge him with
12 that.

13 Q. You leave us no choice but to go the serial arson-
14 ist route? That was a quote, right?

15 A. Right.

16 Q. So at the very least you were going to be the one
17 that labeled him a serial arsonist?

18 A. Yes.

19 Q. At the very least?

20 A. Yes.

21 Q. And that is much worse than what he is currently
22 in custody for, which is an arson and a burglary and a
23 grand larceny on the night in question.

24 A. Well, no. Again, there is no such thing as a ser-
25 ial arsonist, so, no, there is no charge for that.

J. BABKIEWICZ ON CROSS

1 Q. You and I know that, don't we?

2 A. Yes.

3 Q. Like, again, we know there is no eye recognition
4 test, no gas test, and no horrible crime of serial ar-
5 son? You lied to him about the tests and the crime of
6 serial arson?

7 A. Again, the serial arsonist is a category. It's not
8 a charge.

9 (Video playing)

10 Q. Now, skipping down on the same video to sixteen min-
11 utes on the same video.

12 Then we'll go to approximately twenty-one minutes.

13 Q. It's going to be up to the Chief to decide the
14 serial arsonist question? Same theme?

15 A. No, I explained to him that serial arsonists are
16 people who do it for pleasure. The idea was that he
17 wasn't as bad as they were. That's the developing of the
18 theme idea.

19 Q. You made that decision?

20 A. I made the theme. I didn't mean to get him worked
21 up.

22 Q. So you are the one trying to help him get to the
23 Chief because you were talking about serial arson, and
24 you are just now saying what can I take to the Chief who
25 doesn't want anything but serial arson. What are you

J. BABKIEWICZ ON CROSS

1 telling him?

2 A. I'm just going to go talk to the Chief and tell him
3 about whether you're being honest or not -- whether he's
4 being honest or not.

5 Q. I believe we're at twenty-one minutes in.

6 (Video playing)

7 Why is it a mistake not admitting to the crime?

8 A. It's not not admitting to the crime. It's not
9 being truthful with us.

10 Q. But say he is being truthful to you, what is the
11 mistake?

12 A. He is -- the reason why I'm talking to him about it
13 is observations of his behavioral patterns. He was not
14 being truthful with us. I didn't think he was being
15 truthful.

16 Q. I understand that's what you believe. You're tell-
17 ing him, hey, what you're doing is wrong, a mistake; you
18 are hurting yourself.

19 Isn't that what you're telling him right there?

20 A. Yes.

21 Q. Okay, so that the reverse of that is that he can
22 help himself, or the converse of that -- the converse
23 is that he could help himself. Right?

24 A. Yes.

25 Q. So how would he help himself by confessing to the

J. BABKIEWICZ ON CROSS

- 1 fires?
- 2 A. By being truthful and showing remorse. Getting the
3 money off his back. He's obviously stressed.
- 4 Q. I would be too if I were trying to get a cigar-
5 ette for two and a half hours.
- 6 Moving to twenty-six fifteen.
- 7 (Video playing)
- 8 So in two minutes daddy's coming home and what's
9 going to happen when daddy comes home?
- 10 A. Nothing. He's just going to talk to him like I
11 did.
- 12 Q. But that's not what you told him? You said in
13 two minutes the Chief's coming in. I got nothing for
14 him -- it's a threat.
- 15 You're in trouble . . .
- 16 A. I didn't say he was in trouble. I said I got nothing
17 for him.
- 18 Q. If he's not in trouble, why does he care if the
19 Chief comes in?
- 20 A. I don't know.
- 21 Q. Why would you say it?
- 22 A. I figure if I told the Chief he was being coopera-
23 tive it would be beneficial for him.
- 24 Q. You had told him earlier he could get the monkey off
25 his back by talking to you. Right?

J. BABKIEWICZ ON CROSS

1 A. Well, absolutely.

2 Q. How is the Chief going to be beneficial to him?

3 A. I don't know.

4 Q. Disk three, the first video, forty minutes and
5 thirty seconds.

6 (Video playing)

7 Who is that?

8 A. I can't see but I believe it's Captain Norbert.

9 (Video playing)

10 MR. WALKER: Court's indulgence.

11 (Brief pause in proceeding)

12 Q. I've got a disk three, second video, five minutes
13 in.

14 So now you're bringing in the big guns?

15 A. Yes, sir.

16 Q. Now we'll go to twelve minutes, same video.

17 This is the Chief talking?

18 A. Chief McCallister.

19 Q. The Chief is in there alone. Are you in the other
20 room watching the interrogation?

21 A. Yes, sir.

22 Q. There's no previous deal with the Chief?

23 A. I don't believe so, no.

24 Q. Thirteen twenty-one, same video.

25 (Video playing)

J. BABKIEWICZ ON CROSS

1 Q. Has the Chief been a man of his word in this case?

2 A. I don't know. I can't answer that.

3 Q. You don't know about him asking the Bluffton
4 Police Department to go easy on Andre DeCosta?

5 A. No, sir.

6 Q. Here's he promising to put together a deal that
7 makes sense for everybody. Were you consulted about a
8 deal in this case?

9 A. No, sir.

10 Q. Nineteen fifty-three, same video.

11 (Video playing)

12 Why is bail important?

13 A. I have no idea.

14 Q. Just randomly picked it up out of the air to talk
15 to Andre about when you were discussing serious crimes?

16 A. Again, that wasn't me discussing it.

17 Q. You're right. Were you watching in the window?

18 A. Yes, sir.

19 Q. What is bail?

20 A. I assume bail is the same as bond -- getting out
21 with bond or bail.

22 Q. Getting out of where?

23 A. Of jail.

24 Q. Twenty-two thirty.

25 (Video playing)

J. BABKIEWICZ ON CROSS

1 Q. Twenty-three fifty, same video.

2 MR. WALKER: Court's indulgence.

3 Q. Twenty-five O seven of the same video.

4 (Video playing).

5 Did the Chief entrust you with a letter to read into
6 the Court record?

7 A. No, sir.

8 Q. Today here in Court?

9 A. No, sir.

10 Q. Forty-two twenty.

11 They're talking about the jury court?

12 A. Yes, sir.

13 Q. Just for the record at the start of the video there's
14 two officers in the room with Andre. That's you and the
15 Chief?

16 A. Myself and Captain Norbert.

17 Q. So the choices he's being presented with is you all
18 talking good about him or you all talking bad about him
19 to a jury?

20 A. I believe the reference was the Chief getting up
21 and saying something good about him.

22 Q. Speaking to the Solicitor and saying he's a good
23 person, he took care of us?

24 A. I don't remember anything about him testifying in
25 front of a jury.

J. BABKIEWICZ ON CROSS

- 1 MR. WALKER: Court's indulgence.
- 2 Q. Thirty-eight ten, same video.
- 3 Thirty-seven twenty eight, same video.
- 4 (Video playing)
- 5 So how much cooperation can we get out of all this?
- 6 A. I didn't mention this but that was Captain Norbert
- 7 . . .
- 8 Q. It doesn't matter if you're not the one talking . . .
- 9 A. It was Captain Norbert, I believe, at this point.
- 10 Q. But that's what was said?
- 11 A. Yes, that is what was said.
- 12 Q. I thought it was you.
- 13 Thirty-nine twenty-nine.
- 14 (Video playing)
- 15 So you are promising him he will only be charged
- 16 as an arsonist if he cooperates, with a minimum of one
- 17 year?
- 18 A. I didn't promise him anything. I said he could.
- 19 Q. You could recommend leniency?
- 20 A. I could.
- 21 Q. This is forty-two minutes into the last video.
- 22 I'm sorry. The second to the last video.
- 23 This is ~~three~~ and a half hours into your discussion.
- 24 Do you agree with me? Three and a half to four hours?
- 25 A. Yes.

J. BABKIEWICZ ON CROSS

1 Q. And he hasn't slept since he's been in contact with
2 you guys? Right?

3 A. Yes, sir.

4 Q. And normally you would expect someone to have gone
5 to bed the night before?

6 A. Yes, sir.

7 Q. At some point?

8 A. Yes, sir.

9 Q. And he's just told you that he is zoning?

10 A. Yes, sir.

11 Q. Yes, sir. Keeping playing.

12 (Video playing)

13 Based on the part we've just heard and your repre-
14 sentations to Andre, you were saying he's in a special
15 category of people you are willing to help, is that
16 right?

17 A. No, he is not in a special category. We just said
18 that we don't talk to everybody this way. We say things
19 like that to calm him down, to make him feel comfortable.

20 Q. Did you tell Andre he was in a special category?
21 You and I know that everything you have told him is com-
22 pletely bogus, but he doesn't know that?

23 A. Yes, sir.

24 Q. So you are telling him he's special?

25 A. Sure.

J. BABKIEWICZ ON CROSS

1 Q. And that you're going to go to help him out with
2 the Solicitor?

3 A. Yes, sir.

4 Q. Okay. What is the Captain making arrangements
5 for, Captain Norbert?

6 A. I couldn't even tell you.

7 Q. Is he making arrangements to pick up Andre's things
8 for him?

9 A. (Inaudible)

10 Q. Do you know if that happened?

11 A. I don't know if it happened or not.

12 Q. Now, the beginning of this video -- did you give
13 him a cigarette after he talked to you?

14 A. I believe we did.

15 Q. After the interview was concluded?

16 A. I think so.. I can't say for sure.

17 Q. Sixteen sixteen.

18 (Video playing)

19 All right, that's all the video I have. I'm al-
20 most done with my Cross Examination.

21 MR. WALKER: Your Honor, I'm handing to the Court
22 Reporter what's marked copy two, copy three and copy
23 four.

24 The full interview is over five hours long and all
25 that showed up on the screen. It is equivalent to five

J. BABKIEWICZ ON CROSS

1 hours. I'm sure the State has another portion of it to
2 submit to you and he will run it back.

3 BY MR. WALKER:

4 Q. At no time during this interview did you give him a
5 break or take him to take a nap?

6 A. I don't remember. He did say in the interview that
7 if he had one more cigarette -- I don't know if we broke
8 for him to get a cigarette or not. He did get one earl-
9 ier.

10 Q. What I'm saying is he never got an opportunity to
11 rest after being up for all night and for five hours of
12 interrogation.

13 And he was never given anything to eat?

14 A. (No verbal response)

15 Q. I believe that's all I have, Your Honor.

16 THE COURT: I think you have Redirect?

17 MR. THORNTON: Yes, sir, but I certainly will wait
18 until after the break.

19 THE COURT: We'll take a few minutes. You can
20 step down during the break but you are not allowed to
21 discuss your testimony with anyone while you are on the
22 stand. Thank you.

