

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES WRIGHT

APPELLANT

APPELLATE CASE NO. 2014-001960

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-01926 & 2010-GS-07-01927

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

AUGUST 25, 26, 27, 2014

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

JAMES TYTIL WRIGHT

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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No defendant exhibits were admitted.

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JAMES TYTIL WRIGHT - TRIAL

1 going to be here much earlier than that. But again, if
2 you are all here promptly at 10:00, we will begin at
3 10:00. All right?

4 Thank you, and you're excused for the evening.

5 BAILIFF: Watch your step. Follow me. Come this
6 way.

7 JURORS LEAVE COURTROOM 12:16 P.M.

8 BAILIFF: The jury is clear, your Honor.

9 THE COURT: Okay. Let's take care of the pretrial
10 motions, if we can, you all. And that way, you all can
11 get back to your office and get to work.

12 Okay. So, what are we going to do, as far as when
13 we're going to pull a jury? My understanding is that he
14 has -- is going to send them to lunch, and then pull the
15 second jury. Does anyone know?

16 MS. LENORE MUSSER: That was my understanding, your
17 Honor.

18 PRETRIAL MOTIONS:

19 THE COURT: Okay. All right. I just want to make
20 sure. All right. Well, Mr. Lee, let's go ahead and
21 proceed with your motions in this case, get you guys out
22 of here, and --

23 MR. LEE: Do you have copies of them, your Honor?
24 I gave them to you earlier with the voir dire.

25 THE COURT: I got them.

JAMES TYTIL WRIGHT - TRIAL

1 MR. LEE: Okay.

2 THE COURT: Thank you.

3 MR. LEE: And again, some of these may not even
4 need to be -- need to be heard at all. Do you need a
5 copy of this?

6 THE COURT: The first is a motion to sequester
7 witnesses. Any objection, Ms. Henderson?

8 MS. HENDERSON: No, your Honor.

9 THE COURT: Okay. We'll grant that. Obviously,
10 your case officer can stay.

11 MS. HENDERSON: Thank you, your Honor.

12 THE COURT: All right.

13 MR. LEE: The next one is, of course, a *Lyle*
14 motion. I don't know if there's any prior bad acts that
15 Ms. Henderson is attempting to get in.

16 MS. HENDERSON: Your Honor, the co-defendant,
17 Tyshon Barnes, has been instructed by me very sternly
18 that he is to stick strictly to this incident and this
19 incident alone. Mr. Hutto has also explained it to him.
20 I saw no indication he did not understand. He said,
21 yes, you know, *I get it; I get it.*

22 I told him it would end it in a mistrial, and that
23 would end very badly for him, as well. He fully
24 understands he's not to discuss anything he and James
25 might have done, other than this.

JAMES TYTIL WRIGHT - TRIAL

1 THE COURT: Okay.

2 MS. HENDERSON: And I have no intention of bringing
3 anything else out.

4 THE COURT: Very good. All right.

5 MR. LEE: Judge, I'm not aware of any statements,
6 recorded or otherwise, made by Mr. Wright, but I would
7 move a *Jackson versus Denno* hearing if Ms. Henderson
8 intends to attempt to introduce any statements.

9 MS. HENDERSON: Your Honor, he made no statement to
10 law enforcement that the State intends to use.

11 THE COURT: Okay.

12 MR. LEE: Did he make any other statements the
13 State is not going to use?

14 MS. HENDERSON: Do what?

15 MR. LEE: Did he make any other statements you were
16 going to use?

17 MS. HENDERSON: No. To my knowledge, he made no
18 statements, your Honor.

19 THE COURT: Okay.

20 MS. HENDERSON: Sorry.

21 MR. LEE: Judge, I also filed a motion to determine
22 admissibility of prior convictions. I have not been
23 provided a copy of his rap sheet. Actually, I do have
24 one, but there were some questions.

25 MS. HENDERSON: His record is somewhat confusing.

JAMES TYTIL WRIGHT - TRIAL

1 Dylan Hightower went into the jail system to try to
2 figure out exactly what happened. He's got the 2003
3 attempted burglary and strong-armed robbery, which was a
4 juvenile arrest. In 2004, he pled guilty to grand
5 larceny and got, it looks like, a YOA, a suspended YOA.
6 Then, in February of 2005, he pled as an adult to grand
7 larceny, burglary second degree, non-violent, criminal
8 conspiracy, and possession of tools to be used in a
9 burglary.

10 THE COURT: And that's 2005?

11 MS. HENDERSON: That was in February of 2005, your
12 Honor, which he got a split sentence, five years,
13 suspended to five years' probation. And it says it's a
14 split sentence, but I don't see where he did any time on
15 it. And then, it's kind of hinky, because, then, in
16 December of 2005, he was convicted of another burglary
17 third, which was probation. Now, he's left alone until
18 2007, when he gets arrested in Jasper County for the
19 case that we discussed.

20 THE COURT: Right.

21 MS. HENDERSON: The armed robbery. That revoked
22 his probation. He went to SCDC for five years on that
23 revocation, and that's why these warrants were not
24 served until 2010. There were obtained back in 2007,
25 but were not served on him until he returned from SCDC

JAMES TYTIL WRIGHT - TRIAL

1 in 2010.

2 THE COURT: Okay.

3 MS. HENDERSON: That's the best we can figure out
4 what happened, because his rap sheet's really confusing.

5 THE COURT: Okay. So, what do you intend on using
6 if he takes the stand?

7 MS. HENDERSON: Your Honor, the only thing the
8 State could use -- obviously, the Jasper stuff is non-
9 convictions.

10 THE COURT: Right. 2004 is outside the ten years,
11 right?

12 MS. HENDERSON: It's outside the ten years. Yes,
13 your Honor. So, we've got the 2005 burglaries, 2007
14 burglary and grand larcenies.

15 THE COURT: Wait a minute. You mean the 2005 or
16 2007?

17 MS. HENDERSON: Your Honor, it's both. He pled and
18 -- he pled twice. In February of 2005, he pled to a
19 grand larceny, burglary second.

20 THE COURT: Right. And then, in December, he also
21 pled.

22 MS. HENDERSON: And then, December, he pled to burg
23 third. And then, in 2007, it looks like he was revoked
24 on the burg second.

25 THE COURT: Okay. So, that -- when he was --

JAMES TYTIL WRIGHT - TRIAL

1 MS. HENDERSON: Right. Yeah. I'm not -- I'm
2 sorry. I didn't mean to say the 2007 one.

3 COURT REPORTER: I'm sorry, Scott. I did not
4 understand you.

5 THE COURT: So, as I see it and I hear you,
6 February 2005, those convictions, and December of 2005,
7 the burg third.

8 MS. HENDERSON: Yes, your Honor. The 2007 is a
9 revocation that I don't intend to use. I didn't mean to
10 say 2007.

11 THE COURT: Got it. Okay. Mr. Lee?

12 MR. LEE: So, there's a 2005 burglary and grand
13 larceny.

14 THE COURT: Grand larceny, burglary third, criminal
15 conspiracy.

16 MS. HENDERSON: Grand larceny, burglary second --

17 THE COURT: And possession of a -- sorry. And
18 burglary third?

19 MS. HENDERSON: Yes. Grand larceny, burglary
20 second, non-violent, criminal conspiracy, and possession
21 of burglary tools. And then, the December is a burglary
22 third.

23 THE COURT: That's December of 2005. Okay.

24 MR. LEE: Your Honor, I mean, I can argue now, but
25 I think it's probably premature to argue the balancing

JAMES TYTIL WRIGHT - TRIAL

1 test, and it is so distant in time. So, I think we
2 could probably hold off until, number one, he shows up;
3 and number two, doesn't take the plea; number three,
4 decides to testify, so.

5 THE COURT: Okay.

6 MR. LEE: If that's okay, rather than -- I would
7 just --

8 THE COURT: Okay. That's fine.

9 MR. LEE: You know the arguments. Okay.

10 THE COURT: Yes.

11 MR. LEE: And my last motion -- well, actually, I
12 guess, for these is, Mr. Tyshon Barnes apparently is
13 going to show up and testify at some point. He is in, I
14 believe, state custody, but has a state sentence and a
15 federal sentence, running concurrently. And so, the
16 last motion is for the State to put on the record what
17 his -- what he promises, sentence reductions, anything
18 made to him; not just by the Solicitor's Office, but you
19 know, indirectly through the U.S. Attorney and anybody
20 else.

21 THE COURT: Presumptuous. Okay. Ms. Henderson.

22 MS. HENDERSON: Your Honor, they're actually
23 consecutive he is serving. He got ten years on this
24 armed robbery back in 2008. He will finish that
25 sentence in 2016. And then, he has to start serving his

JAMES TYTIL WRIGHT - TRIAL

1 39-year federal sentence. No deal was made. The only
2 thing that we told him was that we would contact the
3 U.S. Attorney and let them know that he had cooperated
4 with the State and for the possibility of downward
5 departure. He knows we didn't promise it. We can't
6 promise it. There are no guarantees.

7 THE COURT: But he could potentially be subject to
8 do the *Rule 35*.

9 MS. HENDERSON: He could potentially be subject to
10 the downward departure if, you know, if the U.S.
11 Attorney finds that his cooperation warranted that. We
12 simply told him we would let the U.S. Attorney know.
13 The U.S. Attorney has been -- I've been communicating
14 with him, and I have contacted his federal public
15 defender back when I decided this, and talked to him.
16 To my knowledge, we know no one has spoken to him. It's
17 just been Mr. Hutto and I. The U.S. Attorney has been
18 communicating strictly with me. Nothing has been
19 decided or told to him for sure of anything.

20 THE COURT: Okay.

21 MR. LEE: So, for the record, he is going -- he has
22 been told that he may be the beneficiary of a downward
23 departure, but you're going to push for that with the
24 federal U.S. Attorney.

25 MS. HENDERSON: He has been told that the State has

JAMES TYTIL WRIGHT - TRIAL

1 told the U.S. Attorney that he is cooperative, and yes,
2 that would recommend he get a downward departure. And
3 like I said, he's also been told that we have no control
4 over that, and we can simply only tell the U.S. Attorney
5 that he cooperated, and where it goes from there is
6 completely up to the federal system.

7 THE COURT: Okay.

8 MR. LEE: Judge, the only thing that I can think of
9 we have left today is an issue regarding a videotape,
10 and it's a VHS videotape that, apparently, one of the --
11 Ms. Hill contacted her bank to cancel the ATM card, and
12 they advised it had been used at the Food Lion, on
13 Highway 116, which is less than a mile away from the
14 incident location. And they went back and apparently
15 talked to Food Lion, who obtained a video. I think
16 Foskey.

17 UNIDENTIFIED: Chapman or Foskey got it. I don't
18 remember which one.

19 MR. LEE: But anyway, they got this video. They
20 looked at it, apparently sent it to SLED for
21 enhancement, but there, the trail kind of seems to end.
22 I've never seen the tape. Because of its proximity to
23 the alleged crime -- in fact, there were three people,
24 apparently, on the tape -- you know, we believe that it
25 may consider exculp -- it may contain exculpatory

JAMES TYTIL WRIGHT - TRIAL

1 evidence, particularly not necessarily seeing it on its
2 on his face, but maybe just seeing general
3 characteristics. Apparently, two of the people using
4 the card had on identical clothing, as it was some type
5 of work outfit. You know, without even being able to
6 see it, we were unable to look into that to see if it
7 may be something that may be helpful to Mr. Wright.

8 The height of the people involved, I mean, we just
9 -- we haven't seen any of it, and it seems to have just
10 disappeared. So, we certainly are not alleging any bad
11 faith on the part of law enforcement or the State or
12 anybody else. However, I think we also can show that it
13 may have exculpatory value. I'm not sure how the courts
14 expect someone to be able to do that with something they
15 haven't seen. However, I think just the very nature of
16 videotapes, not necessarily getting a great picture of
17 someone's face, but just general characteristics that
18 may have led to exculpatory evidence. We don't have
19 that, and we're putting that before the Court. I mean,
20 obviously, concerned about that. I think that Ms.
21 Henderson is prepared to address that.

22 Quite frankly, I'm not even sure what the proper
23 remedy would be that we would ask for, but I guess, out
24 of an abundance of caution, I would ask to have some
25 testimony about it.

JAMES TYTIL WRIGHT - TRIAL

1 THE COURT: Okay.

2 MR. LEE: And then, I guess the motion would be to
3 dismiss the case for failure to produce exculpatory
4 evidence.

5 THE COURT: Okay. Yes, ma'am.

6 MS. HENDERSON: Would you like me to speak briefly,
7 or you want me to go ahead and call the witnesses?

8 THE COURT: Certainly, you can speak briefly.

9 MS. HENDERSON: Thank you, your Honor. Basically,
10 the situation, as I understand it, is pretty much what
11 Mr. Lee just said, that, when Investigator Foskey viewed
12 the footage, he was unable to determine any type of --
13 it -- you could not identify the individuals on it. It
14 was too grainy, I think was the term, and that SLED was
15 not able to enhance it.

16 We have contacted SLED to confirm if they have the
17 video or not. They don't. They have no record of --
18 and I believe Mr. Hutto, who spoke with them -- but to
19 my knowledge, they don't have the tape; they don't have
20 a record of it; so they don't know if they sent it back
21 or kept it. They have absolutely nothing on this.

22 The only other thing involving the tape is, I did
23 ask Mr. Barnes, the co-defendant, if he went to Food
24 Lion, and he said, no, that he and James split after
25 they got to the house, and he doesn't know who went to

JAMES TYTIL WRIGHT - TRIAL

1 Food Lion with James. And I don't think you can even
2 say that James, for sure, was the one that went.

3 THE COURT: Went to the Food Lion, so.

4 MS. HENDERSON: Went to the Food Lion. He just
5 knows James had the debit card. But -- so, he says:

6 *I don't know where, if he went, and who*
7 *went with him; I didn't go with him; we split*
8 *once we got to the house.*

9 So, as far as -- that's the only other knowledge I
10 have about this case, regarding the Food Lion incident.

11 MR. LEE: But if he is on -- if Mr. Barnes is on
12 the tape, it would be certainly good impeachment, if
13 he's lying about going to the Food Lion. Of course,
14 we're not able to have that tape to be able to look it
15 up.

16 Judge, I guess my concern is, is, it doesn't seem
17 to be any paper trail at all. I mean, there's obviously
18 something in a report about it was sent up to SLED. I
19 mean, apparently, there's -- I don't even know if SLED
20 even got it. I mean, there has to be something saying,
21 you know -- because if they were going to use it, they
22 certainly would need a chain. And they keep the chain,
23 whether the tape ends up disappearing or not. So,
24 that's a little bit -- my concern is, there just doesn't
25 seem to be any type of paper trail whatsoever, as far as

JAMES TYTIL WRIGHT - TRIAL

1. what happened to this tape, that I know of.

2. MS. HENDERSON: And your Honor, I mean, obviously,
3. we're going to have to have testimony in order for Mr.
4. -- for us to prove no bad faith. But you know, and the
5. other part of that is that the -- no, you know, obvious
6. exculpatory value to the tape. I haven't seen it,
7. either. You know, I never saw the tape.

8. The only person that we have that saw the tape is
9. Investigator Foskey, you know, who is about to be called
10. and sworn, and Mr. Lee can cross him. But he viewed
11. that tape and was -- it was so grainy he couldn't
12. identify anyone. So, I think that goes to the
13. exculpatory. You know, I understand what Mr. Lee is
14. saying, that he should have had the right to view it, as
15. well, and we agree. But there was no evidence that it
16. was destroyed in bad faith or lost in bad faith, or
17. anything like that; and that even if we found it, we
18. would not be able to determine the identity of the
19. people on it.

20. THE COURT: Okay. Well, let's go ahead and bring
21. Investigator Foskey up, and let's get him to testify.
22. Come on up, sir.

23. MADAM CLERK: Would you place your left hand on the
24. Bible and raise your right hand for me, please. Do you
25. solemnly swear to truthfully answer all questions asked

STATE V WRIGHT

PRETRIAL - DIRECT - JOHN FOSKEY

1 of you by this court, so help you God?

2 JOHN FOSKEY: Yes, ma'am, I do.

3 MADAM CLERK: Please be seated. State your name
4 and spell it for the Court, please, sir.

5 MS. HENDERSON: Your Honor, is it okay with the
6 Court and Mr. Lee if we just skip all formalities and
7 jump straight to the video tape?

8 THE COURT: Are you fine with it, Mr. Lee?

9 MR. LEE: (Nodded head.)

10 THE COURT: Thank you. Whenever you're ready, Ms.
11 Henderson.

12 MS. HENDERSON: Oh, thank you, your Honor.

13 JOHN FOSKEY

14 DIRECT EXAMINATION BY MS. HENDERSON:

15 Q Investigator Foskey, during the process of this
16 investigation, did you come into possession of a video
17 surveillance tape from the Food Lion on Highway 116, on
18 Lady's Island?

19 A Yes, I did.

20 Q Do you remember how you came in possession of that?

21 A I went to Food Lion and had them make a copy of it
22 for me.

23 Q Do you remember what format? Was it a VHS, a CD?
24 I mean, a DVD, or?

25 A VHS.

STATE V WRIGHT

PRETRIAL - DIRECT - JOHN FOSKEY

1 Q It was a VHS? And did you have the opportunity to
2 view that footage?

3 A Yes, I did.

4 Q And can you please tell the Court what you were
5 able to observe on that video.

6 A The only thing you could make out -- you could make
7 out is three people, that they were black males, and
8 approximate heights and weights. But they were so far
9 away from the camera, and it was not very well lit where
10 they were at. You couldn't make out any facial
11 features.

12 Q Okay. And were you able to identify any part of
13 their clothing?

14 A Yes. Two of them had on -- it appeared to be work
15 shirts with a patch on the front of the shirt.

16 Q And could you identify the patch through the video?

17 A No, you could not.

18 Q And what, if anything, did you do, in an attempt to
19 make that video more clear?

20 A Okay. I would really need to look at my evidence
21 sheet that I turned it in to evidence. It was my
22 intention to send it to SLED to have it enhanced, but
23 I'm -- I can't recall offhand if -- if I actually -- it
24 was actually sent or not.

25 Q And do you remember ever seeing that tape again?

STATE V WRIGHT PRETRIAL - CROSS - JOHN FOSKEY

1 A No.

2 THE COURT: Does it help if you give him the
3 evidence list?

4 MS. HENDERSON: There isn't -- that's the problem,
5 your Honor, is that we don't show it going in. We have
6 the property receipt.

7 THE COURT: Right.

8 MS. HENDERSON: Sorry. This is a little out of --

9 THE COURT: Go ahead.

10 MS. HENDERSON: We have the property receipt where
11 Investigator Chapman received it from Food Lion. And
12 that's -- and then, we have Investigator Foskey's report
13 of what he saw on it, and his intention to send it to
14 SLED for enhancement, and that's where our paper trail
15 ends.

16 THE COURT: Okay. Okay. Mr. Lee.

17 JOHN FOSKEY

18 CROSS-EXAMINATION BY MR. LEE:

19 Q Foskey, it looks like your report was written May
20 25th. Does that sound right?

21 A Yes.

22 Q Okay. So, that would have been -- and that's after
23 2007. How long after the armed robbery would it have
24 been? About two weeks? Wasn't the armed robbery May
25 10th? Is that right?

STATE V WRIGHT PRETRIAL - CROSS - JOHN FOSKEY

1 A I'm not sure.

2 Q Okay. So, about two weeks. So, is it 15 days is
3 the difference between what happened and your report?
4 Does that sound right?

5 A Yes.

6 Q Okay. And on your report, it indicates SLED --
7 the tape was sent to SLED for enhancement. So, would
8 that indicate to you that on the 25th, when you wrote
9 the report, it already had been sent?

10 A Yes.

11 Q Okay. What video camera are we talking about at
12 the Food Lion?

13 A There are two different cameras, one that shows
14 coming into the front door, and one that shows on --
15 back by the produce area where the produce is.

16 Q Okay. And both of those views were on the tape
17 that you had?

18 A Yes.

19 Q Okay.

20 A They didn't have one on the ATM machine itself.

21 Q Well, that's what I was going to ask you next, is
22 they have -- when you actually use the ATM, the bank
23 didn't have a camera on the ATM?

24 A No. It's -- it's not a bank camera. It's just a
25 standard ATM, privately owned.

STATE V WRIGHT PRETRIAL - CROSS - JOHN FOSKEY

1 Q Okay. So, there was no camera to even get a
2 picture off of.

3 A No, sir.

4 Q And there's only two views for the Food Lion? They
5 only have two cameras that showed views?

6 A At that time, yes.

7 Q Okay. Which player did you use to try to view the
8 video tape on? One at your office, or?

9 A Yeah, at my office, yes.

10 Q Okay. Had you watched other videos on there to
11 know if it was an up-to-date player, or whether it was a
12 quality VHS player?

13 A Yes. I mean, we watched quite a few on it during
14 that time.

15 Q Based on your experience, can you tell us why the
16 tape was not very clear? Do you think it was defective
17 equipment, taping equipment?

18 A Just older equipment. It was not up-to-date
19 equipment, and the cameras were too far away from where
20 you actually had the views of the people.

21 COURT REPORTER: I'm sorry. *Too far away from*
22 *where you actually had to?*

23 A The view of the people.

24 Q Do you remember when you actually got the tape from
25 Food Lion?

STATE V WRIGHT PRETRIAL - CROSS - JOHN FOSKEY

1 A Not off the top of my head.

2 Q Okay. So but, it was from the same day as the
3 armed robbery, right?

4 A It would have been -- it should have been the same
5 day.

6 Q Okay. The report says it was -- it was used
7 shortly after the robbery. So, that would have been --

8 A Yes.

9 Q Okay. Between the time you got it and when you
10 looked at it, how much time went by? Do you know?

11 A No more than an hour, probably.

12 Q Okay. So, did Chapman go pick it up at Food Lion,
13 or did you?

14 A I can't recall right offhand.

15 Q Okay. But you didn't leave it in your trunk, you
16 know, all weekend --

17 A No, sir.

18 Q -- in a hundred degrees, or anything like that.

19 A No.

20 Q Okay. So, you don't think it was damaged or
21 anything because of anything that you did.

22 A No.

23 Q Okay. Is it your understanding that SLED could not
24 enhance it?

25 A I don't recall. I never heard about the video

STATE V WRIGHT PRETRIAL - CROSS - JOHN FOSKEY

1 again.

2 Q Okay. So, you don't know whether SLED could have
3 enhanced it to make it better?

4 A No, I don't.

5 Q All right. And there's no way to know whether the
6 Defense could have enhanced it to make it look better.
7 You just don't know, right?

8 A No.

9 Q Okay. And you're not aware of any report from SLED
10 saying, hey, we got this, and we can't do anything with
11 it?

12 A No.

13 Q And had you received it back from SLED, either
14 enhanced or not enhanced, would you have filled out a
15 supplemental report saying -- or some type of notation
16 saying, hey, got something back, and it's --

17 A Well, I wouldn't have had it. Our process is to
18 turn it into evidence, and they send it to SLED.

19 Q Okay.

20 A And then, they send it back to our evidence.

21 Q Okay. But then, at some point, you find out about
22 it --

23 A Yes.

24 Q -- and -- or take it to be enhanced, right?

25 A I would have received a report back from SLED.

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1 Q Okay. And you never received any report from SLED.

2 A No.

3 MR. LEE: Okay. That's all I have, your Honor.

4 BY THE COURT:

5 THE COURT: Let me ask you. Do you have any way to
6 even know for sure whether or not it was sent to SLED?

7 DETECTIVE JOHN FOSKEY: That's why I was asking for
8 my evidence sheet, because I could see what I actually
9 turned in to evidence. If I don't, you know, if that
10 tape's not on there, then, it may have not went into
11 evidence.

12 MS. HENDERSON: Your Honor, I could produce our
13 evidence sheets, but they do not have the tape on them.
14 That is what prompted me to call Beaufort County
15 evidence, and speak to Ms. Eileen. I said, *can you*
16 *please confirm what* -- because I thought maybe it got
17 put back in there and just -- it didn't get logged back
18 in or something. And she confirmed that all she had was
19 what I had listed on the evidence logs, which are the
20 photo lineups of Tyshon Barnes, the Piggly Wiggly
21 handbook, and the latent lifts.

22 COURT REPORTER: And the latent lifts?

23 MS. HENDERSON: Latent lifts. Yes, ma'am.

24 THE COURT: Okay. All right. Anything further?

25 MS. HENDERSON: Nothing for Investigator Foskey,

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1 your Honor.

2 MR. LEE: Your Honor, I would just ask, I guess,
3 for the Court to take judicial notice that, on his
4 report on the 25th, it says the tape was sent to SLED
5 for enhancement. So, I think, as far as time tables,
6 and I think everybody agrees with that.

7 THE COURT: Okay.

8 MR. LEE: But I can publish a copy of the report,
9 if necessary.

10 THE COURT: Okay. Why don't we go ahead and make
11 that an exhibit, a court's exhibit, for this motion.
12 All right. Anything further for Investigator Foskey?

13 MS. HENDERSON: No, your Honor.

14 THE COURT: You may step down, sir. I hear you're
15 doing double duty. You've got another case you're
16 trying to get taken care of while you're here. Okay.

17 JOHN FOSKEY: Yes, ma'am.

18 COPY OF DOCUMENT IDENTIFIED AS

19 SUPPLEMENTAL INCIDENT REPORT,

20 CASE NUMBER 20070510265 MARKED

21 COURT'S EXHIBIT 1.

22 THE COURT: Okay. All right. Mr. Lee, you want to
23 argue, or?

24 MR. LEE: Judge, this is a little bit of an unusual
25 situation in that, the type of evidence that you have is

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1 not expungeable items, like drugs that can degrade and
2 go away. So, it's not, I mean, if they didn't give it
3 to us in time. But on the other hand, it's not a -- it
4 is a physical item.

5 THE COURT: Yes.

6 MR. LEE: But on the other hand, it's not a
7 physical -- it is a physical item, but the problem is
8 that the potential exculpatory or inculpatory nature of
9 it, it's kind of fairly locked in, hidden in there. And
10 so, it's a little bit -- it's a little bit different
11 situation than you typically have.

12 I know that SLED has some pretty powerful things
13 for enhancing videos. We all know what you can do, not
14 particularly now. I mean, maybe in '07 you couldn't do
15 as much, but particularly now, you know. So, I think
16 the importance of that could be very, very important,
17 because it can at least be some very favorable
18 circumstantial evidence if my client is not one of the
19 three guys walking around the Food Lion with this card
20 that was taken from the robbery.

21 It also would be very helpful to my client if
22 Tyshon Barnes is one of the guys that is -- it certainly
23 would be very helpful if we could read the name tag on
24 the people's shirts that, you know.

25 I think it's somewhat similar to DNA. I mean, I

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1 think they're getting better and better and better at
2 enhancing these items. And so, you know, this was seven
3 years ago that this happened, and it's just very
4 unfortunate for my client that we can't get that, in an
5 attempt to show the exculpatory nature of the evidence.
6 But we don't, for a second, suggest that Foskey or
7 anybody else purposely lost this or is trying to hide it
8 from us. So, I think the proper problem to look at it
9 is whether or not it has exculpatory value. And I think
10 the fact it's a mile away from the location, I think
11 that the fact that it was used very shortly thereafter,
12 I mean, I'm sure the State would be jumping up and down
13 if it was available for them to talk about this.

14 I would respectfully ask the Court to think about
15 how important this evidence could be, and that we should
16 have it. Really, the evidence in the case that you're
17 going to hear, quite frankly, is one, there's a
18 fingerprint from a pack of cigarettes and a lady's
19 pocketbook, and then testimony from a co-defendant.
20 Other than that, there's not --

21 THE COURT: Whose fingerprint is it?

22 MR. LEE: My client's.

23 THE COURT: Your client's. Okay. Okay.

24 MR. LEE: Yes, ma'am. It's our position that there
25 is exculpatory value to that tape. Maybe not viewable

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1 or evident by the human eye, and we know Foskey looked
2 at it and couldn't tell much, but the fact that it can
3 be enhanced and that they knew that and were sending it
4 up to SLED would suggest to me that there would be some
5 exculpatory nature to that video. So, we respectfully
6 make a motion to dismiss the charges for failure to turn
7 over exculpatory evidence.

8 THE COURT: Ms. Henderson.

9 MS. HENDERSON: Thank you, your Honor. You know,
10 Mr. Lee used the words *could* and *might* a lot, which is
11 exactly what our Supreme Court doesn't want us to do.
12 In *Arizona v. Youngblood*, it says that the fact that it
13 might have been exculpatory is not enough. *State v.*
14 *Adams* at 304 S.C. 302, goes a little further. It says
15 the exculpatory value must be apparent before the State
16 loses it; speculation about such things, our Supreme
17 Court has held, will not do.

18 So, your Honor, basically, you know, there has to
19 be some kind of evidence that there that it definitely
20 contained exculpatory evidence, and then was later
21 destroyed. There is no evidence of that. Mr. Foskey --
22 or Investigator Foskey testified that you cannot obtain
23 anyone's identity much -- or by their clothing, their
24 face. The only thing you can identify is the race and
25 the possible gender of the people. And therefore, I

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1 don't think it rises to the level that we have lost
2 definitely exculpatory evidence, your Honor. I think
3 the fact that it's a possibility is like *Arizona v.*
4 *Youngblood* and *State v. Adams* laid out is not enough.

5 THE COURT: All right.

6 MS. HENDERSON: Additionally, your Honor, we're not
7 -- you know, if this was -- if the moving company had
8 video footage of the armed robbery, and that's what we
9 were discussing, it would be very different. But this
10 is not the actual incident. This is afterwards. And if
11 that were to have been all we would have had, it would
12 never have amounted to armed robbery. It would have
13 just be possession of stolen goods. So, I don't think
14 that, you know, the case rises and falls on that.

15 I understand Mr. Lee's point, that he never got to
16 view it, and as the Defense attorney, he should have had
17 that right. The State absolutely agrees. The State
18 wishes they could have viewed it. But the bottom line
19 is, it was not destroyed or lost with any bad faith, and
20 there is no showing that it for sure contained
21 exculpatory evidence that rises to the levels required
22 in *Arizona v. Youngblood* or *State versus Adams*.

23 THE COURT: All right. Well, respectfully,
24 obviously, there is no bad faith in this case, based on
25 the testimony of Foskey, and -- not the testimony, but

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1 obviously in the reports. The question is whether or
2 not there is any exculpatory value to the tape. And
3 again, as Ms. Henderson stated, case law requires that
4 it must be apparent. Might is not good enough.

5 I further find that, even though it is concerning
6 that the Defense hasn't had the opportunity to see it,
7 it's a videotape of after the event, not the event that
8 he's charged with. So, respectfully, while I do
9 understand Mr. Lee's argument that, potentially, it
10 could be used to impeach the testimony of the co-
11 defendant, again, we don't know that. It's just a
12 might. And we don't even know if SLED could have done
13 anything with it, eventually, as well, even if they did
14 or did not get it.

15 So, with that extent, I'm going to respectfully
16 deny your motion to dismiss.

17 My question is, is in the testimony, your co-
18 defendant is not going to say -- he can testify as to
19 how far, when he was with them, and they have whatever,
20 he can't testify as to any of that, correct?

21 MS. HENDERSON: No, your Honor.

22 THE COURT: And I want to make sure he's not going
23 to go so far as to testify that he didn't go to use it.

24 MS. HENDERSON: Tyshon?

25 THE COURT: Right.

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1 MS. HENDERSON: No. He will say that he doesn't
2 know -- basically, what he says is that he never had the
3 debit card. He doesn't remember, specifically, that
4 detail about Food Lion, but he said, *I never had the*
5 *card; James had the card; so, I didn't go.* But whether
6 James went or who he had with him, he can't say, because
7 he did not go to Food Lion. He got in the car --

8 THE COURT: And he can't say who did.

9 MS. HENDERSON: He can't say who did. He just
10 knows he didn't. All he knows is that James was the one
11 that had the debit card, and that he did not -- he
12 didn't go to Food Lion, and that's the end of his
13 knowledge.

14 THE COURT: Okay. So, that's the extent.

15 MR. LEE: I guess the question is, is there going
16 to be any mention in the State's case of the Food Lion
17 incident?

18 MS. HENDERSON: I mean, if that's how you wish to
19 cure this, is that we don't acknowledge that someone
20 went to Food Lion and used the card. I mean, I
21 certainly understand. You know, I mean, I'm not going
22 to jump -- again, because it has no evidentiary value,
23 it's not something that --

24 THE COURT: Well, there's no one can testify as who
25 is in it.

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1 MS. HENDERSON: Right. The only thing that can be
2 testified is just to that Investigator Foskey and
3 Investigator Chapman followed up with the information
4 and tried to obtain evidence, and it was not helpful. I
5 mean, if we -- but if your Honor wants to, or Scott
6 wants to, move for a motion in limine that that
7 testimony be excluded, that we just never mention Food
8 Lion, and if that's how you're comfortable curing this,
9 I mean, I don't have a problem with that. I just --

10 THE COURT: Mr. Lee, is that what --

11 MR. LEE: I'm sitting here trying to think. I'm
12 not sure if I'd move to exclude it, or whether I would
13 --

14 THE COURT: Want to argue it?

15 MR. LEE: -- ask you whether it would be fair game
16 for me to argue, you know, impeach the investigation for
17 loss of the videotape that, you know, that was there an
18 hour after it happened, a mile away.

19 THE COURT: I certainly think you can use it to
20 impeach, if you want to.

21 MR. LEE: Can I just think about that?

22 THE COURT: Certainly.

23 MR. LEE: As to which to do.

24 THE COURT: Okay. Okay. Anything else, as far as
25 pretrial motions are concerned?

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1 MS. HENDERSON: No, your Honor. The only thing
2 that I would -- that I would ask is --

3 THE COURT: Oh, I'm sorry. I need to put on the
4 record, too, that I actually signed a bench warrant for
5 your client, Mr. Wright. He was told to be here this
6 morning at what time, 9:00, 9:30?

7 MR. LEE: I told him to meet me here at quarter
8 'til 9:00. I spoke with him Wednesday. Last Tuesday,
9 he came by. Wednesday, he signed a plea sheet. I
10 brought it over here Thursday. I talked with a family
11 member Friday, who is actually here.

12 THE COURT: Which is his sister who is here in the
13 courtroom? Okay.

14 MR. LEE: Is here.

15 THE COURT: Okay.

16 MR. LEE: And have you heard anything at all?

17 YOLANDA SIMMONS: No.

18 THE COURT: Okay.

19 YOLANDA SIMMONS: I'm not his sister.

20 MR. LEE: I'm sorry.

21 YOLANDA SIMMONS: I'm not his sister.

22 MR. LEE: Okay.

23 THE COURT: Okay. Well, I've issued a bench
24 warrant. And so, if they pick him up, we'll have him.

25 MR. LEE: Okay.

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1 THE COURT: But he needs to know, obviously, if
2 he's going to be tried in his absence. Okay.

3 MS. HENDERSON: Your Honor, the only thing I ask
4 is, I've never done a trial in absence. Is there a --
5 do you charge the jury, or do you comment on the fact
6 that he's not here? How do we handle that?

7 THE COURT: I think, Mr. Lee, you could address it
8 the way you want. I mean, a person has the right not to
9 be present for their jury trial.

10 MR. LEE: Right. I mean, I need to, obviously,
11 address it in some way.

12 THE COURT: You need to think that through. You
13 probably need to think it through. Yeah.

14 MR. LEE: Right.

15 MS. HENDERSON: Well, and that's what I wanted --
16 because I know the case law that says you do not have a
17 constitutional right not to attend your jury trial. You
18 have a constitutional right to confront your witnesses,
19 but you do not have a constitutional right to not be
20 here. So, that should -- I should be able to comment on
21 the fact. That's why I just wanted to make sure we were
22 clear about that I was able to comment on the fact that
23 he was not here. That's not a violation of -- okay.
24 Never mind. That's what I wanted to clarify.

25 THE COURT: It's just the opposite, yes.

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1 MS. HENDERSON: Okay.

2 THE COURT: Exactly. Okay. Okay. You all will
3 get it straight with her.

4 MS. HENDERSON: Yes, ma'am.

5 THE COURT: And we'll take care of it in the
6 morning. I'm going to ask that you all be back at
7 9:30 tomorrow morning, where we'll go ahead and --
8 actually, I'm going to ask this. Mr. Lee, instead of
9 9:30, why don't we all plan on being here at 9:00
10 tomorrow morning --

11 MR. LEE: Yes, ma'am.

12 THE COURT: -- in case Mr. Wright shows up and
13 decides he's going to do something different, other than
14 proceed to trial. So, that way, we aren't keeping this
15 jury waiting. Okay? Is that all right with you all?

16 MR. LEE: Yes, ma'am. Absolutely.

17 THE COURT: Okay. So, we're going to be here at
18 9:00 o'clock in this courtroom, ready to go. Okay.

19 MS. HENDERSON: Yes, your Honor. Sorry.

20 THE COURT: Also, Mr. Lee, I think you need to
21 coordinate with the possibility that, if he is, in fact,
22 picked up on his bench warrant, we need to make sure
23 that somehow -- I don't know what he's going to be
24 wearing, but that he's going to be able to have clothes
25 to go forward, if that's, in fact, what happens. Just

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1 thinking a little housekeeping ahead of time.

2 MR. LEE: Right.

3 THE COURT: But you know, like I said, I don't
4 know. I mean, if he's in shorts, you know, you're going
5 to need to have him -- have some clothes for him, if
6 that's --

7 MR. LEE: Okay.

8 THE COURT: Okay?

9 MR. LEE: All right.

10 THE COURT: All right. Anything else, you all?

11 MS. HENDERSON: Nothing from the State, your Honor.

12 THE COURT: All right. I'll see you all in the
13 morning.

14 MR. LEE: Thank you.

15 THE COURT: Okay.

16 END DAY ONE, MONDAY, AUGUST 25,

17 2014, 12:52 P.M.

18 BEGIN DAY TWO, TUESDAY, AUGUST 26,

19 2014, 9:45 A.M.

20 BY THE COURT:

21 BAILIFF: All rise. The Honorable Carmen Mullen
22 presiding.

23 THE COURT: Thank you all. Please be seated. Good
24 morning.

25 RESPONSES OF GOOD MORNING.

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1 THE COURT: Mr. Lee, I think we need to put on the
2 record again, your client is not here this morning.
3 Have you had any contact with him?

4 MR. LEE: I have not, your Honor. I have called
5 umpteen times yesterday, late last evening, earlier this
6 morning. I did speak with a Yolanda Simmons this
7 morning. She says that she went to his mother's house.

8 THE COURT: Is she the sister?

9 MR. LEE: No, she's the friend; not his sister.

10 THE COURT: I'm sorry.

11 MR. LEE: I'm not sure, of course, yesterday she
12 went by. She called his work, went by his mom's house.
13 They haven't seen him. They don't know where he is.
14 That's all I know.

15 THE COURT: And I know I issued a bench warrant for
16 him yesterday, because he was supposed to appear.

17 MR. LEE: Yes, ma'am.

18 THE COURT: And I know the Sheriff's deputies are
19 out looking for him in Jasper, correct?

20 MS. HENDERSON: We have Sheriff's deputies down in
21 Ridgeland. And I think they even notified Hardeeville
22 to be on the lookout. The last I heard from Ridgeland
23 was that pretty much all of Jasper County was looking
24 for him last night. I have received no messages this
25 morning, obviously, that he was found.

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1 THE COURT: All right. Well, we just need to
2 establish, for the record, that he was properly noticed,
3 obviously, to be here in court. I know this was on the
4 trial docket. We knew he was first up. Mr. Lee, you
5 said your last contact with him was last Wednesday,
6 where you signed him up. Is that correct?

7 MR. LEE: That's correct.

8 THE COURT: For a guilty plea, and that was the
9 last time you saw him. Did you speak with him after
10 that?

11 MR. LEE: I did not speak with him. I spoke with
12 Yolanda on Friday. She was verifying the court time, or
13 asked me about it. I have not spoken with Mr. Wright
14 since Wednesday afternoon when he came into my office
15 and signed up for the negotiated plea.

16 THE COURT: Okay.

17 MS. HENDERSON: Your Honor, do you want me to make
18 the letter I sent to him and his bond paperwork
19 informing him he'd be tried in his absence a court
20 exhibit?

21 THE COURT: Absolutely.

22 MS. HENDERSON: Okay.

23 THE COURT: Because we're going to try in his
24 absence, we should.

25 MR. LEE: And I guess, just for the record, I need

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1 to object to him being tried in his absence. It's
2 prejudicial to him, and I can't explain where he is, and
3 I don't know that he's not -- that he's not missing
4 court non-willfully.

5 THE COURT: Thank you.

6 COURT REPORTER: Non?

7 THE COURT: Non-willfully.

8 MR. LEE: Non-willfully.

9 THE COURT: Exactly. That was a single negative.

10 MR. LEE: Well, I can't establish that he's
11 willfully missing court.

12 THE COURT: There you go.

13 MR. LEE: Right.

14 THE COURT: Is there anything else?

15 MS. HENDERSON: Do you just want me to make, I
16 mean, this whole bond packet, or do you want me to rip
17 out the page that notifies him, that where he signs and
18 says --

19 THE COURT: You can make the whole packet. If you
20 want to, just maybe flag it for appellate review later
21 on, so they know straight to where they're going for it.

22 COURT REPORTER: The letter will be Court's Exhibit
23 2, and --

24 MS. HENDERSON: We're putting in the whole packet.
25 We can just flag -- the second page is the one that says

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1 --

2 COURT REPORTER: Okay. This packet will be Court's
3 Exhibit 3.

4 DOCUMENT IDENTIFIED AS LETTER
5 DATED 8-11-14 FROM HON. CARRA
6 HENDERSON, MARKED COURT'S EXHIBIT
7 NUMBER 2.

8 DOCUMENTS IDENTIFIED AS BOND
9 PAPERWORK MARKED COURT'S EXHIBIT
10 NUMBER 3.

11 STIPULATION THAT KNOWN PRINT CARD
12 DONE BY SERGEANT CHRISTINE WILSON
13 THAT SHE DID THE COMPARISON WITH IS
14 THAT OF JAMES TYTIL WRIGHT.

15 MS. HENDERSON: And your Honor, the only other
16 thing that I think we need to take up on the record,
17 which, we forgot to do yesterday, as you know, he is
18 identified through fingerprints that were left at the
19 scene. Sergeant Chris Wilson ran the prints through
20 AFIS, and when she got a match to him, she then pulled a
21 booking card from Beaufort City to do the comparison.

22 Scott and I have talked about it. I think the
23 safest way to do this, to avoid any, you know, Lyle
24 stuff, or anything like that is, Scott's going to
25 stipulate -- and I won't speak for him, so if he -- but

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1 stipulate that the known print card that she did the
2 comparison with is that of James Tytil Wright.

3 THE COURT: Okay.

4 MS. HENDERSON: Because otherwise, we would have to
5 get into AFIS and the booking card, and that just --
6 that goes into Lyle, and -- but if I'm not correct on
7 that --

8 MR. LEE: That's correct, your Honor. And I think
9 the way the process is done, and it's always a problem
10 when you have these cases is, prints are sent to SLED or
11 whatever agency, AFIS. They put them in. AFIS gives
12 them -- I'm trying to figure the right word that they
13 use -- assess the possibility. So, they'll send them
14 back anywhere from 20 to 50, saying these are
15 candidates, I think, is what they use, and it comes
16 back. But apparently, that's what happened in this
17 case, and Chris Wilson compared what she had to what
18 they had. So, I think that's probably the proper way to
19 do it.

20 THE COURT: Okay.

21 MR. LEE: Is to say that he is a known standard,
22 and just let Sergeant Wilson kind of go from there.

23 THE COURT: Okay.

24 MS. HENDERSON: And she knows. She knows that
25 she's just simply -- I'm going to ask her what she

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1 compared the prints to. She's going to say a known
2 standard or a known print card of James Wright. She
3 knows not to mention where it came from or anything like
4 that.

5 THE COURT: Anything else, you all?

6 MR. LEE: Judge, I would, of course, at this time,
7 renew my *Brady* motion that I filed a while ago. I sent
8 a disc of like, 53 pages of stuff.

9 One thing that I did speak to Ms. Henderson about
10 this morning, it was a little confusing to me. Foskey's
11 report indicates that there was a lineup, including
12 James Tytil Wright that was shown. Is he here, Carra?

13 MS. HENDERSON: Yeah, I'm sorry. I meant to ask
14 him that.

15 THE COURT: Okay.

16 OFF-THE-RECORD DISCUSSION BETWEEN MS.

17 HENDERSON, MR. LEE, OFFICER FOSKEY.

18 END DISCUSSION.

19 MR. LEE: Again, I'll just renew my *Brady* motion.

20 COURT REPORTER: I'm sorry, Scott. I am not --

21 MR. LEE: I said, I don't think there's any -- I'd
22 like to have it now, but I don't think there is. But
23 just for the record, I'm making that motion.

24 THE COURT: Okay.

25 MR. LEE: Judge, also, I would --

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1 THE COURT: Hold on. Carra just stood up. Ms.
2 Henderson.

3 MS. HENDERSON: Oh, no, he can go ahead.

4 THE COURT: Okay. Is there anything further for
5 Brady that you need to turn over?

6 MS. HENDERSON: No, your Honor, not that I'm aware
7 of. I gave him Tyshon's record, and then, I gave him
8 his jail -- his SCDC report, and I'm pretty sure that's
9 everything that we have that he didn't have already.

10 MR. LEE: The only -- well, one of other the
11 things, Judge, is an issue, as well. Chris Wilson's
12 going to testify, ostensibly, as a fingerprint expert.
13 There is a one-and-a-half-page report that she compiled
14 that I do have a copy of, but it does not have any of
15 her what she calls, I think, desk notes or something
16 that she called, and she told me she has. I haven't
17 seen those. I don't know if Carra has, either. But
18 before she testifies, I'd like to look at them.

19 THE COURT: She's back there right now. I can see
20 her through the window, so why don't you go talk to her?
21 Yeah. I'm pretty sure that was Chris.

22 MR. LEE: Chris.

23 THE COURT: Yes, I'm pretty sure it was her. Good
24 morning. You can go ahead, Scott, and ask her.

25 MR. LEE: I was asking, Chris, about some possible

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1 notes you may have that you can publish the court with.

2 SERGEANT CHRISTINE WILSON: These are just my bench
3 notes from my fingerprint analysis.

4 MR. LEE: Okay. Judge, one of my questions was on
5 the -- she did an exhibit that Carra's going to
6 introduce right here, that points out 11, I guess, items
7 she's going to talk about. I'm not sure. Is that the
8 thumb. Chris? Is that a thumb print?

9 SERGEANT CHRISTINE WILSON: That's the left-middle
10 finger.

11 MR. LEE: Left middle finger. I'm just curious as
12 to on the other prints, how many points of comparison,
13 significant points, did you or did you not number?

14 SERGEANT CHRISTINE WILSON: I don't -- I just
15 prepared a -- just a chart for one finger, for
16 identification purposes, for the jury, to demonstrate
17 how I come to the conclusion of identification.

18 MR. LEE: Okay. And I guess the question is, was
19 that the best one?

20 SERGEANT CHRISTINE WILSON: In my opinion, that was
21 the easiest one.

22 MR. LEE: Okay.

23 SERGEANT CHRISTINE WILSON: For -- to prepare a
24 visual for.

25 MR. LEE: Okay.

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1 SERGEANT CHRISTINE WILSON: To demonstrate.