23 (Whereupon, the Court took a brief recess, after
24 which the matter was resumed)

25 THE COURT: All right, sir.

J. BABKIEWICZ ON REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. THORNTON:

3 Q. Sergeant, I'm going to hand you what's been pre-
4 viously marked as Court's Exhibit Number 9 which is a
5 transcript....

6 This is a transcript of your interview and if it's
7 okay I'm going to reference the transcript itself, Judge,
8 rather than try to find it.

9 During your cross examination there was some ques-
10 tions about the bathroom and cigarette. Would you
11 please turn to page 130, line 19?

12 A. Yes, sir.

13 Q. What does it say?

14 A. You got to use the bathroom or something, and
15 DeCosta said, yes, I do. I said, huh, and he said, yeah,
16 I got to use the bathroom.

17 I then said, all right, come on, and I led him out-
18 side the room.

19 Q. All right, sir. What else does it say?

20 A. It says -- Captain Norbert says to the camera that
21 we're going to allow him to smoke a cigarette here in
22 just a moment.

23 Q. What happens then? Did Mr. DeCosta say anything or
24 do you say anything immediately upon return?

25 A. Upon returning I say, we're back, and he says,

J. BABKIEWICZ ON REDIRECT

1 is Mr. Hamilton already gone, and I say, no, not yet.

2 Hampton already gone -- Captain Norbert said, do you

3 feel a little bit better after that smoke, and DeCosta

4 said, I been asking for it a lot of times.

5 Q. The point of that is -- this is at page 137, right?

6 A. Right.

7 Q. About halfway through the interview?

8 A. Yes.

9 Q. So at some point he was allowed to go to the bath-

10 room and he did smoke a cigarette. Is that correct?

11 A. Yes, sir.

12 Q. I just want that clear for the record. I would

13 direct your attention back to what Mr. Walker -- he

14 talked about this.

15 Sergeant, I'm going to ask you this. This is at

16 the first part of the interview and right after your

17 Miranda Warnings.

18 MR. THORNTON: Your Honor, if I may. This technol-

19 ogy or the lack thereof . . .

20 Q. This is just a little bit -- six minutes and fifty

21 seconds in -- without belaboring the point, is it fair

22 to say that within the first part of your talking to the

23 Defendant prior to all these things Mr. Walker has

24 pointed out that he has already confessed to the jewelry

25 store theft?

MR. BABKIEWICZ ON REDIRECT

1 A. Yes, sir.

2 Q. And he didn't confess until the very end, about
3 the four and a half hour marker, to the arson and to some
4 other arsons and burglaries? Is that correct?

5 A. Yes, sir.

6 MR. THORNTON: Your Honor, at this point I've got
7 the part of the CD that I think would be, if Your Honor
8 needs it at this point to conclude this -- concludes with
9 a reference to other crimes.

10 I don't know procedurally how you would handle it.

11 THE COURT: So it all goes into the mix, I'll be
12 glad to hear from Mr. Walker first of all on the volun-
13 tariness before we go any deeper.

14 MR. WALKER: Thank you, Your Honor. Preliminarily,
15 of course, my objection is two-fold. The Jackson v.
16 Denno and the Fourth Amendment.

17 Secondly, even if the Court were to find that the
18 confession to the burglary was not coerced, that doesn't
19 say anything about the arson.

20 It can be separately suppressed, and also my argu-
21 ments are that the second interview and the statements
22 that he gave -- I don't think that had anything to do
23 in the first statement about fires but the second state-
24 ment is about fires.

25 So you have been hearing all of this information

1 for the last four hours and forty-five minutes of this
2 video as well as the statement at some later point by
3 -- by Officer Russell, I believe is his name.

4 Now, as to Jackson v. Denno, obviously the Defendant
5 is in custody. That's the first prong. Second, he has
6 been interrogated. So we go to whether his rights were
7 voluntarily waived.

8 I obviously have as a preliminary issue a signed
9 advisement of rights form argument that we will reserve
10 at this point.

11 When talking to Officer Norbert, we contend that
12 everything is certainly leading into a second statement
13 a couple of days later which it -- he had already given
14 almost a five hour interview.

15 So for the Court's consideration, State versus
16 Parker, a case where a juvenile had a three and a half
17 hour detention.

18 Let me back up and say a couple of things as a
19 general rule.

20 We look at -- the Court is looking at issues where
21 -- I have a couple of cases I want to cite specifically.
22 Obviously I've read about some other ones.

23 If you look at the general rules, there are any
24 number of rules but most of these cases when they come
25 up are not ones you read about, about where a police
took a defendant and thereby inducing a confession.

1 Interviews are an hour and half long and they do in-
2 volve blowing smoke.

3 And, of course, Your Honor has to use the totality
4 of circumstances test, and we're looking at again under
5 Parker where it sets out the partial list of things to
6 be considered under the totality of the circumstances.

7 The Supreme Court in Winthrop versus Williams says
8 first the length of the interview, which we would say
9 was excessive here, especially given the time of day my
10 client was taken into custody.

11 The regional seminal case is Ashcroft versus Tennes-
12 see. There was a much longer detention but he was first
13 taken into custody at seven A.M. Here we have a shorter
14 detention but he has already been up and he's gone through
15 and into the next morning, which we would submit weaken
16 his will and his ability to withstand.

17 Obviously there was trickery according to the police.
18 The location is obviously in a police station. Ashcroft
19 again talks about fingerprints, disks, and all of these
20 things.

21 Also, you have another case that talks about being
22 overborne by the presence of police. Here you have four
23 different officers over the course of five hours who
24 take breaks and switch out with each other.

25 Here, of course, Mr. DeCosta does not get a break,

1 and the location is in a police station.

2 There is a number of police officers also in the
3 building, and this is a situation not of his choosing;
4 not conducive to his relaxation continuity that we just
5 spoke of.

6 He is not getting any rest while these people are
7 switching out.

8 Obviously he is a mature adult. This is a juvenile
9 case, Parker is, so obviously he is mature enough to
10 make his own decisions, so that is not really what we
11 would press.

12 There is no testimony of any sub-standard mental
13 condition. We are really looking at it for purposes of
14 relaxation continuity in the case.

15 Moving on, other factors of using trickery or coer-
16 cion -- I think it's interesting also in that if you
17 look at Ashcroft back in 1944, if you look at Justice
18 Jackson's dissent, this is illustrative.

19 Of course, this is 1944, a confession made by one
20 in custody heretofore has been admissible evidence un-
21 less it was proven that it was obtained by pressure so
22 strong it would be in fact involuntarily made.

23 Since we have retreated backward to the state of
24 the law in 1944, in that, of course, we see lie after
25 lie after lie.

1 Lie to lie to lie given to Mr. DeCosta, and in fact
2 his assertion of his right, I don't want to talk any
3 more; quit talking to me, and, of course, they continued
4 to try and overcome his will there.

5 Of course, Your Honor, this is true with false con-
6 fessions -- why someone would confess to something they
7 didn't do, when presented options by the police, but I
8 won't belabor that point. It is out there, regardless.

9 The belief that no innocent person would confess
10 falsely with this behavior we are trying to prevent --
11 these situations do go on where you do get innocent per-
12 sons who are overcome by this tactic.

13 We also have case specific in this case -- we are
14 pursuing deprivation of rest, deprivation of drink
15 when asked for and it's not provided, thirty or forty
16 minutes later, and multiple requests for cigarette.

17 Again, it's late at night, something to calm the
18 nerves -- promises conditioned on tell us more and we'll
19 give you one. Then that's withdrawn. Giving and tak-
20 ing and, of course, never -- cooperate more and we'll
21 give you one. Tell us what we want and we'll give you
22 a cigarette.

23 That's a promise and it's a relied-upon promise,
24 and then it's reneged on, and he gets two and a half to
25 three hours into the interview which we conceded on

1 cross examination.

2 There were multiple promises of leniency by the po-
3 lice. The police chief was going to come in and say
4 great things about Andre. That didn't happen.

5 They were supposed to give him probation like in
6 the non-existent case. Of course, we never got an offer
7 in this case until Monday morning, which is an extreme
8 offer for my client's record.

9 Of course, there was promises of leniency, promises
10 of ability to work with the Solicitor -- the category of
11 people that we do this for -- just a special category
12 we don't do for everyone.

13 Then you have a threat. Hey, not just a threat
14 we will say bad things about you but a threat that we're
15 going to charge you with another crime, two other crimes
16 actually, if you don't confess to this one, which is --
17 you heard about threatening him with being charged with
18 stealing the television if he didn't give information
19 about it, as well as the threat of being a serial ar-
20 sonist. We're going to charge you as a serial arsonist,
21 which is playing upon his fear that what is being char-
22 acterized to him as a minor crime having a minimum of
23 one year which we're willing to recommend, or you can
24 be a serial arsonist, which is really bad. It's going
25 to be all over for you.

1 Of course, there is no crime as serial arsonist but
2 it is a threat of a greater crime. In my reading of the
3 footnote, threatening someone to be charged with a dif-
4 ferent crime that is unrelated in order to induce a con-
5 fession which would give an innocent person a reason to
6 confess because they say you can be charged with a crime
7 that carries life but we'll give you this that carries
8 five, so I'll plead to get five. Who knows -- I might
9 as well.

10 Again, you are familiar with that and I won't be-
11 labor the point.

12 He keeps using the word deal throughout these talks
13 and, of course, the multiple direct and blatant lies.
14 We have all this evidence against you. There is case
15 law on that.

16 A case that is probably most appropos -- I mean,
17 the '96 Van Dolan case, 471 SC 7 689. I don't know if
18 you'd like a copy.

19 Of course, the majority says this is deplorable to
20 do that but he's a bad guy, and I think that is probably
21 the only thing involved with this interrogation, so we
22 are going to let it in. Again, we have an interroga-
23 tion here that is longer than that one. That was
24 seven to ten thirty, I believe, shorter than the one
25 we're dealing with here

1 As far as evidence goes, we have a sketch that was
2 drawn with him saying, this is what the witness said
3 the guy looked like, when in fact no witness existed.

4 We've got this evidence of show cases -- again,
5 a deplorable practice. We don't like it, but it is not
6 that bad; we're going to let it go.

7 This case is reprehensible. We find the misrep-
8 resentation of the police to be deplorable. It doesn't
9 say his will was overcome, was over-burdened.

10 Of course, this is where it's so interesting to
11 come in and say, take the totality of the circumstances.
12 We have misrepresentation, we have lies, we have all
13 of this coming together, and I think it is also illus-
14 trative although, of course, not prejudicial. The
15 language is very strong on the dissent from Van Dolan
16 again.

17 (Counsel reading from Van Dolan case)

18 The policy in order to coerce a confession was
19 reprehensible and deplorable, but nonetheless condones
20 the fruits of these acts, which conduct further erodes
21 in their respect for the justice system. Wherever
22 the fine line between acceptable and unacceptable in
23 police conduct may be, there can be no question here
24 that it's been crossed.

25 We have a case in this case which I would submit
is a much further degree than what was considered by

1 the Van Dolan Court.

2 I think that the Judge there was making -- if
3 you have a child throwing a tantrum in the store be-
4 cause he wants to buy a toy and you buy the toy, you
5 are going to get more tantrums.

6 Here the Court said, well, it's okay, and now
7 they pile it on and on and on. The way to stop it is
8 to tell them to stop it and not reward them. We sug-
9 gest that Mr. DeCosta's statement was not voluntary un-
10 der the various precedents that exist.

11 THE COURT: Mr. Thornton, I want you to address
12 the point about the totality of these things.

13 We've been reading cases altering the whole is-
14 sue, and in some cases that excuse a part of this con-
15 duct as was suggested.

16 MR. THORNTON: Your Honor, what was cited having
17 to do with the statement by the Defendant is, I think
18 I'm done, which on its face would appear to be a state-
19 ment that I don't want to make any more statements,
20 but the case of State versus Aleskey suggests that is
21 ambiguous.

22 The Defendant, Mr. Aleskey, said that's all I've
23 got to say. That was a critical invocation of his
24 right to remain silent.

25 In a vacuum with no other things there, that would

1 appear to address the Defendant's concern with the
2 statement, I don't want to say anything else.

3 THE COURT: But as Mr. Walker has suggested, there
4 appear to be several other things which perhaps, taken
5 in isolation -- although perhaps as the Court said in
6 Van Dolan, are reprehensible, are perhaps less than
7 reprehensible taken in its cumulative and might lead
8 to a different result.

9 So if you could address those -- you can address
10 them in any way you want to, but I want you to address
11 that concern.

12 MR. THORNTON: Your Honor, I'll try to do it all
13 at one time, discussing the totality of the circumstances.

14 The State -- it is a totality of the circumstances
15 test, and the test is with the totality of the circum-
16 stances was the Defendant's will overborne.

17 Specifically with regard to promises to leniency,
18 trickery, the time of the confession and things so
19 pertinent to the confession that the confession should
20 be thrown out.

21 Judge, here are some things I want the Court to
22 consider. I know at one time he does say I'm done, it
23 is clear that he continues to converse with them. He
24 doesn't say I'm done; I'm not going to talk to you.
25 He certainly never says anything about wanting to talk

1 to a lawyer before continuing, and he continues to have
2 discussions with the police.

3 This is not an occasion where they say, okay,
4 you're done, so that means you don't want to talk to
5 us any more, and he indicates, no, I'm not going to
6 talk to you any more, or I refuse to answer your questions.

7 It's not even a case where he continues to remain
8 silent.

9 As Your Honor knows from some of the case law,
10 there are even cases where your just sitting there
11 and not talking is not an indication of your right to
12 remain silent.

13 He didn't even do that. He continued to talk and
14 continued to converse with them.

15 I would point out, Your Honor, that although this
16 was a five hour interview we know by the record that
17 he was allowed a water break. I won't say that, but
18 he was allowed water, and he was allowed to have some
19 coffee; he was allowed to go to the bathroom, and he
20 was allowed a cigarette during the course of this.

21 There was also testimony from the officer, and I
22 believe Mr. Walker even pointed this out -- that one
23 of the times -- there were times when officers walked
24 in and out and there were times he was left completely
25 by himself.

1 So while the time he was seated there was five
2 hours long, he was not interrogated for five hours.
3 Additionally, Your Honor, I understand this was early
4 in the morning, two fifty or three o'clock, but the
5 police don't get to pick when the crimes occur.

6 They picked him up immediately upon their suspic-
7 ions and arrested him at the time. They believed he
8 committed the crime so he should not benefit because
9 he chose to commit a crime at that time.

10 The police shouldn't be hamstrung when they ques-
11 tioned him or have allowed him to go to sleep first.
12 He picked the time to be up, Judge.

13 Frankly, what disturbed me at the most, looking at
14 his confession, and I knew this was coming -- obviously
15 the issue of promises.

16 Specifically I would address that and that's why I
17 brought it out to discussion, what Chief McCallister
18 had said about some other person getting probation and
19 some other things.

20 Judge, obviously that is not the kind of thing I
21 would want to get up in front of you and deal with on
22 a regular basis, but I will tell you this. The test
23 is not whether I like it. The test -- whether the tac-
24 tics are acceptable or not, the test is was his will
25 overborne, and I would please ask the Court to consider

1 that on three separate occasions. He's got three sep-
2 arate occasions, Judge, and if I might approach Your
3 Honor, I'd like to refer back to the transcript so I do
4 not get this incorrect.

5 I point out, Judge, page 130 dealt with the breaks
6 and everything. Page 165, line 16.

7 All right -- this is DeCosta -- all right, all
8 right, interrupting -- I'm just ready to get -- so
9 there is no guarantee -- this is to Chief McCallister
10 -- there is no guarantee (reading from transcript).

11 McCallister, I'm not going to sit here and blow
12 smoke.

13 DeCosta, you can't guarantee me probation. Then
14 McCallister said I can't guarantee you anything.

15 At page 170, Your Honor, line three -- the chief
16 was telling me the same thing you were telling me -- he
17 was just telling me what he could do for me in this
18 situation. It's still not a guarantee because I'm not
19 looking for no guarantee because I know it's still up to
20 the Judge.

21 Your Honor, page 225, line 15. Captain Norbert,
22 you want a guarantee; I can't give you that. DeCosta,
23 no, I don't want no guarantee.

24 On three separate occasions, Judge, after all
25 these discussions with Chief McCallister, the Defendant

1 clearly indicated that he knows there's no guarantees;
2 he's not going to get a guarantee; that sentencing is
3 up to the Judge. He was told that by two different of-
4 ficers that he talked to.

5 So the State's position is that while clearly there
6 is some discussion about probation, there is discussion
7 about a lots of other things. The Defendant clearly
8 indicated he knew that there were no guarantees; that it
9 would be up to the Judge.

10 Finally, Your Honor, with regard to the second
11 statement, the statement taken by the SLED investigator,
12 I would say the Defendant had two or three days. Granted,
13 he was in jail but he's got two or three days of time
14 for reflection. He is re-mirandized and re-talked to
15 by another officer and gives another confession.

16 I don't think that you can in any way tie anything
17 in the first confession to a confession that occurs three
18 or four days later by a different officer after he is re-
19 mirandized and re-read his rights.

20 Finally, Your Honor, I would like for you to con-
21 sider the fact that, as I pointed out in my last bit of
22 Redirect, this Defendant confessed within the first
23 seven minutes of the interview. He confessed as to the
24 burglary. The other burglaries which are not, of
25 course, a part of this case.

1 The arson itself did take substantially more time
2 and I think that was around the four and a half hour
3 mark, certainly toward the end of the interview, but he
4 had already confessed to the burglary prior to any of
5 this other discussion.

6 Under the totality of the circumstances, again, the
7 fact that he's already confessed to one crime and he's
8 hedging on the second, and he clearly indicates three dif-
9 ferent times after the majority of the conduct pointed
10 out by Mr. Walker that he understands he's not going to
11 get a guarantee; that it's up to the Judge.

12 Taking into account, Judge, that he was given
13 water, he was given coffee, he was given a cigarette
14 break, and that he was not just interrogated for five
15 straight hours, under that totality of the circumstan-
16 ces, it's the State's position that his will was not
17 overborne.

18 Was there conduct in the statement that has been
19 cautioned against by the Court? Absolutely, and we'll
20 stipulate to that.

21 We would respectfully ask the Court to consider
22 that that is not the test. The test is whether his will
23 was overborne. Your Honor watched the video, and you
24 can judge better than anybody else can and it's your call
25 -- what his demeanor was like, what the demeanor of the

1 officers was like; were they threatening; were they right
2 up on him the entire time, or was it a calm discussion?

3 Was he given opportunity to answer questions; was
4 he given an opportunity to go to the bathroom, as I said,
5 to have water, to have coffee? I would ask the Court
6 to consider this as to the totality of the circumstances,
7 and I think based on the things I've pointed out, Judge,
8 I would respectfully ask you to deny the motion to sup-
9 press.

10 I think clearly he was mirandized. We will stipu-
11 late he was in custody. He was read his Miranda Rights
12 on two separate occasions.

13 Based on the video and the transcript it would ap-
14 pear he understood his rights and he waived them, and
15 the real question in this case is whether that will was
16 overborne later. The State, Judge, respectfully submits
17 that based on everything I've discussed it was not, and
18 I would ask you to allow us to introduce the redacted
19 part of the statement.

20 THE COURT: Mr. Walker, I'm going to ask you, please,
21 to focus on the statement by your client on three occas-
22 ions that he was not looking for promises or guarantees,
23 on whether or not his will was overborne, and as to the
24 burglary charge the statement that he made in the first
25 seven minutes.

1 MR. WALKER: I will address all of those. I will
2 stipulate that the first seven minutes is more problem-
3 atic.

4 The Court can look at the evidence and see what it
5 is when he made his decision. He had another set of
6 charges based on this whole interrogation, and the arson
7 would be another charge in this case, and, of course,
8 the other cases are made from this interview.

9 So even if this particular burglary, if the Court
10 were to so determine -- if it appears to be or didn't ap-
11 pear to be strong when he makes the statement, I still
12 strongly argue that the later statements are beyond the
13 pale, and I do so because if I get up and try to make
14 this motion at another trial they are going to say your
15 decision, based on the cases -- I think there is value in
16 bifurcating out portions of the statement.

17 I would just say as to the burglary, it is what it
18 is. For seven to fifteen minutes on the video that is
19 what the State relies on. You can determine that for
20 yourself.

21 Before I get to where he says, there's no guaran-
22 tees, I'll just briefly touch on where Mr. DeCosta says
23 I'm done.