2 MR. LEE: Okay. But you haven't -- you haven't
3 compiled any other exhibits like that, that --

4 SERGEANT CHRISTINE WILSON: No.

5 MR. LEE: Okay.

6 MS. HENDERSON: Your Honor, and I think part of the
7 issue is -- and I think a lot of this can be done during
8 her testimony, when she has a better chance to explain,
9 is that, it's this process of determining someone's
10 fingerprints is not a number game. Like, it's not just
11 these eleven points say it's James Wright. There's a
12 lot of stuff that she looks at and takes as a whole.
13 She just prepared this so the jury can understand, as a
14 print examiner, stuff that she looks for and how she was
15 looking at this one.

16 And so, if I'm understanding Scott correctly, I
17 think what he wants is, he wants one of these for all
18 three of the prints. But it's -- they weren't created,
19 because it's not the only way that she compares prints,
20 if that makes sense. I just think it's going to be
21 cleared up once she's on the stand and she has a chance
22 to testify and explain.

23 THE COURT: Okay. Mr. Lee. Does that --

24 MR. LEE: I only want what they have. I'm not
25 asking them to create exhibits for me, but you know,

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1 there are different levels of whether it's a good print
2 and whether, you know, how much -- how she feels about
3 it and the points she was able to make. I realize they
4 don't count. It used to, but it don't anymore. I'm
5 just asking to make sure there's everything is out
6 there, that I have everything, and that, you know, I
7 have some information on it.

8 MS. HENDERSON: And your Honor, to my knowledge,
9 with her Bench notes now, we have turned over everything
10 that she has, regarding this, and I think that he can
11 cross her on the -- you know, how well of a print the
12 other two were, or something like that. I mean, I just
13 don't think this is the right time to go ahead and get
14 her testimony all out and talk about that. I mean, I
15 think she has turned over everything she used to make
16 this examination. So, he's got everything.

17 THE COURT: That's what he was asking.

18 MS. HENDERSON: Yeah.

19 THE COURT: He just wanted to make sure that
20 nothing more existed, other than that.

21 MS. HENDERSON: Yeah.

22 THE COURT: Which he needs to do, to his job, so.
23 Okay. Okay.

24 MR. LEE: Judge, another issue that I think is,
25 obviously, self-evident, since my client isn't here, I

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1 would respectfully ask that, after the jury is sworn,
2 that you give them a brief charge, pretrial charge, on a
3 TIA, *State versus Jackson*, 301 South Carolina 49, the
4 1990 case, still is good law. And I have the *Hubbard's*
5 *Jury Instructions*, and I would respectfully ask that you
6 consider trying -- charging this one.

7 THE COURT: Sorry. Caroline's not here. Let me
8 take a look at it.

9 MR. LEE: And basically, it says what the State
10 says, you know, it's not admission; it should not to be
11 construed as admission of guilt.

12 THE COURT: Okay.

13 MR. LEE: And I should have made a copy of it.

14 THE COURT: That's all right.

15 MR. LEE: And that says: *the defendant was tried*.
16 I think it should say: *defendant is being tried in*
17 *absentia*.

18 THE COURT: Okay. I can certainly just change
19 that.

20 MR. LEE: Would you like me to hand up *Jackson*? I
21 mean, it's a one-page opinion.

22 THE COURT: Okay. Let me ask you, in *State versus*
23 *Jackson*, and obviously, this was something that was put
24 in the jury charge at the end of the case, but is there
25 anything in any of the cases that state that it's an

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1 appropriate charge before the case starts?

2 MR. LEE: All it says is:

3 *When a defendant is tried in absentia,*
4 *the trial court should instruct the jury that*
5 *the defendant's failure to appear may not be*
6 *construed as an admission of guilt.*

7 THE COURT: And that goes in the jury instruction
8 at the end of the case.

9 MR. LEE: Well, I think it goes --

10 THE COURT: Well, I'll put in the first, if you
11 want. I mean, that's a strategical decision you're
12 making, again, to have it stated. I mean, obviously,
13 it's the, you know, the elephant in the room, so. You
14 want me to go ahead and -- I mean, that's -- but that's
15 a stretch.

16 MR. LEE: Yeah, but think of the language in there
17 that there's many reasons that a defendant may not be
18 here. That's --

19 THE COURT: Okay.

20 MR. LEE: I don't think we want to really -- I
21 mean, I would appreciate a pretrial charge.

22 THE COURT: Okay.

23 MR. LEE: Just like you charge other things, so.

24 THE COURT: Okay.

25 MR. LEE: A pretrial charge.

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1 THE COURT: Okay. What I'll do, Mr. Lee is, if
2 this is fine with you, obviously, we'll bring the jury
3 in; we'll swear them in; I'll give kind of my normal,
4 you know, preamble before the case starts; and then I'll
5 just state that, you know, the defendant in this case,
6 you know, is being tried in his absence, and there are
7 many reasons why a defendant, you know, could not be
8 present or would not be present. Their failure or, you
9 know, I hate to say their failure to appear. You know,
10 defendants not being here should not be construed by you
11 as an admission of guilt or any evidence of guilt, and
12 just leave it at that.

13 MR. LEE: Okay.

14 THE COURT: Yes.

15 MS. HENDERSON: Your Honor -- I'm sorry.

16 MR. LEE: The reason I think it's important is, you
17 remember during jury selection yesterday, we asked them
18 have you ever been in court in a criminal trial, and one
19 lady said, *yeah, a drug case in Magistrate's Court*; and
20 you said, *well, how did it get resolved?* She said,
21 *well, he was found guilty, because he didn't show up,*
22 *and half the crowd laughed. So, I mean --*

23 MS. HENDERSON: I think she actually said, *it*
24 *didn't -- nothing -- it didn't come to a verdict because*
25 *he didn't show up, I think is what she said.*

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1 MR. LEE: Well, whatever it was I think she said,
2 everybody thought it was very funny.

3 THE COURT: Okay.

4 MR. LEE: But anyway, I respectfully ask you to do
5 that.

6 THE COURT: Okay.

7 MR. LEE: I guess the last issue I have, Judge, is,
8 Ms. Henderson gave me a copy of Tyshon Barnes' rap
9 sheet, and he's the co-defendant that's going to be
10 testifying. And I just have -- I'd just like to make
11 sure we have the what's the conviction and what's not.

12 MS. HENDERSON: Your Honor, before -- sorry.
13 Before we do that, can we go back to the charge real
14 quick, just so I can be heard very briefly on it? My
15 only concern with the wording of the charge is that, you
16 know, it makes the -- it makes it sound like he may have
17 been forbidden to be here to say that he, you know -- I
18 don't know if you can use the words, *there's*, you know,
19 *there's many reasons why a defendant would choose not to*
20 *be here*, but just the way it was worded, I don't want it
21 to indicate that we forbid him from being here, or --

22 THE COURT: It doesn't come across that way. I can
23 tell you, I'm writing it out, just so I don't stumble at
24 all and it won't. So, we're fine. Anything else, you
25 all?

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1 MR. LEE: Judge, I mean, I guess we don't have to
2 do it right this minute, but it would be nice to know
3 exactly what Tyshon Barnes' convictions are.

4 THE COURT: Okay.

5 MR. LEE: The rap sheet's very hard to read. A lot
6 of them say: *Court disposition: convicted, dismissed.*
7 But if we could just go through them real quick, and
8 figure out what are the convictions, because obviously,
9 they'll come out in cross, if not earlier. Do you want
10 to go through the list and see what's --

11 MS. HENDERSON: Yeah.

12 THE COURT: Go through the list, you all.

13 MR. LEE: Judge, going chronologically, the first
14 one is listed May 31, 2004, a burglary, second degree.
15 It looks like there's one, two, three, four, five --
16 five convictions for burglary second, on 12-14-2004; and
17 one conviction for burglary third, on 12-14-2004.

18 MS. HENDERSON: Some of those were July, Scott --
19 July 27, 2004.

20 MR. LEE: Okay. You're right.

21 MS. HENDERSON: Your Honor, those are the ones that
22 say: *convicted; dismissed.* I have asked Tyshon about
23 those, and he says he was convicted of them. I don't
24 know why the rap sheet printed off *convicted; dismissed,*
25 but he has told me that those are convictions.

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1 THE COURT: Okay.

2 MR. LEE: Okay. And then, some are in July, and
3 some are in December. And then, you switch to an arrest
4 on 6-02-2004, burglary second, criminal conspiracy, and
5 giving false information. It looks like the criminal
6 conspiracy was a non-conviction. It was a non-
7 conviction for, looks like, burglary tools. It does not
8 indicate a disposition for the giving of false
9 information, which, I certainly would take the position
10 that this conviction, it goes to trustworthiness, and
11 certainly it's admissible under the rules of evidence.

12 On the jail website, the Beaufort County Public
13 Index of Mr. Barnes, it shows time served for that. And
14 so, it's our position that it shows that he was arrested
15 on 6-02-2004, burglary second; two holds for other
16 counties in criminal conspiracy and false information.
17 The disposition listed on the jail website is time
18 served for false information. And so, we would take the
19 position that, that was a conviction; that lack of SLED
20 showing something different, that it's proper to defer
21 to the Beaufort County online search. And it is our
22 position that he was convicted of providing false
23 information in 2004.

24 MS. HENDERSON: Your Honor, my position would be
25 that, that public index can have fault. We have found

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1 so many different mistakes on that public index that I
2 would defer to the SLED report, that, if he had been
3 found guilty of that, it would have shown up on his SLED
4 rap sheet. Unless there is a sentencing sheet that Mr.
5 Lee has that shows he's convicted, I would just -- my
6 position would be to defer to the SLED rap sheet, which
7 does not show it was disposed of or a conviction.

8 MR. LEE: It shows no disposition. I don't have
9 access to it. I can't pull the SLED --

10 THE COURT: I don't know how you're going to pull a
11 sentencing sheet.

12 MR. LEE: And I don't think I have the burden of
13 showing a conviction that -- that --

14 THE COURT: Well, can we ask him if he was
15 convicted of it, just like you said that you confirmed
16 that on, somehow, on that SLED sheet, it said --

17 MS. HENDERSON: Sure. I'll go, because he's right
18 back there in the holding cell.

19 THE COURT: All right.

20 MS. HENDERSON: Do you want to bring him out, or do
21 you want me to go ask him?

22 THE COURT: Certainly. Let's just go ask him.

23 MS. HENDERSON GOING TO THE HOLDING CELL

24 MR. LEE: I guess it's kind of ironic to ask
25 somebody if they've been convicted of lying.

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1 THE COURT: Well, apparently, he's admitted to all
2 the burglaries, so I'd be shocked.

3 Everyone's ready to go. Thank you.

4 MS. HENDERSON ENTERS COURTROOM.

5 MS. HENDERSON: Your Honor, his response was:

6 *I think I remember it. I think it was*
7 *during that -- I think I got it with that*
8 *burglary charge.*

9 Which is correct; there's a burglary charge with
10 it. And I said:

11 *Did you get time served for it?*

12 He said:

13 *I could have. I'm sorry, I can't*
14 *remember back that far.*

15 THE COURT: All right. Well, Mr. Lee, I'm going to
16 go ahead and let you ask him about it.

17 MR. LEE: Okay. I don't think it's a -- we'll make
18 a verification on it.

19 THE COURT: I don't either.

20 MS. HENDERSON: No.

21 MR. LEE: No. All right. And then, there's a
22 September 8, 2004. It says burglary third and grand
23 larceny, but it doesn't list any disposition. Do you
24 know about that, Carra?

25 MS. HENDERSON: No. I only asked him about -- I

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1 showed him his rap sheet, and I confirmed that the ones
2 that said convicted, he was actually convicted of. And
3 I asked him about the ones that were convicted/
4 dismissed. But if they didn't show a disposition or a
5 non-conviction, I didn't ask him about it. Do you want
6 to just bring him out here, your Honor, if this is --

7 THE COURT: Who's going to remember it?

8 MS. HENDERSON: I mean, he's a very -- he's not
9 being -- you'll see when you talk to him. He's not
10 being evasive. He tries to think back and piece it
11 together. But I can keep -- I'm happy to keep going
12 back and forth in there, but if Mr. Lee would like, we
13 could just -- since it's just us in here, bring him out
14 here and let him answer this.

15 MR. LEE: We can do that, if you want to. I'm just
16 trying -- I'm just trying to find out what really
17 happened so there's no problem with the trial.

18 THE COURT: Okay. Well, let's go ahead and bring
19 him out here. We'll stick him up here, and we'll see
20 what he's been convicted of. What's his last name
21 again?

22 MS. HENDERSON: Barnes, your Honor.

23 THE COURT: Okay.

24 BAILIFF: Are you going to swear him?

25 THE COURT: We're going to swear him in, yes. Come

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1 on around, Mr. Barnes, right around here. You can stick
2 him right here. I don't think he's going to be standing
3 for very long. Are you okay to stand, Mr. Barnes?

4 TYSHON BARNES: Yes, ma'am.

5 THE COURT: All right, sir. Place your hand on the
6 Bible, raise your right hand. Ms. Young's going to
7 swear you in.

8 MADAM CLERK: Do you solemnly swear to truthfully
9 answer all questions asked of you by this court, so help
10 you God?

11 TYSHON BARNES: Yes, ma'am.

12 THE COURT: All right. Mr. Barnes, we're trying to
13 determine, based on your rap sheet, what you've been
14 convicted of, and that's the questions we're going to be
15 asking you now. As you can clearly see, there is no
16 jury here. The attorneys are just entitled to know what
17 they can cross-examine you on, and part of your rap
18 sheet is not clear about whether or not it was a
19 conviction or if it was dismissed, or some other way.
20 So, we're just going to ask you a couple questions about
21 certain offenses. It doesn't matter if you can't
22 remember, just tell us you can't remember. But if you
23 remember there was a conviction, then, we're just trying
24 to get to the end. Okay?

25 TYSHON BARNES: Okay. Okay.

STATE V WRIGHT PRETRIAL - DIRECT TYSHON BARNES

1 THE COURT: I appreciate it. So, Ms. Henderson's
2 going to start by asking you a few questions. Okay?

3 TYSHON BARNES

4 DIRECT EXAMINATION BY MS. HENDERSON:

5 Q Tyshon, I just asked you about giving the false
6 information and that stuff, and what you told me was,
7 you may have gotten time served, but you can't remember
8 back that far.

9 A Yes.

10 Q Okay. Now, we're asking about this September 2004
11 burglary third and grand larceny.

12 A I pled out. I had more than one charge of
13 burglary.

14 Q Let me pull -- let's make sure we're thinking about
15 the right time, because we've got where you pled guilty
16 to the burglaries that I asked you about that said
17 convicted/dismissed. Is that what you're thinking of,
18 or is this a separate one?

19 A I think all of them was together.

20 MS. HENDERSON: And your Honor, it only shows that,
21 in December of 2004, he went into the Department of
22 Corrections on a burglary third -- on two burglary
23 thirds. So, it's really confusing as to -- because he
24 was -- like he says, he was convicted. These are all
25 convictions, but it doesn't show him entering SCDC and

STATE V WRIGHT PRETRIAL - DIRECT TYSHON BARNES

1 what the sentence was.

2 Then, we have the September one that Mr. Lee just
3 asked about, that doesn't show a disposition. And then,
4 we've got him going in on 12-21-2004, on a burglary
5 third and a burglary second, which doesn't match,
6 because he had several convictions on that date.

7 BY MS. HENDERSON:

8 Q So, Tyshon, do you remember at all -- do you
9 remember back in December 2004, when you went to jail
10 for five years?

11 A Yes, I remember.

12 Q Okay. Do you -- I mean, I know you remember. Do
13 you remember on what charges?

14 A I just know they was burglaries. I know -- I
15 remember that I had burglary seconds, and I remember
16 they said that they was, due to me pleading, that they
17 was going to drop it to burglary -- I'm pleading to
18 burglary third.

19 Q Okay.

20 A That's all I remember. I don't remember how many
21 got -- I mean, how many got dismissed, or.

22 Q Okay. Do you remember if you pled guilty to a
23 grand larceny?

24 A I think I did.

25 MS. HENDERSON: Okay.

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1 BY THE COURT:

2 THE COURT: I think it's fair game. I think Mr.
3 Lee can ask him about it, certainly, and go through it.
4 I do. I mean.

5 MS. HENDERSON: I mean, we can keep doing this. I
6 mean, your Honor, Mr. Barnes, like I say, he admits --
7 he admits everything he's done.

8 THE COURT: Right.

9 MS. HENDERSON: I mean, if he didn't do it, he'll
10 tell you. If he did it, he'll tell you, so.

11 THE COURT: Okay.

12 MS. HENDERSON: I think Mr. Lee --

13 THE COURT: Mr. Lee, anything more you want to ask
14 him?

15 MR. LEE: No, ma'am. And I think we have the
16 inmate search detail report, the stuff he's in right
17 now, and it looks like there's attempted escape, armed
18 robbery, assault and battery high and aggravated
19 kidnaping, a burglary, second degree. Does that sound
20 like what you're in for now, Mr. Barnes?

21 TYSHON BARNES: Yes.

22 MR. LEE: Okay.

23 THE COURT: How long is your sentence right now,
24 Mr. Barnes?

25 TYSHON BARNES: Ten years.

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1 THE COURT: Okay.

2 MS. HENDERSON: Your Honor, he pled guilty to this
3 armed robbery.

4 THE COURT: Right.

5 MS. HENDERSON: And some other stuff in 2008, and
6 got ten years.

7 THE COURT: Okay.

8 MS. HENDERSON: When he finishes in 2016 is when
9 he'll start his 39-year sentence on the federal charges.

10 THE COURT: Okay. Got it.

11 MS. HENDERSON: Scott, do you intend to use that
12 stuff as disciplinary things?

13 MR. LEE: The only thing that I'm looking at is
14 what the -- the escape.

15 MS. HENDERSON: Okay.

16 MR. LEE: Which is, apparently, a separate
17 conviction.

18 MS. HENDERSON: Okay. I handed him, also, his --
19 Mr. Barnes' -- a report from since he's been in jail,
20 like how they pick up any time he's been disciplined.

21 THE COURT: Right. Right.

22 MS. HENDERSON: And so, I just was asking if he
23 intended to use it.

24 MR. LEE: No.

25 MS. HENDERSON: I would just object to that stuff

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1 coming in, because those aren't convictions. Discipline
2 -- disciplinary actions in the jail is not the
3 equivalent of a conviction. The State would just argue
4 that those do not fall within the rules to be used
5 against him.

6 MR. LEE: I don't intend to use it. It talks about
7 losing canteen privileges and that.

8 MS. HENDERSON: I just wanted to double-check.

9 THE COURT: All right. Anything else, you all?
10 Okay. Well, the jury is here and ready to go, if you
11 all are ready. Thank you. Okay. Are we good? Are we
12 taking care of Mr. Barnes?

13 MS. HENDERSON: Yes, your Honor.

14 MR. LEE: Yes, your Honor.

15 THE COURT: Mr. Lee, you're good?

16 MR. LEE: As good as I'm going to get, your Honor.

17 THE COURT: Okay. All right. Take him back,
18 Grayson. We're going to get to him today, correct?

19 MR. LEE: Yes, ma'am.

20 THE COURT: Ms. Henderson, we're getting to Mr.
21 Barnes today, correct?

22 MS. HENDERSON: Yes, your Honor.

23 THE COURT: Okay. So, SCDC can get him back.

24 MS. HENDERSON: Yes, your Honor. I hope to rest
25 today. There's only five witnesses, so.

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1 THE COURT: Got it. Okay.

2 MR. LEE: I think that's -- I think that's it.

3 THE COURT: Okay. All right. Well, if you all are
4 ready to go, let's bring the jury in. Do you need a
5 minute?

6 MS. HENDERSON: Yes, your Honor.

7 THE COURT: We need a minute?

8 MS. HENDERSON: Oh, sorry. No, just -- I'm sorry.
9 I'm ready to go. Sorry.

10 MR. LEE: Ready.

11 THE COURT: All right.. You're ready to go? All
12 right. Let's bring them in.

13 BAILIFF: Jury is entering, your Honor. The jury
14 is seated, your Honor.

15 JURORS ENTER COURTROOM 10:18 A.M..

16 THE COURT: Thank you. Good morning, ladies and
17 gentlemen. It's a pleasure to have you with us. At
18 this time, we're going to go ahead and begin the trial
19 of this case. Before we do, I'm going to have Ms. Young
20 swear you in as the jury for this case. So, if you all
21 would please rise and raise your right hand to accept
22 the jurors' oath from Ms. Young.

23 JURORS SWORN BY MADAM CLERK:

24 MADAM CLERK: Do you solemnly swear or affirm that
25 you shall well and truly try in true deliverance made

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1 between the State of South Carolina and the accused at
2 the Bar, and a true verdict give, according to the
3 evidence, so help you God? Please answer by saying, I
4 do.

RESPONSES FROM JURORS.

6 MADAM CLERK: You may be seated. Thank you.

INTRODUCTION TO CASE, BY THE COURT:

8 THE COURT: Ladies and gentlemen, what I'm now
9 going to say to you is intended to serve as an
10 introduction to the trial of this case. These remarks
11 are not a charge on the law. The law is going to be
12 explained to you at the end of the case. This is simply
13 the explanation of the procedure we're going to follow,
14 so you can better understand what we're doing.

15 Ladies and gentlemen, the defendant in this case is
16 charged by indictments that are filed in this court with
17 the offenses of kidnaping and armed robbery, the
18 elements of which I'm going to explain to you at the end
19 of the trial.

20 Ladies and gentlemen, these indictments are simply
21 the charges by which a case is brought into the
22 courtroom, and they are not, in any sense, evidence of
23 any of the allegations that they contain.

24 Now, ladies and gentlemen, the defendant has pled
25 not guilty to these indictments. Therefore, the State

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1 has the burden of proving each of the elements of the
2 indictments beyond a reasonable doubt.

3 Ladies and gentlemen, your purpose, as jurors, is
4 to find and determine the facts. You, the jury, are the
5 sole judge of all facts in this case. If, at any time,
6 I make any comment regarding the facts of this case, you
7 must disregard it.

8 Ladies and gentlemen, you are only to determine the
9 facts of this case from the testimony you're going to
10 hear from the witness stand, as well as any other
11 evidence that's introduced into the Court, or any
12 stipulations entered into by the attorneys. Please
13 understand that it is especially important that you
14 perform your duty of determining the facts in this case
15 diligently and conscientiously, because, ordinarily,
16 there is no way to correct and erroneous determination
17 of the facts by the jury.

18 Ladies and gentlemen, the same law that makes you,
19 the jury, the judge of the facts, makes me the judge of
20 the law. The law that is given by the Court is the only
21 law that you may consider.

22 Ladies and gentlemen, you must accept and follow
23 the law, even though you may disagree with it. I cannot
24 tell you what the facts of this case are, and you cannot
25 disagree with me about what the law is or what you think

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1 the law ought to be.

2 Ladies and gentlemen, your job is to take the law
3 as I give it to you, and apply it to the facts as you
4 find them, and from there, render a true and just
5 verdict under the oath you just took.

6 Now, ladies and gentlemen, until I advise you to
7 begin your deliberations, you are not to discuss this
8 case with anyone, and that includes your fellow jurors,
9 friends, family members, or anyone that's involved in
10 this case. And after the case is submitted to you, you
11 may only discuss it in the jury room, with your fellow
12 jurors. I remind you again, the attorneys, the parties,
13 the witnesses, have been advised that they are not to
14 talk to you in coming and going from the courthouse over
15 the next day or two. Again, I remind you, they're not
16 being unfriendly. They're simply following my orders.

17 Ladies and gentlemen, additionally, during the
18 trial of this case, you are not to read, listen to, or
19 watch any news reports about this case, and this
20 includes anything that may be in the newspaper, on the
21 Internet, radio or television.

22 Ladies and gentlemen, you must not consider
23 anything you may have read or heard about this case
24 outside the courtroom, whether before or during the
25 trial.

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1 Ladies and gentlemen, please understand that it is
2 important that you keep an open mind and not decide any
3 issue in this case until all of the evidence has been
4 presented, the parties have made their closing
5 arguments, and I have instructed you on the law that's
6 applicable to this case. Please understand that it's
7 your sole responsibility to determine the guilt or
8 innocence of the defendant, and your verdict must be
9 based solely on the evidence as it's presented to you
10 here in this courtroom.

11 Ladies and gentlemen, now, just in a moment, the
12 Solicitor is going to make what's called an opening
13 statement, and what she's going to explain to you what
14 she believes the issues are in this case, or at least
15 what she thinks the issues are in this case. And then,
16 the attorney for the defendant is also going to make an
17 opening statement.

18 Ladies and gentlemen, I remind you that what these
19 attorneys say to you in their opening statements is not
20 evidence in this case. Again, it is only their
21 contention as to what they believe the issues are in
22 this case. I remind you again that the evidence will be
23 represented to you by the testimony of sworn witnesses
24 and evidence that's introduced during the trial of this
25 case.

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1 Ladies and gentlemen, I also want you to know that
2 from time to time during the trial, you may hear one of
3 the attorneys say something like, your Honor, I believe
4 we have a matter of law we need to take up; or I may
5 say, come approach the Bench; or I may send you back to
6 your jury room to discuss something with the attorneys.
7 I want you to understand, we're not hiding anything from
8 you. Oftentimes, when I have to rule, as a matter of
9 law, whether or not certain testimony is admitted, I may
10 make a comment on the facts of the case. And again,
11 because I would never want anything I do to influence
12 you in your determination of the facts, out of an
13 abundance of caution, we just do it outside of your
14 presence.

15 Now, ladies and gentlemen, in determining what the
16 true facts are in the case, you must decide whether or
17 not the testimony of the witnesses is believable.
18 Again, it's my responsibility to rule as a matter of law
19 as to whether or not certain testimony is admitted, but
20 once the testimony is admitted, whether or not you
21 believe it is for you to determine.

22 Ladies and gentlemen, in deciding whether to
23 believe a witness, you have the right to consider the
24 interest of the witness, the bias of the witness. You
25 can also look at the opportunity that that witness had

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1 to see and hear and experience the things about which
2 they're testified, and you can look at the way the
3 witness acts on the witness stand.

4 Ladies and gentlemen, you have the right to
5 consider anything that is in the record that will help
6 you evaluate the testimony of the witnesses. That means
7 it's your solemn duty to pay close attention to these
8 witnesses, to observe them, to listen to them and to pay
9 close attention to the attorneys and to the Court, so at
10 the end of the trial, you will be able to go back into
11 your jury room and accurately remember the testimony.

12 Ladies and gentlemen, at this time, because this
13 case is going to be relatively short, I am not going to
14 permit you to take notes. If I believe it would assist
15 you, or if you all request and would like to take notes,
16 you can certainly ask by way of a question. But at this
17 time, I'm simply going to ask that you sit back and
18 listen closely to the opening statements, as well as the
19 witness testimony. All right?

20 Ladies and gentlemen, additionally, I do need to
21 let you know, the defendant in this case is being tried
22 in his absence. Now, there are many reasons why a
23 defendant may not be present at trial. Ladies and
24 gentlemen, the defendant's absence may not be construed
25 by you as an admission in any way of guilt or as

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1 evidence of guilt.

2 Ladies and gentlemen, at this time, we're going to
3 go ahead and begin the trial of this case. Ms.
4 Henderson.

5 MS. HENDERSON: Thank you, your Honor.

6 MR. LEE: Your Honor, before we get started, are
7 you going to charge *Victor versus Nebraska or State*
8 *versus Manning*?

9 THE COURT: Hold on for a second.

10 MR. LEE: I apologize. I should have asked you
11 that before.

12 THE COURT: That's all right.

13 OFF-THE-RECORD BENCH CONFERENCE, OUT
14 OF HEARING OF JURORS. PRESENT: THE COURT,
15 MS. HENDERSON, MS. KENNEY, MR. LEE.
16 END BENCH CONFERENCE.

17 THE COURT: Ladies and gentlemen, now we will begin
18 the trial of this case.

19 OPENING STATEMENTS ON BEHALF OF
20 THE STATE, BY MS. HENDERSON:

21 MS. HENDERSON: Thank you. May it please the
22 Court? Mr. Lee. Good morning. On May 10th of 2007,
23 James Wright and Tyshon Barnes woke up and decided they
24 needed some money. So, what did they do? Did they go
25 out and find themselves some honest work? No, sir.

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1 They did not. Instead, they armed themselves with guns
2 and went and robbed Chavis Moving Company. They walked
3 into that business around 9:00 o'clock in the morning,
4 pointed those guns at the employees, ordered them to the
5 ground, demanded purses, wallets, debit cards, credit
6 cards, cash from the business.

7 And then, they got them up and ordered them into a
8 supply closet, again, at gunpoint; where they put them
9 in there, shut the door, and told them if they tried to
10 leave, they would shoot them.

11 Tyshon Barnes and James Wright then left that
12 business and went about their merry way, money in hand.
13 How do we know that James Wright is who did this crime?
14 Because his co-defendant, Tyshon Barnes, identifies him,
15 and because he left three beautiful fingerprints on a
16 pack of unopened cigarettes that were in victim Nancy
17 Hill's purse. She had just bought them that morning.
18 Biggest mistake Mr. Wright made was rummaging through
19 her purse without gloves on.

20 You're going to hear from Tyshon Barnes. You're
21 going to hear from Ms. Hill. You're going to hear from
22 several officers. You're going to see how they matched
23 the fingerprints on a pack of cigarettes to those of Mr.
24 Wright. And in the end, you will know, beyond a
25 reasonable doubt, that James Wright is who committed

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1 this' armed robbery and kidnaping of Nancy Hill, with
2 Tyshon Barnes. Thank you.

3 OPENING STATEMENT ON BEHALF OF
4 THE DEFENDANT, BY MR. LEE:

5 THE COURT: Thank you.

6 MR. LEE: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. LEE: Ms. Henderson, Ms. Kenney. When I was a
9 kid, I liked to read a lot. My one-year-old and three-
10 year-old don't seem to like books as much, but I sued to
11 read a lot. And one of my favorite stories when I was
12 growing up was Sherlock Holmes. And Sherlock Holmes was
13 a detective who would go around and solve mysteries.
14 And they would take you through the story, and at the
15 end of the book, end of the story, they would explain to
16 the reader how he solved the mystery. And the way that
17 the author did that was, Sherlock Holmes had a sidekick
18 names Watson who was kind of this bubbly guy who didn't
19 understand everything. At the end of every story,
20 Holmes would explain to Watson, this is how I figured it
21 out. So, Watson thought Holmes was the smartest guy in
22 the world.

23 And they always had these things at the end of the
24 book that were very interesting, and the one that I
25 always remember is a story about a castle got broken

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1 into and somebody went in and took something, and
2 Sherlock Holmes goes to investigate it. And he keeps
3 asking people, did you hear the dogs bark; did you hear
4 the dogs barking outside the castle. And everybody
5 said, *we didn't hear any dogs; we didn't hear any dogs.*

6 So then, Sherlock Holmes figures out that the
7 person who went to the castle was someone that the dogs
8 knew, because they didn't bark at them. And so, he told
9 Watson -- Watson said, *how did you figure it out?* He
10 told Watson, at the end of the story, he said, *Watson,*
11 *most times, in finding the truth, what's most important*
12 *is not what you see or hear, but what you don't see and*
13 *you don't hear.*

14 What you don't see and you don't hear. And that is
15 very similar to a case in court, particularly in a
16 criminal case, because the State has the absolute burden
17 of proving beyond a reasonable doubt that a defendant,
18 at his own trial, committed what they said he committed.
19 And they have to prove it by proof beyond a reasonable
20 doubt. And the Judge is going to tell you later on in
21 closing what proof beyond a reasonable doubt or what a
22 reasonable doubt is.

23 A reasonable doubt, under the law, is the type of
24 doubt that causes a reasonable person to hesitate to act
25 when making one of life's important decisions. We say,

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1 if all we have is a reasonable doubt, you're saying that
2 the person gets acquitted? Yeah. Well, doesn't that
3 seem like a very high standard? Well, yeah, it is. And
4 the reason it is, is because the consequences are so
5 high. The consequences of convicting someone are so
6 high that you gotta have proof beyond a reasonable
7 doubt.

8 So, how does reasonable doubt show up? Well, it
9 can be through evidence that comes in, testimony,
10 whatever. But it also can be from the lack of evidence,
11 what you don't see and you don't hear, and that's what
12 this case is going to be about. Obviously, any
13 defendant -- and the way the system is set up, it has to
14 be that way -- the defendant doesn't have to prove
15 anything. If you think about it, it's really impossible
16 to prove a negative. Can any of us prove we've never
17 been to New Jersey? If you've been to New Jersey, you
18 can prove you've been to New Jersey, but you couldn't
19 prove you've never been to New Jersey. And that's way
20 this -- because it makes sense. The defendant doesn't
21 have to prove anything. So, keep that in mind.

22 And we believe that, when you hear all the
23 testimony, there's a lot of stuff missing. A lot of
24 things are going to give you reasonable doubt. A lot of
25 things will give you a reasonable doubt, which is going

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1 to lead to the only possible verdict under your oath,
2 which is not guilty. And a lot of those things are
3 going to be things that weren't done, things that could
4 have been done and should have been done. Things that
5 were left out, things that were lost. And
6 unfortunately, a lot of those things that we're going to
7 talk about were done as part of the investigation, or
8 lack thereof.

9 And the Investigator, I've known for a long time.
10 He's -- I think, today, he's retired now, moved to West
11 Virginia. But he was an investigator for a long time.
12 I had plenty of cases with him. But what's important to
13 remember, again, in addition, is, the *Bible* says:

14 *To whom much is given, much is expected.*

15 And investigators, law enforcement, prosecutors
16 nowadays are given a tremendous amount of power and
17 resources. The power to take away somebody's liberty,
18 to put them in prison, to take away their good name. To
19 whom much is given, much is expected, and we all can
20 expect a lot out of people, because the State is going
21 to be presenting their case to their investigator, and
22 then putting it on you. Here, jury, we want you to flip
23 the switch; we want you to do the last thing, which is
24 send Mr. Wright, find him guilty, we want you to do it.

25 And you have the right, and you should demand that

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1 they answer all the questions, they cross all the T's,
2 and they dot all the I's. That's only fair. You all
3 didn't want to be here this week, I assume. And when we
4 said, please seat the juror, you probably said, oh, my
5 goodness.

6 Very few people I've ever seen celebrate a jog up
7 to the bench to sit down. But anyway, we're all here,
8 and we appreciate you being here. However, the State
9 wants you to do some real dirty work for them. I
10 shouldn't use that word. They want you to finish,
11 convict Mr. Wright, based on the evidence they have.
12 I'll be the one, I think, as I point out a lot of things
13 that weren't done.

14 So, again, listen, obviously, to what you hear and
15 what you see, but perhaps more importantly is what
16 you're not going to see and you're not going to hear.

17 And I would be remiss if I didn't address the white
18 envelope -- elephant in the room, which is, I'm sitting
19 over there by myself. They've got a smart T.V. They've
20 got an investigator. They've got a couple lawyers.
21 They've got computers. I don't even have a client. And
22 the judge is going to tell you -- and this is hard to
23 do. I mean, when we were qualifying a jury yesterday, I
24 don't know if you remember, but somebody said, *I was on*
25 *a drug case, and the person didn't show up; he was found*

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(ORIGINAL)

1 guilty, and everybody laughed. I mean, that's the
2 natural reaction. And that's what's tough about being a
3 juror is, you have to kind of step back a little bit
4 from your everyday doing to say, I gotta follow the
5 rules. I've got to not hold it against Mr. Wright
6 because he's not here, for whatever reason. I have to
7 hold the State to the burden of proof beyond a
8 reasonable doubt, and anything less, by my oath, the
9 verdict's not guilty.

10 So, there were a lot of witnesses listed as
11 potential witnesses. Apparently, a lot of them aren't
12 going to come. The State can't call a lot of them, but
13 we'll talk about that. And it's our hope and our belief
14 that, after the trial, when everything's been said and
15 done, that you'll decide that the State has not
16 satisfied their burden, which is proving the case beyond
17 a reasonable doubt, and that, under your oath and your
18 obligation, the verdict you'll return will be not
19 guilty.

20 THE COURT: Ms. Henderson, if you would call your
21 first witness.

22 MS. HENDERSON: Thank you, your Honor. The State
23 would call Staff Sergeant Brian Townsend.

24 THE COURT: Come on up, sir.

25 MADAM CLERK: Would you place your left hand on the

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1 Bible and raise your right hand for me, sir. Do you
2 solemnly swear to truthfully answer all questions asked
3 of you by this court, so help you God?

4 STAFF SERGEANT BRIAN TOWNSEND: Yes, ma'am, I do.

5 MADAM CLERK: Please be seated. State your name
6 and spell it for the Court, please, sir.

7 STAFF SERGEANT BRIAN TOWNSEND: Brian Townsend.

8 MS. HENDERSON: Thank you.

9 STAFF SERGEANT BRIAN TOWNSEND

10 DIRECT EXAMINATION, BY MS. HENDERSON:

11 Q Staff Sergeant Townsend, where are you employed?

12 A Currently, with the Beaufort County Sheriff's
13 Department; currently in the administrative division.

14 Q And what do you do in the administrative division?

15 A A lot. I'm in charge of the guys that serve
16 papers, warrants. I handle the impound lot. I handle
17 wrecker rotation lists, plus, doing my own load of
18 papers during the day.

19 Q And how long have you been in that position?

20 A Since last October.

21 Q And what did you do before that?

22 A Before that, I was a road supervisor. At the time,
23 -- well, going from back to back, before October, I was
24 road supervisor north of the Broad, on a shift. I held
25 that position since 2000. Before that, I was assistant

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1 road supervisor, north of the Broad, for right about six
2 years. And then, of course, I started in 1990, so.

3 Q Well, that was my next question. How long have you
4 been in law enforcement? So, it's been since 1990?

5 A It's been since 1990. It'll be 24 years next
6 month.

7 Q So, in May of 2007, you were a road supervisor. Is
8 that what you said?

9 A Yes, ma'am.

10 Q Okay. And were you working on May 10, 2007?

11 A Yes, I was. North of the Broad.

12 Q And were you dispatched out to Chavis Moving
13 Company?

14 A Yes, I was.

15 Q Do you know the address of that business?

16 A I think it's 265 or 165 Bay Pines Road. I can't
17 remember which one it is.

18 Q Are you certain it was on Bay Pines Road?

19 A Yes.

20 Q Okay. Is that within Beaufort County?

21 A Yes, ma'am.

22 Q Okay. And what did you respond in reference to?

23 A Well, it was dispatched as an armed robbery, at
24 least two individuals armed with weapons. It was kind
25 of chaotic. I happened to be close. I was near the

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1 pumps when the call came out, and Bay Pines is right
2 near the pumps. So, I actually got there first, which
3 is unusual for a supervisor. They came out, so it
4 sounded pretty bad.

5 We did what we normally do. We went in, and we
6 cleared the building, made sure everybody was okay.
7 Made sure there was nobody there. It was play bad guy.
8 I tried to make sure that there was nobody injured. Set
9 up a perimeter. Gathered statements from those folks
10 that were present, called for investigations, and pretty
11 much held the scene until they got there.

12 Q Okay. Did you call out K-9?

13 A Yes, we did.

14 Q And did K-9 respond?

15 A They did.

16 Q Were they able to get a track?

17 A They got very -- not very far, like seven, eight
18 feet outside the building. It just stopped.

19 Q Okay. And what does that usually indicate?

20 A I'm not a K-9 officer. It usually tells us that it
21 means they got in a car or they got on some kind of mode
22 of transportation.

23 Q And do you know approximately how much -- the value
24 of the money and stuff that was taken at the place?

25 A Originally, it was around six 600. It's a little

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1 over \$600.00 on the original report. I don't know what
2 the total was after the investigators did it. It was
3 right over \$600.00, 620 something.

4 Q Okay. And you said you contacted Investigations?

5 A Yes, ma'am.

6 Q And is that standard procedure?

7 A The -- well, I happened to be there, so, yes. But
8 generally, for a major event, a major crime, the road
9 supervisor makes the judgment call to bring an
10 investigator. It's a major crime. I was present, so I
11 made the call.

12 Q Okay. And you said you collected the statements
13 from the victims?

14 A We gave out the statement forms, got them started
15 on it. I don't know if we actually collected them or if
16 the investigator on-scene and picked them up. I don't
17 remember, but we started that process, got basic
18 information from them so we could put out what the
19 suspects looked like over the radio, that kind of stuff.

20 Q And do you remember the initial description that
21 was given?

22 A Two black males. I don't remember much, other than
23 that. Ski mask and weapons, handguns, that's all I can
24 remember.

25 Q And once the investigator got there, did you have

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1 any further involvement in this case?

2 A Other than closing it down when they told us to
3 leave, leaving somebody present in case they needed
4 help. But of course, if they call back and say they
5 need something, we stop and go back. So, at that point,
6 no. I went on and left one of my guys, and went on to
7 the next mess of business.

8 MS. HENDERSON: Beg the Court's indulgence, your
9 Honor.

10 MS. HENDERSON: Nothing further, your Honor.

11 THE COURT: Mr. Lee.

12 STAFF SERGEANT BRIAN TOWNSEND

13 CROSS-EXAMINATION BY MR. LEE:

14 Q You're the one who first spoke to each one of the
15 people that were at Chavis Moving, right? Did you
16 arrive first?

17 A I arrived first. I don't know if I spoke to every
18 single one of them. I did speak to a few.

19 Q Okay. And you took statements from at least four
20 of them, correct?

21 A Correct.

22 Q Okay. So, you took a statement from Mr. Griffin?
23 Is that right? Lloyd Griffin?

24 A Yes.

25 Q Alan [sic] Lindsey.

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1 A I believe so.

2 Q Okay. Ms. Hill. Remember that?

3 A That name, I don't remember, but if it's written in
4 the report, then, yes.

5 Q Okay. And then, a Nathaniel Williams.

6 A Yes.

7 Q And then, a Ms. Radford, apparently, was too upset
8 to speak.

9 A There was one lady that was very, very upset. I
10 don't remember her name, but, yes, she was exceedingly
11 upset.

12 Q Okay. So, you spoke with them, and they filled out
13 statements, written statements, at the time, correct?

14 A They started. I don't know if they finished them.
15 They started them. I didn't take them all.

16 Q Okay. All right. Now, you completed a report in
17 this case; did you not?

18 A The incident, the original, yes, sir.

19 Q Okay. And have you seen that? Are you familiar
20 with it?

21 A I haven't looked at it in probably a week.

22 Q Okay. That's up to you, if you want to refresh
23 your recollection, you can.

24 A Thank you.

25 Q Now, in that report, you kind of summarize what

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1 each of those witnesses said; do you not?

2 A Briefly, yes, sir.

3 Q Okay.

4 A But it's not as an interview like an investigator
5 would do, but yes.

6 Q But it's truthful.

7 A I'm sorry?

8 Q It's truthful, right?

9 A Yes, sir.

10 Q Okay. So, let's briefly talk about that. All
11 right? Mr. Lindsey, do you remember talking with him?

12 A I don't remember, but I can get to where he was.
13 Let's see. There's Mr. Lindsey, Victim 3.

14 Q Okay. And Mr. Lindsey gave, like, a three-page
15 report, the last page of which had a kind of involved
16 description of both people, correct? Is that -- I can
17 show you his statement, if you like.

18 A I don't have a copy of his statement, but I can
19 tell you what he had said. He said the guy had a ski
20 mask on.

21 Q Okay. Now, let's talk about kind of I guess what
22 people say in general rather when we talk about
23 specifics. The gist of -- and correct me if I'm wrong
24 -- the gist of what happened was that a light-skinned,
25 black male came in first. Do you agree with that?

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1 A What it indicates, yes.

2 Q Okay. And --

3 COURT REPORTER: I'm sorry. Repeat?

4 A I'm sorry?

5 COURT REPORTER: What did you say?

6 A I said, that's what it indicates in the report.

7 Q And that a light-skinned male came in with no mask
8 on, correct?

9 A Correct.

10 Q And then, a dark-skinned, black male followed him,
11 correct?

12 A Correct.

13 Q All right. And the dark-skinned, black male is the
14 one who, at some point, has a mask on, right?

15 A Yeah, the dark-skinned man has the mask on. That's
16 correct.

17 Q Okay. And the dark-skinned male who has on the
18 mask is the one who walks into the second room and grabs
19 a guy by the shoulders and by the back. Is that
20 correct?

21 A I don't see anybody grabbing. I see pointing a
22 handgun at him.

23 Q Well, okay. Well, Mr. Griffin was in his office,
24 and then got kind of grabbed from behind. Do you
25 remember that?

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1 A No, sir, I don't remember.

2 Q Okay. If you don't, that's fine. Okay. Now, do
3 you know who was eventually arrested for this?

4 A No, sir. Other than we're here today for Mr.
5 Wright.

6 Q Okay.

7 A I didn't have anything to do with that part of it.

8 Q Okay. Okay. Have you ever seen Mr. Wright?

9 A I have never seen Mr. Wright.

10 Q Okay. Have you ever seen Mr. Tyshon Barnes?

11 A No, sir.

12 Q Would you agree that, consistently, someone -- the
13 people there, say that a light-skinned, black male came
14 in, followed by a dark-skinned, black male. You agree
15 with that?

16 A Yes, sir.

17 Q Okay. And the dark-skinned, black male was the one
18 who had the mask on.

19 A Yes, sir.

20 Q Okay. But you don't know which one of those is
21 alleged to be Tyshon Barnes, and which one is alleged to
22 be James Wright.

23 A No, sir, I have no idea.

24 Q Okay. But only one of them was wearing a mask,
25 right?

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1 A Yes, sir. According to the statements, that only
2 one of them was wearing a mask.

3 Q Okay. Did you ask Mr. Williams, Nathaniel
4 Williams, if he knew either one of the people that were
5 in there? Your report indicates --

6 A I don't recall asking them that question
7 specifically the way that you've -- you've addressed it.

8 Q Well, on your report, it says, *Interview Victim 5*,
9 which is Williams. It says:

10 *He stated he did not know either suspect.*

11 That's what Mr. Williams said, right?

12 A I'm reading it. I -- I don't see where he says
13 that. He did. Okay. I see where he says that, but I
14 don't recall asking him, specifically, that question.

15 Q Okay. So, either you asked him, or he just
16 unilaterally told you, hey, I don't know either one of
17 the two guys that just robbed us.

18 A I don't recall. I know that he said he didn't know
19 them, because it's in the report.

20 Q Okay.

21 A I don't recall asking him that question.

22 Q Did anybody else? Any of the other people you
23 talked to say they didn't know the suspects?

24 A None of them seemed to know who they were, other
25 than -- I'm not sure what you're asking me. You mean,

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1 the other victims, or?

2 Q Well, just why it says he didn't know the suspects
3 -- Mr. Williams. I'm just wondering why he's,
4 apparently, the only one that --

5 A That's a fact that he -- that's a fact that he
6 stated. I don't know the answer.

7 Q Okay. The statements that you initiated or took,
8 did you turn over everything you had to Detective
9 Foskey, who is the lead investigator?

10 A Everything goes to -- everything goes to the
11 investigator.

12 Q Okay.

13 A Either they get attached originally to the report,
14 which was with this case.

15 Q Um-hmm.

16 A Then, he would take them off of the report. But
17 eventually, he would get them all. So, yes.

18 Q So, he's the lead investigator. Everything kind of
19 funnels through him.

20 A Right. Yes, sir.

21 Q Okay. And you sent everything you had to him.

22 A Yes, sir.

23 Q Okay. Incident report, witness statements,
24 whatever you might have had, you sent to him.

25 A Yes, sir.

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1 Q Okay.