24 Right after that, the officer goes, okay, let me
25 talk to you for a minute, an immediate attempt to

1 overbear his decision. This is the situation. This is
2 your chance to help yourself out. This is where it's a
3 bad decision to exercise your right, and, secondly, after
4 that, there is the second reiteration of the decision by
5 Mr. DeCosta..

6 On the second video which we played for Your Honor,
7 the first I'm done comment was about one minute twenty
8 seconds of video, but then eight minutes and twenty sec-
9 onds, I believe, a different officer came into the room
10 and Mr. DeCosta said, I waiting for this guy to take me
11 to jail. He keeps asking me questions. I told him I
12 didn't want to answer any more questions.

13 So there is -- it is not just the one time sitting
14 there he keeps on talking. He keeps trying to assert it,
15 and they keep trying to convince him he shouldn't.

16 As to the guarantee matter, the statement there's no
17 guarantee, I'm thinking of Miller for that, and, of course,
18 that is not the guarantee Mr. DeCosta was seeking.

19 Mr. DeCosta was seeking help of the police at their
20 solicitation as to what the outcome of the case would
21 be. The part the Solicitor just read to you I think is
22 on page 165, line 16. Continuing to read that -- I can't
23 guarantee you anything. Okay, and he understands that,
24 but you can guarantee me that you will -- and it stops --
25 all right, I'll do the same thing I did -- all right, I'll

1 do these things. He's making a promise. It's a bargain
2 for consideration. I need your advocacy because is
3 going to tell the Court I'm a criminal.

4 The Chief was happy to reenforce that position all
5 throughout the interview. Hey, we're the guys that can get
6 you a better deal, and we will do it. That's the prom-
7 ise he's relying on.

8 Just like, I'll get your stuff from your apartment;
9 I'll take care of all of that for you. Through those words
10 the police undertake to get him to do something, but the
11 actions they did not do.

12 Now they're trying to say, well, we can promise him
13 anything but we don't have to deliver. At the time he
14 is relying on their statements, and they are promising
15 to help him out and not doing so.

16 I'm sorry, Your Honor. I think you had another
17 issue.

18 THE COURT: I think you've covered the two issues
19 I was concerned about, the promises and the issues as
20 to the voluntariness. The confession in the first seven
21 minutes.

22 MR. WALKER: And again I would go to the totality
23 of the circumstances. Here we have a host of bad con-
24 duct. If you ask a member of the general public if the
25 police have to tell the truth, they'll say yes, the

1 police can't lie to you. The police are the police;
2 they're supposed to tell you the truth, and then I talk
3 to my client, every one of my clients, and that's where
4 we are now.

5 It shouldn't be that way, and this Court can influ-
6 ence that.

7 Watching the tape, you can tell and hear what was
8 going on, the whole atmosphere, what was going on, whe-
9 ther it was coercive or whether it was not.

10 For example, whether there was brow-beating, whe-
11 ther there was persistency -- it's a matter of separating
12 that.

13 THE COURT: You have ^{been} watching it more than once.
14 I've watched it once. Listening to it when they are
15 kind of talking over each other -- I think one of you
16 in your questions said you couldn't tell. Well, that's
17 me. I couldn't tell.

18 So what I would do is take that transcript, and
19 I realize there are parts of it that you all don't want
20 me to read because it deals with other crimes, and I
21 would like not to read any more than I've got to read,
22 but I want to make sure I read the right words.

23 So I would like for you all to jot down on sheets
24 of paper your designations of what portions of the
25 transcript you want me to get, and I'll do it overnight.

1 When we convene this in the morning, I will rule.

2 Any objection to that?

3 MR. THORNTON: No objection with one request.

4 (Discussion between counsel and the Court about
5 scheduling)

6 THE COURT: Mr. Walker, are you okay about a delay
7 until the afternoon?

8 MR. WALKER: Yes, sir.

9 MR. THORNTON: The Court Reporter has all the disks
10 as Court's Exhibits.

11 We will have to redo this as a different Court's
12 Exhibit number now. I have redacted this and I have
13 shown it to Mr. Walker. I took out the part that is
14 dealing with this one issue when I would have played it
15 for the jury.

16 This is what I would ask you to consider in the
17 guilt phase of the trial as far as the Jackson v. Denno.

18 MR. WALKER: I don't have a problem with that,
19 Your Honor, along with what he's saying. Your Honor
20 knows what is here.

21 We've spent forty minutes going over what we con-
22 sider as particularly egregious statements, but certainly
23 the five hours goes to the totality of where they are
24 beating him down.

25 So that would be something you would have to kind

1 of consider, but we don't have any objection again. I
2 just don't want to limit you from any sections. I want
3 you to read the most pertinent ones.

4 THE COURT: That's fine. If you give me the whole
5 thing I can promise you I'm not going to spend . .

6 MR. THORNTON: We will print out a list for you
7 sometime today.

8 MR. WALKER: And I will do the same thing with my
9 notations from the transcript. That way we can both
10 have an opportunity to point out what we think is perti-
11 nent.

12 THE COURT: The officer will have to more or less
13 be sequestered for overnight because he is still on the
14 stand.

15 Sir, I don't want you talking to anybody about your
16 testimony overnight.

17 OFFICER BABKIEWICZ: Yes, sir.

18 THE COURT: You may step down.

19 (Witness excused from stand)

20 THE COURT: We'll be in recess on this particular
21 case until tomorrow at two thirty. Two thirty tomorrow
22 afternoon.

23 (Whereupon, the Court stood in recess as to this
24 matter until July 27, 2011)

25 THE COURT: Ladies and gentlemen, please be seated.

1 Gentlemen, are there any more arguments with regard
2 to the issue of the voluntariness of the statement the
3 officer has been testifying about before the Court goes
4 into an analysis of the ruling?

5 For the State?

6 MR. THORNTON: No, Your Honor.

7 THE COURT: For the Defense?

8 MR. WALKER: No, sir.

9 THE COURT: The Defendant has made a timely motion
10 to suppress those portions of the statement or at least
11 initially the statement in its entirety which was given
12 on November 29 of 2010.

13 Sergeant Babkiewicz has been testifying about it on
14 yesterday and arguments have been made.

15 Now, the issue is the decision on the motion to
16 suppress. The motion to suppress the admission of the
17 statement is respectfully denied.

18 At this juncture, of course, normally it would be
19 the burden of the State to get it admitted before the
20 jury. Ultimately, the jury would have to be satisfied
21 beyond a reasonable doubt.

22 I recognize that that dichotomy is somewhat blurred
23 where the finder of facts and judge of the law are the
24 same individual, as in this particular case, and so to
25 that extent I would also rule that the State has also

1 borne its burden beyond a reasonable doubt as to the
2 admissibility of the statement.

3 That is not to say that some portions of the con-
4 duct engaged in in this case are not troublesome to this
5 Court, as they have been to Appellate Courts as well.

6 The issue of voluntariness depends on the totality
7 of circumstances. The question is whether or not the
8 will of the Defendant was overborne by the conduct of
9 the State.

10 Mr. Walker has cited cases to the Court which cor-
11 rectly state that there are several circumstances to be
12 taken into account when deciding this issue of the
13 overborne will.

14 One of them is the length of the questioning and
15 the circumstances surrounding the questioning. In this
16 case the questioning didn't really begin until in the
17 early morning hours and it extended into the mid-morn-
18 ing hours on that same day.

19 The promises of leniency, issues of deceptive ques-
20 tioning techniques, the withholding of creature comforts,
21 those are among the things that can be taken into ac-
22 count in making a decision as to voluntariness.

23 With that said, let me state that insofar as the
24 portions of the confession of Mr. DeCosta that deal with
25 the jewelry store burglary, that portion of the confession

1 is not, quite frankly, subject to the attack, which the
2 statement regarding the arson would be subject to, and
3 the reason for that is from an early stage on Mr. DeCosta
4 has admitted in the questioning his involvement in the
5 jewelry store robbery.

6 The transcript, beginning at page ten, line ten, on
7 through page 17, line 12, is an admission of his parti-
8 cipation in the jewelry store robbery.

9 On page 20, beginning at line 15 and 16, and page
10 24, line 11 and 12, admits his part in the jewelry store
11 robbery.

12 Page 45, 14 through 23, I give credit to the police
13 officer, the arresting officer. He got me on this burg-
14 lary. Page 47, line 14, I brought the burglary on my-
15 self.

16 Page 56, lines nine through 11, I'm going down for
17 my burglary thing. page 57, lines 11 and 12, going to
18 fess up to my burglary. Page 69, 14 through 19, he admits
19 to the burglary and it is significant that in all those
20 statements he consistently denied any involvement in the
21 arson.

22 So it is beyond the question that Mr. DeCosta was
23 properly given his rights under the Miranda, where he
24 was told he had the right to remain silent; if he waived
25 his rights he could -- he was told he could have a lawyer

1 with him and he could have one appointed if he could
2 not afford one. He was told he had a right to consult
3 with the attorney and to stop answering questions at any
4 time, and in that regard the issue has been raised that
5 in fact at one time he said, I'm done; I'm through.

6 He continued to talk so the question is raised whe-
7 ther that was an adequate assertion of his right to re-
8 main silent or his right to stop answering at any time.

9 There is case law, and I've cited this yesterday,
10 that an ambiguous invocation of a right to an officer of
11 that's all I've got to say, and I cited Aleskey -- I
12 can't pronounce it right -- at 538 Southeastern Second --
13 that does not amount to an unequivocal statement.

14 That statement, that's all I've got to say; I'm done
15 with this, they are very similar.

16 On that particular issue, I think that the single
17 statement being made in that regard -- he made it in two
18 ways I think, and in a very short time frame -- it does
19 not avail him of the right to claim a constitutional
20 violation, or stop them from questioning him at that
21 point in time.

22 Now, as we examine these other issues -- and some
23 of them, quite frankly, are circumstances that are touched
24 on in this particular case. Mr. Walker has aptly raised
25 the fact that this particular case seems to embody at one

1 point in time or another some of the elements in all the
2 cases he raised.

3 So he has raised a valid point about whether the
4 totality of the circumstances -- I guess we would call it
5 in an analytic connotation -- is so egregious as to ren-
6 der the entire process invalid.

7 I cannot say that it is because there are cases,
8 frankly, in which our Court has held where in any circum-
9 stances they are present, and perhaps not all of them but
10 certainly more than one, and they have refused to hold
11 the process is invalidated by those things.