2 MR. LEE: That's all I have, your Honor.

3 STAFF SERGEANT BRIAN TOWNSEND: Mr. Lee, do you
4 want your copy?

5 MR. LEE: I might need that later on. Thank you.

6 STAFF SERGEANT BRIAN TOWNSEND: Thank you.

7 STAFF SERGEANT BRIAN TOWNSEND

8 RE-DIRECT EXAMINATION BY MS. HENDERSON:

9 Q Staff Sergeant Townsend, if someone's wearing a ski
10 mask, would it be relatively hard to determine how dark
11 their skin color is?

12 A Yeah, it would be difficult. I mean, yeah, I would
13 say.

14 MS. HENDERSON: No further questions, your Honor.

15 STAFF SERGEANT BRIAN TOWNSEND

16 RE-CROSS-EXAMINATION BY MR. LEE:

17 Q If someone says someone's dark-skinned, does that
18 indicate they saw their skin?

19 A Yes.

20 Q Okay. And these people consistently talked about a
21 darker-skinned person wearing the mask, right?

22 A Correct.

23 Q Okay.

24 MR. LEE: That's all I have.

25 THE COURT: Anything further, Ms. Henderson?

STATE V WRIGHT RE-DIRECT BRYAN TOWNSEND

1 MS. HENDERSON: Just very briefly, your Honor.

2 STAFF SERGEANT BRIAN TOWNSEND

3 RE-RE-DIRECT EXAMINATION BY MS. HENDERSON:

4 Q I'm just going to hand that -- that's your report.
5 In fact, it's only one person that refers to the second
6 suspect as being darker; is it not?

7 A Half a moment. Actually, there are two victims
8 that are saying it differently.

9 Q They're saying it differently.

10 A Yes. One is saying one -- the lighter -- one is
11 saying that the lighter-skinned man was soft-spoken, and
12 the other was saying that the dark-skinned man ask --
13 the darker-skinned man ask them directly for the money,
14 but they're two different individuals.

15 Q Right. But they are not all saying that one person
16 was dark.

17 A No. They're not -- they're not jumping to that
18 level.

19 MS. HENDERSON: Thank you.

20 MR. LEE: Go ahead and let him have it for a
21 second.

22 STAFF SERGEANT BRIAN TOWNSEND

23 RE-RE-CROSS-EXAMINATION BY MR. LEE:

24 Q On your report, when you talked to Mr. Griffin, --

25 A Yes, sir.

STATE V WRIGHT - RE-RE-CROSS BRYAN TOWNSEND

- 1 Q -- who was there, --
- 2 A Yes, sir.
- 3 Q -- okay, and you say -- can you read what it says
- 4 after it says, *the man was wearing a ski mask*. What
- 5 does it say right after that?
- 6 A He said, *he was a dark-skinned, black male who*
- 7 *demanded money*.
- 8 Q Okay. So, Griffin said it was a dark-skinned,
- 9 black male.
- 10 A Um-hmm.
- 11 Q That's in his report. He said it that day, right?
- 12 A Correct.
- 13 Q Okay. Mr. Lindsey, who is Victim Number 3, he
- 14 talks about the first guy was light-skinned and spoke
- 15 calmly..
- 16 A Correct.
- 17 Q Okay. Then, he says, *the other suspect put on a*
- 18 *ski mask and went in Radford's office*.
- 19 What does it say right after *Radford's office*, as
- 20 to what Mr. Lindsey, the second person, said, starting
- 21 with: *this suspect*?
- 22 A *The suspect was darker than the first, and kept*
- 23 *cocking and un-cocking the hammer to a revolver*.
- 24 Q Okay. So, that's two. That's Mr. Lindsey, right?
- 25 A Correct.

STATE V WRIGHT - RE-RE-CROSS BRYAN TOWNSEND

1 Q Okay. And then, you got a statement from Nathaniel
2 Williams. Do you remember that?

3 A Yes, sir. I'm on Mr. Williams.

4 Q He's going to be Number 5.

5 A Yes, sir.

6 Q Okay. Now, on his -- he's the guy that said he
7 didn't know either suspect, right?

8 A Correct.

9 Q Okay. Black male, age 34 years old? Mr. Williams?

10 A Yes, he's --

11 Q Okay. He also gave a written statement; did he
12 not?

13 A He did. I don't have it here.

14 Q Okay. Same day it happened. If I hand you -- does
15 that refresh your recollection?

16 MS. HENDERSON: Your Honor, I would object. He
17 didn't take this written statement. The statements that
18 he took from his report is one thing, but he didn't --
19 he was not present for this written statement, and did
20 not take this written statement. And it would -- this
21 would be hearsay, your Honor.

22 MR. LEE: He referenced -- he referenced in his
23 report, that they gave -- that he took statements from
24 him.

25 THE COURT: You can go ahead.

STATE V WRIGHT - RE-RE-CROSS BRYAN TOWNSEND

1 BY MR. LEE:

2 Q This is Mr. Williams' statement, correct?

3 A This is Mr. Williams' statement.

4 Q Who is a black male himself.

5 A Yes.

6 Q Okay. What is it -- he talks about, a *light-*
7 *skinned, black male approached me.* The next sentence
8 says, *there was* -- and what does that read?

9 A *There was a dark-skinned, black male behind him.*

10 Q Okay. So, Mr. Williams says there was a dark-
11 skinned, black male, right? The one with the mask.

12 A Um-hmm.

13 Q Okay. Thank you.

14 COURT REPORTER: What was your answer?

15 A Yes. I'm sorry.

16 BY MR. LEE:

17 Q Okay. And then, Ms. Radford was the other person
18 there, and she was too upset to even talk, right?

19 A That is correct.

20 Q Okay. And I think -- and then, I think Ms. Hill is
21 the other one. She said she didn't get a good look at
22 anybody, right?

23 A One of them said she didn't get a good look. I
24 think it is Mrs. Hill.

25 Q All right. So, the people that did make

STATE V WRIGHT - RE-RE-CROSS BRYAN TOWNSEND

1 identifying statements like that consistently said
2 light-skinned versus black -- dark-skinned, right?

3 A They did.

4 Q Okay.

5 A The majority of them, yeah.

6 Q All right. Does anybody say it anything different
7 than that?

8 A One doesn't really give a whole lot of detail at
9 all, obviously, the one that wouldn't give any detail.
10 And Mrs. Hill didn't give us a whole lot, either.

11 Q But the three others did.

12 A But the others did.

13 Q So, you had people saying that the complexion of
14 the other was dark-skinned, right?

15 A The others were consistent with that, yes.

16 COURT REPORTER: I'm sorry. One at a time.

17 THE COURT: Thank you.

18 MR. LEE: Thank you.

19 MS. HENDERSON: Nothing further, your Honor.

20 THE COURT: All right. Any objection to Staff
21 Sergeant Townsend being excused from anyone?

22 MR. LEE: No objection.

23 THE COURT: You are excused, sir. Thank you.

24 STAFF SERGEANT BRIAN TOWNSEND: Thank you, ma'am.

25 THE COURT: Thank you. The State will call their

STATE V WRIGHT

DIRECT - NANCY HILL

1 next witness.

2 MS. HENDERSON: The State calls Nancy Hill, your
3 Honor.

4 THE COURT: Thank you. Come on forward to be
5 sworn, Ms. Hill.

6 MADAM CLERK YOUNG: Would you place your left hand
7 on the *Bible*, ma'am, and raise your right hand. Do you
8 solemnly swear to truthfully answer all questions asked
9 of you by this court, so help you God?

10 NANCY HILL: I do.

11 MADAM CLERK YOUNG: Please be seated. State your
12 name and spell it for the Court, please, ma'am.

13 NANCY HILL: Thank you. My name is Nancy Hill,
14 N/a/n/c/y, H/i/l/l.

15 NANCY HILL .

16 DIRECT EXAMINATION BY MS. HENDERSON:

17 Q Good morning, Ms. Hill. Ms. Hill, where do you
18 work?

19 A I'm retired right now.

20 Q You're retired? And where did you work before you
21 retired?

22 A Chavis Moving and Storage.

23 Q And how long did you work there?

24 A A little over four years.

25 Q So, were you working there in 2007?

STATE V WRIGHT

DIRECT - NANCY HILL

1 A Yes, ma'am.

2 Q And what was your job description at Chavis?

3 A I was a transportation assistant. I filled out the
4 paperwork for moves.

5 Q Okay. And where was your desk located in the
6 building?

7 A In the front office, but there was a partition
8 wall.

9 Q Okay. And did you -- could you see the front door?

10 A No.

11 Q From where you sat?

12 A No, I could not see it.

13 Q And how many -- how many employees did Chavis have?

14 A Right around 11. Eleven or 12.

15 Q And how many of you were there on an average day?

16 A It varied, depending on the moves and what was
17 going on. Could be two, could be eight.

18 Q Okay. We're going to go back to May 10th of 2007.
19 Do you remember that day?

20 A Yes, ma'am.

21 Q And were you working at Chavis on that day?

22 A Yes, ma'am.

23 Q Okay. Can you please tell the jury, from the time
24 you got up, until the time you -- of the armed robbery,
25 what did you do?

STATE V WRIGHT

DIRECT - NANCY HILL

1 A Well, I got up. I had my cup of tea. I got ready
2 for work. I got in my car. I stopped, and I'm not sure
3 where, and picked up a carton of cigarettes, because I
4 was almost out. I got to work about 25 after seven and
5 went in, sat down and started my day.

6 Q Okay. Let's talk about that carton of cigarettes
7 that you bought. Was it an unopened carton?

8 A Yes, ma'am. Brand new.

9 Q And when you got to work, did you open it?

10 A Yes, I did.

11 Q And what did you do?

12 A I put one pack in my purse.

13 Q Okay. And did you ever pull it back out of your
14 purse?

15 A No, ma'am.

16 Q So, when you went into the office, where do you put
17 your purse?

18 A Under my desk, on a shelf that sits to the back.

19 Q Okay. And let's say -- how often do you leave your
20 desk?

21 A For a break and to go to the bathroom.

22 Q Was -- and I know this is -- I'm asking you to
23 think back a long time ago. In the hour and a half
24 between you getting to work and the approximate time of
25 the robbery, was your purse left unattended?

STATE V WRIGHT

DIRECT - NANCY HILL

1 A No.

2 Q Let's talk about the armed robbery. What happened?

3 A I was in the front office. I was speaking with
4 Andrew. Someone came in. A young, black gentleman came
5 to the front and asked for an application, or asked if
6 we were hiring. And I said, *I'm taking applications*.
7 So, I got the application. And when I turned back, he
8 had a revolver pointed at me.

9 Q And then what happened?

10 A They -- he told us to all get down on the floor.
11 So -- and oh, I called for Nate for some reason, And he
12 had us all get down on the floor. Someone else came in,
13 went through the door. Did not see them, except for
14 their outfit. I couldn't see their face.

15 After that, they brought Mr. Griffin and Stephanie
16 up to the front. They put us all in the storage room.
17 They went through my purse, because they came and asked
18 me for my PIN number. I gave it to them.

19 Q And what did --

20 A They threatened to --

21 Q I'm sorry. Go ahead.

22 A They threatened to shoot me if I didn't give them
23 the right one; that they were leaving someone there to
24 shoot us. They shut -- shut us in. When Mr. Griffin
25 heard the front door shut, because it has one of those

STATE V WRIGHT

DIRECT - NANCY HILL

1 air things, and it kind of snaps, when the front door
2 shut, he came out, and we started locking up, and called
3 the police.

4 Q Let's back up a little bit. You said that one
5 gentlemen came in and asked for a job description. I'm
6 sorry, a job application.

7 A Yes, ma'am.

8 Q Did that person have a gun at that time?

9 A I did not see one, no.

10 Q Okay. It was when you turned back around after
11 calling for the manager --

12 A Um-hmm.

13 Q -- that you saw the gun. Is that correct?

14 A Yes.

15 Q Okay. When did the second person enter?

16 A He must have come in right behind him, because I
17 did not notice him until he was going out the other
18 door. And I got a glimpse of the side of his -- I call
19 them jogging suits. And that's really all I saw of him.

20 Q Did he have a gun, as well?

21 A I do not know.

22 Q And you said once you came out of the closet, you
23 all started to lock the doors so that -- what did you
24 do, specifically?

25 A Well, I said, *somebody touched my cigarettes; it's*

STATE V WRIGHT

DIRECT - NANCY HILL

1 a brand new pack. So, we left everything on the
2 counter. All my stuff was strewn across the counter,
3 and Mr. Griffin said, *go lock the doors*. So, to save
4 fingerprints, if you want to say, we locked with a
5 shirt.

6 Q How did you know that someone had touched your pack
7 of cigarettes?

8 A Because I had just put it in there out of the
9 carton this morning. The carton was still in my car,
10 and I hadn't taken it out. And everything was strewn
11 across the counter, and my purse had been under the
12 desk. So, someone had to have taken it out, and it had
13 to have been one of the two gentlemen that was there.

14 Q And do you remember them finding your purse?

15 A Yes, yes, they did. They found it. They -- one of
16 them stepped over me and reached under there. Which
17 one, I don't know, because I did keep my head down.

18 Q Okay. But that was when you were on the ground.

19 A Yes, ma'am.

20 Q Okay. So, the entire contents of your purse was
21 laid out.

22 A Yes, ma'am.

23 Q Okay. So, that's how you knew some -- that they
24 had been through it.

25 A Yes, ma'am.

STATE V WRIGHT

CROSS - NANCY HILL

1 Q Okay. And you, nor anybody else, touched it or
2 anything like that?

3 A No, we did not touch it until after law enforcement
4 got there.

5 Q Okay. And do you remember what you were wearing
6 that day?

7 A A yellow cotton sweater and brown pants.

8 Q And how are you able to remember that?

9 A I don't know. It's just very significant in my
10 memory.

11 Q Okay. Have you worn it since?

12 A No, ma'am.

13 Q And why not?

14 A I just got rid of it.

15 MS. HENDERSON: Nothing else at this time, your
16 Honor.

17 NANCY HILL

18 CROSS-EXAMINATION BY MR. LEE:

19 Q I don't even remember what tie I wore yesterday,
20 Ms. Hill. Let me ask you a couple of questions. I know
21 you probably want to get out of here. I'm sorry what
22 happened to you. I know this was a long time ago, but
23 I'm sorry what happened to you.

24 A Yes, it was.

25 Q Let's talk a little bit about your purse.

STATE V WRIGHT

CROSS - NANCY HILL

1 A Um-hmm.

2 Q Is it a typical woman's purse that -- I don't want
3 to sound the wrong way, but does it have all kinds of
4 stuff in it?

5 A Yes, sir.

6 Q Okay. Wallet, makeup, sunglasses.

7 A Not makeup. No sunglasses, because I wear regular
8 glasses.

9 Q Okay. Glasses cases?

10 A No.

11 Q Okay. What's in your purse?

12 A A wallet, my cigarettes.

13 Q Lighter?

14 A Let's see. A lighter, a brush.

15 Q Okay.

16 A Sewing kit.

17 Q Yeah.

18 A A nail cleaner kit.

19 Q Okay.

20 A Receipts. Probably a lot of little things like
21 that.

22 Q Is it a small pocketbook or a big one?

23 A No, big.

24 Q Big? Okay. And the whole thing was dumped out?

25 A No, it was just strewn across the thing. It wasn't.

STATE V WRIGHT

CROSS - NANCY HILL

1 dumped.

2 Q Okay.

3 A They had strewn it across the --

4 Q Okay. Like they had taken stuff out.

5 A Like they'd taken it out and whatever, and laid it
6 along the --

7 Q Okay. But needless to say, there's a lot of stuff
8 that was strewn out.

9 A Yes.

10 Q And obviously, your cigarettes that you're talking
11 about, you had put them in the purse?

12 A My purse, yes.

13 Q And obviously, that required you to pick them up
14 and put them in your purse.

15 A Yes.

16 Q Had you smoked any of those cigarettes yet?

17 A No.

18 Q Okay. But you had picked it up out of the carton,
19 manipulated it, and put it in the purse?

20 A Yes.

21 Q Okay. And then picked it up. Okay. So, your
22 fingerprints should be all over the cigarette case from
23 putting it in the purse, right?

24 A Yes.

25 Q Okay. Among other things. I mean -- and these

STATE V WRIGHT

CROSS - NANCY HILL

1 people went through all the items in the purse, as far
2 as you know.

3 A Yes.

4 Q Just strew them out. Okay. Now, you said
5 something about the first guy that walked in, I believe
6 one of your statements said it was a light-skinned,
7 black male. Is that right?

8 A It's been seven years, sir.

9 Q I know. Okay.

10 A I couldn't tell you.

11 Q Well, do you remember giving a statement or writing
12 something?

13 A Yes, I'm -- you know, I'm sure I did.

14 Q Okay. So, you remember talking to Townsend,
15 Officer Townsend, the first officer there.

16 A I remember talking to an officer.

17 Q Do you remember saying he was young, light-skinned,
18 black male?

19 A I can't tell you if it was --

20 Q Okay. All right.

21 A -- those were my exact words or not.

22 Q Now, but you said that you didn't see the second
23 person, the one who had the mask on, until they were
24 leaving. Is that right?

25 A No, I saw him -- he -- I don't know how to explain

STATE V WRIGHT

CROSS - NANCY HILL

1 it to you. The office where I'm at has like, a cubby
2 hole.

3 Q Right.

4 A Okay. The young -- the first gentleman in was
5 standing in the middle of it.

6 Q Okay.

7 A When I turned to go get him the application --

8 Q Right.

9 A -- and turned back --

10 Q Okay.

11 A -- and he had the gun, the other gentleman is going
12 where there's a partition right here.

13 Q Okay.

14 A All I saw was sleeve and shoulder.

15 Q Okay. You say he had some kind of jogging suit?

16 A That's --

17 Q Was it --

18 A -- I don't know what they call those. No, just the
19 regular ones. They're like that parachute material,
20 whatever they call that stuff.

21 Q Right.

22 A And the first one's was red, had red markings on
23 black, and the other one was yellow.

24 Q The first what?

25 A Gentleman.

STATE V WRIGHT

CROSS - NANCY HILL

1 Q Okay. So, they were pretty distinctive-looking.

2 A Well, I mean, they're -- they were two-toned. That
3 was it.

4 Q All right. And also, Ms. Hill -- well, let me just
5 -- the other people that were there that day were
6 Nathaniel Williams. Is that right?

7 A Yes.

8 Q Or Nate, as they call him?

9 A Yes.

10 Q Lloyd Griffin.

11 A Yes.

12 Q Is that right? Stephanie Radford was there.

13 A Yes.

14 Q And who am I leaving out? There's one.

15 A Andrew Lindsey.

16 Q Andrew Lindsey, right. Okay. So, all five of you
17 were there.

18 A Yes, sir.

19 Q Okay. And all five of you, as far as you know,
20 talked to the police and gave statements, cooperated.

21 A Yes.

22 Q Okay. All right. So, the yellow jogging suit was
23 what the person had on, or red on black? The second
24 person?

25 A Yellow.

STATE V WRIGHT

CROSS - NANCY HILL

- 1 Q Which one did he have on? Which jogging suit?
- 2 A Yellow.
- 3 Q Yellow. Okay. All right. And that was the guy
- 4 that -- that was not the guy that came in first. That
- 5 was the second guy that you didn't get a look at.
- 6 A Yes.
- 7 Q The one that everybody says had a mask on.
- 8 A Yes.
- 9 Q Okay. Did you see his mask?
- 10 A No, sir.
- 11 Q Okay. Yellow jogging suit.
- 12 A Well, no. The jogging suit was -- it's black and
- 13 yellow. The --
- 14 Q Oh, I'm sorry. Sorry about that. Okay. Does it
- 15 have, like, yellow arms and black here, or does it have,
- 16 like, cut across the middle?
- 17 A It's just, you know, abstract.
- 18 Q Okay. Have you ever seen something like that
- 19 before?
- 20 A Yeah. You see them all over the place.
- 21 Q Okay. All right. Okay. Did Detective Foskey ever
- 22 ask you to provide any fingerprints for him to use for
- 23 comparison purposes?
- 24 A No, not that I remember.
- 25 Q All right. Do you recall -- do you recall

STATE V WRIGHT

CROSS - NANCY HILL

1 Nathaniel Williams offering some of this money to these
2 two guys, and they didn't take it?

3 A Yeah. Two dollars.

4 Q And they didn't take it?

5 A That's all he had.

6 Q And they didn't take it.

7 A Not that I remember.

8 Q Okay. Any reason why they wouldn't take money from
9 him, that you know of?

10 A No. I can't imagine.

11 Q Did it make you mad that they took your money and
12 didn't take his?

13 A No..

14 Q Okay. All right. There also was a debit card or a
15 credit card in there, right?

16 A A debit card.

17 Q And after things settled down a little bit, you
18 called the bank, South Carolina Bank and Trust, and
19 said, hey, my debit card got stolen.

20 A Yes. And I had to stop by there and fill out the
21 paperwork to stop it and have my money refunded.

22 Q Okay. So, you got your money back.

23 A The \$600.00 they took, yes.

24 Q Okay. Because, is it your understanding that,
25 shortly thereafter, the card was used at the Food Lion?

STATE V WRIGHT

CROSS - NANCY HILL

1 A Yes, sir.

2 Q Okay. So, they told you that. Okay?

3 A It was, like, a few hours later.

4 Q Okay. Was it before you reported it stolen that it
5 was used?

6 A Did they tell me before?

7 Q That it was used, was it before you were able to
8 report it stolen?

9 A I'm sorry. I don't remember what time it was done.

10 Q Okay. Well, hopefully, if you reported it stolen,
11 they wouldn't take the \$600.00 out of the account,
12 right?

13 A Well, I'm assuming that it happened almost
14 immediately afterwards.

15 Q Okay.

16 A So, we were more --

17 Q The use of the card before you were able to --

18 A Yeah.

19 Q Okay.

20 COURT REPORTER: I'm sorry. One at a time, please.

21 MR. LEE: I'm sorry.

22 BY MR. LEE:

23 Q You assumed the use of the card occurred before you
24 were able to cancel it or report it stolen. Is that
25 right?

STATE V WRIGHT RE-DIRECT - NANCY HILL

1 A Yes, sir. I think so.

2 Q Okay.

3 MR. LEE: I'm sorry. Okay. That's all I have.

4 Thank you, Ms. Hill.

5 NANCY HILL: Thank you.

6 MS. HENDERSON: Briefly, your Honor.

7 THE COURT: Yes, ma'am.

8 NANCY HILL

9 RE-DIRECT EXAMINATION BY MS. HENDERSON:

10 Q Ms. Hill, just so we're clear. Did anybody else
11 touch that pack of cigarettes that was in your purse
12 that morning, other than you and the robber that went
13 through your purse?

14 A No, ma'am.

15 MS. HENDERSON: No further questions, your Honor.

16 THE COURT: Mr. Lee, anything further?

17 MR. LEE: No, nothing further, your Honor.

18 THE COURT: Any objection to Ms. Hill being excused
19 from anyone?

20 MR. LEE: No objection.

21 THE COURT: You are excused Ms. Hill. Thank you.

22 NANCY HILL: Thank you.

23 THE COURT: Ladies and gentlemen of the jury, do
24 you all need a brief recess? Are we okay? Ms.

25 Henderson, how long is your next witness?

STATE V WRIGHT

1 MS. HENDERSON: It's Detective Foskey, your Honor.
2 I think some of them nodded.

3 THE COURT: Take a little bit. All right. Ladies
4 and gentlemen, let's go ahead and take a very brief
5 recess. I need to remind you, do not discuss this case.
6 It wouldn't be appropriate to do so. Get a cup of
7 coffee, and we'll bring you right back in as soon as
8 you're ready. Thank you.

9 JURORS LEAVE COURTROOM 11:11 A.M.

10 BAILIFF: Jury is clear, door is closed, your
11 Honor.

12 THE COURT: Thank you, Al. All right. We'll be at
13 ease. Does anyone need to put anything on the record?
14 No? Let's take about ten minutes. Okay?

15 OFF THE RECORD 11:12 A.M.

16 BACK ON THE RECORD 11:28 A.M.

17 BY THE COURT:

18 BAILIFF: All rise for the Honorable Carmen Mullen.
19 Court is now in session.

20 THE COURT: Thank you. Please be seated. Okay.
21 Are you ready to go?

22 MR. LEE: Yes, ma'am.

23 THE COURT: Let's bring the jury in. Foskey is
24 next. Is that correct? Ms. Moss, I see him. I was
25 going to say, do you have him close? I see him. Okay.

STATE V WRIGHT

1 Mr. Lee, if you have any specific requests to charge
2 that you can think of, let me know.

3 MR. LEE: Okay.

4 MS. HENDERSON: Real quick, before they come in.
5 I know Judge Buckner's rule. What is your rule on
6 when you do not to send a to a jury, as far as late or
7 after a certain time. I know Judge Buckner will send it
8 -- won't argue a charge past 3:00 o'clock. Do you have
9 a --

10 THE COURT: Yes. No, I don't have a rule on that.

11 MS. HENDERSON: Okay.

12 THE COURT: It just depends on the case, and
13 depends on what else we're trying to get done that week,
14 so.

15 MS. HENDERSON: Okay.

16 MR. LEE: Hopefully, we can finish today, and argue
17 and close in the morning.

18 MS. HENDERSON: That's what I was anticipating. I
19 just didn't know.

20 THE COURT: I've got to figure out what the
21 schedule is, and yes.

22 BAILIFF: Jury is entering, your Honor.

23 THE COURT: Thank you.

24 JURORS ENTER COURTROOM 11:32 A.M.

25 THE COURT: Welcome back, ladies and gentlemen. At

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 this time, we'll go ahead and continue the trial of the
2 case.

3 Ms. Henderson, if you'll call your next witness.

4 MS. HENDERSON: Thank you, your Honor. State calls
5 former Detective John Foskey.

6 MADAM CLERK: Would you place your left hand on the
7 *Bible* and raise your right hand for me, please. Do you
8 solemnly swear to truthfully answer all questions asked
9 of you by this court, so help you God?

10 JOHN FOSKEY: I do.

11 MADAM CLERK: Please be seated. State your name
12 and spell it for the Court, please, sir.

13 JOHN FOSKEY: My name is John Foskey.

14 JOHN FOSKEY

15 DIRECT EXAMINATION BY MS. HENDERSON:

16 Q Good morning, Mr. Foskey.

17 A Good morning.

18 Q Where do you currently live?

19 A Roanoke, Virginia.

20 Q And what do in Roanoke, Virginia?

21 A I'm a campus security officer at Hollins
22 University.

23 Q And how long have you been doing that?

24 A About three years.

25 Q And prior to that job, what did you do?

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 A I was in law enforcement.

2 Q Where?

3 A Beaufort County Sheriff's Office.

4 Q Okay. How long were you in law enforcement?

5 A Thirty-two years.

6 Q And were all of those 32 years with Beaufort, or?

7 A Twenty-five is with Beaufort County, and seven with
8 Hardeeville Police Department.

9 Q And what was your job description when you left
10 Beaufort County? What was the last position you held at
11 Beaufort County?

12 A I was a criminal investigator.

13 Q And how long had you been a criminal investigator?

14 A At that time, seven years.

15 Q So, in May of 2007, were you a criminal
16 investigator?

17 A Yes, ma'am.

18 Q Okay. And were you working on that day?

19 A Yes.

20 Q And do you remember getting a call to go to Chavis
21 Moving Company on 265 Bay Pines Road?

22 A Yes, I do.

23 Q And what were you called out for?

24 A I was advised it was an armed robbery just
25 occurred.

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 Q Okay. And what did you do once you responded to
2 the location?

3 A I went to the location. I met with Staff Sergeant
4 Townsend, who was the initial officer. He advised me of
5 what had happened. And so, I spoke to some of the
6 witnesses, and then began processing for evidence.

7 Q Okay. Let's talk about processing for evidence.
8 When you say that you process a scene for evidence, what
9 do you do?

10 A I look for anything that the suspects may have
11 touched that I can lift fingerprints from, or anything
12 they left behind. Anything like that.

13 Q Okay. So, like, door handles, or -- what are some
14 examples?

15 A Yeah, door handles or the door itself where they
16 pushed on it, or the counter where they may have put
17 their hands, or items they picked up and left behind.

18 Q Okay. And so, did -- did you -- is the proper
19 phrase dusting for fingerprints?

20 A Yes.

21 Q Did you dust a good amount of stuff in that
22 building?

23 A Yes, I did.

24 Q Okay. And how many useable prints did you obtain?

25 A Obtained two or three that I thought were useable

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 that I turned in to evidence, I believe.

2 Q Okay. And are fingerprints easy to lift? I don't
3 know if that's the right way to ask you that, but is it
4 something that's easy to obtain when processing a scene?

5 A Yes, with experience, it -- it's fairly easy.

6 Q Do people always leave a fingerprint behind when
7 they touch something?

8 A Not always. I mean, it could be smudged. It could
9 be a unidentifiable fingerprint.

10 Q So, that was going to be my next question. So,
11 there's a difference between -- someone can leave a
12 print, but whether or not that print is useable is a
13 different story. Is that correct?

14 A That's correct. I mean, if they twisted their
15 hand, it could be torqued or something, you just
16 couldn't identify it.

17 Q Okay. So, you dusted the entire business for
18 prints, but you only found two or three useable ones.

19 A Yes, ma'am.

20 Q Okay. And what had you been told had happened?

21 A I was told that two people had came in with guns.
22 One had a ski mask on, one didn't. They held the
23 employees at gunpoint, took some property from them, and
24 then forced them back into a storage room, where they
25 locked them in the storage room.

STATE V WRIGHT

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1 Q And do you remember seeing the storage room?

2 A I saw it, but I don't recall much about it.

3 Q So, you don't recall, like, how many -- how big it
4 was?

5 A No, ma'am.

6 Q Okay. Was it smaller than this courtroom?

7 A Oh, certainly.

8 Q Okay. And were you told the race and gender of the
9 two people that had committed this robbery?

10 A Yes, ma'am. I was told it was two, black males.

11 Q Okay. And other than the dusting for fingerprints,
12 did you collect any other evidence?

13 A Yes, I did. It was a Piggly Wiggly handbook that
14 was left behind by one of the defendants.

15 Q Officer Foskey, I'm going to show you what's been
16 marked for purposes of identification as State's Exhibit
17 1. Do you recognize that?

18 A Yes, ma'am. It's the handbook that was left
19 behind.

20 Q That is the handbook that you collected from the
21 scene?

22 A Yes, it is.

23 Q Okay. And does it appear to have been changed or
24 altered in any way?

25 A No.

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 MS. HENDERSON: Your Honor, at this time, the State
2 would move to have State's Exhibit 1 entered into
3 evidence.

4 MR. LEE: No objection.

5 THE COURT: Without objection.

6 MS. HENDERSON: Permission to publish, your Honor.

7 THE COURT: You may.

8 ITEM IDENTIFIED AS PIGGLY WIGGLY
9 HANDBOOK MARKED STATE'S EXHIBIT
10 NUMBER 1, ADMITTED AS EVIDENCE,
11 AND PUBLISHED TO JURORS.

12 BY MS. HENDERSON:

13 Q Now, Detective Foskey, did you swab for things such
14 as, like, touch DNA and stuff like that?

15 A No, ma'am, we did -- did not have that technology
16 then. It was a few years later, around 2009, when we
17 actually began doing the touch DNA.

18 Q Okay. So, in 2007, that wasn't really something
19 that law enforcement did?

20 A No, ma'am. Not us, anyway.

21 Q Okay. And do you remember what you lifted the
22 prints off, the useable prints off of?

23 A Yes, ma'am. It was a pack of cigarettes that Ms.
24 Hill had in her purse, and she told me the defendant --
25 the suspect had taken items out of her purse, and that

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1 pack of cigarettes was one of the items that was taken
2 out, and I lifted the prints off of it.

3 Q Okay. Did she also explain to you that she had
4 just purchased a carton that morning?

5 A Yes. She said she, she, on the way to work,
6 purchased a carton of cigarettes, took that one pack out
7 and put it in her purse, still unopened.

8 Q Okay. And when you got there, the pack of
9 cigarettes that you processed, where were they located?

10 A They were on a counter near her desk, scattered.

11 Q Okay. Okay. And I'm going to hand you what's been
12 marked for purposes of identification as State's Exhibit
13 2. Do you recognize those?

14 A Yes, ma'am. These are the fingerprint cards I
15 turned in to evidence.

16 Q Okay. Those are the ones that you lifted off the
17 pack of cigarettes?

18 A Yes.

19 Q Okay. And who did you give those to after you
20 lifted them?

21 A To Chris Wilson. Sergeant Wilson.

22 Q And why did you give them to Sergeant Wilson?

23 A She is our fingerprint expert, per se, and I wanted
24 her to see if she could identify the print of someone.

25 Q And what else did you do in the investigation of

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 this case?

2 A Obtained statements from all the witnesses,
3 victims, and I showed photo lineups to the victims of
4 the defendant.

5 Q Okay. I was about to get to that. At some point
6 in your investigation, did you identify Tyshon Barnes as
7 a possible suspect?

8 A Yes, ma'am, I did.

9 Q Okay. And is that who you placed in photo lineups
10 to present to the victims?

11 A Yes.

12 Q Okay. Was he identified as the one not wearing a
13 mask?

14 A Yes, he was.

15 Q Okay. And did some of the victims positively
16 identify him?

17 A Yes, they did.

18 Q Okay. And at some point during your investigation,
19 did you learn that Ms. Hill's card had been -- her debit
20 card that was stolen had been used somewhere?

21 A Yes, I did.

22 Q And where was it used?

23 A At the Food Lion, not too far from Chavis Moving
24 and Storage.

25 Q Do you, by any chance, remember how long after the

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 incident the card had been used?

2 A I don't remember the exact time. It was fairly
3 shortly after the robbery.

4 Q Okay. And what did you do upon obtaining that
5 information?

6 A I went to Food Lion and see if they had video tape,
7 which they did, and I obtained a video tape from Food
8 Lion.

9 Q And were you able to view that videotape?

10 A Yes, I did.

11 Q And what could you see, if anything, on that
12 videotape?

13 A The only thing you could tell was, it was three,
14 black males that came into the store, but you couldn't
15 identify their facial features or anything like that.

16 Q Okay. Could you determine if they were light-
17 skinned or dark-skinned, or height or weight?

18 A No. You could tell their basic weight, maybe, but
19 not the height or skin color, tone.

20 Q Okay. And could you determine anything they were
21 wearing, their clothing?

22 A Two of them, you could tell, looked like what I
23 call work shirts, a work shirt with a patch on the front
24 of the shirt. You could tell there was a patch on it.

25 Q Could you read the patch?

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 A No, ma'am.

2 Q Okay. So, you were not able to get any identifying
3 information from that video.

4 A No.

5 Q Did you make any effort to improve it?

6 A It was sent to SLED to be enhanced, or to try to
7 see if they could enhance it. I don't recall --

8 Q And do you remember if they could?

9 A I don't recall. I never received a response.

10 Q Okay.

11 A I don't know.

12 Q And do you know what happened to that videotape?

13 A No, I don't.

14 Q Okay. But you did not destroy the videotape.

15 A No.

16 Q Okay. And no one else that worked with you would
17 have destroyed that videotape.

18 A Not to my knowledge, no.

19 Q Okay. Do you believe that it was lost in the
20 shuffle? I don't know how else to --

21 A That's a possibility. I mean, I really can't say
22 what happened to it.

23 Q Okay. But it is your testimony here today that you
24 could not obtain any identifying information from that
25 video.

STATE V WRIGHT

DIRECT - JOHN FOSKEY

1 A No, I could not.

2 Q And you did not intentionally get rid of it to
3 conceal anything.

4 A No.

5 Q Okay. And do you know if Sergeant Chris Wilson
6 matched those fingerprints to anyone?

7 A Yes, she did.

8 Q And do you know the name of the person she matched
9 them to?

10 A To James Wright.

11 MS. HENDERSON: Beg the Court's indulgence, your
12 Honor.

13 BY MS. HENDERSON:

14 Q Sergeant Foskey, do you remember what brand or what
15 type of cigarettes it was?

16 A It was Marlboro Lights, I believe.

17 Q And what -- sorry, one other question. We don't
18 have any -- we don't have any pictures of the inside of
19 Chavis. Why did you not take pictures?

20 A I didn't see any evidentiary value of taking
21 pictures. It was just an office, basically.

22 Q Okay.

23 MS. HENDERSON: Nothing further at this time, your
24 Honor.

25 THE COURT: Mr. Lee.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 JOHN FOSKEY

2 CROSS-EXAMINATION BY MR. LEE:

3 Q Good morning, Mr. Foskey.

4 A Good morning, sir.

5 Q It's been awhile. Good to see you again.

6 A You, too.

7 Q All right. So, you left us and headed to Virginia,
8 huh?

9 A Yes, sir.

10 Q Okay. All right. You were the lead investigator,
11 correct?

12 A Correct.

13 Q And in police speak, that means that everything
14 kind of funnels through you, and you kind of assimilate
15 everything, and you're the face of the team, right?

16 A Yes, sir.

17 Q Okay. I want to ask you a little bit about your
18 investigation, Foskey. You talked to -- there were five
19 people that were in Chavis when it got broken into,

20 correct?

21 A Correct.

22 Q Okay. And you spoke to all of them.

23 A Yes, I did.

24 Q Now, is it safe to say, based upon your interviews
25 with those people, that the -- kind of, the consensus

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 was that one guy came in who was followed by someone who
2 was -- another black male who was darker-skinned than
3 him. Is that right? Do you agree with that so far?

4 A I don't remember the darker skin, but I remember
5 one came in and was followed by a second.

6 Q Okay. Would it help me to get the statements for
7 you to review, as far as the --

8 A I mean, if that's in their statement. I just don't
9 recall it. It's been so long.

10 Q Okay.

11 A That part.

12 Q And it's the darker-skinned, black male who has a
13 mask on, right?

14 A It's the second one had the mask.

15 Q Okay. And he's the one that's been described as
16 the darker-skinned, black male. Is that right?

17 A It's possible. I don't recall the darker skin
18 part.

19 Q But it's your position and the State's position is
20 that the person that came in first, --

21 A Um-hmm.

22 Q -- who was described by several people as light-
23 skinned, black male, --

24 A Um-hmm.

25 Q -- it's your position and the State's position that

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 that is Tyshon Barnes, correct?

2 A That's correct.

3 Q And he's the one without the mask.

4 A Yes, sir.

5 Q Okay. And then, it's also your position, or the
6 State's position, that the second guy --

7 A Um-hmm.

8 Q -- that they're talking about, the black male with
9 the darker skin who's wearing a mask, is James Wright.

10 A That's correct.

11 Q Okay. So, as long as we're talking about --

12 A Yes.

13 Q Okay. And you said something earlier to Ms.
14 Henderson about you did show photo lineups to the five
15 people, correct?

16 A Yes. Yes, sir, I did.

17 Q Okay. You showed them lineups of Tyshon Barnes and
18 James Wright?

19 A I don't recall if I actually showed them the ones
20 of James Wright or not. I know I showed them the ones
21 of Tyshon Barnes.

22 Q Okay. Did you write a supplemental incident
23 report, 5-25-07? I know it's been a long time. Does
24 that ring a bell to you?

25 A Yes, sir.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. Can you go down to the last paragraph. The
2 second sentence, it says, *this officer put together.*
3 Can you read that for us?

4 A Yes, sir. It says, *this officer put together*
5 *photo lineups with Barnes and lineups with*
6 *Wright, and presented these to the victims at*
7 *Chavis Moving.*

8 Q Okay. So, reading that, it says, put together
9 photo lineups with Barnes, who is Tyshon Barnes, and
10 lineups with Wright, who is James Wright, correct?

11 A Yes, sir.

12 Q Okay. Do you have those lineups that contain James
13 Wright with you, or are they in evidence? Do you know
14 anything about them?

15 A No, sir. No one was able to identify him through
16 lineups, so they were not turned in as evidence.

17 Q They were not turned in?

18 A No, sir.

19 Q Were they thrown away or tossed or shredded?

20 A Yes, sir. If they were unusable or not identified,
21 we would have no use for them.

22 Q Okay. Now, would you agree that, being an
23 investigator, you obviously want to find evidence to
24 convict people, but you also want to find evidence that
25 may help people, correct? If they didn't --

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 A Yes, sir.

2 Q Okay. Now, wouldn't you agree that five people
3 looking at a picture of Mr. Wright and not being able to
4 identify him is helpful to Mr. Wright?

5 A It's possible.

6 Q It's possible. Okay. And that's sometimes called
7 exculpatory evidence, something that's missing or not
8 there, correct?

9 A Yes, sir.

10 Q But you showed them the lineups and said that the
11 person doesn't have to be on here; you don't have to
12 pick somebody; and you read them all the things you're
13 supposed to read them, right?

14 A Yes, sir.

15 Q Okay. And none of them picked out James Wright.

16 A No, sir.

17 Q Okay. Now, you also did a lineups for --
18 containing Tyshon Barnes, correct?

19 A Correct.

20 Q Okay. And two of the five identified Tyshon Barnes
21 from a photo lineup, correct?

22 A Yes, sir.

23 Q Okay. And that would have been Mr. Lindsey -- I'm
24 sorry, Mr. Griffin, Lloyd Griffin, and Nathaniel
25 Williams. They both picked Tyshon Barnes out of a photo

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 lineup, right?

2 A Yes, sir.

3 Q Okay. And I just borrowed these from the
4 Solicitor's table. Have you seen those before?

5 A Yes, sir.

6 Q Okay. And those are the photo lineups that you
7 showed Mr. Williams and Mr. Griffin, right?

8 A Yes.

9 Q Okay. And both of them indicate that Person Number
10 2 was circled by the person that viewed it, correct?

11 A Correct.

12 Q And Person Number 2 is?

13 A Tyshon Barnes.

14 Q Okay. So, Mr. Griffin and Mr. Williams identified
15 Tyshon Barnes. He's the Number 2, both pictures,
16 correct?

17 A Correct.

18 Q Okay. Now, Mr. Lindsey was also there; was he not?
19 Andrew Lindsey?

20 A Yes.

21 Q Remember his name?

22 A Yes.

23 Q And he picked somebody out of the photo lineup,
24 too; did he not?

25 A Yes, he did.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. And again, we're talking about the person
2 that's been identified as the person who first went into
3 the building, right?

4 A Yes, the one without --

5 Q The person who's been referred to by three --

6 COURT REPORTER: I'm sorry. *The person who first*
7 *went into the building*, and your answer was?

8 A The person without the ski mask.

9 BY MR. LEE:

10 Q But everybody indicates that that person without
11 the mask went in first, correct?

12 A Correct.

13 Q Okay. And he's also been referred to -- the first
14 person, --

15 A Yes.

16 Q -- the one that you're saying is Tyshon Barnes, has
17 been referred to by a few people as the lighter-skinned.

18 A Okay.

19 Q Right? Now, is that -- is that right?

20 A Correct.

21 Q Okay. Now, Mr. Lindsey was also shown a photo
22 lineup, asked if he could identify this first person,
23 correct?

24 A Correct.

25 Q All right. And is that the lineup that was shown

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 to Mr. Lindsey?

2 A Yes, it is.

3 Q Okay. You can identify it?

4 A Yes, sir.

5 Q All right. And who did Mr. Lindsey pick?

6 A Tyshon Barnes' brother.

7 Q Tyshon Barnes' brother?

8 A Yes.

9 Q And he's Number 5?

10 A Yes.

11 Q Okay.

12 MS. HENDERSON: Your Honor, I would object to him
13 publishing stuff to the jury that's not in evidence.

14 MR. LEE: I mean, it's the State's evidence. I
15 mean, I guess I can -- okay. I'm just asking him about
16 it. I mean, you want me to -- okay. I won't show the
17 jury.

18 BY MR. LEE:

19 Q This person, Mr. Lindsey, picked out Tyshon Barnes'
20 brother.

21 A Correct.

22 Q Matthew.

23 A Yes, sir.

24 Q Okay. How did you get a lineup -- or, why did you
25 get a lineup that had Tyshon Barnes' brother, rather

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 than showing Mr. Lindsey this lineup that has Tyshon
2 Barnes in it?

3 A He was shown the lineup with Tyshon Barnes, and we
4 also had his brother. We didn't know who all was
5 involved at that time. We know -- we thought Tyshon
6 Barnes was, and possibly, his brother was with him.
7 That's why our lineup's showing his brother.

8 Q At that point, you thought his brother might have
9 been with him?

10 A We didn't know who was involved, so it was --

11 Q When did you show these lineups?

12 A Whatever the date is on the lineup.

13 Q If it says, date and time recovery, would that be
14 when it was?

15 A Yes, sir.

16 Q So, that says 5-18-07.

17 A Yes, sir.

18 Q Does that sound right?

19 A Um-hmm.

20 Q Okay. So, eight days after the -- it happened.

21 A Yes.

22 Q Okay. Did you show everybody else the picture of
23 his brother, Tyshon Barnes' brother?

24 A I don't recall. I'm sure we should've shown them
25 lineups -- they would've all seen the same lineups, yes.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. But you wouldn't have kept them if they
2 wouldn't have identified.

3 A No, if they didn't identify him.

4 Q Do you know where you got that picture of Barnes'
5 brother?

6 A It's from our jail photos.

7 Q Okay. Because, in fact, Tyshon Barnes and his
8 brother, on May 14th, four days after Chavis and four
9 days before that lineup, were arrested and accused of
10 robbing the post office, right?

11 A I'm not sure of the date.

12 Q And you would know that, right?

13 A Yes, sir.

14 Q Okay. And you were on that case with Officer
15 Burns, who was also an investigator, correct?

16 A Yes, sir.

17 Q Okay. And that was the post office out --

18 A Lobeco.

19 Q Lobeco. That's right. Do you remember talking to
20 a lady, Ms. Radford, who was the one -- she was the one
21 so upset that night -- that day?

22 A Yes. Yes.

23 Q She ended up giving you a statement, eventually;
24 didn't she?

25 A Yes, sir, she did.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. And you're familiar with that statement and
2 what it says? You read it?

3 A It was a pretty long statement. I don't remember
4 all the details of it.

5 Q I know it was a long time ago, Foskey.

6 A Yeah.

7 Q Ms. Radford provided, kind of, what her theory
8 might have been of what happened. Do you remember that?

9 A Yes, sir.

10 Q Okay. And she's the one, I think, you first
11 pointed out that no money was taken from Nathaniel
12 Williams. You remember that? That it was offered. He
13 offered the two guys money, and they wouldn't take it?

14 A I don't recall that.

15 Q Do you recognize that document?

16 A Yes, sir.

17 Q Okay. Statement of Stephanie Radford, dated 5-18-
18 2007?

19 A Yes, sir.

20 Q Eight days after the incident?

21 A Yes.

22 Q Okay. The very last sentence talks about Nate's --
23 that's Nathaniel Williams. Reading that, the last -- on
24 the first page, the last sentence, does that refresh
25 your recollection as to Nate's money?

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 A Yes, sir.

2 Q What does it refresh your recollection in
3 remembering?

4 A She just found that interesting, that they didn't
5 take any of Nate's money.

6 Q Okay. So, she wrote, *I did notice they didn't take*
7 *any of Nate's money -- which is Nathaniel Williams --*
8 *even when he offered. I find that completely*
9 *interesting.*

10 A Yes.

11 Q And she also had some type of theory that she
12 thought it was weird that a guy named Terrence Brown,
13 who apparently worked at Chavis -- is that correct?

14 A Yes.

15 Q Okay. Did you verify that?

16 A Yes.

17 Q So, you looked into Terrence Brown?

18 A Yes, I did.

19 Q Okay. Because Terrence Brown apparently left right
20 before that, right before everything happened, right?

21 A Yes, he did.

22 Q Okay. And she thought that was weird. Making a
23 phone call, leaving the warehouse, and then two minutes
24 later, this happens.

25 A Yes, sir.

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. Did you talk to Terrence Brown?

2 A Yes, sir, I did.

3 Q You did?

4 A Yes.

5 Q Anything in your report or any reports where you
6 indicate you spoke to Terrence Brown?

7 A No.

8 Q What did Terrence Brown say?

9 A I don't recall offhand what he said. This was --
10 I'm trying to remember which one Terrence Brown was. I
11 may not have spoke to Terrence Brown.

12 Q Did you ask Terrence Brown --

13 A I know five -- I'm not sure. I'm not sure if I
14 spoke to him.

15 Q Did you ask Terrence if he knew Tyshon Barnes?

16 A No. I don't remember that.

17 Q You didn't ask him?

18 A I don't recall talking to Terrence Brown. I may
19 have. It's not in my report, I don't think.

20 Q So, if it's not in your report, you probably didn't

21 --

22 A Yes.

23 Q -- talk to him, right?

24 A Yes.

25 Q Because that's why you do a report, is to

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CROSS-EXAMINATION - JOHN FOSKEY

1 memorialize everything that happened.

2 A Yes, it is.

3 Q All right. Let's talk about this Food Lion video.
4 Apparently, minutes after this happened, three people
5 went to the Food Lion, correct?

6 A Correct.

7 Q And used Ms. Hill's card.

8 A Yes, sir.

9 Q Okay. And there's a video of that.

10 A Yes.

11 Q Okay. And you got that.

12 A Yes.

13 Q Okay. But it's gone.

14 A Yes.

15 Q Okay. And it was never turned over to the
16 Solicitor, and never turned over to the Defense. Is
17 that right?

18 A No, sir.

19 Q We don't know where it is.

20 A No.

21 Q We don't know whether SLED could have enhanced it
22 and made it better or not; do we?

23 A No, sir.

24 Q Okay. Because it sure would have been nice, had
25 they been able to enhance the patch that was on the two

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CROSS-EXAMINATION - JOHN FOSKEY

1 people's uniform or work shirt; wouldn't it?

2 A Yes, sir.

3 Q Okay. Any other thing about the -- I mean,
4 obviously, you could see that there was a work shirt
5 that had a patch on it. I think you said it was maybe
6 dark blue in color.

7 A Yes.

8 Q Any other thing about clothing that you remember?

9 A Not that I recall.

10 Q Okay. Because you couldn't see it, or?

11 A I just don't recall.

12 Q Okay.

13 A Just the shirts.

14 Q All right. Well, if you could see --

15 COURT REPORTER: I'm sorry. *I just don't recall*
16 *what about the shirt?*

17 A Just the shirts.

18 Q If you could see a dark blue work shirt, would you
19 have been able to see a black and yellow jumpsuit, if
20 someone's wearing that?

21 A Possibly, yes.

22 Q Okay. But you don't remember if you saw it on the
23 video or not?

24 A No, I don't.

25 Q Okay. And why would a black and yellow jumpsuit be

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 significant in that video or not?

2 A I'm not sure, right offhand.

3 Q Do you remember Ms. Hill giving you a description
4 about the clothing that the second person, the one with
5 the mask, the one that they claim is James Wright, is?

6 A I would have to look at her statement. I don't
7 know.

8 Q Okay. But would it surprise you that she just
9 previously testified that that second person had on a
10 black and yellow jumpsuit?

11 A That -- that's possible.

12 Q Okay. That would be something that would be nice
13 to see in a videotape; would it not?

14 A Yes, it would.

15 Q Okay. But you can't testify there's anybody with a
16 black and yellow jumpsuit on in the video.

17 A No, sir, I can't.

18 Q And we don't -- there's no evidence log. There's
19 no paper trail of what happened to that tape.

20 A No, sir.

21 Q Now, Ms. Henderson was talking to you about some
22 fingerprints, and that you dusted the area. How many
23 fingerprints did you actually attempt to lift?

24 A I attempted to lift prints from the doorway, the
25 counter, and then anything that was taken out of Ms.

STATE V WRIGHT

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1 Hill's purse. The door going into the storage room,
2 door handle and stuff like that.

3 Q Okay. And I think that Mr. Lindsey even said, *hey,*
4 *by the way, when they were walking out, I saw one of*
5 *them touch the top of a file cabinet.* Do you remember
6 that?

7 A I don't recall it right offhand.

8 Q Okay.

9 A He may have.

10 Q So, what you're telling us, though, is that you --
11 the whole place was dusted, and the only fingerprints
12 that you got were three of them off a cigarette pack.

13 A Yeah. Useable prints, yeah.

14 Q In the entire store.

15 A Yes.

16 Q Okay. Because there's not -- there's going to be
17 fingerprints from people that work there, correct?

18 A That's correct.

19 Q There's going to be people from -- who do business
20 there.

21 A Yes.

22 Q It depends on the last time it's been cleaned.
23 There should -- shouldn't there be fingerprints all over
24 the place?

25 A Well, what we call partials or smudges, I mean,

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CROSS-EXAMINATION - JOHN FOSKEY

1 they were all over the place, but not what we call
2 useable prints that you can identify someone.

3 Q Okay. Well, I mean, if I'm sitting here talking
4 like this, --

5 A Um-hmm.

6 Q -- is that going to be a fingerprint?

7 A That's going to be a useable print probably.

8 Q Okay. So, you're saying that, in the entire place,
9 only three fingerprints were able to be lifted.

10 A Yes, sir.

11 Q Okay. And there weren't any other fingerprints --
12 there weren't any fingerprints on the stuff that was
13 taken out of Ms. Hill's purse.

14 A The only one I could get, useable print, was off
15 the cigarette pack.

16 Q Okay. How about Ms. Hill's fingerprints?
17 Certainly, her fingerprints would have been on the
18 cigarette case; would it not?

19 A It's possible.

20 Q Were they?

21 A I mean, it could have been one of the smudges that
22 were unidentifiable.

23 Q And there's no -- there's no -- there's no
24 suggesting that these two guys wore gloves, or in any
25 way tried to prevent themselves from leaving

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 fingerprints, right?

2 A No, sir.

3 Q Okay. And you were saying that you all didn't have
4 the touch DNA back then.

5 A No.

6 Q That means Beaufort County Sheriff's Department.

7 A That's correct.

8 Q Okay. Did SLED?

9 A I'm not sure. I can't answer for SLED.

10 Q You did have other kinds of DNA, though; didn't
11 you?

12 A Yeah.

13 Q Let me back up. Crime scene evidence, isn't there
14 also hair and other microscopic evidence you can look
15 for?

16 A Yes.

17 Q Okay. And if you have a hair, if it includes part
18 of the follicle, you can do DNA off of that, right?

19 A I think they can, yes, sir.

20 Q Okay. Did you attempt to collect any particle or
21 hair, or any other type of evidence?

22 A No, I did not.

23 Q Okay. Because, had you gotten something more
24 substantial than touch DNA, that could have been DNA --
25 sent to the DNA lab, right?

STATE V WRIGHT

CROSS-EXAMINATION - JOHN FOSKEY

1 A It's possible, yes.

2 Q They could do that type of DNA analysis in 2007,
3 right?

4 A Yes.

5 Q As lead investigator, did you get a -- what's
6 called an exemplar from Ms. Hill or anybody else, of
7 their fingerprint, so that you could know, if there was
8 a fingerprint that was found, that it was hers, and it
9 wasn't the person who went through the purse?

10 A No, sir, I didn't.

11 Q Okay. Those are called elimination prints?

12 A Yes.

13 Q Okay. You didn't get any of those.

14 A No.

15 Q Okay. Well, when you're taking a fingerprint,
16 though, I mean, you don't always know right there on the
17 scene whether it's good or not; do you? When you pull
18 something up?

19 A Yes, sir, I do.

20 Q You do?

21 A Yeah.

22 Q You can look at it and tell.

23 A Sir?

24 Q You can look at it and tell at the scene.

25 A Yes, sir.

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CROSS-EXAMINATION - JOHN FOSKEY

1 Q Whether it's any good.

2 A Yes.

3 Q And you can only get -- you said earlier it was
4 pretty easy to get fingerprints. You could only get
5 three from the entire scene, and all three of those came
6 off the same cigarette pack?

7 A Yes, sir.

8 Q Okay. As far as the no pictures being taken of the
9 scene, --

10 A Um-hmm.

11 Q -- what was the reason for that?

12 A It was just, all you had was an office, and just --
13 we could describe it. I mean, there was nothing, like,
14 blood or anything that no one would take pictures of.

15 Q Okay. Unless you want to try to explain to a jury
16 the makeup of the rooms and stuff, correct?

17 A Yes, that's correct.

18 Q Do you remember, Mr. Lindsey gave a pretty long
19 statement. Do you remember him? He's the one that gave
20 the descriptions on the third page of the statement. Do
21 you remember that?

22 A I would have to look at the statement.

23 Q I can get you a copy of that. And I'll ask you --
24 and if you need to refresh your recollection, you
25 certainly can. Do you remember Mr. Lindsey saying that,

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 while the two guys were there, that the phone rang and
2 one of them answered it?

3 A I don't remember offhand.

4 Q You don't remember that?

5 A No.

6 Q Okay.

7 MR. LEE: Beg the Court's indulgence. There it is.

8 BY MR. LEE:

9 Q I'll point to make it a little easier. This is Mr.
10 Lindsey's statement. Is that right? From the 10th?

11 A Yes, sir.

12 Q Okay. Look right there and see if it refreshes
13 your recollection as to whether or not the phone rang
14 when they were there.

15 A Yes, sir.

16 Q Okay.

17 A Mr. Lindsey said it did.

18 COURT REPORTER: I'm sorry. *Mr. Lindsey?*

19 A Said the phone rang.

20 Q So, Mr. Lindsey said -- I'll leave you one copy.
21 I'll take that -- said the phone rang at the business,
22 and owned it -- answered it, right?

23 A Yes.

24 Q Okay. Did you, as lead investigator, did you get
25 any phone records to see whether or not where that call

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CROSS-EXAMINATION - JOHN FOSKEY

1 may have come from?

2 A No, sir, I didn't.

3 Q Okay. Did you see if it might come from Terrence
4 Brown?

5 A No, I didn't.

6 Q Okay. Would it have been helpful to maybe see
7 where it came from?

8 A I was probably under the assumption it was a
9 business call to the business. I didn't tie it into a
10 possible being a phone call to the suspects.

11 Q Okay. Can you think of any reason why the suspects
12 may answer the business phone?

13 A No, sir, I can't.

14 Q All right. On the back page of that, Foskey, is a
15 -- Andrew Lindsey gives descriptions of the two, black
16 males. Do you remember him writing out a pretty
17 detailed description?

18 A Yes, sir.

19 Q Okay. And just to make sure we're on the same
20 page, I think the easiest way is to talk about the one
21 with the mask, versus the one without a mask.

22 A Okay.

23 Q So, it appears that Male Number 1, as he lists
24 them, is the guy without a mask, right?

25 A Yes.

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CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. And that's the one who's been referred to as
2 the lighter-skinned, black male by other people,
3 correct?

4 A Yes, sir.

5 Q The one that first came in. All right. And Mr.
6 Lindsey describes him as having a silver revolver,
7 having a thin face and recessed eyes, correct?

8 A Yes, sir.

9 Q Okay. And he also says he had a thick, local
10 accent. You see that? That's the first guy.

11 A Yes, sir.

12 Q Who the State alleges to be Tyshon Barnes.

13 A Correct. Yes.

14 Q Now, the second guy, the one with the mask, the one
15 the State alleges to be James Wright, he says, *black ski*
16 *mask, black revolver, bushy hair, not long.* Right?

17 A Yes.

18 Q Okay. And a more round face than Male Number 1.

19 A Correct.

20 Q Okay. That's a pretty specific type of
21 description; is it not?

22 A Yes, it is.

23 Q Okay. And so, that was obviously something the guy
24 noticed and something he considered to be important.

25 A Yes.

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CROSS-EXAMINATION - JOHN FOSKEY

1 Q Okay. Just like skin tone or complexion. I mean,
2 if it's important, you include it, right?

3 A That's correct.

4 Q That's a human reaction. Okay. Now, and again,
5 Lindsey is the one who picked out Matthew Barnes,
6 Tyshon's brother, out of the photo lineup, right?

7 A Yes, sir.

8 Q Okay. And he's one of the five that saw a picture
9 of James Wright and did not pick him out, right?

10 A Yes.

11 Q Okay. All right. So, let's talk about this. So,
12 if people are saying -- the witnesses there are saying
13 that the first guy that came in is supposed to be Tyshon
14 Barnes, is supposed to be the lighter-skinned --
15 supposed to be lighter-skinned than the second guy,
16 right?

17 A Yes.

18 Q Okay. Now, did you review -- did you meet Tyshon
19 Barnes?

20 A No, I did not.

21 Q Have you ever seen him?

22 A No, sir.

23 Q Okay. Have you ever pulled a photograph of him?

24 A Yes, sir.

25 Q Okay. Well, obviously, you pulled a photograph of

STATE V WRIGHT CROSS-EXAMINATION - JOHN FOSKEY

1 him if you did a photo lineup.

2 A Yeah.

3 Q Yeah. Okay. All right. That's Tyshon Barnes,
4 correct?

5 A Correct.

6 Q Okay.. Now, light-skinned, no mask, and according
7 to Mr. Lindsey, thin-faced.

8 A Yes.

9 Q Tyshon Barnes.

10 A Yes.

11 Q Okay. Now, James Wright. Darker-skinned, by
12 people's accounts, right?

13 A Correct.

14 Q Darker skin tone, wearing a mask.

15 A Yes.

16 Q And having a fuller face than Number 1, right?
17 That's what Lindsey said, right?

18 A A more round face.

19 Q More round face.

20 A Yeah.

21 Q All right. Have you reviewed or -- have you met
22 Mr. Wright before?

23 A No, sir, I haven't.

24 Q Okay. You obviously viewed his photograph when you
25 did the photo lineups, right?

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CROSS-EXAMINATION - JOHN FOSKEY

1 A Correct.

2 Q Okay. This is something the Solicitor gave me. Do
3 you recognize that picture?

4 A I see that it's James Wright.

5 Q Or, can you identify -- okay. Is that consistent
6 with what you remember putting in the photo lineup,
7 someone that looked like that?

8 A Yes. I guess, um.

9 Q Okay. How would you describe Mr. Wright's skin
10 tone, as compared to Mr. Barnes' skin tone?

11 A A lighter skin tone.

12 Q Mr. Wright is.

13 A In the pictures. Those pictures, yeah.

14 Q Is there any reason to think the pictures are not
15 accurate?

16 A No, sir.

17 Q Okay. So, if Mr. Barnes is supposed to be the
18 light-skinned one, --

19 A Um-hmm.

20 Q -- and Mr. Wright is supposed to be the darker-
21 skinned one, that wouldn't make sense; would it?

22 A Not looking at those pictures.

23 Q Okay. Do you have any evidence, other pictures
24 that you think are not consistent with the pictures that
25 you did as part of your investigation?

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CROSS-EXAMINATION - JOHN FOSKEY

1 A No, sir.

2 Q Okay. But that's wholly inconsistent with what
3 people are saying, right?

4 A Yes.

5 Q Okay. How about Matthew Barnes, Tyshon's brother?
6 Does he have a darker complexion?

7 A I would have to see his picture again. I don't
8 recall him. Yes, it is.

9 Q Is a darker complexion going to look darker under
10 -- behind a ski mask?

11 A I'm sorry. I didn't understand the question.

12 Q Is a darker complexion going to look even darker
13 behind a ski mask?

14 A I'm not so sure how you would tell.

15 COURT REPORTER: I'm sorry. *I'm not so sure?*

16 A I'm not sure how you would tell.

17 Q That's probably a bad question. Okay. When Mr.
18 Lindsey picked out Matthew Barnes, who was he picking
19 out? The first guy or the second guy?

20 A The first guy.

21 Q First guy. Even though he had been shown a picture
22 of Tyshon Barnes and passed him over, didn't pick him
23 out, right?

24 A That's correct.

25 MS. HENDERSON: Your Honor, may we approach?

STATE V WRIGHT

1 THE COURT: You may.

2 OFF-THE-RECORD BENCH CONFERENCE OUT OF
3 HEARING OF JURORS. PRESENT: THE COURT,
4 MS. HENDERSON, MS. KENNEY, MR. LEE.
5 END BENCH CONFERENCE.

6 BY THE COURT:

7 THE COURT: You need to take a break?

8 JUROR NUMBER 350: Yes.

9 THE COURT: Absolutely. Not a worry. Ladies and
10 gentlemen of the jury, take -- keep a seat. We're going
11 to go ahead and let her go out, and then, we'll send the
12 rest of the jury back. Okay?

13 BAILIFF: Yes, ma'am.

14 JUROR LEAVES COURTROOM 12:17 P.M.

15 THE COURT: Ladies and gentlemen, the rest of us
16 are going to also go ahead and take a very brief break.
17 I will tell you, schedule-wise, I expect to go 'til
18 roughly lunchtime or so. We'll take a break. At that
19 point, I'll kind of let you know where we are in the
20 trial of this case.

21 I need to remind you, ladies and gentlemen, again,
22 do not discuss this case. It wouldn't be appropriate to
23 do so. And we'll be right back with you, and I'm going
24 to excuse you back to your jury room. All right? Thank
25 you.

STATE V WRIGHT

1 JURORS LEAVE COURTROOM 12:18 P.M.

2 THE COURT: Madam Bailiff?

3 BAILIFF: Jury is clear, your Honor.

4 THE COURT: All right, you all. We'll be at ease.

5 I'm going to find out what's going on with her, and
6 we'll be back. Just go ahead and take five minutes, if
7 you need it. I need to remind you, obviously, you're on
8 the stand, sir, and not to talk to anyone about your
9 testimony. Okay?

10 JOHN FOSKEY: Yes, ma'am.

11 THE COURT: Thank you. All right. Give me five
12 minutes and I'll let you know how she's doing. Okay?

13 OFF THE RECORD 12:17 P.M.

14 BACK ON THE RECORD.

15 BY THE COURT:

16 BAILIFF: All rise. Come to order. Court is now
17 back in session.

18 THE COURT: Thank you all. Please be seated. For
19 the record, Wanda, I excused Tanisha Young, Juror Number
20 350, and we'll put the first alternate in her place.
21 She's having contractions, so she is four weeks out, and
22 it is her first baby. So, I told her that she needed to
23 report back if she had a baby in the next few days. So,
24 anyway, her mom is coming to get her. So, we'll just go
25 ahead and put the first alternate in her spot.

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1 I was jokingly saying my bailiffs will do anything,
2 but they have told me before that birthing babies was
3 not in the job description, so. All right. You ready
4 to go, Ms. Henderson?

5 MS. HENDERSON: Yes, your Honor.

6 THE COURT: Mr. Lee, you ready to go?

7 MR. LEE: Yes, ma'am.

8 THE COURT: Just very quickly, before you bring
9 them in, Al, when you've finished with Foskey, you've
10 got one more witness or two?

11 MS. HENDERSON: Two, your Honor. We've got Tyshon
12 Barnes, and then we have Chris Wilson.

13 THE COURT: Chris Wilson?

14 MS. HENDERSON: Chris Wilson, yes, your Honor. And
15 I just wanted to make sure, prior to Tyshon taking the
16 stand, that my objection that I made up there is clear
17 for the record, because I see where Mr. Lee is going,
18 and, you know, the case law is clear that you -- that,
19 you know, testimony just for evidence, just to throw
20 suspicion to someone else is not admissible. And I feel
21 that's where he's going, trying to say that Mr. -- that
22 Tyshon Barnes' brother may have been the other one that
23 did this, which is what he's trying to elicit. So, I
24 just wanted to make sure my objection was stated
25 clearly, and that it was cleared up prior to Tyshon

STATE V WRIGHT

1 taking the stand.

2 MR. LEE: My response to that is, I'm not the one
3 that started looking at Kenneth Barnes. They put him in
4 a photo lineup. Not only did they put him in the photo
5 lineup, they had somebody identify Kenneth Barnes in a
6 photo lineup. You know, I don't think that's exactly
7 reaching.

8 MS. HENDERSON: That's not --

9 MR. LEE: And plus, I'm using it to impeach the
10 investigation, I mean, that people weren't looked at.

11 THE COURT: I don't think it has gotten to the
12 level of pointing out third-party guilt, pulled out
13 where I think he's going to a specific person. And
14 again, he did testify that, as part of his
15 investigation, which is officers do, they were trying to
16 figure out who was possibly with Tyshon, and the first
17 normal guess would be the brother or someone.

18 So, anyway, I think -- I note your objection for
19 the record. It's overruled, and I'll go ahead and Mr.
20 Lee said that he's moving on anyway. Is that correct?

21 MR. LEE: Right. That is correct.

22 THE COURT: All right. So, let's bring the jury
23 in, Al.

24 BAILIFF: Jury is entering, your Honor.

25 THE COURT: Thank you.

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 JURORS ENTER COURTROOM 12:27 P.M.

2 THE COURT: Welcome back, ladies and gentlemen of
3 the jury. At this time, as you know, one of our jurors,
4 Ms. Young, stated she's starting to have contractions,
5 and she is due about four weeks out, and it is her first
6 baby. So, we've gone ahead and called her mother to
7 come get her, and with any luck, she'll be delivering at
8 Beaufort Memorial Hospital shortly. I have asked her --
9 of course, I excused her from the trial of this case,
10 and asked her to call us and let us know the happy news
11 when it comes.

12 So, my first alternate, I appreciate you sitting
13 and your willingness to be here, and thank you. And at
14 this time, we're going to go ahead and continue with the
15 testimony of Detective Foskey.

16 JOHN FOSKEY

17 CONTINUE CROSS-EXAMINATION BY MR. LEE:

18 Q Couple more questions.

19 A Yes.

20 Q We'll kind of review a couple things first, Foskey.
21 First of all, you did do lineups with James Wright's
22 picture in them, and none of the five picked out James
23 Wright, correct?

24 A Correct.

25 Q Okay. And you were made aware of a guy named

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 Terrence Brown, who worked at Chavis Moving and Storage,
2 and Ms. Radford's suspicion of him, correct?

3 A Yes.

4 Q Okay. And you did not talk to him, or do not
5 remember talking to him?

6 A I don't remember talking to him.

7 Q Okay. Did you see if there was a connection
8 between Terrence Brown and Tyshon Barnes?

9 A No, sir.

10 Q Okay. You didn't find out, or there was not?

11 A I didn't find out.

12 Q Okay. All right. The Food Lion video, nobody
13 knows where it is.

14 A No.

15 Q Okay. Did it ever make it to SLED?

16 A I'm not sure.

17 Q Okay. Do you know whether it could have been
18 enhanced?

19 A I'm not sure if it could.

20 Q Okay. Did you look at it, based -- and look at it
21 based upon on a clothing description given by Ms. Hill?

22 A I don't recall looking at the clothing.

23 Q Okay. But you could identify some clothing as
24 being a dark blue work uniforms.

25 A Yes.

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 Q And according to Ms. Hill, Mr. Wright had on a
2 black and yellow running suit jumpsuit. Not a jumpsuit,
3 a running suit, correct?

4 A Yes.

5 Q Okay. If that had been on the video matching up
6 the description, certainly that would have been in your
7 report; would it not?

8 A Yes, it would.

9 Q Okay. And the photo lineups that you showed, James
10 Wright is lighter-complexioned than Tyshon Barnes,
11 correct?

12 A Correct.

13 Q But James Wright is accused of being the second
14 person, the second man, who has a darker complexion than
15 the first, who is Tyshon Barnes, correct?

16 A Correct.

17 Q And do you -- I can't remember -- Mr. Lindsey
18 specifically said on the way out that somebody put their
19 fingerprints on the file cabinet on the way out. Do you
20 remember if you dusted that area that he specifically
21 pointed out?

22 A I'm pretty sure I did. I can't recall right
23 offhand.

24 Q All right. And as for the fingerprints, I think
25 your testimony was that fingerprints are fairly easy to

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 lift.

2 A Yes.

3 Q And I think Ms. Henderson said always -- said,
4 well, sometimes they can be smudged or unidentifiable,
5 right?

6 A That's correct.

7 Q So, you stand by that?

8 A Yes.

9 Q Easy to lift?

10 A Um-hmm.

11 Q Okay. And a lot of it depends on what the surface
12 is and that sort of thing, right?

13 A That's correct.

14 Q Like, a wallet's easier to lift off of than -- I
15 don't know, a wood, piece of wood, for example, right?

16 A Correct.

17 Q All right. And is it also your recollection that
18 two people, Ms. Hill and Ms. Radford, said that, for
19 whatever reason, the two people did not take Nathaniel
20 Williams' money.

21 A That's --

22 Q Do you remember that?

23 A That's in their statements, yes.

24 Q Okay.

25 COURT REPORTER: I'm sorry. That's a what kind of

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 statement?

2 A That's in their statement.

3 Q Okay. I'm sorry. Did you do any special
4 investigation about Mr. Williams?

5 A No, sir.

6 Q Ask him about that?

7 A Not that I recall.

8 Q Okay. Do you remember Mr. Williams specifically
9 telling one officer that he didn't know the suspects?

10 A I don't recall that.

11 Q Okay.

12 A No.

13 Q Is it typical to ask a victim if they know the
14 suspects?

15 A I wouldn't say typical, but, I mean, it depends on
16 the circumstances.

17 Q Well, wouldn't it -- if a victim knew who committed
18 a crime against them, don't you think that would be one
19 of the first things they would tell the police?

20 A Certainly, yes.

21 Q Okay. So, you don't really -- you don't usually
22 have to ask these people, did you know who did this.

23 A No, sir.

24 Q Okay. The phone call that came into the business
25 while the two guys were there, that was to the business

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 phone, as I understand.

2 A Yeah. It came in to --

3 Q Okay.

4 A -- through Chavis Moving.

5 Q All right. And no phone check on that, or no way
6 to --

7 A No.

8 Q -- see where that came from. Okay. And your
9 testimony is that there were not any fingerprints from
10 any other items in the entire building that you were
11 able to lift.

12 A Not useable prints, correct.

13 Q Not useable.

14 A Yes.

15 Q In the entire -- so, what do we have? I guess
16 we've got five people -- at least seven people in there,
17 right?

18 A Correct.

19 Q Moving around, touching things, going through
20 stuff, and the only fingerprints that you were saying
21 that could be lifted were the ones from the cigarette
22 pack?

23 A I didn't print the entire building. I just printed
24 certain areas that I thought the suspect may have
25 touched.

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 Q So, like, on a doorknob.

2 A Correct.

3 Q I see you've got to turn the doorknob to get out,
4 right?

5 A Yes.

6 Q Okay. So, there's going to be something on there;
7 is there not?

8 A Yeah. That's usually smudged, because you twist
9 and the knob.

10 Q Okay. So, even though they're fairly -- they're
11 very easy to lift, there's was only three that were
12 lifted.

13 A When I said fairly easy to lift, I said, once you
14 identify them, the lifting part was -- lifting the
15 actual print, not fairly easy to locate, basically.

16 Q Well, the way you locate them is just --

17 A With the powder.

18 Q -- do big areas, right, with the powder, and it's
19 just --

20 A That's correct.

21 Q And that's the way you -- because you can't look
22 and see a fingerprint, right?

23 A No, sir.

24 Q You just dust, and that's where that dust gets
25 everywhere, and that's when you see them, right?

STATE V WRIGHT

CONTINUE CROSS - JOHN FOSKEY

1 A That's correct.

2 Q Okay. And you did not search for any hair or fiber
3 evidence?

4 A No. No, sir.

5 Q Okay. And no DNA, right?

6 A No.

7 Q Okay. Now, you knew exactly what time, I guess,
8 the card was used at the Food Lion, right?

9 A Yes.

10 Q The debit card.

11 A Um-hmm.

12 Q Okay. And it was a few minutes after this
13 incident?

14 A Yes.

15 Q And like, a mile or so away.

16 A Correct.

17 Q Okay. So, you knew what time and when. Did you do
18 any followup interview with anybody at Food Lion, any
19 employees, or anybody that may have been there at a
20 specific date, on a specific time, that may have seen
21 something?

22 A No, sir.

23 Q And the photo lineup that you showed the people as
24 to Mr. Barnes, I think, was done on May 18th. Is that
25 right?

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RE-DIRECT - JOHN FOSKEY

1 A Yes.

2 Q Which is eight days after the incident.

3 A Yes.

4 MR. LEE: Okay. That's all I have. Thank you, Mr.
5 Foskey.

6 A Thank you.

7 JOHN FOSKEY

8 RE-DIRECT EXAMINATION BY MS. HENDERSON:

9 Q I just want to follow up on a few things Mr. Lee
10 mentioned. The photo lineups of James Wright, they
11 didn't identify him, because he was wearing a mask,
12 correct?

13 A Correct.

14 Q I mean, do people -- are people often able to
15 identify someone when their face is covered?

16 A No.

17 Q And you know, he kept mentioning Tyshon's brother,
18 but the person that identified Tyshon's brother, was he
19 identifying him as possibly the one that wasn't wearing
20 a mask?

21 A Yes.

22 Q Okay. So, there was never anybody that said he
23 might have been the one wearing the mask. He was
24 identified as the one that might not -- might have been
25 identified as the one not wearing the mask.

STATE V WRIGHT

RE-DIRECT - JOHN FOSKEY

1 A That's correct.

2 Q Okay. And just to go back to the fingerprints a
3 little bit, you know, Mr. Lee keeps saying it a certain
4 way, but there were prints all over the place. Is that
5 correct?

6 A Yeah. That's correct.

7 Q Okay. And there is a big difference between a
8 useable print and just a regular print.

9 A Yes.

10 Q Okay. So, you're not -- I just want to make sure
11 that your testimony is clear. You're not saying that
12 the only prints in that building were on that pack of
13 cigarettes.

14 A No.

15 Q Okay. Those were just the only ones that, in your
16 experience from lifting prints, you thought you might be
17 able to get a match off of.

18 A That's correct.

19 Q Okay. And to determine where you dust, is that
20 based off of what witnesses tell you, like, where the
21 people went and what they might have touched?

22 A Yes.

23 Q All right. Because you can't unload a bucket of
24 dust into a room and dust the whole entire room,
25 correct?

STATE V WRIGHT

RE-CROSS - JOHN FOSKEY

1 A No. No, ma'am.

2 Q Okay. So, you dusted everywhere you thought they
3 might have come in contact, or based off of witness
4 statements, things they might have touched.

5 A Yes.

6 Q And that included the purse that had been rummaged
7 through.

8 A That's correct.

9 Q Okay. And that is where you got the lifts off of
10 the pack of cigarettes.

11 A Yes.

12 MS. HENDERSON: Beg the Court's indulgence, your
13 Honor.

14 BY MS. HENDERSON:

15 Q And lastly, Mr. Foskey, were those prints matched
16 to someone?

17 A Yes, they were.

18 Q And who was that?

19 A James Wright.

20 Q Thank you.

21 JOHN FOSKEY

22 RE-CROSS-EXAMINATION BY MR. LEE:

23 Q Just a couple of follow-ups. Officer Foskey, when
24 the two people came in the front door, Ms. Hill was
25 there and Mr. Williams was there, right?

STATE V WRIGHT

RE-CROSS - JOHN FOSKEY

1 A Yes.

2 Q Okay. And isn't it true that, based on your
3 conversations with them, that the second guy, the guy
4 who eventually had a mask on, at that point, didn't have
5 a mask on; did he?

6 A Ms. Hill said he was pulling it down as he was
7 coming in, I believe, is what she said.

8 Q Didn't they say that he didn't put it on until he
9 went back in the other room?

10 A I don't recall that.

11 Q Okay. If it's hopeless and worthless to try to
12 have somebody identify someone who was wearing a mask,
13 why do you even bother to show them a lineup?

14 A I didn't know which one had the mask.

15 Q Well, you already had all this information that we
16 talked about before; didn't you?

17 COURT REPORTER: I'm sorry. Your answer was?

18 A I'm not sure what -- what --

19 Q You just did it out of an abundance of caution? I
20 mean, is that --

21 A Yes, yes. I didn't know who -- which one was
22 wearing the mask.

23 Q Okay. Okay. Let me look for one thing real quick.
24 All right. What I was trying to find, at some point,
25 the second guy, who they claim is light, put on a mask

STATE V WRIGHT

1 or pulled down a mask after they had already gone in,
2 right?

3 A Yes, sir.

4 Q Okay. There's no evidence when he came in there,
5 the guy with the mask, that he already had it pulled
6 down when he was walking in there.

7 A According to Ms. Hill, yeah.

8 MR. LEE: All right. That's all I have, your
9 Honor.

10 BY THE COURT:

11 THE COURT: Okay. Anything further?

12 MS. HENDERSON: Nothing further from the State,
13 your Honor.

14 THE COURT: Any objection to Detective Foskey being
15 excused?

16 MS. HENDERSON: No, your Honor. He is excused, and
17 free to go back to Virginia.

18 MR. LEE: No objections.

19 THE COURT: Thank you, sir.

20 JOHN FOSKEY: Thank you.

21 THE COURT: State will call their next witness.

22 MS. HENDERSON: May we approach, your Honor?

23 THE COURT: You may.

24 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
25 HEARING OF JURORS. PRESENT: THE COURT,

STATE V WRIGHT

1 MS. HENDERSON, MS. KENNEY, MR. LEE.

2 END BENCH CONFERENCE.

3 THE COURT: Ladies and gentlemen of the jury, it
4 appears that our next witness might be a little bit
5 longer, so maybe now is a good time for a lunch break.
6 By the clock back up there, it's about 20 to 1:00. I am
7 going to ask if you all be back at 1:45, and we'll go
8 ahead and continue with the trial of this case.

9 Ladies and gentlemen, I need to tell you again, you
10 are not to discuss this case. It wouldn't be
11 appropriate to do so. Looking forward to seeing you all
12 back in the jury room at 1:45. We'll go ahead and get
13 testimony finished up, and we'll go from there. Have a
14 nice lunch, you all. Thank you.

15 JURORS LEAVE COURTROOM 12:43 P.M.

16 BAILIFF: Jury is clear, your Honor.

17 THE COURT: Thank you, Al. All right. So, we'll
18 be at ease, you all, and I just guess we'll simply be at
19 ease until 1:45. Okay? In this case. Okay?

20 OFF THE RECORD 12:44 P.M.

21 BACK ON THE RECORD 12:44 A.M.

22 BY THE COURT:

23 THE COURT: Mr. Barnes, we're going to go, when
24 Jamie swears you in, Ms. Thompson, right here, you can
25 just keep your seat. She's going to have you put your

STATE V WRIGHT

1 right hand on the *Bible* and raise your left hand. Okay?

2 TYSHON BARNES: All right.

3 THE COURT: Yes, Mr. Lee, what do you need?

4 MR. LEE: First of all, as I told -- Sergeant,
5 right -- Sergeant Wilson, I have no objection to her not
6 being sequestered during his testimony. If the
7 fingerprint doesn't match up, I'm probably not going to
8 come forward anyway.

9 THE COURT: Okay. Come on in.

10 MR. LEE: Number two is, before she testifies,
11 though, I would like to shortly argue as far as what the
12 extent of her testimony is going to be.

13 THE COURT: Okay.

14 MR. LEE: I don't know if you want to do that now,
15 or maybe take a little break before she testifies.

16 THE COURT: Let's just take a little break before
17 she testifies.

18 MR. LEE: Okay. It won't take long.

19 THE COURT: But I definitely want her in here
20 during the argument, --

21 MR. LEE: Yes.

22 THE COURT: -- because I know she'll understand
23 what happened, so she'll do what we need to do without
24 having to turn around and explain it to her, so.

25 MR. LEE: Okay.

STATE V WRIGHT

1 THE COURT: Perfect. Thank you. All right. Let's
2 bring the jury in.

3 BAILIFF: You going to swear him?

4 THE COURT: No, no, no. We're just bringing the
5 jury in. We don't need to get a proffer. We're ready
6 for the jury.

7 THE COURT: Mr. Barnes, I'm just going to ask --
8 sorry. Sometimes, you need to pull that up to you a
9 little bit. I just want to make sure we're going to be
10 able to hear you. You might want to lift it. You're a
11 little tall. Okay?

12 TYSHON BARNES: All right.

13 THE COURT: You got it? Okay. Let's go.

14 THE COURT: Okay? He should bring you some water,
15 too. I don't even have any up here, but they'll bring
16 you some water. Okay?

17 MS. HENDERSON: I've got it.

18 THE COURT: Okay. Thank you.

19 BAILIFF: Jury is entering, your Honor.

20 JURORS ENTER COURTROOM 2:22 P.M.

21 BAILIFF: Jury is seated, your Honor.

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen. I appreciate you all waiting on us. I had
24 two other hearings over the lunch hour, but we are ready
25 to go at this time.

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 Ms. Henderson, if you would, and Ms. Thompson, if
2 you'll please, first, swear in the witness. Thank you.

3 MADAM CLERK: If you'll place your left hand on the
4 Bible and raise your right hand. Do you solemnly swear
5 or affirm that the testimony you give to the Court in
6 this trial shall be the truth, so help you God?

7 TYSHON BARNES: I do.

8 TYSHON BARNES

9 DIRECT EXAMINATION BY MS. HENDERSON:

10 Q Good afternoon, Mr. Barnes. We can see that you're
11 currently in a yellow jumpsuit. Where do you reside?

12 A Right now, I'm at Ridgeland Correctional
13 Institution.

14 Q You're at the Ridgeland Correctional Institution?

15 A Yes.

16 Q And what are you currently incarcerated for?

17 A Armed robbery, kidnaping.

18 Q Armed rob -- okay. And is it this armed
19 robbery/kidnaping, or is it a different one?

20 A This one.

21 Q Okay. And when will you finish your sentence on
22 this?

23 A 2016.

24 Q Okay. And will you be a free man after that?

25 A No.

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DIRECT - TYSHON BARNES

1 Q Where are you going after that?

2 A Federal Department of Corrections.

3 Q You're going to the federal prison? How many years
4 do you have in federal prison that you're facing?

5 A Thirty-nine.

6 Q Thirty-nine years? What are you going to do 39
7 years in federal prison for?

8 A Armed Robbery.

9 Q Of what type of businesses?

10 A Post office.

11 Q Post office robberies?

12 A Yes.

13 Q Okay. And Mr. Barnes, are you here of your own
14 free will? In other words, did anyone threaten you or
15 make you be here today?

16 A No.

17 Q So, you are here of your own free will.

18 A Yes.

19 Q Okay. Did me or anybody that works with me promise
20 you anything for you to be here?

21 A I have no type of guaranteed promises on anything.

22 Q Okay. Well, let's talk about it you said you had
23 no types of guaranteed promises. Did I tell you that I
24 would let the U.S. Attorney know that you were
25 cooperative with us in this prosecution?

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 A Yes, you have.

2 Q Okay. And but you said there were no guarantees.
3 So, no one has told you that that will absolutely
4 happen, or it's a hundred percent going to happen.

5 A No.

6 Q Okay. And with that being said, can you please
7 tell us what happened on May 10, 2007, when you robbed
8 the Chavis Moving Company,

9 A On that morning, I went to Chavis Moving and
10 Storage, me and James Wright, and I walked through the
11 door, and there was a lady sitting to the desk. I
12 pulled a firearm on her.

13 Q Okay. Let's back up. I'm going to take you
14 through it a little bit slower, and you're kind of
15 speaking quiet, so just -- I want to make sure everybody
16 can hear you, so just make sure you speak into that
17 microphone. Okay?

18 A Okay.

19 Q When you woke up this morning -- or, that morning,
20 you know, how did you all decide you all were going to
21 do this?

22 A It was just, I mean, really spontaneous. During
23 that time, there was nothing, really -- it was not
24 really planned. It was spontaneous.

25 Q Okay. Was it one person's idea to rob Chavis more

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DIRECT - TYSHON BARNES

1 than the other, or was it just kind of a joint decision?

2 A Kind of a joint decision.

3 Q Okay. And do you remember at all what either one
4 of you were wearing back then?

5 A I was not quite -- I can't quite remember exactly,
6 then, what we had on.

7 Q Okay. You don't remember, like, what color --
8 like, even what color the clothes might have been?

9 A I know it was dark clothes.

10 Q It would have been dark clothes?

11 A Yeah.

12 Q Okay. And what type of gun did you have?

13 A I think it was a semi-automatic. It was a nine-
14 millimeter.

15 Q Okay. What type of gun did James have?

16 A A revolver.

17 Q So, how did you all get to Chavis?

18 A I drove.

19 Q You drove? Okay. And now, we'll go back to where
20 I kind of cut you off and backed you up. So, you get
21 there, and what happens once you get there?

22 A I enter -- we enter Chavis Moving and Storage
23 through the door.

24 MS. HENDERSON: It may be a little -- I don't know
25 what's going on with that mic. Beg the Court's

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 indulgence, your Honor, I'm just going to see if I can
2 adjust it for him. I don't know if that's any better.

3 BY MS. HENDERSON:

4 Q Who entered first?

5 A I did.

6 Q And where did you go when you entered?

7 A To, like, a small desk to the left.

8 Q Okay. And was there somebody sitting at that desk?

9 A Yeah. There was a lady sitting at it.

10 Q Okay. Was she white or black, or?

11 A I think she was white.

12 Q She was white? Okay. And did James enter at that
13 same time?

14 A Like, briefly behind me. Like, seconds.

15 Q Okay. And the lady that was sitting at the desk,
16 could she see James from where he was?

17 A No, it's a blind spot right there.

18 Q There was a blind spot?

19 A Yeah.

20 Q Okay. So, when you got to the window where the
21 lady was sitting, what did you do?

22 A I asked her -- I can't quite remember exactly what
23 I asked her, but I asked her something, and I remember
24 her turning around to do something. Then, when she
25 turned back around, that's when I had the firearm on

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 her, but I can't quite remember exactly what I asked her
2 then.

3 Q Okay. But when she turned around. When she turned
4 around, that's when you pulled the gun?

5 A Yeah.

6 Q Okay. So, when she turned back around, you had the
7 gun pointed at her.

8 A Yeah.

9 Q Okay. What was James doing at this time?

10 A Standing to my left.

11 Q Okay. Did he have a ski mask on at this time, or
12 no?

13 A I think he did have it on by then.

14 Q Okay. And what happened once you pulled the guns
15 on her?

16 A I told them, get up, and I took her to the back.

17 Q Okay. So, you know, unfortunately for us, we don't
18 have pictures of Chavis Moving Company. So, I'm going
19 to need you to help us understand. Could you -- when
20 you entered in, you were standing at that window. Could
21 you see the rest of the building, or did you have to go
22 through a door or a hallway?

23 A I don't really quite remember the whole layout, but
24 I know I walked toward the back. I know there was rooms
25 in the back. I do know that.

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 Q Okay. Okay. And did you and James stay together
2 the whole time when you were in there, or did you all
3 split? How did that work?

4 A We kind of split it. It wasn't -- the business
5 isn't too big, so it's not like we went nowhere.

6 Q Okay. So, you had the gun pulled on the lady that
7 was sitting at the desk, and you told her to get down.

8 A Yeah.

9 Q Okay. And then, you went and found the rest of the
10 employees, or?

11 A Yeah.

12 Q Okay. What did you all do once you had found all
13 the employees?

14 A Put them all in one area.

15 Q Okay. Did you have them all laying on the ground?

16 A Yeah, I think I did. Some of them laid down.

17 Q Okay. Some of them laid down?

18 A Yeah, sit down.

19 Q Sit down? Okay. And did you -- how did you get
20 the money? Did you start going through their pockets?
21 Did you demand it? Did you -- how did you -- how did
22 you get their possessions?

23 A I don't quite remember the do. I -- like, we was,
24 pretty much, at that point, focused on two different --
25 like, two different ways. I went one way. He went kind

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DIRECT - TYSHON BARNES

1 of another way. He was pretty much holding everybody
2 down while I was doing the --

3 COURT REPORTER: I'm sorry. *He was pretty much?*

4 A Holding everybody down in the room.

5 BY MS. HENDERSON:

6 Q Okay. Now, when you all first got there, the owner
7 and another victim were in a different room, and
8 somebody went and got them and brought them forward.
9 Was that you or James?

10 A That was me.

11 Q That was you? Okay. And so, you all did that
12 before, and then you had everybody in the same room, on
13 the ground.

14 A Yes.

15 Q Okay. And then, you moved them into the supply
16 closet?

17 A Yes.

18 Q Okay. Who -- at some point, one of the victims had
19 a purse, the lady that you --

20 MR. LEE: Your Honor, I'm going to object to this
21 leading. I've tried to --

22 THE COURT: Okay. Sustained.

23 MS. HENDERSON: Okay. Sorry.

24 THE COURT: Stop leading.

25 MS. HENDERSON: Yes, your Honor.

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 BY MS. HENDERSON:

2 Q Did you locate a purse while you all were looking
3 for stuff to steal?

4 A I remember a purse did get -- I remember a purse
5 did come up, but I don't quite remember, like, how it
6 looked or anything of that nature, though.

7 Q Okay. Who went through the purse?

8 A James Wright.

9 Q Okay. And who was the one that had the debit
10 cards?

11 A I never had a debit card. I seen the debit card.
12 I never had it.

13 Q Okay. So, once you all moved them into the storage
14 -- or the supply room, what happened?

15 A I think I shut the door, and we left.

16 Q Okay. Did you all make any threats to them?

17 A Yeah. Somebody ATM card, about the ATM PIN number,
18 telling her you gonna get the correct PIN number.

19 Q Okay. Did you make that threat, or did James make
20 that threat?

21 A It was one of us, but I know I was right there. I
22 was standing exactly right there.

23 Q Okay.

24 A So, I don't know which one of us actually made the
25 threat, though.

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DIRECT - TYSHON BARNES

1 Q Okay. So, do you remember around about how much
2 money you all got at the time?

3 A Maybe a few hundred. I really don't quite remember
4 the exact amount.

5 Q Okay. And what happened after you put them all in
6 the supply closet?

7 A We left. We shut the door and left.

8 Q Okay. And how did you all leave?

9 A In a vehicle.

10 Q Who drove?

11 A Me.

12 Q And where did you go?

13 A Back home.

14 Q Whose home?

15 A My house.

16 Q Okay. And did you all stay together?

17 A We didn't stay together, but we -- something like
18 that.

19 Q Well, I'm sorry. When you all got back to the
20 house, did you stay together?

21 A Oh, yeah. Yeah.

22 Q Okay. And one of the ATM cards, did you go to Food
23 Lion at any point after this incident?

24 A No, I didn't -- I didn't drive to Food Lion. I
25 don't remember driving to Food Lion.

STATE V WRIGHT

DIRECT - TYSHON BARNES

- 1 Q Okay. So, you did not go to Food Lion that day.
- 2 A Not right after that incident, because I remember I
- 3 pretty -- I don't -- I don't remember going to Food
- 4 Lion.
- 5 Q Do you know if James went to Food Lion?
- 6 A I can't quite remember.
- 7 Q Okay.
- 8 A I can't remember if he went to Food Lion.
- 9 Q Okay. Did James smoke cigarettes?
- 10 A Yeah.
- 11 Q What kind did he smoke?
- 12 A Newport.
- 13 Q Newports? What was your relationship with James in
- 14 2007?
- 15 A We had a real close relationship.
- 16 Q You all were close?
- 17 A Yeah.
- 18 Q Tyshon, I'm going to hand you what's been
- 19 previously marked as State's Exhibit 3. Can you
- 20 identify the person in that picture?
- 21 A Yeah, that's James Wright.
- 22 Q That's James Wright?
- 23 A Yeah.
- 24 Q And is this the person that committed the armed
- 25 robbery with you?