12 State v Parker -- the folks in this Colleton County
13 case involving a sixteen year old who was convicted of
14 armed robbery and murder at a grocery store over there
15 when he was sixteen years old -- when he was arrested
16 he had been running all night long, had been hiding all
17 night long, and they brought him to the police station
18 and began to question him there, and the questioning
19 went on for three hours.

20 Ostensibly, at least, there is a parallel between
21 what the allegations are in Mr. DeCosta's case I think,
22 when the crime occurred around two forty-five or three
23 o'clock in the morning.

24 He was arrested shortly thereafter and the questions
25 went on until about ten o'clock in the morning, after

1 starting at five.

2 Certainly in the case of Mr. Parker who was sixteen
3 years old, he was cold and was a minor, as I've said, and
4 he spent three and a half hours being interviewed in that
5 circumstance.

6 That certainly does not appear to be any less a
7 situation than that afforded Mr. DeCosta under his cir-
8 cumstances.

9 The issue of whether or not the promises of leniency
10 which were given in this case obviously -- I recognize
11 they weren't guarantees obviously. Certainly a promise to
12 speak up for him in his behalf, promises to write a let-
13 ter and promises to do all those things if not a promise
14 to get him probation.

15 The promises of leniency have not held to be suffi-
16 cient to render a confession invalid unless the confes-
17 sion is a condition of the promise itself.

18 In this particular case, Mr. DeCosta stated that he
19 knew there were no guarantees; that nothing was guaran-
20 teed; that it was all up to the Judge.

21 And so that would certainly indicate that insofar
22 as the promises of leniency were concerned, his will was
23 not overborne in regard to the statement that he made.

24 Now, what about the issue of the deceptive questions
25 and deceptive techniques that were used? Our

1 Court has held, as Mr. Walker pointed out, that the cases
2 say those type of deceptive techniques are deplorable,
3 and they are deplorable, but our Court has continued to
4 allow them and other Courts have continued to allow them,
5 so I am bound by what the Appellate Courts in my view
6 have directed me to do.

7 Until the Appellate Courts tell me and other trial
8 judges that deceptive techniques are in and of themselves
9 improper to the extent of rendering any statement invalid
10 then I am bound to follow the law.

11 That is to say, the techniques involved in this par-
12 ticular case are common and comparable to those in other
13 cases. If so, then I cannot in view of that render the
14 confession inadmissible

15 There are better ways to do it. Obviously, great
16 latitude is given to law enforcement, recognizing that
17 some type of trickery is often involved, and that it is
18 sometimes necessary, but, once again, when the deception is
19 not so egregious as to once again overbear the will of
20 an individual, the deception is not illegal.

21 It certainly does not render the confession inadmis-
22 sible, and we covered such things as water, cigarette and
23 bathroom breaks. Certainly those things are not given or
24 at least given when he asked for them in every instance,
25 but that is not to say they were unreasonably withheld.

1 The record reflects he had at least one cigarette,
2 and perhaps two. He was given water on one occasion, I
3 think, and coffee on another. He was allowed to go to
4 the restroom, so certainly nothing in the withhold of
5 comforts would render his confession inadmissible or in-
6 valid; that is, as to the statement that was given on
7 November 29, 2010.

8 The second statement that was given, that statement
9 stands on its own. It was given after a period of time
10 of several days -- five days perhaps or four, depending on
11 how you're counting.

12 He was re-mirandized. He understood his rights, and
13 from reading the transcript I see that Mr. DeCosta cer-
14 tainly indicates in his statements a degree of intelligence
15 as far above the average, as to the numerous folks that
16 come before this Court.

17 That confession stands on its own or that statement
18 stands on its own. He was properly given his rights and
19 he waived those rights. He made a statement after he'd
20 been advised of those rights, and that statement is ad-
21 missible as well.

22 I have considered, quite frankly, the impact of dis-
23 allowing that portion of the additional statement which
24 refers to the confession on the arson crime, and it would
25 reflect my own distaste, I think properly, as some of

1 conduct that was engaged in in that particular case, but
2 somehow distaste is measured in my ruling in this regard.
3 I am not allowed to base a ruling on my own personal opin-
4 ion about something, whether I like it or dislike it. I
5 am required by law to follow the law as I see it and as
6 I understand it..

7 Reasonable minds can disagree on that but I have
8 gone to this length to put my rationale on the record so
9 that when this matter is looked at in appellate review
10 my rationale will be subject to examination by the appel-
11 late court, and if they find the basis of my ruling with-
12 out any legal or evidentiary support, then, of course,
13 they can do what they always do.

14 But for now, today, the motion to suppress is re-
15 spectfully denied. Thank you.

16 All right, Mr. Thornton.

17 MR. THORNTON: I would ask the Court due to the un-
18 usual circumstance that this is a bench trial -- one of
19 the things that I submitted to Your Honor was an abbre-
20 viated transcript, and it was only that part of the
21 transcript that dealt with this case.

22 I wanted to know from Your Honor before I attempted
23 to play any video if that is something you have had a
24 chance to review, and, if you have, Judge, since that
25 would be the video I would play today, I don't want to make

1 you revisit the information if you know what is contained
2 therein.

3 With that, Judge, the State has nothing -- we would
4 rest, subject to whatever Cross Examination Mr. Walker
5 would have of Sergeant Babkiewicz.

6 THE COURT: Mr. Walker.

7 MR. THORNTON: Actually, if Your Honor for purposes
8 of this is willing to incorporate the question of Jackson v
9 Denno into the evidentiary, I would be happy to rest on
10 that.

11 MR. WALKER: I don't have any other questions.

12 THE COURT: I would certainly incorporate, so the
13 State has now rested its case in chief. To preserve the
14 record, Mr. Walker, I'd be glad for you to make your
15 motions now on Rule 19.

16 MR. WALKER: Yes, Your Honor has heard pre-trial
17 motions and made pre-trial rulings, and Your Honor has
18 been very gracious in allowing me a continuing objection
19 based on pre-trial rulings.

20 However, the rationale of the case law is that at the
21 pre-trial stage the Court has not had a chance to hear
22 all of the witnesses or the testimony to reach a final
23 conclusion.

24 With that as a reference, having heard all the testi-
25 mony in addition to what you heard in pre-trial -- you

1 also heard some other information you didn't hear at pre-
2 trial -- you heard from Gonzales on the road that he saw
3 Mr. Hamilton's vehicle coming out of a large gated sub-
4 division and there were no open businesses on the road
5 at this time of night.

6 You heard him say it was point seven miles from where
7 the burglary happened. You heard him say that he was
8 there looking for another vehicle and couldn't find it,
9 and he initially said that when he saw this vehicle driv-
10 ing slowly that is what drew his attention.

11 On further cross examination during the case in
12 chief was, well, you didn't see the other vehicle you
13 were looking for at the time you saw Mr. Hamilton. Then
14 he said that was the only vehicle I saw, and I asked him
15 -- he said he saw the vehicle he was looking for, and it
16 was Mr. Hamilton's vehicle.

17 I asked him if it had been driving at a regular
18 rate of speed -- no, that's not what I'm saying.

19 The clear inference from that testimony is that it
20 was not the only car he saw and he was going to stop it
21 regardless.

22 I think we have proved there is another large resi-
23 dential area with a golf course right across from 278
24 there. So it would be not at all unusual to expect to
25 see traffic there, as well as that there is a pharmacy

1 right there that is open and doing business, where they
2 pulled into, and there was traffic in that parking lot.

3 A road coming out of that residential area and with
4 a night-time sickness you could easily go to that phar-
5 macy that's open.

6 I think in toto, both pre-trial and during trial,
7 the evidence is they were just going to stop the vehicle
8 to see what they could find, and we submit that is barred
9 clearly by the Fourth Amendment.

10 We ask the Court in the light of the new totality
11 of the evidence to reconsider its ruling and, in doing
12 so, to suppress the evidence that was in the vehicle as
13 a result of the stop of the vehicle.

14 We would submit as to any physical evidence in the
15 vehicle and as to both statements, so there would be no-
16 thing the State could proceed on.

17 THE COURT: You can step down.

18 (Witness excused from stand)

19 MR. THORNTON: May we approach?

20 (Conference at the bench between counsel and the
21 Court off the record)

22 THE COURT: All right. Mr. Thornton?

23 MR. THORNTON: Your Honor, at this time, as an ini-
24 tial procedural matter, I would ask that -- I know the
25 Court has reviewed everything. To make sure our record

1 is clear, I would ask the Court to move into evidence
2 the transcript, both the abbreviated transcript and the
3 full transcript, that the Court reviewed in the Jackson
4 v Denno hearing, and I guess we need to get the numbers
5 straight, Your Honor, which I would be happy to do.

6 I would ask that each of the Court's Exhibits be
7 moved into evidence as well as the -- I believe, Your
8 Honor, we just need to move into evidence the abbrevi-
9 ated transcript for evidentiary purposes.

10 As to the full transcript, we have items in it that
11 I don't feel would be appropriate.

12 I believe the statement given by Mr. DeCosta to the
13 SLED agent, Your Honor, was labeled State's Exhibit --
14 it was never moved into evidence but we tagged it --.

15 THE COURT: The transcript is marked Court's Exhibit
16 9, and I reviewed that because Mr. Walker said that I
17 needed to review it to get the totality of the entire
18 situation.

19 Court's Exhibit 10 are the disks that were shown to
20 me yesterday. I would say to keep it as a Court's Exhi-
21 bit as Number 10.

22 MR. THORNTON: Yes, sir.

23 MR. WALKER: I don't have any objection to that
24 procedure.

25 THE COURT: I think we've been over this before,

1 but we need to make sure everything is preserved for
2 appellate review.

3 Your excerpts are preserved for appellate review.

4 (Mr. Walker's notes marked Court's Exhibit 11)

5 MR. WALKER: I tried to call up the time stamp on
6 each video as the record should show as we went through
7 and watched so it would be on the transcript.

8 I think that would make it clear for any kind of a
9 review.

10 THE COURT: All right, the State has now rested. Mr.
11 Walker has made his appropriate motions as to Rule 19,
12 and that rule is such that I must view the evidence in
13 the light most favorable to the State as the non-moving
14 party, if there is any evidence, either direct or cir-
15 cumstantial, or from which his guilt can logically be in-
16 ferred or deduced.

17 The motion is denied. Of course, there is obviously
18 an overriding issue of whether there is admissibility at
19 all, and I have ruled on that earlier.

20 So having made that decision, the next decision I
21 think is inescapable based on -- I won't say at this junc-
22 ture but save that for another point in that regard.