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 A Yes.

2 Q At Chavis Moving Company on May 10, 2007?

3 A Yes.

4 MS. HENDERSON: Your Honor, at this time, the State
5 would move to have State's Exhibit 3 entered into
6 evidence.

7 THE COURT: Is that an objection?

8 MR. LEE: No objection.

9 THE COURT: Without objection.

10 MS. HENDERSON: Permission to publish, your Honor.

11 THE COURT: You may.

12 MS. HENDERSON: Can everybody see that?

13 ITEM IDENTIFIED AS PHOTOGRAPH OF
14 JAMES WRIGHT MARKED STATE'S EXHIBIT
15 NUMBER 3, ADMITTED AS EVIDENCE, AND
16 PUBLISHED TO JURORS.

17 BY MS. HENDERSON:

18 Q That is the person that you committed this armed
19 robbery with?

20 A Yes.

21 Q And that is James Wright?

22 A Yes.

23 Q Okay. Tyshon, let's talk about -- let's talk a
24 little bit about your past. You were a pretty bad guy
25 between 2004 and 2008; weren't you?

STATE V WRIGHT

DIRECT - TYSHON BARNES

1 A Yes.

2 Q Okay. What type of crimes were you yourself
3 committing back then?

4 A Anywhere, ranging from armed burglary to armed
5 robberies, in that nature.

6 Q How old were you in 2004?

7 A Seventeen.

8 Q Okay. And how old were you when you did this armed
9 robbery? Do you remember? At Chavis?

10 A Turning 20. Twenty.

11 Q Okay. Is James about the same age as you?

12 A Yeah, older.

13 Q He's older than you?

14 A Yeah.

15 Q So, you said, back in -- I'm sorry. Just to back
16 up, back in 2004 to 2008, you were doing, what did you
17 say?

18 A Armed burglaries and armed robberies.

19 Q Burglaries and armed robbery? So, you were just
20 pretty much a robber and a thief back then.

21 A Yes.

22 Q Okay. And you've given -- have you ever given
23 false information to police before about your crimes?

24 A I think in 2004 I did.

25 Q Okay. And what was the nature of that?

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DIRECT - TYSHON BARNES

1 A A burglary.

2 Q Okay. And despite your past and the things you did
3 in your past, is everything you've told this jury today
4 true?

5 A Everything is true.

6 Q And James Wright was your co-defendant in this
7 armed robbery.

8 A Yes, he was.

9 MS. HENDERSON: Beg the Court's indulgence for just
10 one minute, your Honor. No further questions at this
11 time, your Honor. Oh, sorry, I do. I apologize. I'm
12 sorry, Scott. It just came to me.

13 BY MS. HENDERSON:

14 Q Tyshon, do you know a guy named Nathaniel Williams?

15 A No.

16 Q And do you remember one of the victims being
17 African-American?

18 A No, I -- I don't quite remember who all was even in
19 there.

20 Q Okay.

21 A I was pretty much moving pretty fast.

22 Q Okay. Did you take whatever money was offered to
23 you from the victims?

24 A I don't even quite remember that part. I remember
25 I went to the one guy who he worked there, and he gave

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DIRECT - TYSHON BARNES

1 me a box.

2 Q Okay.

3 A He went in a box and was getting something out of a
4 box.. That's the part that I did. I don't quite
5 remember another part.

6 Q Okay. What about a guy named Terrence Brown? Do
7 you know Terrence Brown?

8 A Yeah, I know him.

9 Q Okay. And Terrence Brown worked at Chavis?

10 A Yeah, he worked there.

11 Q Okay. What, "if any, involvement did Terrence Brown
12 have with this robbery?

13 A No, Terrence Brown didn't have no involvement with
14 this robbery.

15 Q Did he know you all were going to do it?

16 A No, he didn't know we was going to do it. We kind
17 of eluded information from him, unbeknownst that we was
18 even robbing.

19 Q Okay. So, let me just clarify what you just said.
20 You got information out of him about Chavis?

21 A By me just asking, I mean, just about his job. He
22 was speaking about his job, and we asked -- I asked
23 questions just on the aspect of finding out information.
24 Like, he even didn't know -- he didn't know we was
25 planning on doing a robbery on his job or anything.

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CROSS - TYSHON BARNES

1 Q Okay. Did you know whether or not he was going to
2 be there when you all robbed it?

3 A No.

4 Q Okay. And were you wearing a mask?

5 A No, I wasn't.

6 Q Did you have anything on your face or head?

7 A I think I had a ball cap on. I think I did.

8 Q Okay. But Terrence Brown did not have anything to
9 do with this robbery.

10 A No, he did not.

11 MS. HENDERSON: Sorry. No further questions.

12 TYSHON BARNES

13 CROSS-EXAMINATION BY MR. LEE:

14 Q Mr. Barnes, the Solicitor said that you were a
15 thief and a robber and a liar, based on your prior
16 convictions, but she didn't really go into a whole lot
17 of specifics. 2004, did you pled guilty to six
18 burglaries? Does that sound right?

19 A Yes. I pled to -- I know I had -- I don't quite
20 remember how many I pled to, but I know I had quite a
21 bit of burglaries.

22 Q Okay. Okay. Do they just run together, or just?

23 A Yeah, just run together.

24 Q And in 2004, you were also convicted and given time
25 served for providing false information to the police,

STATE V WRIGHT

CROSS - TYSHON BARNES

1 and you said that involved a burglary?

2 A Yes.

3 Q Okay. So, you've lied to police. You've told them
4 something that wasn't true.

5 A Yes, I did.

6 Q Okay. And that was to, I assume, help yourself,
7 make it not look as bad, or, I mean, it was your benefit
8 to lie to them, I assume, right?

9 A At that time, it was.

10 Q Okay. So, it was a self-serving statement.

11 A Yes.

12 Q All right. Then, in 2007, convictions for armed
13 robbery, assault and battery of a high and aggravating
14 nature, kidnaping, burglary second. Does that sound
15 right?

16 A 2007? Burglary?

17 Q Yeah.

18 A I don't remember a burglary for 2007.

19 Q Don't remember it? Okay. How about an attempted
20 escape from jail in 2008?

21 A I remember that charge.

22 Q Okay. Convicted of that?

23 A Yes, I pled to that.

24 Q Okay. And then, we have the federal stuff, because
25 -- that would be federal because it's a post office,

STATE V WRIGHT

CROSS - TYSHON BARNES

1 right?

2 A Yes.

3 Q Okay. So, it's safe to say that you kind of --
4 you've been around, and you kind of know the system.

5 A Yes.

6 Q The legal system. Okay. And you started early.
7 Age 17?

8 A Yes.

9 Q All right. You've got younger brother; don't you?

10 A Yes.

11 Q Kenneth?

12 A Yes.

13 Q Okay. And he's what, three years younger than you?

14 A Yeah.

15 Q Okay. And obviously, as his big brother, you try
16 to look out for him.

17 A I mean, look --

18 Q Like big brothers do.

19 A As much as possible. We don't be around each other
20 a lot.

21 Q Okay. Back in 2007, when Chavis Moving Company was
22 robbed, your brother, Kenneth, was 17 years old, right?

23 A Yes.

24 Q Same age that you were when you started getting in
25 all this trouble.

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CROSS - TYSHON BARNES

1 A Yes.

2 Q Okay. And obviously, you don't want -- you were
3 hoping your brother, and still hope your brother doesn't
4 follow, kind of, where you are, right?

5 A Yes.

6 Q Okay. And you've helped your brother out of jams
7 before; haven't you?

8 A No.

9 Q No?

10 A I don't remember helping him out of a jam before.

11 Q All right. Let's talk about this post office
12 robbery --

13 A Yes.

14 Q -- in 2007, which is four days after the Chavis.

15 A Right.

16 Q Okay. You were charged.

17 A Right.

18 Q Your brother was charged with accessory, correct?

19 A No. He was charged with a firearm charge.

20 Q He also was charged with accessory after the fact;
21 was he not?

22 A No. He had no federal charge, period.

23 Q It wasn't federal. It was state.

24 A The Fed had took over my case in the beginning.

25 Q Kenneth was charged in state court, though, with

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1 accessory after the fact to a felony; was he not? Not
2 in federal court, but state court.

3 A I don't know about that.

4 Q You don't know. Okay. But Kenneth's story was
5 that -- and then, another guy named Benjamin somebody.

6 A Washington.

7 Q Yeah. Okay. So, you all three.

8 A Yeah.

9 Q Okay. And it involved in some kind of car chase,
10 and everybody ran, so there was like, a fleeing charge
11 as well, right?

12 A Yes.

13 Q All right. Kenneth's version, at that point, was
14 --

15 MS. HENDERSON: Objection, your Honor. He's not on
16 trial for this.

17 MR. LEE: It goes to his motivation to testify and
18 help himself and look after his brother.

19 THE COURT: Overruled. You can ask it.

20 BY MR. LEE:

21 Q So, Kenneth, at 17 years old, is with big brother,
22 gets pulled over by the police, and a post office has
23 just been robbed, right?

24 A Yes.

25 Q Okay. Kenneth's story is, hey, man, I don't know

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1 anything about it. They just picked me up, and I was
2 just riding in the car, right?

3 A Yes.

4 Q Okay. And you backed up that story to help out
5 your brother; did you not?

6 A Cause it was true.

7 Q Okay. But he was charged with that, additionally,
8 and then you -- he gave a self-serving statement, and
9 you backed it up, and you said, hey, I'll take the hit
10 on this, because he didn't have anything to do with it,
11 right?

12 A I took the hit on the armed robbery.

13 Q Right. Okay.

14 A He wasn't with me during the armed robbery.

15 Q All right. You're saying he wasn't involved.
16 Okay. And that incident was May 14th of 2007; was it
17 not?

18 A I think -- I think that was the date.

19 Q And the Chavis incident --

20 COURT REPORTER: I'm so sorry. *I think that was*
21 *the date?*

22 A I think that was the day.

23 MR. LEE: I'm sorry.

24 BY MR. LEE:

25 Q The Chavis incident was May 10, 2007, correct?

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1 A Yes.

2 Q Four days before. Okay. Now, when you were
3 testifying earlier, you said after the Chavis thing
4 happened, that you had driven, and you and James Wright
5 went back to your house.

6 A Yes.

7 Q Okay. And at that time, you lived at Early Branch,
8 right?

9 A No.

10 Q You didn't. Any reason why your booking report
11 would say you lived in Early Branch?

12 A I lived on County Shed Road.

13 Q County Shed Road. Okay. But anyway, you went from
14 Chavis, you and James, you say, went from there to your
15 house.

16 A Yes.

17 Q Okay. And you don't remember -- did you pick
18 anybody else up?

19 A Not in between us -- not in between leaving Chavis
20 Moving and Storage and going back home, no.

21 Q Okay. Did you stop at Food Lion?

22 A No. To -- in between that time?

23 Q Yeah.

24 A In between the robbery?

25 Q Yes.

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1 A No. Went straight home.

2 Q Okay. And James went with you, and he stayed at
3 your house for awhile?

4 A He came back with me, and I think he left. But I
5 don't think he went to Food Lion. I think he -- he
6 leaves my house. He doesn't stay there all the time.

7 Q Okay. All right. Were you working at the time?

8 A No.

9 Q Okay. Was your brother Kenneth?

10 A I don't think so.

11 Q Okay. Are you aware that one of the debit cards
12 was used at the Food Lion, minutes after the robbery?

13 A I wasn't aware of that.

14 Q You weren't aware of that?

15 A No.

16 Q Okay. And it couldn't have been you and James if
17 you all went straight home and then stayed over there,
18 if it happened right after the robbery, right?

19 A Yeah. I went straight to the house.

20 Q Okay.

21 COURT REPORTER: I'm sorry. I didn't hear you.

22 A I went straight to the house.

23 BY MR. LEE:

24 Q Did you give the debit card to anybody before you
25 went home?

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1 A I never had the debit card in my possession .

2 Q Did you --

3 A -- in my possession.

4 Q According -- sorry. According to James --
5 according to you, did James give the debit card to
6 anybody to go use at Food Lion?

7 A I didn't see him give the debit card to anybody.

8 Q Okay. And you were with him, because you all went
9 out and left together according to you, right?

10 A After the robbery.

11 Q In your car, yeah.

12 A Yes, after the robbery.

13 Q When did you plead to the armed robbery, kidnaping,
14 burglary stuff that you're up the road for now?

15 A 2008.

16 Q 2008? Okay. Did you ever give any type of
17 admission statement to the police?

18 A Yes.

19 Q You did?

20 A Yes.

21 Q What did you tell them?

22 A Took me to polygraph me? They was --

23 Q No, I'm talking about incident report. Did you
24 ever talk to Detective Foskey?

25 A I don't remember what detective I talked to, but

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1 I talked to a detective when they took me in. They
2 was about to take me in for a polygraph test for this,
3 but --

4 Q I'm not talking about --

5 A -- but they never took me in.

6 Q I'm talking about in 2007, as part of the
7 investigation, did Foskey talk to you in 2007, after it
8 happened?

9 A I talk -- I talked to a detective. That's what I'm
10 saying. I talked to a detective when they came and got
11 me from the county jail and took me to the Sheriff
12 Department, right next to the county jail.

13 Q Okay.

14 A They took me over there, but I don't the -- I don't
15 know the detective name.

16 Q Okay.

17 A But he took me over there for a polygraph, and I
18 talked to a detective then.

19 Q Okay. Okay. Now, from when you pled guilty in
20 2008, 'til now, have you contacted the Solicitor's
21 Office or the Sheriff's Office saying, I've got some
22 really good information I need to give. You didn't
23 contact them; did you?

24 A No, I have not.

25 Q So, you're sitting up there, whittling away, doing

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1 your ten-year state sentence, waiting on your federal
2 sentence, and by the grace of God, in walks the
3 Solicitor's Office to talk to you about this case?

4 A They asked me questions. Somebody came and seen me
5 about my -- about my pleading to this armed robbery, and
6 asked me what took place during this armed robbery.

7 Q Okay.

8 A Yeah.

9 Q And was that Mr. Hunt over there, the investigator?

10 A Yes.

11 Q From the Solicitor's Office? But you didn't -- you
12 didn't call him up and say, hey, can I talk to you about
13 this?

14 A No, I did not.

15 Q They just showed up, much to your surprise.

16 A Yes. They questioned me about --

17 Q Okay.

18 A -- the actions that took place.

19 Q And that was, what, sometime early July of 2014?

20 A I don't really quite remember.

21 Q Does that sound right?

22 A Sound about right.

23 Q It's not been -- it hadn't been too long ago; has
24 it?

25 A It hasn't been a real long time ago, no.

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1 Q Okay. So, you were probably pretty pleasantly
2 surprised that they came up to talk to you about it,
3 particularly when they said that they would try to help
4 you on your federal stuff, right?

5 A I mean, can you say that question again? I mean,
6 what are you asking me?

7 Q Well, weren't you glad to see him?

8 A Weren't I glad to see him?

9 Q Yeah, because they were going to try to help you,
10 right?

11 A I mean, I could use help.

12 Q Yeah. Okay. And you've got your family. I mean,
13 your family's local and stuff, and you got your family
14 out there, and you're pretty anxious to try to get home,
15 as we all would be, right?

16 A Yes, I am.

17 Q Okay. You'd like to see your mom and your brother.

18 A Yes, I am.

19 Q Okay. Would you agree that there's different color
20 complexions of African-Americans, generally?

21 A Yes.

22 Q Okay. And would you also agree that James Wright
23 has a lighter complexion than you do?

24 A Yes.

25 Q Okay. How about Kenneth, your brother? Is he

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1 similar to your complexion?

2 A Around about the same complexion.

3 Q About the same? Okay. Have you ever, as part of
4 this case -- is today the first day that you heard
5 anything about -- somebody asking you about Terrence
6 Brown?

7 A Yeah. I have not got -- I have never got
8 questioned about Terrence Brown.

9 Q Okay. None of the detectives ever asked you if you
10 had any connection to Terrence Brown or anything like
11 that?

12 A No.

13 Q Okay. And Terrence Brown was the one -- the guy
14 you knew that worked there.

15 A Yes.

16 Q Okay. Did you know Nathaniel Williams?

17 A No.

18 Q The guy, Nate, the guy that worked there?

19 A No, I didn't know nobody else that worked there.

20 Q Okay.

21 A Period.

22 Q How tall is your brother? He's about six-five;
23 isn't he?

24 A Six-five.

25 Q Six-five. How tall are you?

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1 A Six-two.

2 Q Six-two? Do you all get confused for each other a
3 lot?

4 A No.

5 Q You don't? Because you all really don't look that
6 much alike; do you?

7 A No, we don't.

8 Q Okay. His ears appear to be different, and he has
9 a different haircut. You're more stocky, and he's more
10 slender. Is that right?

11 A Right.

12 Q Is that thing that's circled, is that a picture of
13 your brother?

14 A Yes.

15 Q Number 5?

16 A Yeah.

17 Q Okay. Okay. And that shows that somebody circled
18 that particular picture, right?

19 A Yes.

20 Q Are you aware that one of the people from Chavis
21 identified your brother as being involved?

22 A I was not aware of that.

23 Q Okay. Are you aware that two people identified you
24 as being involved? Did you know that?

25 A I was aware of people identifying me as being

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1 involved.

2 Q Okay. And your understanding of the deal or the
3 arrangement is that, if you help the State by coming in
4 here and testifying against -- giving testimony against
5 James Wright, that they are going to agree to go to the
6 U.S. Attorney and try to reduce the existing sentence
7 that you have.

8 A No. It's only if I come in and be truthful that I
9 would -- might receive a downward departure dealing with
10 the federal system.

11 Q That you might. But that's what your hope is -- to
12 receive a downward departure.

13 A Yes, I do hope that.

14 Q Okay. You're not doing it out of your civic duty?

15 A I'm not doing what out of my civic duty?

16 Q Coming here today. You're doing it because you
17 have a chance to be rewarded for it, right?

18 A Partially.

19 Q Partially? Well, your sense of civic duty hasn't
20 hit you -- didn't hit you until they showed up and said
21 they could help you out, right?

22 A You're saying my sense of civic -- I don't
23 understand that question.

24 Q Yeah. Doing the right thing. Your civic duty.
25 Doing what's best for everybody.

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1 A I'm just being truthful about the situation,
2 period.

3 Q Okay. But you didn't feel the need to be truthful
4 until they came and saw you.

5 A Nobody ever questioned me about anything else
6 dealing with this case from the beginning. I just pled
7 guilty to my charge and took accountability for my
8 actions from the beginning. That was all that was done
9 with this case, period.

10 Q Got you. Okay. When Ms. Henderson asked you about
11 a purse, some purse, you initially said you didn't
12 really remember. So, did anybody look at a purse. Said
13 I don't really remember. Is that right?

14 A I said I don't really remember the color or
15 anything dealing with the purse, but I do remember the
16 purse.

17 Q Okay. What was in the purse?

18 A I know the debit card was in the purse.

19 Q You know the credit card was in the purse?

20 A Yeah.

21 Q Well, you said you never saw a credit card. How do
22 you know it was a credit card.

23 A No, I said I never had the credit card.

24 Q You never had it?

25 A Yeah, I never had it. I seen the credit card.

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1 Q You saw it. Okay.

2 A I never had it in my possession.

3 Q What else was in the purse?

4 A I don't really quite remember everything that was
5 in the purse, period. I mean, I didn't really look at
6 -- I wasn't -- it was -- we was doing two different --

7 Q Did you spread it out and look at it, looking for
8 stuff to take?

9 A You said did I spread it out?

10 Q Yeah.

11 A No. I never had the purse.

12 Q You never had the purse. Was it spread out, stuff
13 -- looking for stuff?

14 A I didn't see no stuff really spread out.

15 Q Okay. All right. And back to that robbery, the
16 post office thing, based upon your brother's statement
17 and your statement, his charge was dropped from the
18 State, and he never was charged by the Feds, right?

19 A Yes.

20 Q Okay. How about Benjamin, the other guy?

21 A He was charged.

22 Q He was charged? Okay. You three run together a
23 lot?

24 A No, we don't run together. Me and Benjamin
25 Washington ran together.

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1 Q Okay. Is Benjamin -- where does Benjamin
2 Washington work?

3 A He didn't have a job when I was out.

4 Q He didn't? All right. Thank you, Mr. Barnes.

5 MS. HENDERSON: Nothing further from the State,
6 your Honor.

7 BY THE COURT:

8 THE COURT: Ladies and gentlemen, at this time,
9 we're going to take a very brief recess. Again, do not
10 discuss this case. It wouldn't be appropriate to do so.
11 And we'll be right back with you.

12 JURORS LEAVE COURTROOM 2:57 P.M.

13 BAILIFF: Jury is clear, your Honor.

14 THE COURT: Thank you, Al. Let's go ahead, and Mr.
15 Barnes can step down. No objection to his being
16 released from anyone. Is that correct?

17 MS. HENDERSON: No, your Honor.

18 MR. LEE: No objection.

19 THE COURT: And thank you all for bringing Mr.
20 Barnes. We appreciate it very much. Thank you. I also
21 see Chris Williams -- or Wilson back there. Let's --
22 come on up, and we need to do a proffer, or what do we
23 need to do, Mr. Lee?

24 MR. LEE: No, I just I just had a -- wanted to
25 bring up an issue. I've talked with her, and she's been

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1 very nice, and spoke with me the last couple days. I
2 don't think there's going to be a real issue about the
3 qualification of her, but what I wanted to discuss was
4 exactly the verbiage that she'll be allowed and not
5 allowed to use in discussing it. And it would be my
6 position and my suggestion that she, -- since she's been
7 testifying as an expert, she be allowed to give an
8 opinion as an expert, that the latent lifts that she
9 compared on whatever day it was, in her opinion, are --
10 I don't know the exact language used -- are similar in
11 characteristics, and it's her opinion that they're
12 similar to the known print standard that we're going to
13 stipulate, as far as came from Mr. Wright.

14 I'm just worried about using the word *match*. I
15 think that puts so much certainty on it that you can't
16 really say that, because scientifically, you can't say
17 that two people do not have the same fingerprint. And
18 you know, even in the world of DNA, it's never a DNA
19 match. It's one in a zillion, grillion, million, that
20 sort of thing. So, you know, the fingerprint stuff is,
21 I think, less an exact science than some..

22 But anyway, my request would be that we not let her
23 use the word *match*, because it sounds so conclusive that
24 there's no question, you know, no way around it, and
25 it's somehow more reliable than anything else, because

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1 you have a match. Although, all she can really do is
2 give her opinion if used an expert.

3 THE COURT: Okay. You know what? She's right
4 here.

5 MR. LEE: Yeah.

6 THE COURT: So, I want to hear from the expert's
7 mouth.

8 SERGEANT CHRISTINE WILSON: I typically don't use
9 the word *match*. I may use terminology such as the
10 source of a latent impression was one and the same as
11 the defendant, or was individualized as that of the
12 defendant. I typically don't use the word *match*, but
13 I've come to a conclusion, based on my years of
14 experience and training, that the source of a certain
15 latent impression was the defendant, or whoever the case
16 may be.

17 THE COURT: I think she can give that as -- and
18 that's her opinion.

19 MR. LEE: In her opinion that.

20 THE COURT: Yes. That's her opinion.

21 MS. HENDERSON: And that would be the State's
22 position, your Honor. I think she can say -- I mean,
23 obviously, Scott can cross her to whatever extent that
24 he wants, but that she can say, in her opinion, in her
25 expert opinion and training, that these -- okay. And I

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1 apologize that I used the word *match*. I didn't know
2 what to use. But anyway, that these -- the prints that
3 were lifted, are so similar to James Wright that, in her
4 expert opinion, there is no other person whose
5 fingerprints these were. I mean, I'm not saying it
6 right, because I'm not an expert, but --

7 THE COURT: Right.

8 MS. HENDERSON: But I can --

9 THE COURT: And don't you say the word *match*
10 either, when you're asking the question.

11 MS. HENDERSON: Right. Right, so.

12 THE COURT: Okay.

13 MS. HENDERSON: And I apologize. I didn't know I
14 wasn't supposed to say the word.

15 THE COURT: Okay. I think --

16 MR. LEE: Well, that's up to the judge. It's not
17 --

18 THE COURT: Again, it's up to -- it's your opinion,
19 obviously, and you're doing your comparisons, and that's
20 -- it's your opinion. I think you can adequately cross-
21 examine her on what degree of whatever certainty she can
22 be on this. Again, it's an opinion. It's an expert
23 opinion. She can give it, for what it's worth. You can
24 cross her on it all you want. She's not going to use
25 the word *match*.

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1 SERGEANT CHRISTINE WILSON: I promise.

2 MS. HENDERSON: I won't either. I'm sorry.

3 THE COURT: As long as Mr. Lee doesn't, we're all
4 in good shape.

5 MR. LEE: Well, yeah, I might be the one who says
6 that, but. Okay.

7 THE COURT: Anything further we need to make sure
8 we're clear on?

9 MR. LEE: I don't think so. I have spoken with
10 Sergeant Wilson, and she has told me she has been
11 qualified as an expert eight times. Chris, is that
12 right?

13 SERGEANT CHRISTINE WILSON: Roughly eight times.

14 MR. LEE: I will stipulate to her credentials.

15 THE COURT: Okay.

16 MR. LEE: I will stipulate that she is an expert in
17 forensic --

18 SERGEANT CHRISTINE WILSON: Latent print
19 examination.

20 MR. LEE: Latent print examination, and that she
21 has necessary training and experience in order to
22 render --

23 THE COURT: Okay.

24 MR. LEE: -- be an expert, and to render an expert
25 opinion.

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1 THE COURT: Okay.

2 MS. HENDERSON: And your Honor, and I get that, and
3 I will shorten it, but I do like for the jury hear how
4 she --

5 THE COURT: Okay. And I'm going to let you.

6 MS. HENDERSON: Okay.

7 THE COURT: We're just going to shorten it. Okay?

8 MS. HENDERSON: Yes, your Honor.

9 THE COURT: All right. Are we ready to go?

10 MR. LEE: Yes, your Honor.

11 THE COURT: You all need --

12 MR. LEE: Are we going to do her and then talk
13 about charges, and then rest for the day, and come back
14 tomorrow?

15 THE COURT: I think we are. I think that, if you
16 guys are fine -- it's 3:00 o'clock right now. I just,
17 at this point, let's just argue and charge tomorrow.

18 Anything specific in we talked about. Obviously, I
19 need to hear motions; you're going to renew it. You're
20 not putting anything up, correct, that you know of right
21 now? Okay.

22 MR. LEE: No. I mean, I'll make a D.V. motion, if
23 I have to and --

24 THE COURT: Right.

25 MR. LEE: -- I'll renew it.

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1 THE COURT: Other than that. Okay. Caroline, is
2 there anything that you've got in the charge we can kind
3 of -- she's got identity as one of them, obviously.

4 LAW CLERK CAROLINE SCRANTOM: I have identity in
5 there. I have the reasonable doubt charge that was
6 requested.

7 THE COURT: *Manning*.

8 MADAM CLERK: Expert witness. Prior record
9 witness. Absent defendant to go along with failure of
10 defendant to testify, and hand of one.

11 THE COURT: Do you all want hand of one is the hand
12 of all, or not?

13 MS. HENDERSON: No.

14 MR. LEE: Hand of one doesn't apply.

15 THE COURT: They say no. Okay.

16 COURT REPORTER: I'm sorry. I didn't hear you.

17 THE COURT: They said hand of one --

18 MR. LEE: I don't think the hand of one would
19 apply. I mean, this is an identity case.

20 THE COURT: It is. Okay.

21 MR. LEE: And I also would ask to tweak the
22 language a little bit on -- don't put failure of the
23 defendant to testify.

24 THE COURT: Right. We don't.

25 MR. LEE: Okay.

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1 LAW CLERK CAROLINE SCRANTOM: That's the title.

2 Sorry.

3 THE COURT: Yes. And every Defense attorney says
4 please don't say that.

5 MR. LEE: And I guess direct evidence.

6 THE COURT: Direct versus circumstantial.

7 MR. LEE: Circumstantial, I mean, is it -- I don't
8 think there's any circumstantial evidence of -- I'm not
9 sure.

10 MS. HENDERSON: I mean, --

11 MR. LEE: There usually is some type of
12 circumstantial, but I'm not sure that it's --

13 MS. HENDERSON: Yeah. I mean, I think it's just a
14 standard charge. I think we do it just to be safe, we
15 do direct and circumstantial. I wouldn't see of a
16 reason to --

17 THE COURT: Right.

18 MS. HENDERSON: I mean, it's essentially one
19 charge. To separate it out and just direct would be --

20 THE COURT: No, I think it's appropriate, the whole
21 thing.. Yes. Okay.

22 MR. LEE: Judge, one thing that I would, you know,
23 ask for a little bit of time to testify to is whether or
24 not the jury can be permitted to draw some type of
25 inference from certain witnesses. The State failing to

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1 call certain witnesses, because, again, I don't have
2 access to these people. I mean, four out of the five
3 people that are listed as victims are not here, but were
4 listed as potential witnesses.

5 THE COURT: Do you have a proposed charge, or? Do
6 you have a proposed charge for that.

7 MR. LEE: I've got a new one, yeah. I think I've
8 got a new one.

9 THE COURT: I've got the charge book, so I'm giving
10 it back to you.

11 MR. LEE: Okay.

12 THE COURT: But --

13 MR. LEE: I need to get a new one, but it's --
14 actually right beside the TIA, but that's just thinking
15 out loud, what I may be asking for.

16 THE COURT: Okay. Caroline, you want to see what
17 you can find? Okay.

18 MR. LEE: I think the question is whether or not
19 it's within their control.

20 THE COURT: Okay.

21 MR. LEE: Of the witness, in their control.

22 MS. HENDERSON: And your Honor, --

23 THE COURT: Let's look at it first before we even
24 say anything about it. Let's actually look at the law
25 first, something new and shocking. Why don't we go

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1 ahead and we do Sergeant Wilson. Okay? Let's bring the
2 jury in. Do you all need a break? Do you need two
3 minutes, or no? You okay?

4 MR. LEE: Can we have two minutes?

5 THE COURT: You can have two minutes.

6 MR. LEE: All right.

7 OFF THE RECORD 3:06 P.M.

8 BACK ON THE RECORD 3:13 P.M.

9 BY THE COURT:

10 BAILIFF: All rise. Please come to order.

11 THE COURT: Thank you all. Please be seated.
12 Okay. Let's go ahead and bring the jury in, if you
13 would, Al. Thank you.

14 BAILIFF: Jury entering your Honor.

15 THE COURT: Thank you.

16 JURORS ENTER COURTROOM 3:13 P.M.

17 BAILIFF: Jury is seated, your Honor.

18 THE COURT: Thank you. Welcome back, ladies and
19 gentlemen. The State will call their next witness.

20 MS. HENDERSON: Thank you, your Honor. The State
21 calls Sergeant Christine Wilson.

22 THE COURT: Come on forward, Sergeant Wilson.

23 BAILIFF: Do you want me to swear her in?

24 THE COURT: Please, if you would. Thank you.

25 BAILIFF: Hi, Chris. How are you today? Place

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1 your left hand on the *Bible* and raise you right hand.
2 Do you solemnly swear or affirm the testimony you are
3 about to give to this court to be the truth, so help you
4 God?

5 SERGEANT CHRISTINE WILSON: I do.

6 BAILIFF: All right.

7 BAILIFF: Okay. That one moves. Just change that
8 other one out. Give your full name, and spell your last
9 name for the court reporter.

10 SERGEANT CHRISTINE WILSON: Christine Wilson,
11 W/i/l/s/o/n.

12 SERGEANT CHRISTINE WILSON

13 DIRECT EXAMINATION BY MS. HENDERSON:

14 Q Good afternoon, Sergeant Wilson. Where are you
15 currently employed?

16 A The Beaufort County Sheriff's Office.

17 Q And what is your job duties with the Beaufort
18 County Sheriff's Office?

19 A I'm a criminal investigator. I investigate a wide
20 variety of criminal offenses. I am also a qualified
21 latent print examiner.

22 Q And how long have you been qualified as a latent
23 print examiner?

24 A Since approximately 2002.

25 Q Okay. And what education and training do you have

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1 to have to be qualified as a latent print examiner?

2 A I have approximately 250 hours of advanced training
3 involving latent print examination. It includes basic
4 fingerprint examination, advanced latent fingerprint
5 techniques, palm print examination, examination of
6 simultaneous impressions, various seminars and
7 internships.

8 I submit annually to competency evaluation through
9 Collaborative Testing Services. That's a yearly
10 requirement. And I'm also a member of the International
11 Association for Identification and the South Carolina
12 chapter of that organization.

13 Q And how many times have you been qualified as an
14 expert in this field?

15 A Approximately eight times.

16 MS. HENDERSON: Your Honor, the State would move to
17 have Ms. Wilson qualified as an expert in latent print
18 examination.

19 MR. LEE: No objection.

20 MS. HENDERSON: Thank you.

21 THE COURT: Ladies and gentlemen, in this case,
22 Sergeant Wilson is being qualified as an expert in
23 latent print examination. That allows her to give her
24 opinion and the reasons for her opinion. You can accept
25 it or reject it, and certainly compare her testimony as

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1 to any other evidence in the case.

2 MS. HENDERSON: Thank you, your Honor.

3 BY MS. HENDERSON:

4 Q What is an inked print?

5 A An inked print, there are -- there's an inked
6 prints and latent prints, which we'll get to, but an
7 inked print, if you look at the tips of your fingers and
8 even the soles of your feet, there's -- there's skin
9 that's different from the skin on the rest of your body.
10 If you were to look at your fingertips through a
11 magnifying glass, it would look almost like corduroy.
12 Those are -- are ridges and furrows that are present on
13 the fingertips, on the palms of the hands and on soles
14 of the feet. And those are called friction ridges, and
15 that gives us the ability to grasp items or gain
16 traction when we're walking.

17 A -- an inked print is a recording of that friction
18 skin, by rolling ink or some similar type of medium, and
19 then deliberately, carefully, in a controlled manner,
20 recording those ridge details, those impressions, onto
21 some other type of surface, like a card or a sheet of
22 paper, or something like that.

23 Q What is the difference between that and a latent
24 print?

25 A A latent print is an impression that's left by

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1 chance. It's not left in a controlled environment, such
2 as if you were to grasp a bottle, that's not a
3 controlled touch. It's just a random touch that we
4 literally give no thought to as we grasp items, you
5 know, throughout our lives.

6 But a latent impression or a chance impression, is
7 left on a surface when -- well, to back up, on all the
8 ridges of your fingers, on your friction skin, there are
9 tiny sweat pores that are constantly exuding sweat.
10 When you touch an item, a recording of those ridge
11 details are left on the item that is touched because of
12 the sweat that is exuded from the sweat pores.

13 A lot of times, those impressions are hidden,
14 cannot be seen with the naked eye, so we have to use
15 techniques such as dusting with powders or certain types
16 of chemicals to expose those impressions to make them
17 visible.

18 Q And are there distinguishing characteristics of a
19 fingerprint and a palm print?

20 A There are. And the characteristics refer to the
21 minutia or the features that we see within the pattern.
22 The ridge detail that you see, or the ridge flow, is not
23 a constantly -- an unbroken line. Ridge detail is often
24 broken ridges. Some of the characteristics that we see
25 are -- we call them bifurcations, where -- where a ridge

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1 splits into two; or converging ridges where two ridges
2 will converge into one; an ending ridge. Sometimes
3 you'll see a dot or an island, or those types of
4 characteristics, and it's those unique characteristics
5 that -- that we use to compare to a known source.

6 Q Okay. And so, that brings me to my next question.
7 Before we get into this specific case, can you just kind
8 of explain, how are fingerprints compared and
9 identification effected?

10 A To compare fingerprints, or to compare a latent
11 impression to a known source of a print, we examine the
12 ridge characteristics of -- of both the impression, both
13 the latent or the unknown impression, against that of a
14 known impression to determine if the features or the
15 characteristics occupy the same position and have the
16 same unit relationship. That's how a comparison is
17 done. And on an identification, is effected by viewing
18 those ridge characteristics and looking at their
19 similarity, comparing the similarity and their position
20 within the patterns, determining whether or not the two
21 impressions are similar in nature by the placement of
22 those ridge characteristics, as well as the pattern
23 itself.

24 Q Okay. And what are the basic factors in the use of
25 fingerprints as a means of identification?

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1 A There are two -- two basic premises for the use of
2 fingerprints as a means of identification. The first
3 one is that fingerprints are permanent. Fingerprints
4 begin to form between the tenth and twelfth week of
5 gestation, before a person is born. And the arrangement
6 of those fingerprint details are permanent from birth,
7 all the way through a person's life, even through
8 composition -- decomposition after death.

9 Also, the other premise is that fingerprints are
10 individually unique. Fingerprints of no two individuals
11 have ever been found to be the same. During fetal
12 development, the forming of the friction ridge detail is
13 completely random. It's -- it's not assigned. It's
14 random during the fetal development, and that results in
15 a tremendous number of characteristics for each person
16 that are unique to that individual.

17 Q And you kind of touched on this, but based on your
18 training and studying and years of experience in latent
19 analysis, have you ever come across two people that
20 share the same fingerprint?

21 A I have not.

22 Q Okay. Or a palm print?

23 A No.

24 Q Okay. I'm going to go ahead and hand you what's
25 been marked for purposes of identification as State's

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1 Exhibits 2 and 4. Do you recognize those?

2 A I do.

3 Q And what are they?

4 A These are two index cards containing latent lifts.

5 Q Okay. And are those the latent lifts that you
6 compared in this case?

7 A They are.

8 Q Okay. And do you know where those latent lifts
9 were lifted from?

10 A I could tell what is written on the back of one of
11 the cards.

12 Q And what is that?

13 A It says, *from a Marlboro Light cigarette pack.*

14 Q Okay. And what is the other item?

15 A The other item, there's nothing written on the back
16 of the card.

17 Q Sorry. I handed you two exhibits. State's 2 and
18 State's 4. This one.

19 A Yeah.

20 Q Okay.

21 A This is a photographic rendering of the comparison
22 that I did with one of the latent impressions that was
23 removed from the cigarette pack against a known
24 impression of a defendant.

25 Q Okay. And we'll start with State's 2. Does it

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1 appear to have been altered or changed in any way?

2 A It does not.

3 MS. HENDERSON: Your Honor, at this point, the
4 State would move to have State's Exhibit 2 be entered
5 into evidence.

6 MR. LEE: No objection.

7 THE COURT: Without objection.

8 ITEM IDENTIFIED AS PHOTOGRAPHIC
9 RENDERING, MARKED STATE'S EXHIBIT
10 NUMBER 2, ADMITTED AS EVIDENCE.

11 BY MS. HENDERSON:

12 Q And we'll get to the separate, but I just wanted to
13 go ahead and get them -- does the State's 4, does that
14 appear to have been changed or altered in any way?

15 A It does not.

16 MS. HENDERSON: Your Honor, at this point, the
17 State would have State's 4 entered into evidence.

18 MR. LEE: No objection.

19 THE COURT: Without objection.

20 MS. HENDERSON: Thank you.

21 ITEM IDENTIFIED AS PHOTOGRAPH
22 RENDERING MARKED STATE'S EXHIBIT
23 NUMBER 4, ADMITTED AS EVIDENCE.

24 BY MS. HENDERSON:

25 Q Now, you said you -- those were the latent lifts,

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1 State's Exhibit 2, that you compared. What did you
2 compare them to?

3 A To known impressions of James Wright.

4 Q Okay. And what was the result of your examination?

5 A The result of my examination was that the -- the
6 impressions left on the index card that -- that has the
7 quality latent impressions was identified as -- the
8 source was identified as James Wright.

9 Q And how are you able to reach that conclusion? And
10 if you'd like to demonstrate at this time.

11 A I would.

12 Q Okay.

13 A That would be the best way for the jury to
14 understand is through the demonstrations.

15 MS. HENDERSON: Permission to publish State's 4,
16 your Honor.

17 THE COURT: You may.

18 MS. HENDERSON: Thank you. Permission for Sergeant
19 Wilson to step down.

20 THE COURT: You may step down, Sergeant Wilson.
21 Mr. Lee, you're invited to come over and watch.

22 MR. LEE: Thank you.

23 STATE EXHIBIT NUMBERS 2 AND 4 PUBLISHED
24 TO JURORS.

25 BY MS. HENDERSON:

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1 Q Okay. Sergeant Wilson, if you can please explain
2 to the jury what they're looking at.

3 A The image on the left-hand side I've noted as being
4 the latent impression. That is a photographic
5 enlargement of the latent -- one of the latent
6 impressions that was taken from the item in evidence. I
7 photographed that, and I enlarged it.

8 The impression on the right-hand side is the known
9 impression. It is the -- the left-mid finger of James
10 Wright. I have put together this visual demonstration
11 of how I would conduct an examination to come to the
12 conclusion that I came to.

13 Again, if you look at the ridges and furrows, the
14 black lines represent the ridges, and the white areas
15 would represent the valleys, or the furrows, where you
16 don't -- you don't get a detail.

17 What I'm going to do is demonstrate for you how I
18 came to my conclusion that -- that the identity of the
19 source of that print is James Wright. If you will
20 follow along with me, it's rather -- rather tedious, but
21 it is important. So, we're going to begin with the
22 latent impression.

23 And on the latent impression, I've --

24 Q I apologize. The court reporter needs you to talk
25 a little bit louder, if you would.

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1 A Yes, ma'am. Beginning with latent -- the latent
2 impression -- and I don't know, can -- if you all can
3 see this. The line -- the -- I've marked these
4 individual features or characteristics or minutia that I
5 referred to by the straight red lines, pointing out
6 those individual characteristics.

7 Number 1, the red line goes to the end of an ending
8 ridge right here, and hopefully -- hopefully, that's
9 visible. So, Number 1 is an ending ridge. And then, on
10 the known impression, Number 1 is the same ending ridge.

11 Now, if I were to count down two spaces, starting
12 at Number 1 and counting down 1, 2, I land on another
13 ending ridge that points up. Same thing on the known
14 impression. If I start at the -- the end of Ridge
15 Number 1, and I count two ridges, 1,2, two, I come to
16 another ending ridge that points in the same direction.
17 So -- so, Number 1 and 2 here, and Number 1 and 2 on the
18 latent impression are in the same unit relationships,
19 same spacial orientation.

20 Continuing on. If we start --

21 MS. HENDERSON: Chris, I apologize to interrupt.
22 Some of the jurors are having difficulty on that end
23 seeing it.

24 A I apologize.

25 MS. HENDERSON: Maybe we could angle it a little

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1 bit so that you're not standing in front.

2 THE COURT: What about the ones on the other end?

3 Will you make sure they can see?

4 MS. HENDERSON: Yes, ma'am. I'm trying. I just
5 wanted to --

6 THE COURT: You need to pull it back a little bit?
7 Ms. Henderson, pull it back just a little bit. It makes
8 it easier.

9 A I'll try to be mindful of that, your Honor, as I
10 point these out.

11 THE COURT: Okay.

12 BY MS. HENDERSON:

13 A Continuing on, if we start at the ending ridge
14 number 2 and follow that ridge straight down -- and I
15 know there are some white spots in here, and that would
16 be residue, or whatever might have been left on the tape
17 -- but starting at ridge number 2, and following that
18 ridge down, it ends at a ridge that forks downward, in a
19 downward position, and we call that a bifurcation. So,
20 following detail number 2, down to detail number 3 is a
21 bifurcation, or a forking ridge.

22 On the known impression, starting at end of ridge
23 number 2, and following that same ridge down, it also
24 ends in a ridge, or in a fork at the end of that ridge.
25 Again, a bifurcation that's in the same location as the

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1 bifurcation on number 3.

2 If we were to then start at this bifurcation and
3 count in 1, 2, 3, 4 -- I don't think this is going to
4 work, maybe -- we'll start at number 3 and count in 1,
5 2, 3, 4, 5 ridges, there's another ending ridge at
6 Number 4. On the known impression, starting at number
7 3, that downward bifurcation, and counting 1, 2, 3, 4,
8 5, there is another ending ridge in the same location,
9 as that between number 3 and number 4 on the latent
10 impression.

11 Starting -- or continuing on between 4 and 5, we
12 start with an ending ridge at number 4. And following
13 that ridge straight up, at the other end is another
14 ending ridge. So, what that is, is, it's fairly a short
15 ridge that's interrupted. It's a single ridge. So, we
16 have number 4 at one end, and we have number 5 at the
17 other end of that ridge. On the known impression, the
18 very same thing. If we start at the end of this ridge
19 at number 4, follow that ridge up, it comes to the other
20 end of that short ridge, and I've labeled that number 5.
21 And these are, again, in the same position in both of
22 these impressions.

23 Continuing on between 5 and 6, if we count 1, 2, 3,
24 4 ridges down, we come to another ending ridge that --
25 that the ridge actually faces downward. Same thing on

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1 the known impression. Starting at the end ridge, and
2 come down 1, 2, 3, 4, it ends in the same spot on the
3 known impression, at an ending ridge, and I believe --
4 number 6.

5 COURT REPORTER: I didn't hear that. I'm sorry.

6 *At a known ridge?*

7 A At -- on the known impression -- on the known
8 impression. Sorry.

9 Continue on between 6 and 7, starting at number 6,
10 traveling up the short ridge, we come to a convergence
11 of ridges, so it's -- it's a ridge that comes up and
12 converges with another ridge and forms this bifurcation.
13 So, I marked that number 7. Following 6 to number 7 is
14 bifurcation. And on the known impression, it's in the
15 same place on the known impression. Start at the end of
16 this ending ridge, go up that short ridge, and -- and
17 the ridges converge at that point, and create that
18 bifurcation in the same place on the known impression,
19 and that's between characteristics 6 and 7.

20 Going from 7 to 8, if we start this bifurcation at
21 number 7, we go up one ridge, a little bit to the right,
22 we have another ridge that forks out to the right. It
23 opens to the right. And on the known impression, if we
24 start at number 7, again, go up one ridge, a little bit
25 to the right, we have another forking ridge to the

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1 right, in the same location on the known impression as
2 it is on the latent impression.

3 Starting with this bifurcation, we'll go from 8 to
4 9. One, 2, 3, 4, 5. Five ridges between 8 and 9. This
5 is another bifurcation, not as clear on the latent
6 impression. Again, that's a chance contact. It's not
7 as cleanly rolled, but that is a bifurcation in a
8 downward direction. I've labeled that number 9. Same
9 thing from 8 to 9 on the known impression. One, 2, 3,
10 4, 5 brings us to the same type of bifurcation on the
11 known impression. And ABG is doing a virus -- I'm
12 sorry. But the ridges between 8 and 9, there are five
13 ridges between them in the same location on the latent
14 impression and on the known impression.

15 Going from 9 to 10, we start this bifurcation at
16 number 9, and we count over 1, 2, 3, we come to an
17 ending ridge that I've marked number 10. And going from
18 9 to 10 over here, we'll start at the bifurcation at 9.
19 One, 2, 3. We land on an ending ridge in the same
20 location and relative position as on latent impression.

21 Going from number 10 to 11, we start at the ending
22 ridge at number 10, go up one ridge a little bit to the
23 left, and there is a bifurcation that opens to the left.
24 Same thing on the known impression. We'll start at the
25 ending ridge at number 10, up one ridge, a little bit to

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1 the left, and we have bifurcation in the same relative
2 position that I've also marked number 11 on the known
3 impression.

4 Now, I selected eleven features for demonstration
5 purposes. There are others that -- that I have not
6 marked that maybe -- maybe you all can see it, as well.
7 But for demonstration purposes, to explain how I did
8 this, I just chose eleven to mark.

9 Q And when you were testifying earlier, and you were
10 explaining the difference between an inked impression
11 and a latent impression, is this known impression, is
12 that what would be classified as an inked impression?

13 A Yes, it would.

14 Q Okay. So, that that would be, the ink was
15 physically put on Mr. Wright's hand and put on a paper.
16 Okay.

17 A That's correct. In a very controlled, deliberate
18 manner. Whereas a latent impression, you're not going
19 to have that careful rolling, placed, even appearance,
20 but the features are all in the same position. Whether
21 the print is twisted or torqued a little bit or smushed
22 together, the individual features still are in the same
23 position in both impressions.

24 Q And was there anything significant about these
25 impressions that you examined? The three -- did you say

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1 there were three different fingerprints?

2 A There were three different fingerprints. I chose
3 the left-middle finger impression for demonstration
4 purposes, but there were two other latent impressions of
5 value that I also identified as -- as Mr. Wright's. And
6 those -- actually, all three of his impressions came
7 from his left index, his left-middle, and his left ring
8 finger.

9 Q Does that tell you anything about the type of
10 impression that was left, with it being those three
11 fingers?

12 A In my experience and training, that leads me to
13 believe that it was a simultaneous impression; that
14 those three impressions were left at the same time by
15 grabbing the item. We use multiple fingers to grab
16 items, and that these -- these three fingers touched
17 that item at the same time.

18 Q Thank you. Sergeant Wilson, in conclusion, in your
19 expert opinion, whose fingerprints were those on the
20 latent impressions that you compared?

21 A My -- my conclusion is that the source of those
22 latent impressions were the fingers of James Wright.

23 Q Thank you.

24 MS. HENDERSON: Beg the Court's indulgence for just
25 one second.

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1 BY MS. HENDERSON:

2 Q Just very, very briefly, Sergeant Wilson, since you
3 are more of an expert, we talked about this with
4 Sergeant Foskey -- or Detective Foskey. Since you are
5 more of an expert in latent impressions and stuff, is it
6 -- what is the difference between a useable impression
7 and a non-useable impression?

8 A For an impression to be useable, I -- I have to be
9 satisfied that the -- the print is unique enough and
10 contains adequate information within it for me to be
11 able to individualize it to another source. If -- if
12 there are not enough features for me to be able to do
13 that, then it's just not a useable print.

14 Q Okay. And -- and what --

15 COURT REPORTER: I'm sorry. *Then, it's not just a?*

16 A It's not a useable print.

17 BY MS. HENDERSON:

18 Q And while you are a latent print expert, you are
19 also a detective investigator. So, have you processed
20 scenes before?

21 A Yes, I have.

22 Q And have you dusted for prints?

23 A I have.

24 Q Is it -- I don't know if I want to use the word
25 common, I don't know how best to ask this, but is it

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1 common to get a lot of unuseable prints when you're
2 dusting, and few actual useable ones?

3 A It's not unusual at all. In fact, in my
4 experience, you get less useable prints than you do
5 unuseable prints.

6 Q And does the surface in which you are dusting, or
7 the surface that is touched, does that make a difference
8 sometimes as to whether or not you can get a useable
9 print?

10 A It does. Smooth surfaces such as glass or
11 cellophane, ceramic, shiny ceramic, that sort of thing,
12 those would be good surfaces to -- for fingerprints.
13 Examples of poor surfaces for fingerprints would be,
14 possibly, leather or some type of pebbled surfaces that
15 the -- that the prints are not going to adhere to like
16 they would a shiny surface.

17 Q So, as an expert, you are not surprised that there
18 were useable impressions found in the cellophane of a
19 cigarette wrapper?

20 A I was not surprised.

21 MS. HENDERSON: Nothing further, your Honor.

22 THE COURT: Mr. Lee.

23 SERGEANT CHRISTINE WILSON

24 CROSS-EXAMINATION BY MR. LEE.

25 Q All right. I don't want to ask you about this

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1 particular -- not in this particular case, but you're
2 familiar with what happens sometimes, Sergeant Wilson,
3 when you receive fingerprints. Sometimes it comes to
4 you through a system called AFIS. Is that right?

5 A Correct.

6 Q Okay. And when you get those types of -- what AFIS
7 is going to send you is what, Automated Fingerprint
8 Indexing System, is that what it stands for?

9 A It's Automated Fingerprint Identification System.

10 Q Okay. But when a print is -- a latent print is
11 taken, a lot of times it's run through -- in some cases,
12 run through AFIS, and then AFIS sends you what are
13 called candidates, correct?

14 A That's correct.

15 Q Okay.

16 A It sends a -- a candidate list.

17 Q A candidate list. Typically what, 20 to 30,
18 sometimes more, sometimes less?

19 A Usually anywhere between 20, 30, and 40.

20 Q Okay.

21 A You can actually change those numbers.

22 Q Okay. And the candidates are names and ink prints
23 that come to you, as then examiner, that have certain
24 characteristics in common, right?

25 A As far as --

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1 Q Or consistent characteristics.

2 A For populating a candidate list in AFIS?

3 Q Yes.

4 A Is that what you're asking?

5 Q Yes.

6 A Yes.

7 Q I mean, that's how they get candidates. They want
8 to send you ones that might --

9 A Correct.

10 Q -- might be the right -- okay. So, what that says
11 is that, while the argument is, nobody has the same
12 fingerprint, you do see certain characteristics. You
13 may see one characteristic on more than one fingerprint,
14 right?

15 A There are some similarities, but there are far more
16 differences.

17 Q Right. But just the sheer number, I mean, there
18 have to be some types of similarities. I mean, if you
19 have that much space to put four billion people on them,
20 then there are some similarities, and that's where that
21 candidate list comes from, right?

22 A It does. And I've -- I've seen -- I've seen
23 candidate lists that give me a list of 20 candidates,
24 and I look at each individual impression, and I wonder
25 how the computer came up with that particular candidate.

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1 The pattern is all wrong, it's not the same type of
2 print, that sort of thing. But it does, using some kind
3 of mathematic algorithm, it does populate a list of
4 candidates, and I have to sort through those.

5 Q Gotcha. Okay. And so, the point being, so, while
6 a candidate list can have some consistent, but also,
7 have some contradictory points, right?

8 A That's correct.

9 Q Okay. And that's how you kind of differentiate.

10 A Correct.

11 Q Okay. So, wouldn't you agree, also, if there's --
12 sometimes there's issues about having a partial print,
13 or having part of the print blocked by something, or
14 having -- you not being able -- isn't it preferable to
15 have a clean print?

16 A It --

17 Q Clean, meaning there's no blocks on it or anything
18 that might --

19 A It certainly makes my life a lot easier, if that
20 were the case.

21 Q Right. Right.

22 A We don't -- I don't typically have that luxury.

23 Q Right.

24 A So, I would use a partial print or whatever is
25 presented to me.

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1 Q Okay. I understand. And looking at this State's
2 Number 4, you did point out that there is some -- some
3 like, blotches, or little bubble-looking things on
4 there. You're not able to see through those to examine,
5 right, what's underneath that on the print?

6 A That's correct.

7 Q Okay. So, what if there are contradictory points
8 underneath a part of a print you can't see? You
9 wouldn't be able to see it; would you?

10 A I would not be able to see those. I don't -- if I
11 see a white blotch or -- or something that has -- has
12 obliterated, --

13 Q Um-hmm.

14 A -- a ridge detail, I'm not even going to entertain
15 that area. Or --

16 Q Right, because you can't see through it.

17 A Correct.

18 Q Yeah.

19 A And I'm not going to assume that there may or may
20 not be a characteristic under there that --

21 Q Okay.

22 A -- may or may not be present.

23 Q Other than doing the fingerprints, do you really
24 know anything about this case?

25 A Not particularly.

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1 Q I mean, other than what you may have heard in the
2 last hour or so. But I mean, you didn't -- you didn't
3 investigate it. You didn't go out to the crime scene.
4 You didn't pull the fingerprints yourself. You --

5 A I did not. I was handed latent lifts and --

6 Q It was just handed to you?

7 A -- and that was it.

8 Q Okay. But you have been an investigator in the
9 past, and well, you're still an investigator, but you've
10 done the type of work Foskey was doing at the time. You
11 done plenty of that, correct?

12 A Yes.

13 Q Okay. In the situation where you have a -- this is
14 like a warehouse type of storage place. It appears
15 there were five people there and two people that went in
16 there. Seven people within a couple rooms, moving
17 around and that sort of thing. Would you expect to see
18 more than three fingerprints? You know, with a dumped-
19 out purse, with everything going on, would you expect to
20 see more than three readable prints in the entire place?
21 Because number one, fingerprints, if it's the right
22 condition, you put a fingerprint, it may stay there for
23 a day, a week, a month, a year, depending on --

24 A Depends -- depends on all sorts of different
25 things.

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1 Q Right. So, unless they're cleaned, there's
2 fingerprints on top of fingerprints, on top of
3 fingerprints, on top of fingerprints, right?

4 A There would be. And -- and simply because somebody
5 touches something doesn't automatically mean that
6 there's going to be a fingerprint left.

7 Q Right.

8 A Touching something does not equal fingerprint left
9 behind. So -- so, when you process a large area,
10 sometimes it is not surprising that there's a very
11 limited number of -- of latent impressions that were
12 recovered.

13 COURT REPORTER: *Latent impressions that?*

14 A Were recovered.

15 BY MR. LEE:

16 Q On a cigarette pack, if somebody touched a
17 cigarette pack, would you -- all conditions being the
18 same, would you expect it to be more likely that they
19 would leave a readable print, or less likely they would
20 leave a readable print?

21 A I can't say for sure. I know that the second lift
22 in this exhibit is also an attempt to lift useable
23 latent impressions, and I believe this was on the same
24 cigarette pack, and there are no useable impressions on
25 this particular lift. Not -- I don't believe there's

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CROSS - CHRISTINE WILSON

1 even one ridge on any of those impressions. So, it's --
2 again, it's -- it's chance. It's a chance touch, and
3 there's a chance that a useable latent will be left.

4 Q Would you be surprised if someone touched a
5 cigarette pack like that and did not leave some type
6 of --

7 A I would not be surprised.

8 Q You would not be surprised.

9 A I would not. It's -- it's --

10 Q Even though that's a --

11 A It's possible for a print to be left or not be
12 left.

13 Q But that's a good surface for it.

14 A That would be conducive, yes.

15 Q Did you receive any --

16 COURT REPORTER: I'm sorry. *That would be?*

17 A Conducive.

18 BY MR. LEE:

19 Q Did you see elimination prints from a woman named
20 Ms. Hill, who apparently owned the pack of cigarettes?

21 A Did I receive --

22 Q Yes.

23 A -- elimination prints?

24 Q Yeah.

25 A No.

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CROSS - CHRISTINE WILSON

1 Q Are there any of her prints on that cigarette pack?

2 A I don't have any idea. I -- I know that there are
3 those unuseable prints. I don't know who left those,
4 but they cannot be individualized or identified. I just
5 know that the three useable impressions on the first
6 card that I testified to are identifiable.

7 Q Okay. All right. A couple more things. I know
8 this is getting to be like a science class. You created
9 this?

10 A I did.

11 Q Okay. You created that. So, do you have the
12 ability to manipulate, like, which way those things are
13 turned, and how big they are and stuff?

14 A I can enlarge them or turn them, or darken them
15 with contrast, or lighten them.

16 Q Okay.

17 A Whatever is going to make it easier on the eyes.

18 Q Okay. So, you can go from the regular-sized, life-
19 sized print, all the way up to very big so you can see
20 it better?

21 A Yes.

22 Q Okay. And you can turn it, manipulate it like
23 that, and that sort of thing.

24 A I don't like to use the word *manipulate*. I can
25 orient it --

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CROSS - CHRISTINE WILSON

1 Q Right.

2 A -- to --

3 Q Manipulate has a bad connotation.

4 A -- for demonstration purposes, yes.

5 Q You can move it. Okay. Right. You can move it
6 however you want to. And then, can you change the
7 colors and stuff on those things if you want to?

8 A I can.

9 Q Okay. All right. And that's for the latent
10 prints, as well as the ink prints, right?

11 A Yes. As far as the color I choose to draw the
12 lines and the numbers, it just depends. I've used blue
13 before, but I chose red for this.

14 Q Okay. And you don't know any of the process that
15 was used to gather these prints. You don't know
16 anything about the investigation.

17 A I do not.

18 Q They just came to you.

19 A That's correct.

20 MR. LEE: Okay. When you do the -- well, I won't
21 ask that question. Thank you.

22 THE COURT: Anything further, Ms. Henderson?

23 MS. HENDERSON: Nothing further from the State,
24 your Honor.

25 THE COURT: Any objection to Sergeant -- oh, I'm

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1 sorry -- Wilson being excused?

2 MR. LEE: No objection.

3 THE COURT: Thank you. Thank you. You are
4 excused.

5 SERGEANT CHRISTINE WILSON: Thank you, ma'am.

6 THE COURT: Ms. Henderson, anything further?

7 THE STATE RESTS.

8 MS. HENDERSON: Your Honor, the State rests.

9 BY THE COURT:

10 THE COURT: Ladies and gentlemen, at this time, the
11 State rests their case. There is a brief matter of law
12 I need to take up with the attorneys, and I'll bring you
13 right back out and tell you where we're going from here.
14 All right? I need to remind you, do not discuss this
15 case. It wouldn't be appropriate to do so.

16 JURY LEAVES COURTROOM 3:52 P.M.

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: Thanks, Al. All right. Any motions?
19 Any motions?

20 MR. LEE: Yes, ma'am.

21 THE COURT: Any motions, Mr. Lee?

22 MOTIONS:

23 MR. LEE: Yes, ma'am. The first motion I have,
24 your Honor, is, I would renew my earlier motion to
25 dismiss for the State's failure to produce that Food

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1 Lion tape. And the reason I'm doing it now is because
2 there's been testimony that just developed that we
3 didn't have yesterday when I argued it that, I believe,
4 arguably, puts us into the -- has not satisfied the
5 prejudice prong of the requirement under the case law
6 that we talked about. And I think that we're going to
7 more of a, you know, from a could have, might have,
8 should have, maybe, whatever evidence will come out.

9 There are real issues with this, because the real
10 -- the real thing is that, Barnes testified that neither
11 he nor Wright were at the Food Lion. Having that tape
12 would obviously -- if Wright wasn't there, it would
13 obviously help. But perhaps more importantly is, we got
14 a good clothing description from Ms. Hill, and it was a
15 very specific black and yellow wind suit or jumpsuit, or
16 I think it said wind suit. And I think Foskey agreed
17 that that's what -- I think she gave it. And Foskey
18 testified that he could identify two of the people
19 wearing a dark blue shirt with some type of patch, as if
20 it was some type of work shirt, and that indicates the
21 amount of detail he was able to see. He was able to see
22 color, number one, because it was blue, and then at
23 least some type of shape.

24 If Mr. Wright, minutes after this is happening,
25 before Ms. Hill can even call the bank to say, *my card*

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1 *got stolen*, if Mr. Wright is supposedly in there, you
2 would clearly be able to see his clothing, unless he
3 changed. But it would be very likely. And without that
4 tape, you know, again, we're not able to show these
5 things that would have exculpatory value, because if we
6 can say, look, we know the card was used, no question,
7 in Bilo shortly after; and we know that ain't James
8 Wright, that is hugely exculpatory for Mr. Wright, and
9 certainly circumstantial evidence that he wasn't there
10 when the robbery happened, contrary to Mr. Barnes'
11 testimony.

12 So, I would renew that motion, respectfully.
13 Again, I still don't have the evidence. I'm not
14 suggesting any type of bad faith. I do think that the
15 exculpatory value and the prejudice to the defendant has
16 bumped up a few notches, based upon testimony that we
17 had not heard when I made the argument yesterday. So, I
18 respectfully renew that motion, and I think that, based
19 upon the rest of the test -- the case, the testimony,
20 with the evidence against my client being a fingerprint,
21 and then testimony of Mr. Barnes, which, you can take it
22 or leave it and put it on whatever perspective you want
23 to, that would be very significant exculpatory evidence.
24 So, I think the prejudice is clearly there, and would
25 respectfully renew that motion to dismiss.

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1 THE COURT: All right. You want to answer it?

2 MS. HENDERSON: Your Honor, the only thing the
3 State would add about the new stuff is that, from my
4 recollection of Detective Foskey's testimony, he didn't
5 say that the individual was not wearing the clothes that
6 matched Ms. Hill's description. He said he didn't -- he
7 couldn't tell. So, it wasn't that we had contradictory
8 -- it's not that we have testimony saying this person
9 was not wearing clothes that matched what Ms. Hill said.

10 Additionally, Mr. Barnes did not say that James did
11 not go to Food Lion. He said, *we didn't stop on the*
12 *way, and I didn't go.* You know, he said -- he testified
13 that James, at some point, left his house. It wasn't
14 clear how quickly or whatever. So, there was no
15 testimony -- in other words, he didn't also contradict.
16 He didn't say, James never went to Food Lion, so it
17 couldn't have been him on that video. He just said, *we*
18 *didn't stop there on the way home.*

19 Your Honor, with that being said, I don't think
20 that anything's changed from yesterday. I think we're
21 still speculating that it might have had exculpatory
22 evidence. I don't think that the testimony that we've
23 heard today changes that.

24 THE COURT: All right. Well, respectfully, I agree
25 with you. I think we are speculating as to whether or

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1 not there was anything exculpatory on that video.

2 Again, there is no bad faith. I think we can all agree
3 on that.

4 MR. LEE: Yes, ma'am.

5 THE COURT: But I'm going to respectfully deny your
6 motion to dismiss.

7 MR. LEE: Okay. And I also, at this point, your
8 Honor, make a motion for a directed verdict. It's our
9 position the State has not, under *Rule 19* of the
10 *Criminal Rules of Procedure*, when there's a failure of
11 competent evidence to prove the charge in the
12 indictments. I realize you have to take it in the light
13 most favorable to the State, and there's substantial
14 impeachment that went on with Mr. Barnes, and there is
15 fingerprint evidence. However, I would respectfully,
16 particularly based on the prior motion about the video,
17 as well. I think they've failed to carry their burden.
18 I know you look at the existence, by the way, but I
19 would respectfully make a directed verdict motion at
20 this time.

21 THE COURT: You can go ahead and answer.

22 MS. HENDERSON: Your Honor, I would -- the State
23 would just argue that there is ample evidence that Mr.
24 Wright is the person that did this; that it should go to
25 the jury. Mr. Barnes' testimony is a jury question.

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1 His credibility is for the jury to determine. The
2 fingerprint clearly places him at the scene. And with
3 the limited time window between the purchase of the
4 cigarettes and the robbery, it's -- there's really no
5 other explanation, in the State's view, of how his
6 fingerprint got there, and I think that short window
7 makes the evidence against him very strong, and I think
8 it surpasses the directed verdict standard.

9 THE COURT: Okay. Well, taking the evidence in the
10 light most favorable, obviously, to the non-moving
11 party, as you stated, I do think there's evidence from
12 which the jury could find that Mr. Wright was the person
13 that committed this offense, and respectfully, I'm going
14 to send it to the jury.

15 Mr. Lee, I'm going to bring the jury back out. I'm
16 going to have -- are you going to rest at this point?
17 I'm going to have you rest for them. We'll break for
18 the evening. We'll just renew your directed verdict
19 motion after they've left, which you're required to do
20 so.

21 And we've gone over the charge, somewhat. We've
22 looked at your requested charge, Mr. Lee, which we can
23 talk about, but you need to find me some authority. The
24 cases that are cited under the rule book are --

25 MR. LEE: They're civil cases.

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1 THE COURT: -- either civil cases, or they have to
2 do with spoilation. And so, they really aren't square
3 on. I want to be very careful, as not to be commenting
4 on the facts of the case.

5 MR. LEE: I know.

6 THE COURT: Which is where I kind of tread that
7 difficult line in the requested charge. If you would
8 like me to, though, we will make a copy of it, and I
9 will put it as a Court's exhibit --

10 MR. LEE: Right.

11 THE COURT: -- that you requested that charge. I
12 don't think it fits square on all fours on this case. I
13 don't think it's appropriate.

14 DOCUMENT IDENTIFIED AS REQUEST
15 TO CHARGE MARKED COURT'S EXHIBIT
16 NUMBER 4.

17 MR. LEE: North Carolina has a great charge on it.

18 THE COURT: Do they?

19 MR. LEE: It essentially says that, if it's co-
20 defendant testimony, it's garbage. I mean, we haven't
21 even come close to doing that.

22 MS. HENDERSON: I was confused. Which charge are
23 we talking about? I thought we were talking about
24 the --

25 THE COURT: We were talking about the inference

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1 one. Basically, that the witness is within your
2 control. That's the one I was talking about.

3 MS. HENDERSON: Oh, okay. That's the one I thought
4 you were talking about.

5 MR. LEE: Okay. I'm sorry. Oh. I jumped over to
6 the co-defendant.

7 THE COURT: Okay. And then, you requested,
8 apparently, a second charge from Caroline about --

9 MR. LEE: Well, as far as -- I was thinking out
10 loud, as far as whether we get some type of charge on
11 special skepticism to put when a co-defendant is
12 testifying. But I think the general charge is, your
13 Honor, probably covers that.

14 THE COURT: It covers it. You advise the
15 prejudice, and I think, you know, you certainly did an
16 adequate job stating that, you know, you're doing this
17 to help yourself.

18 MR. LEE: Right.

19 THE COURT: On a 39-year sentence, so.

20 MR. LEE: Okay.

21 THE COURT: I think it's -- I think it's fine,
22 unless you can find a proposed charge that is good, and
23 you know, is fair. At this point, I don't have it, so.

24 MR. LEE: All right.

25 THE COURT: All right. Let's bring the jury in,

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1 you all, if we can.

2 MS. HENDERSON: I was going to give Caroline one
3 more cite that is a criminal case regarding the not
4 calling of witnesses.

5 THE COURT: Okay.

6 MS. HENDERSON: Caroline, it's *State v. Batson*, 261
7 *S.C.* 128.

8 THE COURT: Thank you. Let's bring the jury in.
9 Mr. Lee, you're going to rest for them. I'm going to
10 send them home. You all, my thoughts, tomorrow morning
11 is, we start at 10:00 o'clock. Argue and charge.
12 That'll give us all a little breathing room. It'll give
13 me an opportunity to go through the charge, tell you
14 exactly what we're doing. I think you know pretty much
15 what are. I don't think there's anything that's a
16 mystery in this one, and we'll get rolling in the
17 morning. Okay? So, let's bring them on out, Al.

18 BAILIFF: The jury is entering, your Honor.

19 THE COURT: Thank you.

20 JURORS ENTER COURTROOM 4:01 P.M.

21 BAILIFF: Jury is seated.

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen. Mr. Lee?

24 DEFENSE RESTS.

25 MR. LEE: Your Honor, the Defense rests, as well.

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1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, at
3 this time, both the State and the Defense have rested
4 their case. What is left to do is, hear the arguments
5 from the lawyers, I will charge you on the law that's
6 applicable to this case, and then it will be sent to you
7 for deliberations. All of that takes time, and based on
8 the hour right now, most judges have a rule of thumb
9 that we don't argue and charge a jury after 3:00
10 o'clock, because I don't know how long you will end up
11 being here, and again, that whole process takes some
12 time. Plus, there are some matters of law I still need
13 to take up with the lawyers, as well, outside of your
14 presence.

15 So, with that said, I want to make sure it's
16 agreeable, Madam Foreperson, to everyone in the jury,
17 we're going to go ahead and break for the evening, and
18 I'm going to ask that you return to your jury room
19 tomorrow morning at 10:00 a.m., where we are going to
20 conclude this case. All right?

21 If your deliberations end up running into the lunch
22 hour, I'm going to go ahead and tell you right now that
23 we're just going to bring in food for you. It's never
24 anything wonderful. It's pizza. We don't have a whole
25 lot of money. But anyway, we want you to be able to,

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1 hopefully, return a verdict, if you're able to. So,
2 think towards that end.

3 Again, ladies and gentlemen, even though you have
4 heard all the evidence in the case, you have not heard
5 the lawyers' arguments, you haven't heard my charge on
6 the law, and it would be highly inappropriate for you to
7 speak about the case, do any of your own independent
8 research, anything along those lines. Again, everything
9 you need to decide this case, you're going to get in
10 this courtroom. And again, I do not want anyone doing
11 anything other than going home, having a great dinner, a
12 good night's sleep, good breakfast, and we'll see you
13 all back in your jury room at 10:00 a.m. tomorrow
14 morning. All right?

15 Thank you all. You've been a wonderful jury.
16 Thank you. Good night.

17 BAILIFF: Jury is clear, your Honor.

18 JURY LEAVES COURTROOM 4:04 P.M.

19 THE COURT: Okay. All right, you all, we'll be at
20 ease in this case. If you all are here by 9:30ish or
21 so, Caroline will show you the whole charge, if you want
22 it. She's emailing it to you right now.

23 MR. LEE: Oh, wow.

24 THE COURT: So, additionally, verdict forms, as
25 well? She'll give you that, too.

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1 MR. LEE: Judge, I'm not sure if we need a *Telfaire*
2 charge or not, because they haven't identified my
3 client. So, I guess I'll think about that, but I'm not
4 sure an I.D. charge is --

5 THE COURT: Is appropriate?

6 MS. HENDERSON: And that's why we had to put a DMV
7 photo, because his failure to appear for his trial took
8 away our ability for him to be identified by witnesses,
9 so. And sorry, that's why I was confused yesterday.
10 That's where the right not to be present -- to not be
11 present came from. That's why I was getting confused on
12 that law.

13 THE COURT: Okay. Okay.

14 MS. HENDERSON: Sorry, and I have --

15 MR. LEE: So, she said it was overly suggestive,
16 because it has his name on it, right?

17 THE COURT: Well, I don't know if an I.D. charge is
18 appropriate, because, allegedly, he had a ski mask on,
19 if he was, in fact, the person the State says he is, so.

20 MR. LEE: There's some testimony that he -- that
21 the second person put a mask on as he was walking back
22 to the back room, but that's a little convoluted.

23 THE COURT: Why don't you think about it.

24 MR. LEE: I will.

25 THE COURT: Tell me overnight if you are requesting

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1 it and what the State's position is, and, okay? All
2 right. We'll see you all -- if you all will be here by
3 9:30.

4 MR. LEE: Sure.

5 END DAY TWO, TUESDAY, AUGUST 26,
6 2014, 4:05 P.M.

7 BEGIN DAY THREE, WEDNESDAY,
8 AUGUST 27, 2014, 9:47 A.M.

9 BY THE COURT:

10 JURY CHARGE DISCUSSION:

11 THE COURT: So, I hear we're fighting about the
12 reasonable doubt charge. All right. Well, I'm going to
13 tell you what I'm going to charge, then. Okay? I think
14 that's why we kind of have all of it in there. I will
15 take out the civil case portion of it, but I think the
16 rest of it, to make it very clear, it all needs to be in
17 there. I mean, that's just. Anything else with the
18 charge, you all?

19 MS. HENDERSON: Not from the State, your Honor.

20 THE COURT: Anything else from the Defense?

21 MR. LEE: Because I looked at it last night, and
22 leaving that identity, I don't think that identity is --

23 THE COURT: Took it out.

24 MR. LEE: Okay.

25 THE COURT: I agree with you.

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1 MR. LEE: Yeah.

2 THE COURT: I agree with you.

3 MR. LEE: I mean, if it was a witness or a victim
4 identifying someone, it may be relevant, but it's an
5 alleged co-defendant.

6 THE COURT: Exactly.

7 MR. LEE: Yeah.

8 THE COURT: Yes. You don't want it in. You don't
9 care about it being in for the State, for the record.

10 MS. HENDERSON: No, your Honor. I mean, I had to
11 have some way to identify him, because he wasn't sitting
12 there --

13 THE COURT: Right.

14 MS. HENDERSON: -- just to prove that he is James
15 Wright. But I mean, as far as the charge, no, your
16 Honor.

17 THE COURT: Right.

18 MR. LEE: And can I just note my objection, your
19 Honor? It was before Ms. Henderson's opening statement.
20 I asked to come to the Bench. I should have done that
21 earlier than that, but and ask you if you were going to
22 charge *State versus Manning*. Obviously, my presentation
23 in my opening was tailored towards that.

24 THE COURT: And I do, and I am charging both.

25 MR. LEE: I see.

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1 THE COURT: So, again, I'm charging both.

2 MR. LEE: Just for the record, my objection would
3 be to the *Victor versus Nebraska* language, the firmly
4 convinced.

5 COURT REPORTER: I'm sorry, I didn't hear you.
6 *Just for the record, my objection would be to the?*

7 MR. LEE: Is for the *Victor versus Nebraska*
8 language, which is the firmly convinced language.

9 THE COURT: And again, I've got both in there.
10 That's how I stop that fight in every criminal this
11 case.

12 MR. LEE: I know.

13 THE COURT: So. And I agree with you, I think,
14 with that portion of it.

15 RENEWED MOTIONS BY MR. LEE:

16 MR. LEE: Judge, I would also -- I didn't do it
17 yesterday, probably because the jury was in here, but I
18 also would renew all of my previous motions, including
19 my directed verdict motion and motion to dismiss, based
20 on the Food Lion tape not being around. Technically, I
21 didn't do that after I closed, because the jury was
22 still in here, so.

23 THE COURT: Okay. And also, for the record, I
24 don't know, did we renew again after you rested? I'm
25 not -- I can't remember.

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1 MR. LEE: That's what I was just saying.

2 THE COURT: You were just now renewing it. Okay.

3 MR. LEE: I didn't do that, and I'd like to do that
4 now.

5 THE COURT: Okay.

6 MR. LEE: My understanding was, that would be okay
7 to do today.

8 THE COURT: And again, absolutely, Wanda, preserved
9 it for the record, certainly, for your client. And
10 again, I'm denying it, based on the same grounds as
11 before.

12 OFF THE RECORD.

13 BACK ON THE RECORD.

14 THE COURT: All right. So, we're just waiting on
15 our jury. Anything else this morning?

16 MR. LEE: Not from the Defense, your Honor.

17 THE COURT: Okay.

18 MS. HENDERSON: No, ma'am.

19 THE COURT: Okay. So, you've got the last
20 argument. You didn't put anything in, right?

21 MR. LEE: Yes, ma'am.

22 THE COURT: Okay. So, we are good to go. I had a
23 question for you. I wasn't sure. Does your client have
24 federal charges pending against him, as well?

25 MR. LEE: No, ma'am.

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1 THE COURT: Okay. So, he wasn't --

2 MR. LEE: He wasn't ever charged or anything with
3 that post office robberies.

4 THE COURT: Okay. And you dismissed everything in
5 Jasper. What else is out there?

6 MS. HENDERSON: Your Honor, he's still got a gun
7 charge, and I still have not dismissed the Jasper
8 charge, because this woman will not -- I'm trying to
9 remain respectful to the victim and not dismiss them
10 behind her back. I have told Rhonda that she's running
11 out of time. I am not -- they will be dismissed.
12 Nothing is hinged on this trial. It's just happenstance
13 that this trial came before. No matter the outcome,
14 guilty or not guilty here today, that case is not
15 prosecutable, and Ridgeland knows it, and I will be
16 dismissing it. I'm just trying to do it after I speak
17 to her.

18 THE COURT: Okay.

19 MS. HENDERSON: But it's just been a nightmare to
20 get her in. There is a gun charge that is still pending
21 in Jasper, that somehow got lost in the shuffle. It's
22 relatively new, but I think Mr. Plexico or Bob has him
23 with that, because Scott's only got him on this.

24 OFF THE RECORD.

25 BACK ON THE RECORD.

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1 THE COURT: All right, you all. This jury is here.
2 You all ready to go? You ready to go?

3 MS. HENDERSON: Yes, ma'am.

4 MR. LEE: Yes, ma'am.

5 THE COURT: All right. Bring them in. I thought
6 they were going to get very angry with me when I sent
7 them home at 4:00 o'clock. Okay.

8 BAILIFF: Jury entering, your Honor.

9 JURORS ENTER COURTROOM 10:07 A.M.

10 BAILIFF: Jury is seated, your Honor.

11 THE COURT: Thank you. Good morning, ladies and
12 gentlemen. Pleasure to see you all. At this time,
13 you're going to hear the closing arguments of the
14 attorneys. I am then going to charge you on the law
15 that's applicable to this case, and then we're going to
16 send it to you, so you can begin your deliberations.
17 So, at this time, if you would give your attention to
18 Ms. Henderson.

19 MS. HENDERSON: Thank you, your Honor. May it
20 please the Court? Mr. Lee.

21 THE COURT: Yes, ma'am.

22 CLOSING ARGUMENT ON BEHALF OF THE

23 STATE, BY MS. HENDERSON:

24 MS. HENDERSON: Good morning.

25 RESPONSES BY JURORS.

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1 MS. HENDERSON: Ladies and gentlemen, the facts of
2 this case are really very simple. James Wright is
3 guilty of the armed robbery and kidnaping of Nancy Hill.
4 Were there other victims? Yes. But victims move on,
5 and move away for many reasons. But Nancy Hill is still
6 here, and she's still very much a victim of this
7 horrible crime, and she deserves some justice.

8 So, how do we know that James Wright is guilty?
9 Let's look first at the elements of each offense,
10 starting with armed robbery. An armed robbery requires
11 someone to commit a robbery, which is the taking,
12 carrying away of personal property of another without
13 consent and with the intent to steal.

14 We know that James Wright took Nancy Hill's debit
15 card and money. She testified to that, and Tyshon
16 testified to that. We know that they carried it away.
17 They left the business with it. Tyshon told you they
18 drove off with the money. She had to go cancel her
19 card. We know it belonged to her. She testified that
20 it did.

21 Without consent. She certainly never gave either
22 one of them permission to take her money.

23 And with the intent to steal, obviously, they
24 intended to steal it. That was their plan. They left
25 with it, and they certainly did not return it.

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1 Taken from the immediate presence of the person.
2 She said they stepped over her to snatch her purse off
3 of the shelf. Immediate presence.

4 By violence, intimidation or fear. She had a gun
5 pointed at her, and what did they tell her? *I will*
6 *shoot you if you give me the wrong PIN number.*
7 Violence, intimidation and fear.

8 While armed with a deadly weapon. Everyone's in
9 agreement, they both had guns. Tyshon says, *I had the*
10 *automatic; James had the revolver.*

11 Ladies and gentlemen, there is your armed robbery.
12 It's that simple.

13 Let's go to kidnaping. The definition of kidnaping
14 is to seize, confine, inveigle, decoy, kidnaped, adopt,
15 or carry away other persons knowingly and without
16 authority of law. So, how do we know he's guilty of
17 this? Both Ms. Hill and Tyshon told you she was held at
18 gunpoint, ordered to the floor at gunpoint, robbed of
19 her purse at gunpoint, forced in a supply room at
20 gunpoint, shut in there and threatened at gunpoint. She
21 was seized the moment that gun was pointed at her, and
22 she was confined the moment she went into that room, and
23 they certainly knew what they were doing, and had no
24 authority of law to do so. There's your kidnaping.

25 So, how do we know it was James Wright? Because

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1 that's what it really boils down to, and those are the
2 two things that I told you in my opening statement,
3 Tyshon Barnes and the fingerprint. Let's start with
4 Tyshon.

5 Ladies and gentlemen, when he was on that stand, he
6 was very straightforward. He sat there and admitted all
7 of his wrongdoings, and he never tried to excuse or
8 justify. He was honest and forthcoming with his past.
9 Is part of the reason that he was here was to get help
10 on his federal sentence? Of course, it is. Of course,
11 he wants help. He's facing 39 years. But he knew the
12 only way he was going to get help was if he told the
13 truth.

14 When Mr. Lee tried to suggest that we promised him
15 help on his sentence if he came and testified, Tyshon
16 corrected him and said, *no, sir, that's not what they*
17 *said.* He told you, *they told me if I was truthful, that*
18 *I might get help.* There is a difference. He was never
19 told to lie, and he has no motive to lie. He and James
20 were real close. There's no ill will there.

21 When Mr. Lee suggested that he had withheld this
22 information until now, his answer was very simple: *no*
23 *one ever asked me until now.*

24 Of course, he didn't just come forward on his own.
25 There are risks in testifying against someone. For

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1 everything he had to gain by being here, he also has
2 something to lose. So, why would he lie? But even if
3 you didn't trust him, even if you were still concerned
4 about whether or not to believe what he told you,
5 everything he said was corroborated by Ms. Hill and the
6 fingerprint.

7 Chris Wilson, an expert in latent print
8 examination, testified that those fingerprints that were
9 lifted from Nancy Hill's pack of Marlboro Lights
10 unequivocally belonged to James Wright. Not just one
11 fingerprint, three, these three, and in a way that was
12 indicative of grabbing.

13 She showed you how you came to that conclusion, and
14 you're going to have that picture with those points on
15 it back in the jury room for you to look at. So, if no
16 two people have the same fingerprint, and the
17 fingerprints on that pack of Marlboro Lights belonged to
18 James Wright, then we know that James Wright is the
19 robber that went through Ms. Hill's purse. No matter
20 what else happens, what else you choose to believe, how
21 do you get around that? You can't.

22 Mr. Lee is trying to distract you with what I call
23 red herrings, trying to draw your attention away from
24 that very point, from the obvious. He would rather you
25 focus on what Investigator Foskey didn't do, instead of

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1 what he did do. He would rather you focus on skin tone
2 than scientific evidence.

3 Ladies and gentlemen, these victims had guns
4 pointed at their faces. Mr. Wright was wearing a ski
5 mask and dark clothing. They had limited visibility,
6 because half the time they were on the floor, and then
7 they were in a supply room. This was a traumatizing and
8 panicked situation. The fact that there is some
9 confusion regarding skin tone is not surprising, and
10 it's certainly not enough to suggest that Mr. Wright
11 didn't do this.

12 He would rather draw your attention to two innocent
13 men, Nathaniel Williams and Terrence Brown. There is no
14 evidence to suggest that either one of these men had
15 anything to do with this. The fact that they worked
16 there and happened to be African-American does not make
17 them suspects. It wasn't their fingerprint on that pack
18 of cigarettes, and it was not their face that was
19 identified by the victims.

20 He also wants you to focus on that missing
21 videotape from Food Lion. But we know that you couldn't
22 identify anyone off of that video. The quality was too
23 poor. We know it was three black males, and we know the
24 card was used shortly after the incident. Tyshon told
25 you, he lives on County Shed Road. County Shed Road

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1 isn't but about a five- to six-minute car ride from
2 Chavis Moving Company. He said -- what did he tell you?
3 We went straight home. After a while, James left. He
4 could have gone up there. We don't know for certain who
5 used that card, but we know who stole it, and that's
6 James Wright.

7 He keeps bringing attention to the fact that one
8 victim, when showed one of the photo lineups, picked out
9 Tyshon's brother. The victim had said he looked like it
10 might be him. He was identifying the unmasked man.
11 Whether or not siblings resemble each other and things
12 like that, it's a moot point. We know Tyshon Barnes was
13 the unmasked man. He told you he was. He admitted that
14 he was. And I say again, it wasn't the brother's
15 fingerprints on that pack of cigarettes.

16 He wants to make a big deal that no one picked
17 James Wright out of the photo lineup. He was wearing a
18 mask. How can you identify someone's face if you never
19 saw it? But we have something better than his face --
20 his unique, personal fingerprint. And I know I keep
21 going back to it, ladies and gentlemen, but if you think
22 about it, it really is the most important thing. If you
23 put everything else aside, the fingerprint speaks for
24 itself.

25 What did Nancy Hill tell you? That morning on the

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1 way to work, she stopped and bought an unopened carton
2 of cigarettes. When she got to the office at 7:30, she
3 opened that carton, pulled out an unopened pack of
4 cigarettes and dropped it in her purse. Less than an
5 hour and half later, she's held at gunpoint and robbed.
6 When she comes out of that supply room, she sees that
7 her purse has been rummaged through, and the contents is
8 laying on the counter. And she said to you, *I knew he*
9 *had touched it, so we didn't move anything.*

10 When the police arrived, they lifted three prints
11 off of that pack of cigarettes, and we know who those
12 prints belong to. She told you that her purse never
13 left her custody or control in that hour and a half, and
14 when I asked her, *did anyone touch that pack of*
15 *cigarettes between the time you dropped it in your purse*
16 *that morning, and you were robbed?* And she said,
17 definite and certain, *no.*

18 So, if James Wright didn't do this, how, how did
19 his fingerprints get on that pack of cigarettes? There
20 is no other explanation, ladies and gentlemen. You
21 don't have to -- if you don't find Tyshon credible,
22 that's a personal decision, but what he says is
23 supported by the evidence. And he came in here, and he
24 told you exactly how they did it, who did what.

25 Ladies and gentlemen, there really is no doubt that

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1 James Wright was Tyshon Barnes' partner in crime. The
2 evidence is clear. Tyshon Barnes is paying his debt to
3 society for this crime. It's time for James to pay his.
4 Find him guilty of armed robbery and kidnaping of Nancy
5 Hill, because ladies and gentlemen, he is guilty beyond
6 a reasonable doubt. Thank you.

7 CLOSING ARGUMENT ON BEHALF OF THE
8 DEFENDANT, BY MR. LEE:

9 MR. LEE: Good morning.

10 RESPONSES BY JURORS.

11 MR. LEE: When I was a young kid, I had a sister
12 who is 12 months younger than I am, and every summer our
13 parents, much to their relief probably, would send Lori
14 and I down to Alabama to spend time with my
15 grandparents, and we loved going down there. And of
16 course, being 12 months apart, brother/sister, we had
17 huge sibling rivalry. We looked up to each other, but
18 we had huge sibling rivalries.

19 And our grandfather, who retired from the Army and
20 owned a boiled peanut-producing business, would always
21 kind of look after us and stuff. And invariably, with
22 brother and sister, we'd get into some kind of argument
23 or something like that. And the object always was, is
24 to be the first one to get to Grandfather and say,
25 Granddaddy, guess what Lori did? Or, Granddaddy, guess

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1 what Scott did? And he used to always quote this thing
2 out of the *Bible*, which I never really knew what it was
3 until I looked it up recently, and it's *Psalm 17:18*, and
4 it says -- and he'd say this:

5 *The first to present his case seems right,*
6 *until another comes forward to question that.*

7 And it makes sense. The Solicitor says that this
8 is a simple case; those are red herrings.

9 Those aren't red herrings, they're reasonable
10 doubts, and that's what we're going to talk about. So,
11 I urge you not to just, the first thing you hear, say,
12 well, that's got to be right, because this is why we
13 have the system. This is why I'm up here. So, let's
14 talk about a few things.

15 Let's talk about reasonable doubt, because again,
16 proof beyond a reasonable doubt is the burden that they
17 have. If you have any reasonable doubt as to whether or
18 not they've proven the case, the only verdict is not
19 guilty. And a reasonable doubt is the type of doubt
20 that would cause a reasonable person, in making one of
21 life's important decisions, to hesitate to act.

22 This is some ibuprofen. For the purpose of this,
23 this is cyanide. They look alike. They look exactly
24 alike. You can't look at them and tell the difference.
25 They look exactly alike. This stuff, that stuff.

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1 So, let's talk about reasonable doubt. How many
2 people were at this place? Five. And I had to ask
3 Foskey, you know, what some people said, and they were
4 consistently saying the second person was dark. There's
5 five people there, five that were listed as victims by
6 the State. How many did they bring to court for you to
7 see? And your job as a jury, them saying, we want you
8 to convict him, how many people did they bring to court?
9 One. One -- Ms. Hill.

10 These other people obviously saw things. They
11 identified Tyshon Barnes, at least two of them did. The
12 other one was identified as his brother. Have they
13 pulled -- have they pulled their weight? Have they
14 showed you what they need to do? That's a reasonable
15 doubt. Bad stuff, good stuff. That's cyanide, poured
16 in with ibuprofen.

17 They also talk about -- they want to dismiss it --
18 well, Foskey showed everybody a lineup of James Wright's
19 picture in it, and they couldn't identify anybody, so we
20 just shredded it. We got rid of it. What's the point
21 in getting rid of it? Isn't it an investigator's duty
22 to try to convict the guilty and free the innocent?
23 Evidence always isn't in the State's favor, and the
24 investigator investigates. One of the many things that
25 were just thrown away. As the Solicitor said at one

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1 point, *lost in the shuffle*. And she wants you to excuse
2 all this losing things in the shuffle and overlook it.
3 There's five people that looked at this photo lineup
4 with James Wright in it, and not a single one of them
5 picked him out. And you can say what you want about,
6 well, he had a mask on and stuff. Well, they were able
7 to see what the skin tone was. They were able to see a
8 lot of other things. Five people. Nobody.

9 Then, the first time anybody seemed to be concerned
10 about this Terrence Brown was Ms. Radford, who's one of
11 the four people they didn't -- the State didn't bring.
12 And she said, in her statement to Foskey, *something just*
13 *doesn't seem right; his guy named Terrence Brown works*
14 *there, and he made a call; and two minutes later, he*
15 *left. And when he left, then two minutes later, this*
16 *happens.*

17 Ms. Radford, the employee, is telling the police
18 officer -- *Terrence Brown*. Gave them the name. Foskey:
19 *you ever heard of Terrence Brown? No. I mean, did you*
20 *talk to him? No, I don't know who that is. It's in her*
21 *statement, his name, where he works. He works at the*
22 *place. Didn't even talk to him.*

23 So, then, when do we hear about Terrence Brown
24 again? I asked Mr. Barnes, *you know Terrence Brown? He*
25 *said, yeah, yeah; friend of mine; works there; we talked*

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1 to him.

2 Why should I have to ask a paid witness for the
3 State about this Terrence Brown seven years after the
4 fact? Nobody had ever talked to Terrence Brown. The
5 lady, who was one of the victims, was smart enough to
6 give them that name. And that's some reasonable doubt.
7 What did Terrence Brown have to do with this? They
8 didn't look. They didn't want to see. We'll talk about
9 that in a minute.

10 All right. Let's talk about the Food Lion video.
11 Quicker than Ms. Hill could get to the phone and call
12 the bank and say, *cancel my card*, the Food Lion card had
13 been used -- I mean, the ATM card had been used at the
14 Food Lion. We know when, we know where. Video? Yeah,
15 there's a video. The officer had it, but it got lost in
16 the shuffle, because he was going to send it to SLED for
17 enhancement. Nobody knows where it is. It wasn't
18 enhanced. It wasn't looked at. Well, did it show --
19 did it show a black male wearing a black and yellow
20 jumpsuit? Foskey: no, I don't think so, but couldn't
21 really see anything. But I could see that the guys had
22 on -- two guys had on navy blue shirts with -- with work
23 patches on them. So, you can see the color. He said
24 that. And they had to have a clothing description from
25 Ms. Hill, who testified. She gave them that clothing

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1 description.

2 Again, the Solicitor calls that a red herring.
3 That's not a red herring. That's a reasonable doubt,
4 because they're not giving you anything, guys. They're
5 saying, do our dirty work. Convict this guy. Here it
6 is. Take it from here. Hold on a minute. We have
7 reasonable doubts, and that's what we're talking about,
8 things that you don't see and you don't hear, that I
9 talked about in my opening.

10 All right. Consistently, the people there talk
11 about this second person, the one with the mask --
12 everybody -- we're on the same page about --
13 consistently, everybody said, that person was darker-
14 skinned. They didn't say, I couldn't see anything,
15 because he had a mask on all the time. They gave
16 descriptions. They said he was darker-skinned, darker-
17 skinned. James Wright is not even close to being
18 darker-skinned. He's lighter-skinned than Tyshon Barnes
19 and his brother.

20 If it's not important and if you didn't see it, you
21 don't say it. At least three of those people said, the
22 second guy was darker-skinned. Yeah, he had a mask on,
23 but he was darker-skinned. We could see that much. He
24 was darker-skinned. That is completely inconsistent
25 with the theory that they're going on, that Tyshon

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1 Barnes was the first guy in the door, and James Wright
2 was the second, the guy that put on the mask,
3 eventually. Again, reasonable doubt.

4 Then, getting back to the Terrence Brown issue that
5 wasn't investigated, one of the people said, during the
6 time that the guys were there, the company phone rang.
7 If you're robbing someplace, do you go and pick up the
8 phone and answer it? Chavis Moving and Storage, can I
9 help you? Of course not. What would that suggest?
10 Well, I don't know. One might say that means Terrence
11 Brown was calling to make sure everything was going all
12 right, the guy who just left two minutes before, who is
13 friends with Tyshon Barnes. Doesn't make a whole lot of
14 sense at all. But, unfortunately, was that
15 investigated? No.

16 How hard is it to get the phone records? It's a
17 company phone. Get their phone records, see who made
18 that call, Foskey. At least look into it. Give us
19 something. Help us get rid of the reasonable doubt.
20 It's right there in front of you.

21 Now, the lineups we talked about, well, apparently,
22 people couldn't pick out some, but we do know that
23 Tyshon Barnes was picked out of two lineups. And then,
24 for whatever reason, a lineup was shown that included
25 Tyshon's brother, Matthew, three years younger. And if

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1 you look at the picture, even by Tyshon's own testimony,
2 they don't look anything alike. So, writing it off,
3 well, you know, brother, brother, they don't look
4 anything alike. So, isn't it weird that somebody didn't
5 pick out Tyshon when he looked at that photo lineup,
6 looked at another one with Tyshon's brother in it, and
7 picked out his brother? The same brother who, four days
8 later, is in a car, speeding away from police, with
9 Tyshon and a guy named Benjamin Walker, after the post
10 office has just been robbed.

11 Three guys, including Tyshon Barnes, including his
12 brother Matthew, his younger brother, who is 17 at the
13 time, who he doesn't want to go down the same path as
14 him, who he's worried about, who he helped out by
15 confirming or giving him Matthew's story that Matthew
16 got picked up after Tyshon did the robbery. That
17 brother, the one he's helped out in the past. The one
18 he doesn't want to go down the same street he's going
19 down.

20 This whole place with seven people, at least going
21 around, and they get -- the only fingerprints they lift
22 are the ones that they brought to court, only useable.
23 I would suggest to you that the chance of that happening
24 are none, if you give half an effort to lift some
25 prints. We didn't hear about any, well they were, you

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1 know, we got a bunch, but they were smudged. These
2 fingerprints were taken, and there were no other ones.
3 Nancy Hill's fingerprint isn't on there? Well, maybe we
4 could, you know -- no other fingerprints just doesn't
5 make a lot of sense. There were no other useable.

6 They specifically told Foskey, hey, on the way out,
7 one of the guys touched the top of the file cabinet.
8 They said that somebody told him that day. Did they
9 process the file cabinet? I don't know. Probably not.
10 That would have been good, if somebody saw somebody do
11 it. And a file cabinet's got to be a good surface;
12 doesn't it? Those metal file cabinets, you put it down,
13 you can see the sweat from your fingers when you touch
14 something like that.

15 All right. Well, as a jury trying to decide this,
16 wouldn't it be nice to have the pictures from the Chavis
17 Moving and Storage, so you, as a jury, could say, okay,
18 I understand now. They came in the store, there's a
19 table right here. Whatever the case may be. Did you
20 take one single crime scene photo? No. It's just --
21 look, Foskey is a good investigator and a friend of
22 mine, and he is a good officer. He did not do a good
23 job on this case at all, and it was right there, staring
24 him in the face, things he could have done.

25 Well, we know the fingerprints are questionable.

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1 Did you get any hair from the place, or any fiber, or
2 anything we could run DNA on? No, I didn't even look
3 for it.

4 The Solicitor's falling into the same trap that
5 Foskey did: oh, we got fingerprints. Fingerprint,
6 fingerprint, fingerprint. But what the Solicitor, I
7 would submit to you, have realized in the past seven
8 years, is that there's problems with fingerprint
9 evidence. I'm going to talk to you about it in just a
10 minute. And it is not end-all, be-all. It is an
11 inexact science, and brings to the question, why would a
12 prosecutor -- why would a Solicitor's Office bring,
13 according to her, a thief and a robber? And she used
14 some other language about he was a bad dude from 2004 to
15 2008. They know this. Why would they bring him into
16 court -- and he's also a liar, by the way, because he's
17 been convicted of providing false information to the
18 police, just like he provided false information to you
19 that James Wright was there.

20 But nevertheless, just think about it. Why would
21 the -- why would the State go out of their way seven
22 years later? They went to him, remember? He's sitting
23 in jail, cooling out. It must have been -- looked like
24 manna from Heaven. Oh, my gosh, here's the answer to my
25 prayers. These people coming in, and they want to, you

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1 know -- he knew about what happened in the case, because
2 he was there. He's had a -- he pled guilty to it. He's
3 had a lawyer. He's looked at all the reports. Yeah, he
4 knows something about the case, because he was there.
5 All he was doing was adding in the wrong person, which
6 is James Wright, because guess what, hey Tyshon, when
7 we're talking about the trial of James Wright, we want
8 you to present -- we want you to testify truthfully
9 about James Wright.

10 We're here seven years later. Why would they do
11 that? Why would they try to help out this guy who is
12 nothing but bad news? Robbing people, robbing post
13 offices, sticking guns in people's face, lying to the
14 police, breaking in people's houses, the State, why
15 would they want to stick out their neck and help this
16 guy out? Because they knew. They knew that that
17 fingerprint wasn't all it's cracked up to be. They
18 wanted to try to bolster that testimony. They wanted to
19 try to give you something else. Why would they push?
20 This guy's got 39 years. I mean, what are they going to
21 reduce it to, 38 years? Or are they going to reduce it
22 to ten years? How much would you pay to get -- to not
23 go to jail for several years? As much as you have.
24 He'd pay millions, if you asked him, if he had it.
25 Well, he's just -- he's just doing the right thing and

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1 stuff like that. That's -- we know that. That's not
2 common sense. That is not common sense.

3 So, they've got to use him to try to bolster their
4 fingerprint, because they know there's a problem,
5 because there's nothing else that has any -- there's any
6 evidence that's believable against James Wright.
7 Nothing. So, their case rests on the shoulders of
8 Tyshon Barnes, who was deemed by the lawyer that called
9 him a thief and a robber and a bad dude.

10 You got to believe Tyshon Barnes to believe their
11 story. The Judge is going to tell you about assessing
12 the credibility of witnesses, the believability of
13 witnesses. You know, and maybe Tyshon has seen the
14 light, and he's a good guy now, and stuff like that.
15 But let me ask you this, talking about reasonable doubt,
16 the type of doubt that would cause a reasonable person
17 to hesitate to act and talking about credibility of
18 witnesses, if Tyshon Barnes came knocking on your door
19 this weekend, and knowing what you knew about him --
20 hey, I remember you. You were the guy that testified at
21 the trial. Yeah. What can I do for you, Mr. Barnes?
22 Listen, I have seen the light. I am doing the right
23 thing, and I'm a standup guy, and I've got a -- I'm
24 helping you out. I've got this investment opportunity
25 for you, and all you've got to do is give me some money,

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1 and I will double it, triple it, whatever. Trust me.

2 Well, that's a pretty important decision about
3 whether you're going to hand over any money; isn't it?
4 Knowing what you know about him, how much money are you
5 going to give him to invest? Not a red cent, and if you
6 can't trust him with one penny, how can you trust him to
7 convict James Wright?

8 You all may have noticed this. I put this over
9 here earlier. That is a copy of a picture that my
10 three-year-old proudly brought home from school not long
11 ago. Quite frankly, a lot of them look alike, but she
12 did that, and she brought that home. And as I was
13 looking at it, while it's not nearly as elaborate and
14 have all the things, you know, it's kind of like a --
15 it's kind of like a fingerprint, because it has these
16 different things going all around and stuff. I had --
17 of course, fingerprints have a lot more.

18 The fingerprints we're talking about, fingerprint
19 comparisons and ridges and all that kind of stuff, and
20 there's hundreds, not thousands of things they compare.
21 But one thing that was interesting about Sergeant
22 Wilson's testimony was, she talked about the thing
23 called AFIS, which is the Automated Fingerprint
24 Identification System, and that's a computer of all
25 these algorithms and everything else that will compare

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1 fingerprints.

2 And I mean, goodness knows what computers can do
3 nowadays. I mean, it's amazing. I mean, there's voice
4 recognition software. I mean, everything we do is a
5 computer, and it's absolutely amazing what computers can
6 do nowadays. I mean, it would probably scare us, what
7 they can do that we don't know about. But apparently,
8 what a computer cannot do, despite the best efforts and
9 everything else, is do fingerprints. And she said,
10 yeah, when we submit a fingerprint, usually AFIS sends
11 us 20 to 30 candidates to come back. And what a
12 candidate means is, it has those 20 or 30, however many
13 have consistencies in them that other fingerprints, that
14 have submitted fingerprint, that the latent print has.
15 Well, that makes sense. I mean, you know, for a spot
16 that big, you know, four or five billion people in the
17 world, obviously, there has to be some similarities, and
18 then, she said that there are. AFIS gives you about 20
19 to 30 candidates, and then, they're supposed to look at
20 them and then go through the analysis that she did.

21 So, they go through this elaborate process, and
22 they pick and choose some consistencies and say, we
23 found these consistencies, you know, we -- it's our
24 opinion that these fingerprints are there. Well, she
25 also testified that they have the capability and

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1 actually do this, of changing the size of the
2 fingerprints. I used to word *manipulate*. I didn't mean
3 to use it in a bad way, but she said they can move it if
4 it was -- if it's, you know -- if it's crooked, they can
5 straighten it up. They can move it, adjust it, color
6 it, stuff like that. So, they can do that on -- they
7 can do that on the known print, the ink print, as well
8 as the latent print. And she did somewhat of an example
9 of it. So, they can do that.

10 So. And then, she showed you, I think, eleven
11 points that she thought were consistently with each
12 other on the one she said.

13 So, I'm there last night looking at Olivia's
14 drawing -- and I'm no scientist, I went to law school,
15 and I don't have any technical training, but a
16 fingerprint's a fingerprint is a fingerprint. They keep
17 saying there was one fingerprint. Well, there's one
18 fingerprint. Let's make sure that it's the same one,
19 the exact same one. Not points of commonality, because
20 AFIS gives us 20 to 30 candidates. Let's make sure it's
21 the same one. How hard is that to do? Well, it wasn't
22 very hard for me to run over to Staples after court
23 yesterday and buy one of these transparent things like
24 this. My secretary is out this week. It also wasn't
25 very hard for me to put this into the copy machine and

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1 make a copy of Olivia's picture. It also wasn't -- so,
2 this would be the ink print, or the latent, and this
3 would be the ink print. It also was not very hard for
4 me to put them on top of each other and see that they
5 match. Did the State do that with this fingerprint
6 stuff? No. They wanted to pick and choose, and there
7 were some, like, I don't know, glare spots or problems
8 with the tape, or something like that. Did they do
9 that? No. If it was an exact match, wouldn't you have
10 transparency right on top of it? Wouldn't you? They
11 can do it. I can't do it. They can do it. They can
12 change the color. They can change the size. They can
13 do that. They can go to Staples, but they already have
14 it.

15 I mean, the things she did, it had all these black
16 arrows and numbers, I mean, letters and stuff like that.
17 That's a fingerprint match. Because again, there's 20
18 to 30 candidates, on average, that have characteristics
19 -- similar characteristics. Just like the similar
20 characteristics that she said, hey, these are some of
21 the characteristics, so, it's my opinion that that was
22 left by James Wright.

23 I'd submit to you, the State knew that. They knew
24 it seven years ago. They knew it in July, when they
25 decided to ride up and see Mr. Barnes, with the answer

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1 to his prayers, because they sure aren't getting any
2 other cooperation or any other evidence against Mr.
3 Wright any other way; are they? We've gone through
4 this.

5 I would submit to you that there's more evidence
6 that's also not even close to proof beyond a reasonable
7 doubt. I would suggest to you that there's been more
8 evidence against Kenneth Barnes than there has been
9 James Wright. Arguably, there's been more evidence
10 against Terrence Brown being involved than James Wright.
11 And if you watch Mr. Barnes, Tyshon Barnes, he stumbled
12 a little bit on this. You could tell, with this Food
13 Lion thing wasn't quite -- he hadn't quite figured that
14 one out. Maybe he didn't know about that. I think he
15 said he didn't know about it.

16 So, he couldn't testify truthfully, because he
17 didn't realize that was out there, that that card was
18 out there, that he had been -- somebody had been on tape
19 using that card. Said that they went straight home, and
20 then James left. At some time. I think he said
21 something like -- he didn't say when. This happened so
22 quick, the lady called her bank right away, and it was -
23 - they already -- they would have canceled the card.
24 And they knew exactly what happened, and they didn't go
25 to the Food Lion.

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1 So, when we talk about reasonable doubt, those
2 aren't red herrings. Red herrings are something to
3 throw you off the trail, something totally out there,
4 unrelated. These are direct problems, reasonable doubt
5 in the case. And how did you hear about them? Not when
6 they were asking questions. Most times, in finding the
7 truth, what's most important is not what you see or
8 hear, but what you don't see and you don't hear. Had I
9 not said anything, you wouldn't have heard any of this
10 stuff. Why? Because it's an inconvenient truth for the
11 State. It's a reasonable doubt.

12 All right. I think I put ten, ten of those
13 representing cyanide into the hundred ibuprofens. Same
14 color, same shape, same consistency, same smell,
15 everything. Okay? They're in there. It's a reasonable
16 doubt sitting there. If you had a headache right now, I
17 got some ibuprofen. I got to tell you, though, that ten
18 of those things are poison, and you can't really look at
19 them and tell the difference. But hey, I mean, if you
20 want to give it a shot, I mean, what's the worst thing
21 that could happen? Well, I could die because I've eaten
22 cyanide when I didn't mean to. That's what reasonable
23 doubt's all about. Would you take one of those? Of
24 course, not. And I mean, it's not -- obviously, I
25 didn't put poison on the bar, but that's for analogy

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1 purposes. Of course, you wouldn't take one. If there
2 was one in there, you wouldn't take it, because it's not
3 -- what do you have? Reasonable doubt. You hesitate.
4 Of course, you do. Of course, you do.

5 Ladies and gentlemen, this case is seven -- over
6 seven years old, and what have they -- what has the
7 State shown to you to erase reasonable doubt, to say,
8 hey, take the load, guys, here it is. We're handing it
9 off. There's no reasonable doubt. Here's the case, you
10 all take it. You all come back and find him guilty.
11 You all do the rest. What have they given you?
12 Nothing..

13 And you know, you keep hearing the -- she said,
14 well, James could have gone back to the Food Lion. When
15 you start hearing about could and might and sort of and
16 stuff like that, all of that's reasonable doubt. They
17 should be able to show what happened without giving you
18 reasonable doubt. But there's plenty of reasonable
19 doubt. I urge you, when you go back there, to talk
20 about reasonable doubt.

21 What I would ask you, respectfully, and Judge has
22 told you to not talk about is, why isn't Mr. Wright here
23 for his trial seven years later? It's just like,
24 failure to come so he doesn't testify. It's hard to put
25 yourself in a mind set, but you just need to do it for a

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1 little bit, of being a juror, even if you think that'd
2 be very, very important, one of those, when you're out
3 in everyday life. When you're here, the rules change a
4 little bit. I mean, they can tell you how long you've
5 got to sit down, when you go to eat, when you got to be
6 back. The rules change, and it's not fun, but those are
7 the rules. And it's, you know, you hate all these grown
8 people have rules, but I mean, some of us do.

9 If anybody goes back there and that comes up, I
10 would just ask -- ask you all to say, hold on a minute.
11 The Judge told us that we can't talk about the fact that
12 Mr. Wright wasn't here. It happened seven years ago.
13 They've had seven years. The State and all of its
14 resources, all of its investigators, all of its experts,
15 all of its smart boards and computers and people working
16 for them to bring the case to you all, so you can feel
17 good about finding absolutely no reasonable doubt in
18 convicting this guy, and they have failed miserably.
19 And it's nobody's fault fault. It's just where we all
20 are, in this position you all have been put in.

21 But they haven't carried their burden. They're not
22 being fair to you and asking you with a straight face,
23 we want you to convict this guy. You wouldn't eat the
24 aspirin. You wouldn't give Tyshon Barnes a nickel out
25 of your pocket. You can't trust him. And the fact that

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1 they even brought him and want you to believe him, and
2 want you to say that he supports their shaky fingerprint
3 technology stuff, I mean, I haven't been -- I haven't
4 been to medical school or anything, but I know how you
5 compare two things. And if they had that, if that was
6 the case, don't you think it would be front and center
7 on the 80-inch-wide screen they have here? Of course,
8 it would. It would be right up there on that television
9 to look at, and it's not. And that should be enough in
10 and of itself, besides the fact that, why would they
11 call Tyshon Barnes? Because they know, deep down,
12 there's a problem.

13 So, in closing, there's a lot of reasonable doubt,
14 a lot. We appreciate you being here. I would ask that
15 you go back and talk about it. There are some exhibits
16 they've got. I'm not exactly sure why, I mean, a Piggly
17 Wiggly employee handbook is there. I'm not sure what
18 you all are going to do with that. Wouldn't an overlap
19 of fingerprints have been better than a Piggly Wiggly
20 fingerprint? Or wouldn't the video from the Food Lion
21 been better, or wouldn't DNA evidence have been better?
22 Or wouldn't phone records showing who called that day?
23 Wouldn't an interview with Terrence Brown have been
24 better? Wouldn't a picture of the scene have been
25 better?

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1 You've got a Piggly Wiggly handbook. Go read that,
2 if you want to. I'm not sure that has -- talk about a
3 red herring. That's the definition of a red herring.
4 Well, one of them said somebody came in with a Piggly
5 Wiggly handbook.

6 We respectfully ask you to go back and deliberate,
7 consider all these things. We appreciate your time, and
8 obviously, our wish, our hope, and we'll await your
9 word, is that you come back with a not guilty verdict.
10 Thank you.

JURY CHARGE, BY THE COURT:

11 THE COURT: Madam Foreperson, ladies and gentlemen
12 of the jury, you've all very patiently and listened very
13 attentively to the presentation of the evidence in this
14 case, and I want to thank you for that. It now becomes
15 the duty of the trial judge, under the constitution of
16 this state, to charge and instruct you on the law that's
17 applicable to this case, and it's your duty, as jurors,
18 to accept and apply the law as I will now state it to
19 you.
20

21 Ladies and gentlemen, as jurors, it is your
22 exclusive duty to decide all the issues of fact in this
23 case. You must determine the effect, the value, the
24 weight, and truth of the evidence.

25 Both the State and defendant have a right to expect

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1 that you will carefully consider and evaluate the
2 evidence and apply the law of the case to the evidence.
3 By doing so, both the State and the defendant will
4 receive and attain a fair and impartial trial in this
5 matter.

6 Now, ladies and gentlemen, the State of South
7 Carolina, by the bills of indictment in this case,
8 charge the defendant, James Wright, with armed robbery
9 and kidnaping. I remind you that the fact that the
10 defendant was arrested, charged and indicted in this
11 case is not evidence in this case, and cannot be
12 considered by you as evidence of guilt in this case; nor
13 does it create any presumption or inference of guilt.

14 This document is simply the formal written
15 instrument that contains the charge made against the
16 defendant. It's the formal document by which this case
17 is brought into this courtroom.

18 Ladies and gentlemen, the defendant has pled not
19 guilty to the indictments, and that plea puts the burden
20 on the State to prove the defendant guilty beyond a
21 reasonable doubt. A person charged with committing a
22 criminal offense in South Carolina is never required to
23 prove himself innocent. I charge you that it's an
24 important rule of law that the defendant in a criminal
25 trial, no matter what the seriousness of the charges may

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1 be, will always be presumed to be innocent of the crime
2 for which the indictment was issued, unless guilt has
3 been proven by evidence satisfying you, the jury, of
4 that guilt beyond a reasonable doubt.

5 Ladies and gentlemen, this presumption of innocence
6 does not end when you begin your deliberations, but it
7 accompanies the defendant throughout the trial, until
8 you reach a verdict of guilt, based on evidence
9 satisfying you of that guilt beyond a reasonable doubt.

10 Ladies and gentlemen, the presumption of innocence
11 is like a robe of righteousness that's placed about the
12 shoulders of the defendant, and it remains with the
13 defendant until it has been stripped away by evidence
14 satisfying you, the jury, of the defendant's guilt
15 beyond a reasonable doubt.

16 Ladies and gentlemen, the presumption of innocence
17 is not a mere legal theory. It's not just a legal
18 phrase we use. It is a substantial right to which every
19 defendant is entitled, unless you, the jury, are
20 satisfied from the evidence of the defendant's guilt
21 beyond a reasonable doubt.

22 Ladies and gentlemen, as you know, the State has
23 the burden of proving the defendant guilty beyond a
24 reasonable doubt, and what does that mean? Well, the
25 term *reasonable doubt* must be given its plain and

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1 ordinary meaning. However, to the extent that I may
2 define it for you, a reasonable doubt is the kind of
3 doubt that would cause a reasonable person to hesitate
4 to act in the most important of their personal
5 decisions.

6 Ladies and gentlemen, the defendant is entitled to
7 every reasonable doubt arising in this case. If, upon
8 any issue of fact essential to a conviction you have a
9 reasonable doubt as to how that issue should be
10 resolved, you must resolve that reasonable doubt in
11 favor of the defendant.

12 Ladies and gentlemen, proof beyond a reasonable
13 doubt is proof that leaves you firmly convinced of the
14 defendant's guilt.

15 Now, ladies and gentlemen, there are very few
16 things in this world that we know with absolute
17 certainty, and in criminal cases, the law does not
18 require proof that overcomes every possible doubt. If,
19 based on your consideration of the evidence, you are
20 firmly convinced that the defendant is guilty of the
21 crimes charged, you must find the defendant guilty. If,
22 on the other hand, you think there is a real possibility
23 the defendant is not guilty, you must give the defendant
24 the benefit of the doubt and find him not guilty.

25 Ladies and gentlemen, I remind you that, during

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1 this trial, you and I have certain duties to perform.
2 As the judge, it's my responsibility to rule as a matter
3 of law and preside over the trial of the case, and I
4 also have to rule as to the admissibility of the
5 evidence that's offered during the trial.

6 Ladies and gentlemen, you are to consider only the
7 competent evidence before you. You are to consider only
8 the testimony which has been presented from the witness
9 stand and any other exhibits which have been made a part
10 of the record of this case.

11 I have the additional duty to charge you the law
12 that's applicable to this case. I'm the sole judge of
13 the law, and it's your duty, as jurors, to accept and
14 apply it as I now state it to you. If you have any idea
15 as to what the law is or what you think the law ought to
16 be, and it does not agree with what I now tell you the
17 law is, you must abandon this idea, because you are
18 sworn to accept and apply the law exactly as I state it
19 to you.

20 Ladies and gentlemen, in every case tried in this
21 court before a jury, the jury is the sole and exclusive
22 judge of the facts. A trial judge cannot intimate,
23 comment on, or make any statement to a trial jury about
24 the facts in a case. Since you, the jury, are the sole
25 judge of the facts in this case, you are not to infer

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1 from what I've said during the progress of this trial,
2 in ruling upon the admissibility of evidence or
3 otherwise, or anything that I saw now to you during the
4 course of this instruction that I have an opinion about
5 the facts of this case. The law does not allow me to
6 have an opinion about the facts in this case. This is a
7 matter solely for you, the jury, to determine, and I
8 remind you, as jurors, it's your duty to determine the
9 effect, the value, the weight, and the truth of the
10 evidence that's been presented in this trial.

11 Now, ladies and gentlemen, there are two types of
12 evidence which are generally presented during a trial.
13 That is direct evidence and circumstantial evidence.
14 Direct evidence directly proves the existence of a fact
15 and does not require deduction. Circumstantial evidence
16 is proof of a chain of facts and circumstances
17 indicating the existence of a fact.

18 Ladies and gentlemen, crimes may be proven by
19 circumstantial evidence. The law makes absolutely no
20 distinction between the weight or value to be given to
21 either direct or circumstantial evidence. However, to
22 the extent the State relies on circumstantial evidence,
23 all the circumstances must be consistent with each
24 other, and when taken together, point conclusively to
25 the guilt of the accused beyond a reasonable doubt. If

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1 these circumstances merely portray a defendant's
2 behavior as suspicious, the proof has failed.

3 Ladies and gentlemen, I remind you, the State has
4 the burden of proving the defendant guilty beyond a
5 reasonable doubt, and this burden rests with the State,
6 regardless of whether the State relies on direct
7 evidence, circumstantial evidence, or some combination
8 of the two.

9 Now, ladies and gentlemen, it is your duty to
10 determine the credibility of the witnesses who have
11 testified in this case, and credibility simply means
12 believability. It's your duty as jurors to analyze and
13 evaluate the evidence and determine which evidence
14 convinces you of its truth. In determining the
15 believability of witnesses who have testified in this
16 case, you may believe one witness over several
17 witnesses, or several witnesses over one witness. You
18 may believe a part of the testimony of a witness and
19 reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in
21 its entirety or reject the testimony of a witness in its
22 entirety. You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice, or other
24 motive in this case, and you may also consider the
25 appearance and manner of a witness while on the witness

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1 stand.

2 Ladies and gentlemen, the rules of evidence
3 ordinarily do not permit witnesses to testify to
4 opinions or conclusions. An exception to this rule
5 exists for witnesses that we call expert witnesses, a
6 witness who, by education and experience has become and
7 expert in some art, science, or profession may give an
8 opinion as to the subject the witness claims to be an
9 expert in, and may also give the reasons for the
10 opinion. You should consider any expert opinion given
11 by a witness, and like any other evidence, give it the
12 weight you think it deserves. If you decide that an
13 expert witness's opinion is not based on sufficient
14 education and experience, or if you decide that the
15 reasons given in support of the opinion are not sound,
16 or that the opinion is outweighed by other evidence, you
17 may disregard the opinion entirely. An expert witness's
18 testimony is to be given no greater weight than that of
19 other witnesses, simply because the witness is an
20 expert, and you do not have to accept an expert's
21 opinion, even though it is uncontradicted.

22 Now, ladies and gentlemen, at the beginning of the
23 trial, I explained and I remind you now that, under the
24 laws of this state, a defendant may be tried, even if a
25 defendant is not at the trial. But ladies and

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1 gentlemen, the fact that the defendant is not present
2 may not be considered against him in any manner
3 whatsoever.

4 I also instruct you and emphasize, the fact that
5 the defendant in this case did not take the witness
6 stand and testify is not a factor for you to be
7 considered in any manner whatsoever in determining the
8 guilt or innocence of the defendant.

9 Ladies and gentlemen, a defendant has a
10 constitutional right to remain silent. The fact that
11 the defendant has asserted that right cannot be held
12 against him in determining his guilt or innocence, and
13 it must not be discussed by you back in the jury room
14 during your deliberations.

15 Ladies and gentlemen, I repeat to you, under your
16 oath as jurors, you are to draw no conclusions
17 whatsoever from the fact that the defendant in this case
18 did not take the witness stand and testify in his
19 behalf. Again, as I stated to you before, the fact that
20 he did not testify should not even be discussed by you
21 or mentioned in the jury room.

22 Ladies and gentlemen, the defendant is not required
23 to prove that he is innocent. The State has the burden
24 of proving that he is guilty of the charges against him,
25 and the State must prove that beyond a reasonable doubt.

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1 Now, ladies and gentlemen, a person who has a past
2 criminal record is competent to testify during a trial.
3 A past record does not affect the ability of that
4 witness to testify. The past record may only be
5 considered by you, if at all, in determining the
6 witness's believability.

7 Remember, ladies and gentlemen, you are the sole
8 judges of the facts in this case, and of the
9 believability of any and all of the witnesses.

10 Now, ladies and gentlemen, the defendant is charged
11 with two separate offenses in this case, armed robbery
12 and kidnaping, and you must decide each offense on its
13 own.

14 Ladies and gentlemen, again, the first charge is
15 armed robbery. In order to prove this offense, the
16 State must first prove, beyond a reasonable doubt, that
17 the defendant took personal property from a person or
18 presence of another person.

19 Ladies and gentlemen, property is in the presence
20 of a person if it is within the person's reach,
21 inspection, observation, or control, so that the person
22 could, if not overcome with violence or prevented by
23 fear, keep possession of the property.

24 Ladies and gentlemen, the State must also prove,
25 beyond a reasonable doubt, that the defendant carried

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1 the property away, intending to permanently deprive the
2 owner of the property, and to keep the property for the
3 defendant's own use.

4 Ladies and gentlemen, the slightest removal of the
5 property or the complete possession of the property,
6 even for an instant, by a defendant, is sufficient to
7 show a taking and carrying away of the property.

8 Ladies and gentlemen, the taking and carrying away
9 of the property must have been done with violence, or by
10 putting the owner of the property in fear of violence.

11 Ladies and gentlemen, finally, to prove armed
12 robbery, the State must prove, beyond a reasonable
13 doubt, that the defendant was armed with a deadly
14 weapon, or by alleging, either by actions or words, that
15 he was armed while using a representation of a deadly
16 weapon, or any object which a person present during the
17 commission of the robbery reasonably believed to be a
18 deadly weapon, during the robbery.

19 Ladies and gentlemen, the following are just a few
20 examples of instruments which may be deadly weapons: a
21 pistol, a shotgun, rifle, dirk, dagger, knife or
22 slingshot.

23 Ladies and gentlemen, a gun may be a deadly weapon,
24 even if it is not operating. Now, ladies and gentlemen,
25 in this case, the defendant is also charged with

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1 kidnaping. To prove kidnaping, the State must prove,
2 beyond a reasonable doubt, the defendant knowingly and
3 unlawfully seized, confined, inveigled, decoyed,
4 kidnaped, abducted, or carried away another person
5 without authority of law.

6 Ladies and gentlemen, to do a thing unlawfully is
7 to do it willfully, against the law, and knowingly means
8 with knowledge or conscientiously, not accidentally.
9 Seize means to take hold of suddenly or forcibly.
10 Confine means to limit, restrict or enclose within
11 bounds, imprison, or shut or keep in. Inveigle means to
12 lure or entice, or lead astray by false representations,
13 promises or other deceitful means. And decoy means to
14 lure by or as if by decoy.

15 Ladies and gentlemen, a decoy is something to
16 entice a person into a trap.

17 Ladies and gentlemen, kidnap is to remove a person
18 against their will by unlawful force or by fraud, and
19 abduct means to carry off secretly or by force for an
20 illegal purpose, and carry away means to remove.

21 Ladies and gentlemen, the State does not have to
22 prove that the defendant did all of these things.
23 Instead, if you find, beyond a reasonable doubt, that
24 the defendant did any of these things, you may find the
25 defendant guilty of kidnaping.

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1 Ladies and gentlemen, I also tell you that
2 something done without authority of law is something
3 which the law does not sanction, permit, allow, condone,
4 or provide justification for. The kidnaping does not
5 have to be for any personal or monetary gain or illegal
6 purpose, but may be for any reason whatsoever.

7 Madam Foreperson, members of the jury, as you
8 retire to begin your deliberations in this case, I wish
9 to express the hope that each of you are mindful of the
10 importance of your responsibility here today. You're
11 not called upon very often to serve as jurors, and the
12 proper performance of that duty requires that each of
13 you reach the height of freeing your mind of all
14 improper influences.

15 Ladies and gentlemen, please don't get the idea
16 that I'm trying to intimate to you how I think you
17 should decide this case. As I've already told you,
18 under the laws, you, the jury, are the sole judge of all
19 questions of fact, and it would be highly improper for
20 me to influence you in your performance of that duty.
21 However, ladies and gentlemen, as the presiding officer
22 of this court, I am vitally concerned that whatever
23 verdict you reach will be the result of you going back
24 into your jury room and confining your consideration to
25 the evidence and the law that you've heard here in this

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1 courtroom, weighing it fairly and impartially, as I have
2 every confidence you will, ladies and gentlemen. You
3 owe no support or sympathy to anyone.

4 Now, I remind you that your verdict must be
5 unanimous. It must be the verdict of all twelve jurors,
6 and to that end, my law clerk has prepared a verdict
7 form. It simply has a case caption and the indictment
8 numbers, and it has two questions, both of which you
9 must answer, Madam Foreperson.

10 The first states:

11 As to *Indictment Number 2010-GS-07-01926*,
12 *the charge of armed robbery, we, the jury,*
13 *unanimously find the defendant, James Wright, --*
14 *and either*
15 *not guilty or guilty.*

16 As to *Indictment Number 2012-GS-07-01927*,
17 *the charge of kidnaping, we, the jury,*
18 *unanimously find the defendant, James Wright --*
19 *and again, either*
20 *-- guilty or not guilty.*

21 And I apologize, there is a scribner's error. They
22 both should be 2010, and I'll make that correction
23 before it's sent to you.

24 Ladies and gentlemen, you need to mark, simply,
25 guilty or not guilty, and please don't infer by the

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1 order that I put not guilty or guilty as having any
2 significance. My law clerk switches them at every
3 single trial. All right?

4 Madam Foreperson, there is a line for you to sign
5 your name when the jury has reached a verdict, and a
6 place for you to date it.

7 When the jury has reached a unanimous verdict, I
8 ask that you to knock on your jury room door, and we
9 will accept you back in the courtroom to hear your
10 verdict.

11 Ladies and gentlemen, for the very last time, I'm
12 going to send you back to your jury room, and I'm going
13 to tell you not to discuss this case. If there's
14 something further on the law that the lawyers want me to
15 charge you, I'm going bring you back out, and I'm going
16 to charge your further. If not, I am going to send this
17 verdict form, corrected, of course, along with the
18 evidence in the case, to you, and that will be your
19 signal to begin your deliberations. All right?

20 Ladies and gentlemen, thank you for your attention.
21 I'm going to send you back now.

22 JURORS LEAVE COURTROOM 11:12 A.M.

23 BAILIFF: Jury is clear, your Honor.

24 THE COURT: Thank you, Al. Any exceptions or
25 additions from the State?

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1 MS. HENDERSON: None from the State, your Honor.

2 THE COURT: From the Defense?

3 MR. LEE: None from the Defense, your Honor.

4 THE COURT: Okay. Thank you.

5 MR. LEE: That's the first verdict form I've ever
6 had in 20 years that says not guilty first.

7 THE COURT: Really?

8 MR. LEE: Yeah. Because the judge always says they
9 randomly pick those, and then, it's always guilty first.
10 I'm glad to see that.

11 THE COURT: You must be on the opposite side.
12 Okay. All right, you all. Let's go through the
13 evidence and make sure we've got everything.

14 MR. LEE: Judge, do you want to cut the alternate
15 loose, or?

16 THE COURT: Yes, I'm going to cut him loose, if
17 that's fine with you all, I plan on it, yes.

18 MR. LEE: Yes.

19 MS. HENDERSON: When the Court exhibits go back
20 or --

21 THE COURT: When you send them back, we'll bring
22 him, yes.

23 MR. LEE: You okay with cutting the alternate
24 loose?

25 MS. HENDERSON: Yeah, Oh, yeah.

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1 THE COURT: Here's the indictments, LaSandra.

2 MADAM CLERK: Okay.

3 THE COURT: Okay. Do you mind giving this to
4 Wanda?

5 BAILIFF: Are you ready for me to take it back?
6 You want the alternate?

7 THE COURT: Yes. And you have the verdict form,
8 right?

9 BAILIFF: Yes, ma'am.

10 THE COURT: Yes. Perfect. Thank you.

11 JURORS BEGIN DELIBERATION 11:14 A.M.

12 BAILIFF: Your Honor, Mr. Roemeling, the alternate.

13 THE COURT: Thank you. Mr. Roemeling, how are you,
14 sir?

15 JUROR NUMBER 279: Good.

16 THE COURT: Thank you for serving as an alternate
17 in this case. We lost one juror, which, we still don't
18 know if there's a baby yet. We're waiting, and we're
19 going to call her mother. But at this time, I'm going
20 to go ahead and release you. The only thing I ask is
21 that, if you have made friends with anyone on the jury,
22 I don't want you speaking to them until and unless
23 they've reached a verdict.

24 And if you want to stay, you are welcome to. If
25 you want to go home, I can give you my law clerk's --

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1 you give us your phone number, and if you're interested
2 in what the verdict is, we can call you and tell you.

3 JUROR NUMBER 279: Yes.

4 THE COURT: Certainly. So, if you would, if you'll
5 just give Wanda your phone number, if that's all right
6 with you, we'll call you. But thank you for being here,
7 and thank you for serving.

8 I will also tell you, too, sometimes the lawyers
9 may want to ask you what you think. That's permissible,
10 but you're not required to discuss it.

11 JUROR NUMBER 279: Okay.

12 THE COURT: Completely up to you, and if you want
13 to, you can go home and discuss it now, at this point.

14 JUROR NUMBER 279: Okay.

15 THE COURT: You're free to do that. All right?
16 But you've earned your exemption for the next three
17 years. I can tell you that this case is going to be
18 resolved today. They are finishing up the first armed
19 robbery. This is the second armed robbery case we're
20 trying right now.

21 JUROR NUMBER 279: Okay.

22 THE COURT: So, we've moved a lot of cases this
23 week, and I'll start taking guilty pleas, once they can
24 bring them over from the jail. So, we keep working
25 while you all are back there. But thank you for being

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1 here.

2 JUROR NUMBER 279: You're welcome.

3 THE COURT: We really appreciate it.

4 JUROR NUMBER 279: It was quite an experience.

5 THE COURT: Good. I'm glad. I'm glad. All right,
6 guys. Well, we'll be at ease in this case until, you
7 know, we hear back from the jury.

8 OFF THE RECORD 11:15 A.M.

9 BACK ON THE RECORD 12:26 P.M. ...

10 BY THE COURT:

11 THE COURT: Let's bring the jury in, Al.

12 BAILIFF: Yes, ma'am.

13 BAILIFF: May I approach, your Honor?

14 THE COURT: You may, sir.

15 BAILIFF: Jury entering, your Honor.

16 THE COURT: Thank you.

17 JURORS ENTER COURTROOM 12:28 P.M.

18 BAILIFF: Thank you. Madam Foreperson, I
19 understand the jury has reached a verdict.

20 MADAM FOREPERSON: Yes, your Honor.

21 THE COURT: Will you please hand it to the bailiff?
22 Do you want to publish it, LaSandra?

23 MADAM CLERK: Yes, ma'am.

24 THE COURT: Thank you.

25 VERDICT, BY MADAM CLERK:

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1 MADAM CLERK: Yes, ma'am.

2 The State of South Carolina versus James
3 Wright, Indictment Number 2010-GS-07-01926,
4 2010-GS-07-01927.

5 As to the indictment 2010-GS-07-01926, for
6 the charge of armed robbery, we, the jury,
7 unanimously find the defendant, James Wright,
8 guilty.

9 As to Indictment 2010-GS-07-01927, the
10 charge of kidnaping, we, the jury, unanimously
11 find the defendant, James Wright, guilty.

12 Signed by Forelady. Madam Forelady, was this
13 your verdict?

14 MADAM FOREPERSON: Yes, ma'am.

15 MADAM CLERK: If all agrees, would you please raise
16 your right hand. Thank you.

17 ALL JURORS RAISED THEIR RIGHT HANDS.

18 THE COURT: Thank you. Is there anything further
19 required from this jury? Do you want me to individually
20 poll them, Mr. Lee?

21 MR. LEE: I would ask you to do that, please.

22 THE COURT: Okay. Thank you, LaSandra.

23 JURORS POLLED, BY MADAM CLERK:

24 MADAM CLERK: Yes, ma'am. Madam Forelady, Linna
25 Frederick, would you please stand? Is this your

STATE V WRIGHT

1 verdict?

2 JUROR NUMBER 106: Yes, ma'am.

3 MADAM CLERK: Is it still your verdict?

4 JUROR NUMBER 106: Yes, ma'am.

5 MADAM CLERK: Thank you, ma'am. Abigail Morris,
6 was this your verdict?

7 JUROR NUMBER 227: Yes, it was.

8 MADAM CLERK: Is it still your verdict?

9 MR. NORRIS: 227: Yes, it is.

10 MADAM CLERK: Thank you. Paul Keyserling, was this
11 your verdict?

12 JUROR NUMBER 175: Yes.

13 MADAM CLERK: Is it still your verdict?

14 JUROR NUMBER 175: Yes.

15 MADAM CLERK: Michael Gatterman, was this your
16 verdict?

17 JUROR NUMBER 112: Yes.

18 MADAM CLERK: Is it still your verdict?

19 JUROR NUMBER 112: Yes.

20 MADAM CLERK: Joyce Miller, was this your verdict?

21 JUROR NUMBER 224: Yes, ma'am.

22 MADAM CLERK: Is it still your verdict?

23 JUROR NUMBER 224: Yes.

24 MADAM CLERK: Megan McGrath, was this your verdict?

25 JUROR NUMBER 212: Yes.

STATE V WRIGHT

1 MADAM CLERK: Is it still your verdict?
2 JUROR NUMBER 212: Yes.
3 MADAM CLERK: Laura Lewis, was this your verdict?
4 JUROR NUMBER 195: Yes.
5 MADAM CLERK: Is it still your verdict?
6 JUROR NUMBER 195: Yes.
7 MADAM CLERK: Jerri Meisner, was this your verdict?
8 JUROR NUMBER 220: Yes.
9 MADAM CLERK: Is it still your verdict?
10 JUROR NUMBER 220: Yes.
11 MADAM CLERK: Francis Herman, was this your
12 verdict?
13 JUROR NUMBER 147: Yes.
14 MADAM CLERK: Is it still your verdict?
15 JUROR NUMBER 147: Yes.
16 MADAM CLERK: Sharon Williams, was this your
17 verdict?
18 JUROR NUMBER 340: Yes.
19 MADAM CLERK: Is it still your verdict?
20 JUROR NUMBER 340: Yes.
21 MADAM CLERK: Walter Delaney, was this your
22 verdict?
23 JUROR NUMBER 70: Yes.
24 MADAM CLERK: Is it still your verdict?
25 JUROR NUMBER 70: Yes.

STATE V WRIGHT

1 MADAM CLERK: And Gerald Wynn, was this your
2 verdict?

3 JUROR NUMBER 348: Yes.

4 MADAM CLERK: Is it still your verdict?

5 JUROR NUMBER 348: Yes.

6 MADAM CLERK: Thank you.

7 THE COURT: Thank you. Anything further required
8 from this jury from the State?

9 MS. HENDERSON: Nothing from the State, your Honor.

10 THE COURT: From the Defense?

11 MR. LEE: No, your Honor.

12 THE COURT: Ladies and gentlemen, thank you. You
13 have helped us resolve not only this case, but when I
14 start a docket at the beginning of each term of court,
15 which is on a Monday through Friday, we start with a
16 number of cases. While you all have been back there
17 deliberating, we have been taking guilty pleas. I could
18 never try all the cases that are before us in Beaufort
19 County, or anywhere in the state, for that matter. We
20 dispose of them by other means -- conditional
21 discharges, people plead guilty and waive their right to
22 a jury trial for some benefit in their sentencing.

23 I will tell you, in this case, because Mr. Wright
24 is not present, I am going to go ahead and sentence him,
25 but it will be under seal. No one will know what my

STATE V WRIGHT

1 sentence is until they find him and bring him in. And
2 then, at that point, we bring him forward, and then I
3 reveal what the sentence is. All right?

4 So, I can't tell you what kind of time he's going
5 to get. No one in the room, actually, will know what it
6 is, other than me. All right? Typically, if they were
7 here, I would sentence them in front of you, if you
8 wished to stay, but in this case, I can't. I can tell
9 you that armed robbery carries a mandatory minimum of
10 ten years in prison. So, just to let you know kind off
11 what we're talking about, that would be the absolute
12 possible minimum.

13 Ladies and gentlemen, at this time, you are
14 permitted to discuss the case if you want, when you go
15 home and see family and friends. Additionally,
16 sometimes the attorneys may ask you what you think or,
17 you know, what was your impression. They are permitted
18 to do that, but of course, you're never required to talk
19 to anyone in regards to the case. If you are not
20 interested in discussing it, say, no, thank you, and you
21 can simply walk away. Or if, for some reason, someone
22 persists, I want you to either call up or go to the
23 Clerk's Office and tell them, and I will take care of
24 them. I can tell you, I have, only once, had that as a
25 problem in my nine years on the Bench.

STATE V WRIGHT

1 We are very respectful of our juries, clearly, and
2 we really appreciate the hard job you do. You know, I
3 say in my charge all the time, you don't sit in this
4 position very often, and you really don't, and it is
5 difficult, and I appreciate it, and this entire system
6 does not work without having people willing to serve.
7 And I always state this, the only reason why every
8 person in this courthouse has a job or is here is
9 because we have jurors and people of Beaufort County
10 that are willing to come up here and put aside their
11 families and their obligations, and decide these
12 important issues for our society, and we are grateful
13 for it. So, please understand the importance of it.

14 And again, we get to go ahead and release you for
15 the rest of the week. We'll still be here working. If
16 you have any interest, you're welcome to stay and watch.
17 Again, I'm doing guilty pleas, and I'll do, I'm sure,
18 probation violations this week. I'll be setting bonds,
19 doing a lot of different things. But we're going to
20 continue doing the county's business.

21 And if you need a work excuse, you can go ahead and
22 get that from your bailiffs. They'll give it to you,
23 but at this time, I'm going to go ahead and excuse you
24 back to your jury room. Thank you.

25 JURORS LEAVE COURTROOM 12:34 P.M.

STATE V WRIGHT

1 BY THE COURT:

2 BAILIFF: The jury is clear, your Honor.

3 THE COURT: You want to take five minutes, you all,
4 or?

5 MS. HENDERSON: We were just asking, Scott wasn't
6 sure if there was an issue with an armed robbery and
7 kidnaping could not be run consecutive, but I don't -- I
8 don't know.

9 MR. LEE: I think they may transmute. I'm not sure
10 if consecutive is permitted on that combination. I
11 don't have it in front of me, but that's kind of what my
12 recollection is.

13 THE COURT: You think it's required?

14 MR. LEE: No.

15 MS. HENDERSON: No.

16 MR. LEE: I think that it cannot be consecutive,
17 because it's from the same --

18 MS. HENDERSON: He's saying that he doesn't think
19 it's an option.

20 THE COURT: Okay.

21 MS. HENDERSON: But I don't know.

22 THE COURT: Well, I wasn't going to give him
23 consecutive time.

24 MR. LEE: Okay. Well, it's not an issue. I just
25 thought we needed to --

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1 THE COURT: Sorry.

2 MR. LEE: I appreciate that.

3 THE COURT: Okay.

4 MS. HENDERSON: I didn't ask for it. I just didn't
5 know. He just asked if I knew if that was the case, and
6 I've never heard of that, so I wasn't sure.

7 DEFENSE MOTIONS AND RENEWAL OF

8 DEFENSE MOTIONS, BY MR. LEE:

9 MR. LEE: Judge, and at this time, I would renew
10 all my previous motions that I made, directed verdict
11 motions, motion to dismiss because of the loss of
12 videotape, as well as the testimony that came in
13 additionally about the clothing description that we
14 believe showed the exculpatory nature of the video, had
15 we been able to have it.

16 And then, I would also, you know, renew all of
17 those, and ask that the Court to reconsider as a
18 judgment notwithstanding the verdict, and make a motion
19 for a new trial, based upon the denial of all previous
20 motions.

21 THE COURT: Thank you. I appreciate that, and
22 respectfully I deny, based on the same original grounds.

23 Is there anything you need to tell me about Mr.
24 Wright, as far as the sentencing is concerned?

25 MR. LEE: Yes, ma'am. Mr. Wright went through the

STATE V WRIGHT

1 eleventh grade at Jasper High School. He got out in --
2 he got out. He has obtained his GED. He had been
3 working most recently at a landscaping company. He's
4 not married. He doesn't have any kids. He grew up in
5 Ridgeland, lived there his whole life.

6 THE COURT: Do you know what landscaping company he
7 works for?

8 MR. LEE: I don't think I have it down.

9 THE COURT: No worries. Okay.

10 MR. LEE: And Judge, I'll just tell you this, I
11 mean --

12 THE COURT: Let me ask you this, if you don't mind.

13 MR. LEE: Sure.

14 THE COURT: Since 2007, has he been in anymore
15 trouble?

16 MR. LEE: Well, I mean, that's --

17 THE COURT: We were talking about these --

18 MR. LEE: I guess the definition of trouble. I
19 mean, he's --

20 THE COURT: We've got the Jasper charges that you
21 have dismissed, correct?

22 MR. LEE: Right.

23 THE COURT: And then, obviously, they are not
24 convictions, but what did you dismiss against him? Not
25 that I'm going to consider it.

STATE V WRIGHT

1 MS. HENDERSON: No, I know. It was -- it was a
2 home invasion, tied up the victims and robbed them at
3 gunpoint and stole the car.

4 MR. LEE: And I believe, since then, since '07 --

5 THE COURT: What year was that?

6 MS. HENDERSON: Your Honor, that was 2007. That's
7 what revoked his probation.

8 THE COURT: Got it.

9 MS. HENDERSON: It's those charges where he went
10 and did five years.

11 THE COURT: Okay.

12 MS. HENDERSON: And then came out in 2010, and
13 these warrants were served on him. And then, Scott and
14 I still can't quite figure out how he got out. The jail
15 in Jasper County appears to have just let him go.

16 MR. LEE: Yeah. And then, he came over here --

17 MS. HENDERSON: We're not even sure he posted a
18 bond, so.

19 MR. LEE: He came over here because he had all of
20 them, they he gave an O.R. bond on these charges, which
21 surprised me.

22 THE COURT: So, what's his prior record, then?

23 MS. HENDERSON: Your Honor, his prior record is, he
24 has a juvenile 2003 attempted burglary and strong-armed
25 robbery. 2004, grand larceny. 2005, grand larceny,

STATE V WRIGHT

1 burglary second degree, criminal conspiracy and
2 possession and making, you know, the possession of tools
3 for a burglary. And 2005, burglary third degree.

4 THE COURT: Okay. I'm sorry, Mr. Lee. I didn't
5 mean to cut you off.

6 MR. LEE: No, I know.

7 THE COURT: What else did you want to tell me about
8 him?

9 MR. LEE: Judge, you know, I'll say this. I've
10 represented him for awhile, obviously, and he's usually
11 pretty good about calling me back and, you know, showing
12 up for roll call, for the most part. And then, you
13 know, we had some long discussions, as you know. I
14 mean, last week, we had -- I bugged and bugged and
15 bugged Ms. Henderson, and we finally agreed a negotiated
16 ten on this, and I was given a deadline of Thursday at
17 12:00 to have him signed up. So, I got him in the
18 office on Wednesday, got him signed up, extensively told
19 him the dangers of him not coming to court on Monday to
20 do the plea, over and over.

21 I spoke with a friend of his, Yolanda, on Friday,
22 when she called about the court date, and stressed the
23 importance. I have continued to do that. I cannot
24 offer a reason why he's not here, and I guess the real
25 question is, you know, is that considered as part of --

STATE V WRIGHT

1 part of your sentence? I would ask -- respectfully ask
2 that it not be. It is a seven-year-old case. You know,
3 we did what we could with what we had, and you know, it
4 certainly was a bad crime. The jury has spoken, so I
5 would just ask you to consider, you know, something
6 south of the -- you have a ten-to-30 range, obviously.
7 I would just respectfully ask, maybe something in the
8 middle, just to not punish him for going to trial, but
9 show him the benefit of him coming and pleading, like he
10 was going to, would have made a lot more sense. And it
11 is an 85 percent crime, so every year that he's added to
12 that ten is almost, I guess, ten more months he's going
13 to do by making a mistake and not coming in to court.

14 THE COURT: He's 28 years old, is what I've got
15 down on the sentencing sheet. Is that correct?

16 MR. LEE: That's correct, your Honor.

17 THE COURT: Okay. All right. Well, I'll certainly
18 take all that into consideration. I will say this, you
19 both did a great job in trying the case. For having an
20 empty chair in a criminal case, Mr. Lee, you did a great
21 job.

22 MR. LEE: Thank you.

23 THE COURT: And again, Ms. Henderson, as always,
24 you did very well. I'm going to take this back, and
25 obviously, it'll be under seal anyway, but I'll go ahead

STATE V WRIGHT

1 and make sure of that, after I sign the sentencing
2 sheet, sentence him, I'll give it to LaSandra.

3 MR. LEE: Okay. And like to take an opportunity to
4 apologize to the Court and to Ms. Henderson and
5 everybody got caught short by him not showing up. I
6 certainly was in the same category, and if I had known
7 he wasn't going to show up, I would not have --

8 MS. HENDERSON: My gut told me he wasn't coming.
9 Yeah, I knew he wasn't going to come. I don't know why,
10 my gut told me all weekend he wasn't going to come. I
11 just -- I know so much more about him, because he's a
12 Jasper boy, and I just -- I know -- I know more. And
13 so, I just -- I had a feeling he wouldn't show, but.

14 THE COURT: Okay. All right. Well, I appreciate
15 it, you all.

16 OFF THE RECORD.

17 BACK ON THE RECORD.

18 MR. LEE: Judge Mullen?

19 THE COURT: Yes.

20 MR. LEE: Can I put one more thing on the record as
21 far as the --

22 THE COURT: Can we go ahead.

23 MR. LEE: We have agreed and stipulated that the
24 kidnaping charge he was convicted for -- of course, Mr.
25 Bax was more on his toes than I was, reminded me, we

STATE V WRIGHT

1 would like a finding on the record that it was non-
2 sexual and does it not require him to register on the
3 sexual registry.

4 MS. HENDERSON: And the State agrees with that,
5 your Honor.

6 THE COURT: I appreciate that. I will go ahead and
7 make a finding for the record that there is no sexual
8 component of it --

9 MR. LEE: Okay.

10 THE COURT: -- and he is not required to register
11 on the sexual registry.

12 MR. LEE: Thank you. Thank you, Mr. Bax.

13 THE COURT:

END TRIAL 12:42 P.M.

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-01926 & 2010-GS-07-01927

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

SEPTEMBER 16, 2014

TRANSCRIPT OF SENTENCE IMPOSITION

BEAUFORT, SOUTH CAROLINA

JAMES TYTIL WRIGHT

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF THE STATE OF SOUTH CAROLINA:

HON. CARRA HENDERSON
chenderson@bcgov.net
HON. JULIE KATE KENNEY
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14TH JUDICIAL CIRCUIT
SOLICITOR'S OFFICE
RIDGELAND, SOUTH CAROLINA 29936

ON BEHALF OF DEFENDANT
JAMES TYTIL WRIGHT:

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TELEPHONE 843-986-9030
swlee@swleelaw.com

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EXHIBITS

No exhibits were admitted.

9-16-14 STATE V. JAMES TYTIL WRIGHT - SENTENCING (ORIGINAL)

1 BEGINNING 9:33 A.M.

2 BY THE COURT:

3 BAILIFF: All rise. Court is now in session, the
4 Honorable Carmen Mullen presiding.

5 THE COURT: Thank you. Please be seated. Good
6 morning. Mr. Lee, are you ready to go forward?

7 MR. LEE: We're ready, your Honor.

8 THE COURT: All right. Anything from the State?

9 MS. HENDERSON: Not unless you just -- you want me
10 to put anything on the record, your Honor, as far as his
11 apprehension or anything like that goes.

12 THE COURT: You want to go ahead and just put,
13 obviously, we tried Mr. Wright.

14 MS. HENDERSON: August 25th, your Honor.

15 THE COURT: Right. It was two weeks ago now. He
16 did not show up for his trial. As we had put on the
17 record, he had notice. Mr. Lee defended him vigorously,
18 and the jury had convicted him. Anything else we need
19 to put on the record?

20 MS. HENDERSON: Like I said, your Honor, unless you
21 want facts about the apprehension on the record. Other
22 than that.

23 THE COURT: Go ahead. If you want to, you can,
24 certainly.

25 MS. HENDERSON: Okay.

9-16-14 STATE V. JAMES TYTIL WRIGHT - SENTENCING (ORIGINAL)

1 MR. LEE: Your Honor, for the record, I would
2 object to this. I realize that it's a sealed sentence,
3 --

4 THE COURT: Right.

5 MR. LEE: -- but I don't think this is relevant as
6 to the sentencing, because happened after the sentence.

7 THE COURT: The fact?

8 MR. LEE: Right.

9 THE COURT: Okay. Well, I don't think we need to
10 put it on the record.

11 MS. HENDERSON: That's fine.

12 THE COURT: I don't think it necessarily matters.
13 Again, it's a sealed sentence, and unfortunately, in
14 this case, it was actually entered into CMS. So,
15 apparently, the paper had already picked it up, so we
16 all know what the sentence is in this case.

17 Mr. Lee, anything else you want to say on behalf of
18 your client?

19 MR. LEE: Judge, you kind of heard everything.
20 Again, he was working in landscaping when this happened.
21 He's married. And I didn't realize this, but he did
22 have a child between the time of the trial, shortly
23 after the trial. And I don't -- I'm not offering that
24 as an excuse, but that was certainly on his mind, I
25 believe, when he did not show up for court.

9-16-14 STATE V. JAMES TYTIL WRIGHT - SENTENCING (ORIGINAL)

1 He had previously signed up to enter a plea, to
2 negotiate a ten years, and I wish it wouldn't have come
3 out like this, but it has. And he's here today prepared
4 to accept his punishment and move forward.

5 THE COURT: All right. Mr. Wright, if you'll
6 stand, please, sir.

7 Mr. Wright, in your absence, you were convicted in
8 Indictments Number 2010-GS-07-01926 and 2010-GS-07-
9 01927, and were convicted by the jury unanimously on one
10 count of armed robbery and one count of kidnaping. Sir,
11 at that time, I went ahead and sentenced you, and it's
12 sealed, the sentence.

13 Sir, your sentence on 2010-GS-07-01927, for the
14 charge of kidnaping, is 20 years. On the Indictment
15 2010-GS-07-01926, for armed robbery, your sentence on
16 that charge is for 20 years. Those are to run
17 concurrent to each other, and I'm giving you credit for
18 any time you served, sir, either before these charges
19 and sentence.

20 Yes.

21 MS. HENDERSON: Your Honor, the one thing I forgot
22 to mention, if you would please place on the sentencing
23 sheet somewhere, co-defendant, Tyshon Barnes, SCDC asked
24 that that be placed on there, so that when they take him
25 in to determine where he's going, they know not to send

9-16-14 STATE V. JAMES TYTIL WRIGHT - SENTENCING (ORIGINAL)

1 him to the same facility as the co-defendant that
2 testified against him.

3 THE COURT: Okay. Thank you. I will go ahead and
4 put that in there.

5 MS. HENDERSON: Thank you, your Honor.

6 THE COURT: Okay. And can you spell Tyshon,
7 please?

8 MS. HENDERSON: Yes, your Honor. It's T/y/s/h/o/n.

9 THE COURT: Okay. Good luck to you, Mr. Wright.

10 MR. LEE: Judge, one other thing.

11 THE COURT: Yes.

12 MR. LEE: I know it's a little different since it's
13 kind of been bifurcated, not by choice, --

14 THE COURT: Right.

15 MR. LEE: -- but I had advised Mr. Wright he has
16 ten days to appeal on his sentence and judgment of the
17 Court, and I'm doing the paperwork for him right now,
18 so.

19 THE COURT: Very good. Thank you, Mr. Lee. I
20 appreciate that.

21 MR. LEE: Thank you.

22 THE COURT: All right. Thank you. Okay.

END PROCEEDING 9:38 A.M.

WITNESSES

Sgt J. Foskey, BCSO

ARREST WARRANT NUMBER

J345519

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date: 10/28/10

VERDICT

Foreperson of Petit Jury
Date:

INDICT.DOT

DOCKET NO. 2010GS0701926

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

OCTOBER Term 2010

THE STATE

vs.

James Wright

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon**

SC Code: 16-11-0330(A)
CDR Code:0139

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

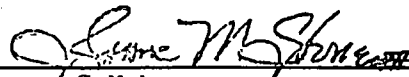
INDICTMENT
2010GS0701926

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

That on or about May 10, 2007, in Beaufort County, South Carolina, the Defendant, James Wright, at 265 Bay Pines Road, Burton, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Andrew Lindsay, Lloyd Griffin, Nancy Hill, Nathaniel Williams, and Stephanie Rodford with the intent to permanently deprive the victims of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Sgt J. Foskey, BCSO

ARREST WARRANT NUMBER

J332372

ACTION OF GRAND JURY

True Bill

B. Muthig
Foreperson of Grand Jury
Date: 10/28/10

VERDICT

Foreperson of Petit Jury
Date:

INDICT.DOT

DOCKET NO. 2010GS0701927

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

OCTOBER Term 2010

THE STATE

vs.

James Wright

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

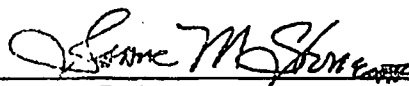
INDICTMENT
2010GS0701927

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping / Kidnapping

That in Beaufort County, South Carolina, on or about May 10, 2007, the Defendant, James Wright, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victims, Andrew Lindsay, Lloyd Griffin, Nancy Hill, Nathaniel Williams, and Stephanie Rodford, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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



Solicitor

COUNTY OF Beaufort
 STATE VS.
James Wright
 AKA: _____
 Race: B Sex: M Age: 28
 DOB: [REDACTED] SS#: [REDACTED]
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2010GS0701926A/W#: J345519Date of Offense: 5/10/2007S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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:

Henderson, Carla 76918 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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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 _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 33.90

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: Please try not to place with
C-Defendant Tyshawn
Barnes

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

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Wasson, Renee

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2192Sentence Date: 8-27-14

COUNTY OF Beaufort
STATE VS.
James Wright

INDICTMENT/CASE#: 2010GS0701927

AKA: _____

A/W#: J332372Race: B Sex: M Age: 28Date of Offense: 5/10/2007DOB: [REDACTED] SS#: [REDACTED] 2014 SEP 16 AM 9:02

§ 16-03-0910

CDR Code #: 0095

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

☒ CONVICTED OF or ☐ PLEADSTO: Kidnapping / Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Anderson, Carra76918
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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

_____ 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:

Please try not to place
Co-Defendant Tyshawn
Barnes

☐ 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: 2142Sentence Date: 8-27-14

AGENCY I.D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER
20070510265

WCC
INQ. INTD.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

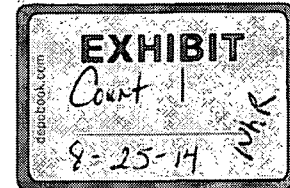
☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 3 PAGES

(A) Reference BCSO incident report 20070510265

Incident Type: Armed Robbery/Kidnapping
Incident Location: 265 Bay Pines Road Burton
Comp/Victim: Griffin, Lloyd
Suspect 1: Barnes, Tyshon
Suspect 2: Wright, James
Reporting Officer: Townsend
Assigned Officer: Foskey

Reportable



Synopsis:

Reference (A) the comp. reported he and four other employees of Chavis Moving were inside the business when the two suspects entered the business armed with handguns and demanded money. The suspects put all of the employees in a storage room at gunpoint and made them lay on the floor. The suspects went through the purse of Nancy Hill and took her ATM card and at gunpoint made her give them her PIN number. The suspects took the petty cash and property from each victim. One of the suspects was wearing a mask and one was not.

Investigators Actions:

This officer responded to the scene and was apprised of the incident by SSGT Townsend. This officer then collected a Piggly Wiggly handbook that one of the suspects left on the counter by the front door. This officer along with Investigator Chapman began processing the scene for latent fingerprints. While processing Nancy Hill advised me one of the suspects had taken everything out of her purse. This officer then processed the items that had been taken from her purse and recovered some latent prints from an unopened pack of Marlboro Light cigarettes. No other usable prints were located at that time. I asked Hill if she had bought a lone pack of cigarettes and she stated no, that before coming to work this morning she had bought a carton of cigarettes and took that pack from the carton and placed it in her purse just prior to coming into the office therefore, no one could have touched that pack of cigarettes but her. Statements were obtained from the employees.

A short time later Hill contacted this officer to advise when she went to cancel her ATM card she was advised it had been used at 0905 at the Foodlion on Hwy 116. The Foodlion is less than one mile away from the incident location and the time it was used was shortly after the robbery. This officer obtained the video tape from food lion. On the tape it showed three black males entering the store together. One of the males used the victims card at the ATM machine and removed \$500.00. Two of the suspects had on some type of work uniforms that appeared to be blue with a company logo and name tag on them but the tape was too grainy to identify the suspects faces or the information on the shirts. The tape was sent to SLED for enhancement.

This officer had Investigator Sergeant Chris Wilson submit the latent prints I lifted from the cigarette pack into AFIS and a hit came back on suspect 2 James Wright. His prints were compared and found to match the latent prints.

During this time period there were several other armed robberies in the area with the same MO and a possible suspect was identified being suspect 1 Tyshon Barnes. This officer put together photo line-ups with Barnes and line ups with Wright and presented these to the victims at Chavis Moving. All of the victims were shown the line ups alone with no contact with the other employees. Lloyd Griffin and Nathaniel Williams both picked out suspect 1 Barnes as being the robber without the mask. Hill stated she did not get a good look at the face as she was ordered to the floor and Stephanie Radford stated she only saw the one wearing a mask. Andrew Lindsey stated he could not be sure of a photo but stated the photo Kenneth Barnes, Tyshon's brother, looked a lot like the suspect.

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED ☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		REPORTING OFFICER(S) John W. Foskey		APPROVING OFFICER Bland		DATE 5-25-07
DATE 5-25-07		UNIT NUMBER F0851		OFFICER Bland		DATE 6-1-7
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO						

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT

Post Office Box 1880
Bluffton, South Carolina 29910



Telephone: (843) 717-4061
Facsimile: (843) 726-7942

ISAAC MCDUFFIE STONE, III
SOLICITOR

August 11, 2014

James Wright
[REDACTED]
[REDACTED]

Re: State of South Carolina v. James Wright
Armed Robbery
2010-GS-07-1926
Kidnapping
2010-GS-07-1927

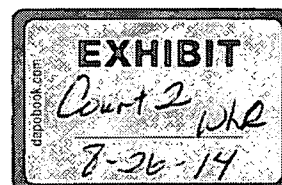
Dear Mr. Wright,

The above listed case has been set for trial the week of August 25, 2014 at the Beaufort County Courthouse. Jury selection will begin at 10:00 am. If you fail to appear, you will be tried in your absence. Should you have any questions, please contact your attorney, Scott Lee.

Sincerely,


Carla Henderson
Assistant Solicitor
14th Circuit Solicitor's Office

cc: Scott Lee, Esq.



CERTIFICATE OF TRANSMITTAL

Page 1 of 1

** Rule 3 of the South Carolina Rules of Criminal Procedure requires the transmittal of a warrant to the clerk within fifteen (15) days of defendant's arrest.
The following papers pertaining to criminal proceedings were transmitted to the Clerk of Court on this date:

To Court / County: Beaufort County General Sessions / Beaufort

** Date Transmitted: 08/27/2010

From Court: 07102 - Beaufort County Bond Court

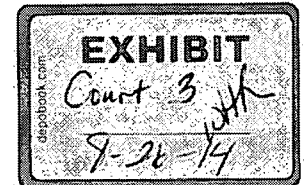
By: 5812

Smith, Darlene

Judge Code

(Name and title of transmitting official)

	State vs. Defendant (Last Name, First M.)	Date Of Arrest	Warrant/Ticket Number (One Per Line)	Dismissed at Prelim.		Warrant or Ticket	Papers Being Transmitted on This Date (check only which apply):		
				Yes	No		Checklist	Bond	Other (describe)*
1	Wright, James	08/27/2010	J332372 10/1927		X	W	X	X	
2	Wright, James	08/27/2010	J345519 10/1926		X	W	X	X	



*If abbreviations used, explain.

For use by Clerks only

The above listed documents were received on: _____ (Date)

Copies transmitted to the Solicitor on: _____ (Date)

Clerk of Court

For use by Solicitors only

OPTIONAL:

Date Received by Solicitor: _____

Received by _____ (Initials) _____ (Date)

White Original - Clerk of Court

Pink Copy - Solicitor (Optional)

Canary Copy - Transmitting Official

SCCA / 215 90)

SOUTH CAROLINA COURT ADMINISTRATION

341

STATE OF SOUTH CAROLINA
COUNTY/CITY OF BEAUFORT

CHECKLIST

James Wright
Name of Defendant

TRIAL COURT:
☒ GENERAL SESSIONS COURT
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT

ORIGINAL

CASE NUMBER/CHARGE:

J332372 Kidnapping / Kidnapping

J345519 Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☒ BAIL PROCEEDING / ☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
 - ☒ a. Bond Form I (personal recognizance)
 - ☒ b. Bond Form II (surety, cash, percentage)
 - ☐ c. None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 - ☒ a. Orally
 - ☒ b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. ☒ Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges.
 - ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before Clerk of Court's Office located at 102 Ribaut Road, Beaufort, SC for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

10/1/2010 @ 8:45 AM

First Appearance or Bond Hearing Date

JUDGE'S SIGNATURE

Arraignment

James Wright

Defendant Name

Defendant AKA (if applicable)

[REDACTED]
Address

Drivers License #

State Issued DL

[REDACTED]
Date of Birth

[REDACTED]
Social Security #

R.E. TUPPER

Magistrate

Bond

Defendant Attorney

J Foskey - Beaufort County Sheriff
Officer/Agency

You have been arrested and charged with the crime(s) of: **Kidnapping / Kidnapping & Robbery / Armed Robbery**

You have the right to employ counsel to represent you.

In the event you are financially unable to employ counsel, the State will provide you with counsel by appointment, or with the services of the Public Defender of this county. If you desire the state to provide you with counsel, you may make application for counsel, (unless you are not eligible under the order of the court). You may *apply for counsel*, should you qualify at the Clerk of Court's office in Beaufort County, located at Phone: .

Defendant must initial each paragraph:

JW	The Defendant has been advised that if he/she chooses to apply for counsel, a \$40.00 application fee must be paid to the Clerk of Court, located at before that application will be processed.
JW	The Defendant understands that he/she has a right to apply for the services of the Public Defender, and that he/she expressly waives the services of counsel by appointment of the Public Defender.
JW	The Defendant has been informed that he/she has a right to be present at the trial on the charge(s) for which he/she has been arrested, and that the trial will proceed in his/her absence should he/she fail to appear in court.

The undersigned certifies that he/she has been informed of the charges against him/her and the nature thereof.

Executed before me, on **Friday, August 27, 2010**

James Wright
Defendant

[Signature]
Judge

344
Pre-Trial Interview Affidavit of Indigency Application for Counsel

I understand that the personal information obtained from this interview will be used to determine my eligibility for a Public Defender

Signature of Defendant

Date

Case Number(s) / Charges(s):

J332372

Kidnapping / Kidnapping

J345519

Robbery / Armed Robbery

Personal Data:

Defendant's Name: James Wright

Alias(s)

Current Address:

Phone #

How Long at this Address:

Rent

Own

Board

How long in Beaufort County/City

for Address

How long

Social Security Number

Date of Birth

Married: Yes ☐ No ☐ Living with spouse Yes ☐ No ☐ Children Yes ☐ No ☐ #

Living with Relatives Yes ☐ No ☐ Contact with Relatives Yes ☐ No ☐

Employment Data:

Currently Working Yes ☐ No ☐ Full-Time ☐ Part-Time ☐ How Long:

Current Employer:

Address

Supervisor

Type of Work

Phone

Previous Employer:

How Long

Type of Work

Phone

Education Data:Currently in School: Yes ☐ No ☐ Graduated Yes ☐ No ☐

Highest Grade Completed _____ School _____

Military Data:Currently in Military Yes ☐ No ☐ Prior Military Yes ☐ No ☐ Type of Discharge _____**Prior Record Data:**Prior Arrest: Yes ☐ No ☐ Adult ☐ Juvenile ☐
(If yes see attached NCIC report)Currently on Bond Yes ☐ No ☐ Currently on Probation Yes ☐ No ☐Currently on Parole Yes ☐ No ☐ Currently on EPA Yes ☐ No ☐Outstanding Warrants Yes ☐ No ☐ Any GSBWs Yes ☐ No ☐Any MBWs Yes ☐ No ☐ Any FCBWs Yes ☐ No ☐

Remarks _____

Financial Data:

Dependants: Total Number of Dependants who are recognized by IRS Standards _____

Assets: Amount of Wages Per Month \$ _____
Amount of Unemployment Checks \$ _____
Income from other Sources (Specify) _____ \$ _____

How much cash do you have: \$ _____

Checking Account Balance \$ _____

Savings Account Balance \$ _____

Value of Real Estate/Stocks/Bonds/Collections \$ _____

Other Assets (Specify) _____ \$ _____

Total \$ _____

Liabilities: List all your creditors, liens, encumbrances, mortgages, car payments, credit cards, etc
and amount owed:_____
\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____
\$ _____

AFFIDAVIT OF DEFENDANT:

do solemnly swear that the account by me delivered to this Court with my application for counsel does contain a true and full account of all my real and personal estate, debts, credits, and affects whatsoever, without exception. That which I or any person in trust for me have or at the time of my possession had, or am, or was, in any respect entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before directly or indirectly sold, leased, assigned, or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to representation, but that such claim shall not constitute a lien against my property unless the claim is reduced to Judgment by Order of the Court after giving at least thirty days notice.

I am financially able ☐ unable ☐ to employ counsel and request that counsel be ☐ not be ☐ assigned to represent me.

Signature of Defendant

Sworn to and Subscribed Before Me This
_____ day of _____, 20____

Presiding Judge

APPOINTMENT OR DENIAL OF COUNSEL (if applicable):

Based on information contained in this Affidavit the appointment of a Public Defender to represent the above named defendant is hereby

Approved ☐ Initials _____
Denied ☐ Initials _____

Defendant released on bond Yes ☐ No ☐

Sworn to and Subscribed Before Me This
_____ day of _____, 20____

Presiding Judge

I, the defendant named herein, further acknowledge that I am required by Order of the Court to notify the Beaufort County/City Public Defender's Office of any change in my financial status prior to the trial of my case.

Any change in my financial status may affect my eligibility for court appointed counsel. Upon any change in my financial status I will contact the Public Defender for re-screening to determine my continued eligibility for counsel.

I further acknowledge that my failure to notify the Public Defender of any change may result in my being held in Contempt of Court.

Signature of Defendant

Sworn to and Subscribed Before Me This
_____ day of _____, 20____

Presiding Judge
Beaufort County Bond Court

STATE OF SOUTH CAROLINA

IN THE SUMMARY COURT

COUNTY/CITY BEAUFORT

Ticket/Warrant Number

J332372

J345519

State of South Carolina

vs

Order

For Conditions of Bond

James Wright

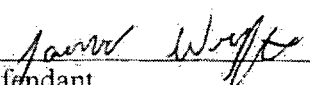
Defendant

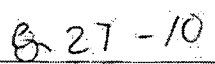
TO THE ABOVE NAMED DEFENDANT:

You are hereby ordered to appear at an Initial Appearance at BEAUFORT COUNT GENERAL SESSIONS, 102 RIBAUT RD, BEAUFORT, SC 29901 on 10/01/2010 at 8:45 AM to answer truthfully any questions asked by the presiding judge.


 Summary Court Judge
ACKNOWLEDGEMENT BY THE DEFENDANT

- I acknowledge and understand that I am to appear at the above scheduled Initial Appearance.
- I understand that should I fail to appear for my Initial Appearance, a bench warrant will be issued for my arrest.
- I understand it is my responsibility and condition of my bond that I obtain a private attorney or apply for a Public Defender.
- I understand there is a fee of \$40.00 to pay at the Clerk of Court's office for the processing of my application for the Public Defender.
- I understand that it is my responsibility to notify the Solicitor's office, via the form I have been given, of how I will be represented by 09/21/2010.
- Should I fail to notify the Solicitor's Office of my decision on representation, I understand that my bond will be revoked at the Initial Appearance.


 Defendant


 Date

County of Beaufort

State of South Carolina

IN THE SUMMARY COURT

DISCHARGE

vs.

James Wright

DEFENDANT(S)

DISCHARGE

By R. E. Tupper, Judge in and for the County and state aforesaid,

To the Sheriff and Keeper of the Common Jail in the said County:

The Defendant, James Wright, having been committed to your custody for the charge of:

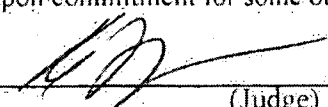
Case number	Charge	Trial Court	Bond Type	Amount
J332372	Kidnapping / Kidnapping	Beaufort County General Sessions	Personal Recogniza	\$30,000.00
J345519	Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon	Beaufort County General Sessions	Personal Recogniza	\$30,000.00

has posted bond of type

Personal Recognizance in the amount of **\$60,000.00**

and having given bond as required by the Court, you are hereby authorized and required to discharge the said Defendant from your custody. Provided that said Defendant is not held by you upon commitment for some other offense.

EN UNDER MY HAND AND SEAL THIS DAY August 27, 2010


(Judge)

(Seal)

Beaufort County, SC

BAIL PROCEEDING
FORM I

STATE OF SOUTH CAROLINA

IN THE Beaufort County General Sessions

COUNTY OF Beaufort

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Wright, James

NAME OF DEFENDANT

Offense Charged: Kidnapping / Kidnapping-[J332372] Robbery / Armed Robbery, robbery while armed or allegedly armed with a
deadly weapon-[J345519]

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date, and time required to answer the charge made against him and do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon recognizance without surety executed by him:

Appearance Recognizance Without Surety

On the 27th day of August, 2010, personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of 60,000.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of the Order.

III

That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release:

IV

That the defendant shall appear at (check one):

☒ the term of COURT OF GENERAL SESSIONS beginning on October 01, 2010 at 8:45 o'clock, A M JW
at Beaufort County General Sessions - PO Box 1128/102 Ribaut Road, Rm. 208/Beaufort, SC 29901 1128 / (843) 255-5050
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____ M,
at _____

If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SIGNATURE OF DEFENDANT

ADDRESS

Ridgeland, SC 29936

CITY/STATE/ZIP

TELEPHONE

SIGNATURE OF JUDGE

DATE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

Original Copy For The Trial Court - Copy For The Defendant

State of South Carolina
County of Beaufort
vs.

Warrant/Ticket # J345519

Charges: Robbery / Armed Robbery,
robbery while armed or allegedly
armed with a deadly weapon

James Wright

Defendant's Full Name/aka

Defendant's SS#

DOB

Race/Sex

M / B

Defendant's Address

Ridgeland, SC 29936

ADDITIONAL CONDITIONS OF BOND AND NO TRESPASS NOTICE

This matter is before me at the request of the State, to add special conditions to the Defendant's bond, due to the nature of the charge(s) against the Defendant, the Court hereby orders the following special conditions(s) in **addition** to those noted on his/her initial bond order. **In addition this order is intended to meet the Federal guidelines referenced in 18 USC 922 (g).**

- ☐ 1. The Defendant is to participate in and successfully complete a counseling Program, designed for persons who batter or abuse loved ones or household members.
- ☒ 2. The Defendant cannot have in his possession, any weapon(s); and is ordered to turn over to law enforcement personnel, any and all guns, and/or weapons within the Defendant's possession or control. The defendant further is ordered and acknowledges that he/she can not purchase or attempt to purchase any weapon/firearm while this order is in place. Any attempt to purchase/possess a weapon/firearm during the term of this order will be in violation of Federal laws (referenced in 17 USC 922(g)).
- ☒ 3. The defendant is not to go within 1000 feet of the Victim's residence or work place; and is not to have or attempt to have any contact with the Victim either directly or indirectly (through the mail, by telephone, through the delivery of any messages(s) or item, e-mail or other means, or any other forms of harassment or stalking of Victim in any manner.

I so move: Lore B... State/Officer

I acknowledge these additional conditions of bond and understand that if I am found in violation of any condition that I will be subject to immediate arrest, and or additional criminal charges, and will be brought before this Court for a bond evocation or contempt hearing. I understand any possession or attempt to possess a weapon during the term of this order will be in violation of Federal Law referenced in 18 USC 922(g). I also understand, that if I violate the no trespass notice I will be subject to immediate arrest for trespass after notice.

Date Issued August 27, 2010

Lloyd Griffin

Victims Name

James Wright
Defendant

[Signature]
Judge

Expiration date if applicable: Upon Disposition of Court Date

This case will be tried in Magistrate/ Municipal Court/General Sessions

State of South Carolina
County of Beaufort
vs

Warrant/Ticket # J345519

Charges: Robbery / Armed Robbery,
robbery while armed or allegedly
armed with a deadly weapon

James Wright

Defendant's Full Name/aka

Defendant's SS# [REDACTED] DOB [REDACTED] Race/Sex M / B

Defendant's Address [REDACTED]
Ridgeland, SC 29936

ADDITIONAL CONDITIONS OF BOND AND NO TRESPASS NOTICE

This matter is before me at the request of the State, to add special conditions to the Defendant's bond, due to the nature of the charge(s) against the Defendant, the Court hereby orders the following special conditions(s) in addition to those noted on his/her initial bond order. **In addition this order is intended to meet the Federal guidelines referenced in 18 USC 922 (g).**

- ☐ 1. The Defendant is to participate in and successfully complete a counseling Program, designed for persons who batter or abuse loved ones or household members.
- ☒ 2. The Defendant cannot have in his possession, any weapon(s); and is ordered to turn over to law enforcement personnel, any and all guns, and/or weapons within the Defendant's possession or control. The defendant further is ordered and acknowledges that he/she can not purchase or attempt to purchase any weapon/firearm while this order is in place. Any attempt to purchase/possess a weapon/firearm during the term of this order will be in violation of Federal laws (referenced in 18 USC 922(g)).
- ☒ 3. The defendant is not to go within 1000 feet of the Victim's residence or work place; and is not to have or attempt to have any contact with the Victim either directly or indirectly (through the mail, by telephone, through the delivery of any messages(s) or item, e-mail or other means, or any other forms of harassment or stalking of Victim in any manner.

I so move: Cape Breton State/Officer

I acknowledge these additional conditions of bond and understand that if I am found in violation of any condition that I will be subject to immediate arrest, and or additional criminal charges, and will be brought before this Court for a bond evocation or contempt hearing. I understand any possession or attempt to possess a weapon during the term of this order will be in violation of Federal Law referenced in 18 USC 922(g). I also understand, that if I violate the no trespass notice I will be subject to immediate arrest for trespass after notice.

Date Issued August 27, 2010

James Wright
Defendant

Stephanie Rodford

Victims Name

[Signature]
Judge

Expiration date if applicable: Upon Disposition of Court Date

This case will be tried in Magistrate/ Municipal Court/General Sessions

State of South Carolina
County of Beaufort
vs

Warrant/Ticket # J345519

Charges: Robbery / Armed Robbery,
robbery while armed or allegedly
armed with a deadly weapon

James Wright

Defendant's Full Name/aka

Defendant's SS# [REDACTED] DOB [REDACTED] Race/Sex M / B

Defendant's Address [REDACTED]
Ridgeland, SC 29936

ADDITIONAL CONDITIONS OF BOND AND NO TRESPASS NOTICE

This matter is before me at the request of the State, to add special conditions to the Defendant's bond, due to the nature of the charge(s) against the Defendant, the Court hereby orders the following special conditions(s) in addition to those noted on his/her initial bond order. In addition this order is intended to meet the Federal guidelines referenced in 18 USC922 (g).

- ☐ 1. The Defendant is to participate in and successfully complete a counseling Program, designed for persons who batter or abuse loved ones or household members.
- ☒ 2. The Defendant cannot have in his possession, any weapon(s); and is ordered to turn over to law enforcement personnel, any and all guns, and/or weapons within the Defendant's possession or control. The defendant further is ordered and acknowledges that he/she can not purchase or attempt to purchase any weapon/firearm while this order is in place. Any attempt to purchase/possess a weapon/firearm during the term of this order will be in violation of Federal laws (referenced in 17USC 922(g)).
- ☒ 3. The defendant is not to go within 1000 feet of the Victim's residence or work place; and is not to have or attempt to have any contact with the Victim either directly or indirectly (through the mail, by telephone, through the delivery of any messages(s) or item, e-mail or other means, or any other forms of harassment or stalking of Victim in any manner.

I so move: LCC Bona Fide State/Officer

I acknowledge these additional conditions of bond and understand that if I am found in violation of any condition that I will be subject to immediate arrest, and or additional criminal charges, and will be brought before this Court for a bond revocation or contempt hearing. I understand any possession or attempt to possess a weapon during the term of this order will be in violation of Federal Law referenced in 18 USC 922(g). I also understand, that if I violate the no trespass notice I will be subject to immediate arrest for trespass after notice.

Date Issued August 27, 2010

Defendant

Nathaniel Williams

Victims Name

Judge

Expiration date if applicable: Upon Disposition of Court Date
This case will be tried in Magistrate/ Municipal Court/General Sessions

State of South Carolina
County of Beaufort
vs

Warrant/Ticket # J345519

Charges: Robbery / Armed Robbery,
robbery while armed or allegedly
armed with a deadly weapon

James Wright
Defendant's Full Name/aka

Defendant's SS# [REDACTED] DOB [REDACTED] Race/Sex M / B
Defendant's Address [REDACTED]
Ridgeland, SC 29936

ADDITIONAL CONDITIONS OF BOND AND NO TRESPASS NOTICE

This matter is before me at the request of the State, to add special conditions to the Defendant's bond, due to the nature of the charge(s) against the Defendant, the Court hereby orders the following special conditions(s) in addition to those noted on his/her initial bond order. **In addition this order is intended to meet the Federal guidelines referenced in 18 USC922 (g).**

- ☐ 1. The Defendant is to participate in and successfully complete a counseling Program, designed for persons who batter or abuse loved ones or household members.
- ☒ 2. The Defendant cannot have in his possession, any weapon(s); and is ordered to turn over to law enforcement personnel, any and all guns, and/or weapons within the Defendant's possession or control. The defendant further is ordered and acknowledges that he/she can not purchase or attempt to purchase any weapon/firearm while this order is in place. Any attempt to purchase/possess a weapon/firearm during the term of this order will be in violation of Federal laws (referenced in 17USC 922(g)).
- ☒ 3. The defendant is not to go within 1000 feet of the Victim's residence or work place; and is not to have or attempt to have any contact with the Victim either directly or indirectly (through the mail, by telephone, through the delivery of any messages(s) or item, e-mail or other means, or any other forms of harassment or stalking of Victim in any manner.

I so move: LCOL Brea State/Officer

I acknowledge these additional conditions of bond and understand that if I am found in violation of any condition that I will be subject to immediate arrest, and or additional criminal charges, and will be brought before this Court for a bond evocation or contempt hearing. I understand any possession or attempt to possess a weapon during the term of this order will be in violation of Federal Law referenced in 18 USC 922(g). I also understand, that if I violate the no trespass notice I will be subject to immediate arrest for trespass after notice.

Date Issued August 27, 2010

James Wright
Defendant

Nancy Hall
Victims Name

[Signature]
Judge

Expiration date if applicable: Upon Disposition of Court Date
This case will be tried in Magistrate/ Municipal Court/General Sessions

State of South Carolina
County of Beaufort

vs

Warrant/Ticket # J345519

Charges: Robbery / Armed Robbery,
robbery while armed or allegedly
armed with a deadly weapon

James Wright

Defendant's Full Name/aka

Defendant's SS#

DOB

Race/Sex

M

/ B

Defendant's Address

Ridgeland, SC 29936

ADDITIONAL CONDITIONS OF BOND AND NO TRESPASS NOTICE

This matter is before me at the request of the State, to add special conditions to the Defendant's bond, due to the nature of the charge(s) against the Defendant, the Court hereby orders the following special conditions(s) in addition to those noted on his/her initial bond order. In addition this order is intended to meet the Federal guidelines referenced in 18 USC922 (g).

- ☐ 1. The Defendant is to participate in and successfully complete a counseling Program, designed for persons who batter or abuse loved ones or household members.
- ☒ 2. The Defendant cannot have in his possession, any weapon(s); and is ordered to turn over to law enforcement personnel, any and all guns, and/or weapons within the Defendant's possession or control. The defendant further is ordered and acknowledges that he/she can not purchase or attempt to purchase any weapon/firearm while this order is in place. Any attempt to purchase/possess a weapon/firearm during the term of this order will be in violation of Federal laws (referenced in 17USC 922(g)).
- ☒ 3. The defendant is not to go within 1000 feet of the Victim's residence or work place; and is not to have or attempt to have any contact with the Victim either directly or indirectly (through the mail, by telephone, through the delivery of any messages(s) or item, e-mail or other means, or any other forms of harassment or stalking of Victim in any manner.

I so move: L. C. [Signature] H. [Signature] State/Officer

I acknowledge these additional conditions of bond and understand that if I am found in violation of any condition that I will be subject to immediate arrest, and or additional criminal charges, and will be brought before this Court for a bond evocation or contempt hearing. I understand any possession or attempt to possess a weapon during the term of this order will be in violation of Federal Law referenced in 18 USC-922(g). I also understand, that if I violate the no trespass notice I will be subject to immediate arrest for trespass after notice.

Date Issued August 27, 2010

Defendant

Andrew Lindsey

Victims Name

Judge

Expiration date if applicable: Upon Disposition of Court Date

This case will be tried in Magistrate/ Municipal Court/General Sessions

ARREST WARRANT

J-345519

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Beaufort

Townsend

THE STATE
against

James Wright

Case #
20070510265

Address:

RIDGELAND, SC 29936

Phone: _____ SSN: _____

Sex: M Race: B Height: 6 3 Weight: 180

DL State: SC DL #: 9999999999

DOB: _____ Agency ORI #: SC0070000

Prosecuting Agency: Beaufort County Sheriff

Prosecuting Officer: J Foskey - 0851

Offense: Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant: James Wright
on 08-20-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
PO Box 1128
102 Ribaut Road, Rm. 208
Beaufort, SC 299011128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Beaufort

Personally appeared before me the affiant J Foskey who

being duly sworn deposes and says that defendant James Wright

did within this county and state on or about 05/10/2007 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Beaufort)

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That the defendant did on May 10, 2007 at approximately 0900 hours while armed with a deadly weapon, handgun, did rob several
employees of Chavis Moving and Storage at 265 Bay Pines Road in Burton, Beaufort County South Carolina. The defendant took
currency and personal property from the victims. Lloyd Griffin was in charge of the employees and was one of the victims robbed
by the defendant. The affiant and witnesses to prove the same;

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Beaufort

Affiant's Address 2001 Duke Street
Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/10/2007 defendant James Wright

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Beaufort) as set forth below

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

Sworn to and subscribed before me

on 05/11/2007

Signature of Issuing Judge

Mark F Fitzgibbons

Judge Code: 7060

Judge's Address Post Office Box 2207

Beaufort, SC 29901-

Judge's Telephone (843)470-5202

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Office

355

200705101506002

ARREST WARRANT

J-332372 *Townsend*

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

THE STATE

against

20070510265

James Wright

Address: *[Redacted]*
Ridgeland, SC 29936-

Phone: *[Redacted]* SSN: *[Redacted]*

Sex: M Race: B Height: 6 3 Weight: 180

DL State: *[Redacted]* DL #: *[Redacted]*

DOB: *[Redacted]* Agency ORI #: SC0070000

Prosecuting Agency: Beaufort County Sheriff

Prosecuting Officer: J Foskey - 0851

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

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

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

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant *James Wright*
on *05-20-10*

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
PO Box 1128
102-Ribaut Road, Rm. 208
Beaufort, SC 299011128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

Personally appeared before me the affiant J Foskey

being duly sworn deposes and says that defendant James Wright
did within this county and state on or about 05/10/2007 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Beaufort)

in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Kidnapping

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

In that on May 10, 2007, the defendant, James Tytil Wright, did unlawfully seize, and confine five employees of the Chavis
Moving and Storage Company, located at 265 Bay Pines Road, Burton, Beaufort County, South Carolina. The defendant forced the
victims at gun point into a storage room and made them lie down on the floor and would not allow them to leave. The defendant
was armed with a handgun during this incident, during which an armed robbery was also committed. The affiant and others are
witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

Affiant's Address 2001 Duke Street

Beaufort, SC 29902-

Affiant's Telephone (843)470-3200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/10/2007 defendant James Wright

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Beaufort) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

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

on 05/24/2007 (L.S.)

Signature of Issuing Judge

Darlene Smith

Judge Code: 5812

Judge's Address Post Office Box 2207

Beaufort, SC 29903-4865

Judge's Telephone (843)470-5202

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

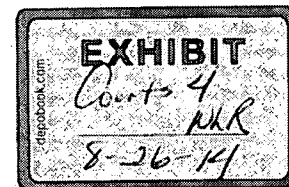
Defendant's Requested Instruction Number _____

Defenda

INFERENCE FROM FACT THAT WITNESS NOT CALLED BY STATE

If it is particularly within the power of the state to produce a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been unfavorable to the state. No such conclusion should be drawn by you, however, with regard to a witness who is equally available to both parties or where the testimony of that witness would be merely repetitive or cumulative.

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as an adn



See, e.g., *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984) (civil case); O'MALLEY, GRENIG, & LEE, 1A FEDERAL JURY PRACTICE AND INSTRUCTIONS § 14.15 (5th ed. 2000); cf., e.g., *Gathers v. South Carolina Electric and Gas Co.*, 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993) (civil case); *State v. Mabe*, 306 S.C. 355, 412 S.E.2d 386 (1991) (lost or destroyed evidence); see also *State v. Hammond*, 270 S.C. 347, 242 S.E.2d 411 (1978) (instruction can have a limited role but not required).

State v.

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."

November 12th, 2015


Kathrine H. Hudgins
Appellate Defender

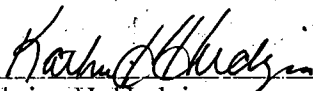
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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."

November 12th, 2015


Kathrine H. Hudgins
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

RECEIVED
NOV 12 2015
SC Court of Appeals