23 Mr. Walker, is there anything for the Defense since
24 the State has rested?

25 MR. WALKER: No, sir, Your Honor.

1 THE COURT: All right.

2 MR. THORNTON: As much as it pains me, Your Honor,
3 I think you can make your own determination on this after
4 hearing all of the evidence, so the State would waive
5 argument.

6 THE COURT: Mr. Walker.

7 MR. WALKER: Before I answer that, Your Honor, I
8 didn't know if you wanted to go into my client's right
9 to testify on the right.

10 THE COURT: I will be glad to do that. I will cer-
11 tainly advise him of his right to testify.

12 Mr. DeCosta, under our rules nobody can force any-
13 body to testify against himself, and so I need to in-
14 quire of you as to your understanding of your rights in
15 that regard.

16 Madam Clerk, would you put him under oath, please.

17 (Defendant placed under oath for purposes of the
18 discussion by the Clerk)

19 THE COURT: Mr. DeCosta, under the Fifth Amendment
20 of our United States Constitution and the South Carolina
21 Constitution, the law provides that no person can be com-
22 pelled in a criminal proceeding to be a witness against
23 himself.

24 That means that you cannot be required to testify
25 in, and that is a right that the law gives to you. You

1 have a right against self-incrimination, and nobody can
2 exercise that right, nobody can give up that right, ex-
3 cept you.

4 That means that you have a right not to testify in
5 this case. If you choose to exercise that right that
6 means the finder of facts, which in this case is me,
7 cannot take that into account or give it any weight what-
8 soever in consideration of your guilt or your innocence.

9 When someone exercises their constitutional right,
10 that fact and may not be held against him. On the other
11 hand, you have a right if you wish to give up that right
12 to testify in your own defense in Court, if you choose to
13 do that.

14 If you give up that right against self-incrimination
15 and choose to testify in your own defense, Mr. Thornton
16 or Ms. Rankin can cross examine you on any point that
17 may be relevant in this particular case.

18 Do you understand the rights that are yours not to
19 testify?

20 DEFENDANT: Yes, sir.

21 THE COURT: And you have discussed those with Mr.
22 Walker? Is that fair to say?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you want to
25 ask me about your right to testify or not to testify?

1 DEFENDANT: No, sir.

2 THE COURT: Let the record reflect that he said no.
3 Do you need to talk with Mr. Walker before you make any
4 decision?

5 DEFENDANT: No, sir.

6 THE COURT: Do you wish to testify?

7 DEFENDANT: No, sir.

8 THE COURT: Thank you. Let the record reflect that
9 he has indicated he does not wish to testify.

10 Thank you, Mr. Walker.

11 MR. WALKER: I would tell you that we have no evi-
12 dence as well. Again, you are quite the distinguished
13 jurist. You have seen a lot of these, and I don't be-
14 lieve anything I say will sway your view of the evidence.

15 We trust you to be an impartial judge, and we would
16 waive our closing argument.

17 THE COURT: All right, folks. Let's be in recess
18 at least by four o'clock. If I have not been able to go
19 over things by four o'clock -- that is fifty-five minutes
20 from now -- I will ask for some more time.

21 We will reconvene at four o'clock.

22 (Whereupon, the Court stood in recess for a period
23 of time, and the matter was then resumed)

24 THE COURT: Ladies and gentlemen, the burden
25 obviously in this and any other criminal proceeding is

1 to prove the Defendant's guilt beyond a reasonable doubt
2 before he can be found guilty of any crime.

3 Proof beyond a reasonable doubt is proof that leaves
4 the finder of fact firmly convinced as to the guilt of
5 the Defendant.

6 The law does not require proof that overcomes every
7 possible doubt, but is solely based on the consideration
8 of the finder of facts.

9 If a finder of facts is firmly convinced of the guilt
10 of the Defendant, then the finder of facts must find the
11 Defendant guilty.

12 On the other hand, after considering all of the evi-
13 dence if the finder of facts thinks there is a real pos-
14 sibility that the Defendant is not guilty, he is required
15 to give the Defendant the benefit of that doubt and to
16 find the Defendant not guilty.

17 The Defendant is charged in Indictment Number 2482
18 with grand larceny of Ten Thousand Dollars or more. The
19 elements the State has to prove beyond a reasonable doubt
20 are that the Defendant wilfully and feloniously took away
21 the property of someone else, intending to steal it, and
22 deprived the owner of the use of that property he carried
23 away and deprived the owner of its own use.

24 In this case, because the Indictment alleges the
25 value of the property being Ten Thousand Dollars or more,

1 the value of the property in that amount has to be
2 proven.

3 So the State has to meet each of those elements
4 beyond a reasonable doubt before the Defendant can be
5 convicted as to that crime.

6 Burglary in the second degree is defined under Sec-
7 tion 16 11 312 B of the Code of Laws as the wrongful en-
8 tering of a building without the consent of the owner
9 or the one in possession, and with the intent to commit
10 a crime therein; that the entering occurred in the night-
11 time.

12 These are the circumstances that must be proven,
13 entry must be without consent of the owner; it must be
14 with intent to commit a crime; and the entry must occur
15 in the nighttime.

16 Arson in the third degree is defined under Section
17 16 11 110 C as wilfully and maliciously burning or set-
18 ting fire to or aiding or procuring the burning of a
19 structure that causes damage to the property.

20 The grand larceny statute, 16 13 30, and the arson
21 statute, 16 11 110 C, were amended so as to take effect
22 on June 2nd, 2010. This crime occurred on November 29,
23 2010, several months after the adoption of the statute.

24 So what then is the evidence offered by the State
25 to meet its burden of proof as to the charges of grand

1 larceny and burglary in the second degree, of a violent
2 nature?

3 In this particular case, we find that the Defendant
4 and CoDefendant were stopped within a mile of the loca-
5 tion of the store that was burned and the store that was
6 broken into.

7 The time was a few minues after the crimes of arson
8 and burglary occurred.

9 The Defendant, Mr. DeCosta, was found in actual or
10 constructive possession of a bag containing the stolen
11 property later identified by the owner, and also in the
12 bag containing the stolen property was the Defendant's
13 identification card, Mr. Decosta.

14 Mr. Ligato testified that the property was his; that
15 he did not give anyone permission to go into the store, and
16 certainly did not give anyone permission to take prop-
17 erty away.

18 In addition, in the vehicle in which the Defendant
19 was stopped was an ax with glass that was embedded in the
20 handle, although not positively identified but at least
21 circumstantially similar to the glass that was at the
22 scene.

23 The video that was introduced, the surveillance
24 video that was introduced, although in time lapse photo-
25 graphy making it impossible to identify anyone, showed

1 an individual or individuals wearing dark clothing,
2 similar to the clothes the Defendant and the CoDefendant
3 were wearing or found in possession of.

4 And so the fact that the Defendant was found in
5 close proximity in time and space that the crimes were
6 committed, was found in possession of stolen goods;
7 that he was found in possession of an ax which essenti-
8 ally could have been used to break into the store, and
9 the video showed the clothes being worn by the intrusive
10 people to be similar to that identified as being worn
11 by the Defendant in this particular case, in my view, in
12 and of themselves, would leave no reasonable doubt as
13 to the guilt of the Defendant as to the crimes of burg-
14 lary and grand larceny.

15 It is significant to say that Mr. Ligato testified
16 that the value of the property taken was more than Ten
17 Thousand Dollars.

18 Certainly if there were any reasonable doubt under
19 the scenario I have just discussed, the confession would
20 remove all reasonable doubt in that regard.

21 As to the grand larceny itself, of course, the fel-
22 onious taking of the property with intent to steal and
23 deprive the owner of its use, converting it to his own
24 use, the value being more than Ten Thousand Dollars, the
25 evidence is cumulative with the evidence that the Defendant

1 was found in possession of the stolen property. Clearly
2 it was outside the store where it was supposed to be.
3 The owner testified it belonged to him and that its value
4 was more than Ten Thousand Dollars.

5 As to arson, the evidence -- the only direct evidence
6 as to the arson is the confession of Mr. DeCosta. The
7 confession, as given to the SLED Agent standing alone, is
8 an unequivocal admission of guilt in that regard.

9 He indicated that Mr. Hamilton threw a rock that
10 did not break the window, and that he, Mr. DeCosta, threw
11 a rock that did break a window; that Mr. Hamilton threw
12 gas and set the building on fire.

13 So the evidence then is that Mr. DeCosta either
14 burned or procured the burn of the building, maliciously
15 and wilfully causing the damage to the building, in vio-
16 lation of the law.

17 There is in addition to that circumstantial evidence
18 in the match between the telephone number and Mr. Hamilton's
19 telephone that was found in possession of Mr. Hamilton
20 and Mr. DeCosta or at least in the vehicle they were tra-
21 veling in, and that was the number that was given to nine
22 one one to report the arson in that regard.

23 Now, as to the confession that was given to the
24 Bluffton police, of course, is additional evidence in
25 this regard. I do not need to consider that confession,

1 quite frankly, in reaching my decision in this regard,
2 and, quite candidly, I choose not to consider it for
3 reasons that I have placed on this record earlier in
4 my analysis of that confession.

5 So I think, as we all know, this case rises and
6 falls on whether the stop itself was legal, and if the
7 stop itself was legal then most of the other evidence
8 falls into place. If the stop was not legal, then all
9 the evidence is inadmissible and Mr. DeCosta cannot be
10 found guilty on this basis.

11 I have ruled in that regard, and I need not belabor
12 the point any further, but that is something the Appel-
13 late Court will understand, that all the evidence this
14 Court has used in determining the guilt of Mr. DeCosta
15 was based on evidence procured as a result of that stop.

16 Mr. DeCosta's convictions will rise and fall on whe-
17 ther or not that evidence was admissible, whether the
18 stop itself was legal.

19 Under Indictment 2482, grand larceny, the verdict
20 of the Court is guilty.

21 Under Indictment 2483, the verdict of the Court is
22 guilty.

23 On Indictment 2484, arson in the third degree, the
24 verdict of the Court is guilty.

25 Mr. Walker, I'll be glad to hear any motions.

1 MR. WALKER: Thank you, Your Honor. In the usual
2 format of events tried in a jury trial, after the con-
3 clusion of the jury came back, I would have just made a
4 motion to renew my earlier motions, and I do that at
5 this time.

6 THE COURT: That's what I'm giving you the oppor-
7 tunity to do, and I renew my earlier rulings in that
8 regard.

9 Is there anything in addition to that?

10 MR. WALKER: I think you have addressed what we've
11 heard. In fact, we've had -- normally a verdict would
12 come back that would not give a particular reason for the
13 decision, which is the unusual situation we have here.

14 So I don't want to comment except to maybe sum up
15 for the record that certainly while Mr. Ligato can tes-
16 tify that the value of the watches was over Ten Thousand
17 he also testified that was a retail value. He testified
18 the wholesale value would be less.

19 Of course, that's an actual test of an economic
20 value or what the economic loss was, so we believe the
21 economic value is somewhat speculative, and that is a
22 part of the record in that regard.

23 Certainly it will be a part of the appellate re-
24 view, I'm sure. Other than that, that would be all I have, and
25 to renew my other motions.

1 THE COURT: Mr. Thornton?

2 MR. THORNTON: The only thing I would ask -- there
3 are no further motions. I'm just going to pass the sen-
4 tencing sheets.

5 THE COURT: All right, on the matter of sentencing,
6 Mr. Thornton, I'll be glad to hear you on any prior
7 record.

8 MR. THORNTON: He has a 1998 conviction for shop-
9 lifting. He has a 2002 record of convictions of driving
10 without a license or insurance, unregistered -- basically
11 driving offenses, Your Honor.

12 He has a driving under suspension also from 2006,
13 2008. He has a driving under suspension third or greater
14 conviction.

15 He has a forgery conviction, less than Five Thous-
16 and Dollars, along with another driving conviction in
17 2009, and he has a receiving stolen goods also from 2009.
18 Receiving stolen goods conviction, December 2009.

19 That's his prior record, Judge, and I want to say
20 after a review of all the evidence in this case I think
21 Your Honor can consider even things that don't come in
22 in the trial itself, combined with the other charges he
23 was facing, to try to deal with these charges.

24 I am asking for a twenty year sentence. I realize
25 that would require you to give him some consecutive time

1 on two of the charges. The maximum on the burglary sec-
2 ond is fifteen, and the maximum on the arson third is
3 fifteen. Then I believe on the grand larceny of Ten
4 Thousand Dollars or more -- I've been in front of you be-
5 fore, Judge, and you know I don't ask for that very often.
6 I don't think I've ever asked you for consecutive time
7 but I think it's warranted in this case, Judge, and I'd
8 like to tell you why.

9 You have in this case somebody willing to burglary a
10 business -- not only willing to burglarize a business,
11 you have someone who is not only willing to set a build-
12 ing on fire, but you have someone who is willing to set
13 that building on fire to cover his tracks for the other
14 crime.

15 In addition to the potential loss of life and dam-
16 age to property the arson causes, the damage and poten-
17 tial loss of life to somebody's business, you are also
18 pulling away EMS and fire and police services that could
19 be used in case somebody's house was on fire, and they
20 are being redirected and diverted in an attempt to cover
21 up this crime.

22 For that reason, Judge, and for the other crimes he
23 is currently charged with that you know information was
24 introduced today in the Jackson v. Denno, not as a part
25 of the evidence, but I don't think you are bound to only

1 deal with the evidence.

2 I'm asking for a sentence of twenty years, and I
3 think it is reasonable in this case.

4 Nothing further from the State.

5 THE COURT: Mr. Walker, I'll be glad to hear from
6 you and from Mr. DeCosta or anyone you wish me to hear.

7 MR. WALKER: As a preliminary matter, Your Honor, I
8 submit that any consideration of any other crimes or
9 charges would be improper.

10 The case name escapes me, but the U. S. Supreme
11 Court has said it would be inappropriate to consider any
12 of the things mentioned by the Solicitor as enhancing
13 factors.

14 I will address some of the Solicitor's points, but
15 I want to tell you a little about Andre. He's thirty-one
16 years of age. You've heard he's got a history of minor
17 offenses such as shoplifting and driving offenses, and
18 then a forgery and receiving stolen goods from the year
19 before this happened.

20 He has never been on probation. He has never been
21 to prison. You heard, I think, the tape or read in the
22 transcript of him having some college education. I think
23 that is actually a certificate in culinary arts and a
24 career excellence center, so it is kind of a job training
25 type of education.

1 He actually just finished his GED, his general equiv-
2 alency degree, last week in the jail, and that is his
3 highest level of formal education.

4 At the time this happened he was employed doing some
5 landscaping but didn't have a job when this happened, and
6 that is his normal trade, doing landscaping work and pick-
7 ing up that kind of work.

8 He is not married, doesn't have any children, and
9 he has gotten into this stage of his life without really
10 coming into Court in concert with another individual, as
11 the Court found, going for the big time the first time
12 out of the gate.

13 But we have to look at what we actually have, and I
14 think we're talking about a completely different thing.
15 We have an arson, and I think the arson makes it differ-
16 ent for a different reason than the Solicitor said.

17 We have a burglary of a business at night, and when
18 we're talking about different levels of burglary -- of
19 course, any burglary is bad, and it's bad to go into a
20 dwelling or someone's home -- that's their castle -- we
21 say it's bad to do that at night because then you increase
22 the risk of running into someone.

23 Then we drop down to lesser charges, and, frankly,
24 the logic is a little backwards there because we say
25 going into a business at night is worse than going into

1 any place else, because the logic is you would avoid
2 running into people. So from that logic, you would think
3 going in at night would be a lesser offense, talking of
4 going into a business at night to gain property and gain
5 some money -- they could fence and get some money.

6 I think the evidence is clear from what you've heard
7 -- from the evidence that has been shown, there was an
8 intent to break in and commit a property crime to gain
9 some money or property they could fence and make some
10 money, but no intent of personal violence to anyone, and
11 you can take that from the time of day and the type of
12 target, the property.

13 You can also take a look at that on the arson. Cer-
14 tainly, it impacts but there is a statement -- I believe
15 in the statement to Officer Russell -- he says, we con-
16 sidered the golf cart place but we thought there might
17 be gas or something there; we didn't want to cause an
18 explosion.

19 They were not there to try to destroy property but
20 the diversion is to occupy the time and lock in the per-
21 sons who service such as in this case.

22 Of course, it could all go wrong. There could be
23 some person there or the fire could spread and be out of
24 control, and these are all factors that could happen,
25 but we look at the intent. Was it a malicious or depraved

1 mind? We submit that the actions in this case don't
2 bear that out:

3 I think you really are just talking about someone
4 who broke into a business and took some stuff, and if no
5 prior record then you'd give a short active sentence and
6 put him on probation, let him make some restitution, what
7 restitution could be made. I don't see any reason not
8 to make that same sort of calculation.

9 I don't see any reason not to make that same sort
10 of calculation based on (inaudible). I think when you
11 take in the fact that arson was committed, the fact is
12 that it was a business and it's at night, the type of ar-
13 son, a small fire with gasoline to start a fire, and it
14 is called in and reported immediately afterward.

15 Okay, we lit this place and let's get random people
16 to find it. It's at least something to consider, and a
17 reason not to consider the more severe sentence.

18 We would submit that a sentence in the three to five
19 year range with probation to follow and again to monitor
20 as well as allow some restitution if any is still owed.
21 I don't know how much wasn't covered by insurance.

22 I also want to express to the Court that Andre has
23 talked to me about addressing the Court, and I think if
24 he did so it would contain some of what I have expressed.
25 I have counseled him with regard to appellate posture

1 that any statements by him would be inappropriate. We
2 have talked about him addressing the Court but that is
3 why he doesn't do so. His family is here.

4 He has said that the arson is particularly hein-
5 ous because they set a fire to cover their tracks. It
6 is just the method they chose, and this is a circumstance
7 where every effort is made to avoid people and avoid con-
8 tact with people. I would say any potential loss of life
9 would have been of a reckless nature, not any kind of a
10 malicious intent.

11 Looking for closed businesses or avoiding businesses
12 that could have been perhaps more impacted by their ac-
13 tions.

14 Again, trying to avoid exposure to large fires or
15 anything like that, and relying on emergency services so
16 we get to speculative sorts of damages that really occur
17 with any call for any reason; that if you're doing one
18 thing, you can't do another.

19 I think that's pretty much always present, and to
20 say that's an additional or extra factor in this case
21 wouldn't really apply. We would ask for a sentence in
22 the three to five year range with a good bit of proba-
23 tion, Your Honor.

24 THE COURT: Thank you, Mr. Walker.

25 (Pause in the proceeding)

1 THE COURT: Gentlemen, I have listened to the state-
2 ments you all have made in mitigation. Even though I do
3 not fully comply with either one of your requests, I have
4 taken those matters into account to consider them in my
5 sentence.

6 On Indictment 2482, the charge of grand larceny, Ten
7 Thousand Dollars or more, Mr. DeCosta, the sentence of the
8 Court is that you be admitted to the State Department of
9 Corrections for a period of ten years.

10 On Indictment 2483, charging you with burglary in
11 the second degree of a violent nature, the sentence of the
12 Court, Mr. DeCosta, is that you be committed to the State
13 Department of Corrections for fifteen years.

14 On Indictment 2484, charging you with arson third
15 degree, Mr. DeCosta, the sentence of the Court is that you
16 be committed to the State Department of Corrections for
17 a period of fifteen years.

18 These sentences are all to run concurrent with each
19 other, with credit for time served.

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

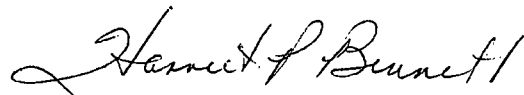
CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Deborah Everett to the best of my ability, having been heard in the Court of General Sessions for Beaufort County on July 25-27, 2011.

A portion of the Transcript is not complete in that the afternoon session of July 25, 2011, is not available for transcription. A portion of the Transcript from July 28, 2011, has previously been prepared by Ms. Everett.

Further, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

July 16, 2013



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010 GS 07 02482-02484

State of South Carolina,
Plaintiff

VS

Andrew DeCosta,
Defendant

TRANSCRIPT OF RECORD

July 28, 2011
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE G. THOMAS COOPER, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

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

SEAN THORNTON, Attorney at Law
Assistant Solicitor for State of South Carolina

MATTHEW WALKER, Attorney at Law
Attorney for the Defendant

I N D E X

NO WITNESSES INTRODUCED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

EXHIBITS

NO EXHIBITS INTRODUCED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 (Whereupon Hearing began at 2:10 P.M.)

2 BAILIFF: All rise.

3 THE COURT: Thank you, ladies and
4 gentlemen. Please be seated. Good afternoon.

5 MR. SEAN THORNTON: Your Honor, I was
6 asked by Matthew Walker today if he could put
7 something on the record in the case that we have
8 involving his client Andrew Decosta. I think he
9 is going to waive his client's presence. I don't
10 think it's necessary he be here and the State has
11 no objection to him making the motion I think he
12 is about to make.

13 THE COURT: All right. Mr. Walker.

14 MR. MATTHEW WALKER: Thank you, Your
15 Honor. I thought I was done for the day but over
16 lunch it occurred to me that I had not made a
17 motion for a new trial. I do waive my client's
18 presence. I'm not even sure if in a bench trial
19 situation it's necessarily required. Just out of
20 an abundance of caution, I would at this time make
21 a motion for a new trial, renewing my earlier
22 objections and base the motion on evidence being
23 considered that should not have been, based on my
24 earlier objections. Thank you.

25 THE COURT: Certainly and like you due to

1 the nature I don't think it's necessary but the
2 record is now protected and I note your motion for
3 a new trial.

4 I deny the motion for the same reason I denied
5 the motions for Directed Verdict.

6 MR. WALKER: Thank you, Your Honor.

7 MR. THORNTON: Thank you, Your Honor.

8 --- END OF TRANSCRIPT OF RECORD ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

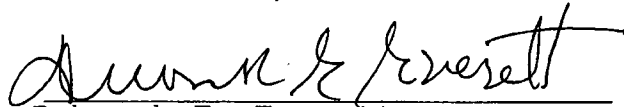
24

25

I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 28th day of July, 2011.

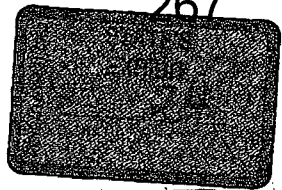
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 22, 2011



Deborah E. Everett
Official Court Reporter

 ORIGINAL



SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD
Governor

REGINALD I. LLOYD
Director

MIRANDA RIGHTS

PLACE: BEAUFORT DET. DATE: 12/3/2010 TIME: 3:45 P.M.

BEFORE WE ASK YOU QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- AD You have the right to remain silent
- AD Anything you say can be used in court as evidence against you.
- AD You are entitled to talk to a lawyer now and have him present now or at any time during questioning.
- AD If you cannot afford an attorney, one will be appointed for you without cost.
- AD If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.
- AD Do you understand these rights?
- AD Do you wish to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk now without a lawyer present. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness: Daniel P. Furell
Witness: _____

Signed: Orinda DeCosta

(N-037)





VOLUNTARY STATEMENT

CASE # 35-10-0041

LEAD #

LAST NAME DE COSTA		FIRST NAME ANDRE		MIDDLE NAME LEON		AGE 30
NICKNAME/AKA		M <input checked="" type="checkbox"/> F <input type="checkbox"/>	STREET ADDRESS			
CITY BLUFFTON		STATE SC	ZIP 29910	MAILING ADDRESS IF DIFFERENT		
HOME TELEPHONE	WORK TELEPHONE		OCCUPATION LANDSCAPING			
EMPLOYER			EMPLOYER ADDRESS			
DRIVER'S LICENSE NUMBER/STATE			DATE AND TIME OF INTERVIEW			
LOCATION OF INTERVIEW BLUFFTON CTY. DET.						
INTERVIEWING AGENT D. Russell		DEPARTMENT SLED		INTERVIEWING AGENT		DEPARTMENT

I, ANDRE DE COSTA understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can not read and write and completed the grade in school.

I, S/A DAN RUSSELL AM WRITING THIS INTERVIEW FOR ANDRE LEON DE COSTAS ON 12-3-2010 AT 5:30 P.M. AT BPT CTY DET. CENTER.

ON NOVEMBER 28, 2010, I ANDRE LEON DE COSTA WAS WITH ANTHONY HAMELTON AT HIS GIRLFRIEND'S HOUSE, BEVERLY FIELDS IN NEW HOPE HOUSING IN BLUFFTON. AD

HAMELTON AND I WERE TALKING ABOUT NEEDING JOBS BECAUSE I HAD BEEN LAID OFF AND HAMELTON WAS UNEMPLOYED.

WE LEFT AND ROSE AROUND TRYING TO FIGURE OUT SOMETHING CREMINAL TO DO TO GET MONEY. WE DIDN'T WANT TO DO ANYTHING EXTREME TO GET MONEY. AFTER RIDING AROUND WE PASSED THE JEWELRY STORE BY PUBLIX STORE AND THOUGHT ABOUT GETTING JEWELRY AND TRY TO SELL IT. WE DIDN'T ANYTHING AT THIS TIME. HAMELTON DROVE ME TO MY HOUSE (1304 BLUFFTON HOUSE) AND I WENT INTO THE HOUSE BY MYSELF. HAMELTON WENT BACK TO HIS HOUSE LATER THAT NIGHT AT 10:00 P.M. HAMELTON CALLED TO SEE IF I WAS UP. AT THAT TIME HAMELTON SAID HE WAS COMING OVER TO PICK ME UP. AD

I WAS PICKED UP AND WE WENT TO CHECK OUT THE JEWELRY STORE. HAMELTON SUGGESTED WE SET THE ALARM OFF ANOTHER BUILDING TO 'BUY' TIME. WE DECIDED ON 'DANZ FAN' BECAUSE

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 12-3-10 Time: 6:00 PM Signature of person giving voluntary statement: Andre DeCosta

WITNESS: Dan Russell WITNESS: _____

I certify that I have been given a copy of this statement consisting of 2 pages.

SLED
CF003 5/95

VOLUNTARY STATEMENT
SUPPLEMENTAL

DECOSTA, ANDRE

Statement of, Continued.

THIS BUILDING WAS A BETTER CHOICE. WE KNOW THE GOLF
CART SHOP WAS THERE AND KNEW THERE MIGHT BE GAS
IN THERE AND DID NOT WANT TO CAUSE AN EXPLOSION.

HAMILTON THREW THE ROCK FIRST BUT DIDN'T BREAK
THE GLASS. I THEN THREW THE ROCK AND THE GLASS BROKE,
WHICH WAS THE DOOR. HAMILTON THREW THE BOTTLE OF
GAS THROU THE HOLE WHILE THE GLASS WAS BROKE.
AFTER I THREW THE ROCK I WENT TO THE TRUCK. AFTER HAMILTON
THREW THE BOTTLE OF GAS WE LEFT AND WENT TO THE JEWELRY
STORE.

THIS IS MY FIRST TIME SETTING ANYTHING OF VALUE ON FIRE.
I HAVE NEVER COMMITTED THE CRIME OF ARSON.

I ALSO WOULD LIKE TO ADD I DID NOT GO TO THE GAS
STATION TO PURCHASE THE GAS USED FOR THE FIRE.

~~AD
AD
AD
AD~~

Andre Decosta

Signature of person giving voluntary statement

Person giving statement to place initials behind
last word of statement as appears on last page.

270 COUNTY OF Beaufort STATE VS. Andre Decosta

INDICTMENT/CASE#: 2010GS0702482 A/W#: J351224 Date of Offense: 11/29/2010 S.C. Code § : 16-13-0030(b) CDR Code #: 3421

AKA: Race: B Sex: M Age: 31 DOB: SS#: Address: City, State, Zip: DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Grand Larceny 10,000 or more

CONVICTED OF or PLEADS

in violation of § 16-13-0030(b) of the S.C. Code of Laws, bearing CDR Code # 3421 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Thornton, Sean SC Bar# 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 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 7/27/11 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 Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient: *Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

Certified - A True Copy

Signature of Jerri Ann Roseheau - Clerk of Court Beaufort County, SC - LaSandra Young

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

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

Presiding Judge Judge Code: Sentence Date: 7/27/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

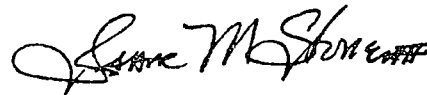
INDICTMENT
2010GS0702482

At a Court of General Sessions, convened on January 27, 2011, the Grand Jurors of Beaufort County present upon their oath:

Grand Larceny \$10,000 or more

That in Beaufort County, South Carolina, on or about November 29, 2010, the Defendant, Andre L Decosta, did take and carry away the property of Ligatos Fine Jewelry, valued at in excess of ten thousand dollars (\$10,000), described as follows: jewelry and watches, with intent to deprive the owner of such property; in violation of Section 16-13-30, Code of Laws of South Carolina, (1976, as amended)

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



Solicitor

STATE OF SOUTH CAROLINA

272 COUNTY OF Beaufort VS. STATE Andre Decosta

AKA:

Race: B Sex: M Age: 31

DOB: SS#

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0702483

A/W#: J351225

Date of Offense: 11/29/2010

S.C. Code § : 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
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:

Thornton, Sean

SC Bar#

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 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2/27/11
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 Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.50

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Certified - A True Copy

Jerr Ann Roseneau - Clerk of Court Beaufort County, SC - La Sandra Young

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

Presiding Judge

Judge Code: 058

Sentence Date: 2/27/11

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0702483

At a Court of General Sessions, convened on January 27, 2011, the Grand Jurors of Beaufort County present upon their oath:

Burglary 2nd degree - Violent

That in Beaufort County, on or about 11/29/2010 the Defendant, Andre L Decosta, did enter the building of Ligatos Fine Jewelry located at 80 Baylor Dr., Suite 106, Bluffton, SC without consent and with the intent to commit a crime therein. That, in addition, this occurred during the night time, in violation of Section 16-11-312(B) of the South Carolina Code of Laws (1976, as amended)

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



Solicitor

274 COUNTY OF Beaufort STATE VS. Andre Decosta

INDICTMENT/CASE#: 2010GS0702484 A/W#: J351226 Date of Offense: 11/29/2010 S.C. Code § : 16-11-0110(C) CDR Code #: 3435

AKA: Race: B Sex: M Age: 31 DOB: Address: City, State, Zip: DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Arson/ Arson- Third Degre

CONVICTED OF or PLEADS

in violation of § 16-11-0110(C) of the S.C. Code of Laws, bearing CDR Code # 3435 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Thornton, Sean SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 7/27/11 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 Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient: *Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.50, TOTAL \$133.50

Certified - A True Copy

Jeri Ann Roseneau - Clerk of Court Beaufort County, SC - LaSandra Young

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

Clerk of Court/ Deputy Clerk Deborah Everett

Presiding Judge Judge Code: Sentence Date: 7/27/11

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."

March 20th, 2015



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

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."

March 20th, 2015



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT