STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JUN 10 2019
SC Court of Appeals

Appeal from Anderson County

Honorable J. Cordell Maddox, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMORIUS DONTAVIS GAINES,

APPELLANT

APPELLATE CASE NO. 2018-001672

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED SEPTEMBER 4-6, 2018 1

JURY SELECTION 7

MOTION TO SEVER INDICTMENTS 32

JACKSON V. DENNO HEARING 48

TESTIMONY (IN CAMERA)

CRAIG GARDNER 49

COURT'S RULING 66

MOTION IN LIMINE TO EXCLUDE HEARSAY STATEMENTS 68

TESTIMONY (IN CAMERA)

CRAIG GARDNER 70

COURT'S RULING 82

MOTION IN LIMINE TO EXCLUDE LAY OPINION TESTIMONY 82

COURT'S RULING 86

OPENING STATEMENT BY MS. HUEY 92

OPENING STATEMENT BY MR. LUCAS 95

TESTIMONY

KARISSA CARSON 98

LOGEN BAKER 106

DON HODGES 123

KARRY GLENN 144

HANISHA PATEL 152

SHERIKA HARPER 165

RENEWAL OF MOTION TO EXCLUDE LAY OPINION TESTIMONY 171

COURT'S RULING 171

TESTIMONY

SHERIKA HARPER 174

CONNIE GAINES 181

CRAIG GARDNER 195

JACOB SAXON 265

STATE RESTS 272

MOTION FOR DIRECTED VERDICT 274

COURT'S RULING 275

COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY 276

DEFENSE RESTS 282

RENEWAL OF MOTION FOR DIRECTED VERDICT 283

COURT'S RULING 283

CLOSING ARGUMENT BY MR. OVERBY 285

CLOSING ARGUMENT BY MR. LUCAS 296

CHARGE ON THE LAW 310

VERDICT 338

MOTION TO SET ASIDE VERDICT 340

SENTENCING 347

INDICTMENTS AND SENTENCE SHEETS 350

CERTIFICATE OF COUNSEL 361

1

State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2017-GS-04-01674
	)	2017-GS-04-01675
Damorius Dontavis Gaines	)	2017-GS-04-01676
	)	2017-GS-04-01681
Defendant.	)	

September 4-6, 2018
Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

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

Stan Overby, Assistant Solicitor
Attorney for the State

Catherine Huey, Assistant Solicitor
Attorney for the State

Hadden Lucas, Assistant Public Defender
Attorney for the Defendant

Gordon Senerius, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS PAGE

INVESTIGATOR CRAIG GARDNER

Jackson v. Denno by Mr. Overby.....49

Jackson v. Denno cross by Mr. Lucas.....61

Proffer examination by Mr. Overby.....70

Cross-proffer exam by Mr. Lucas.....73

Direct examination by Mr. Overby.....195

Cross-examination by Mr. Lucas.....237

Redirect examination by Mr. Overby.....261

KARISSA CARSON

Direct examination by Mr. Overby.....98

LOGEN BAKER

Direct examination by Mr. Overby.....106

Cross-examination by Mr. Lucas.....120

LIEUTENANT DON HODGES, JR.

Direct examination by Mr. Overby.....123

Cross-examination by Mr. Lucas.....137

KARRY GLENN

Direct examination by Mr. Overby.....144

Cross-examination by Mr. Lucas.....148

Redirect examination by Mr. Overby.....150

Recross-examination by Mr. Lucas.....151

HANISHA PATEL

Direct examination by Mr. Overby.....152

SHERIKA HARPER

Direct examination by Ms. Huey.....165

Cross-examination by Mr. Lucas.....177

Redirect examination by Mr. Huey.....178

CONNIE GAINES

Direct examination by Ms. Huey.....181

Cross-examination by Mr. Lucas.....186

Redirect examination by Ms. Huey.....187

DEPUTY JACOB SAXON

Direct examination by Mr. Overby.....265

Cross-examination by Mr. Lucas.....268

Redirect examination by Mr. Overby.....269

Continued redirect exam by Mr. Overby..271

- - -

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
1	Photograph		X
2	Photograph		X
3	Photograph		X
4	Video surveillance		X
5	Photograph		X
6	Photograph		X
7	Photograph		X
8	Photograph		X
9	Photograph		X
10	Video surveillance		X
11	Photograph		X
12	Handwritten statement		X
13	Photograph		X
14	Photograph		X
15	Photograph		X
16	Photograph		X
17	Photograph		X
18	Photograph		X
19	Photograph		X
20	Photograph		X
21	Photograph		X
22	Photograph		X

5

23	Photograph	X
24	Photograph	X

- - -

PROCEEDINGS

- - -

THE COURT: My name is Cordell Maddox. This is sort of like "Let's make a deal." Behind every curtain there's a joke this week, and I apologize for the delays. Did y'all talk over here?

MS. HUEY: Yes, sir.

THE COURT: Okay. Let me just -- and I don't know how much Judge Sprouse told you, but what happens in a week -- we've got a short week. Court Administration, without anybody's input, sets these weeks. And of course in South Carolina, Circuit court judges hear criminal cases and civil cases. You don't have different judges for each.

And, quite frankly, it is a little out of ordinary in a short week to set two General Sessions for criminal terms of court. So this week is, as I told my wife this morning, going to be kind of a flaming disaster because what's -- I've got a trial. I'm going to pick a jury in just a minute. I'm going to start my trial.

Judge Sprouse is doing his trial. Then on Thursday, he has a matter that is a fairly important matter that has nothing to do with his trial. I don't know if he told you that or not. If he did,

excuse me for repeating it.

On Friday, I have a matter that has nothing to do with my trial that's going to take all day and is going to have half of Greenville here. So what I'm going to do is pick a jury, and then I -- I think we'll probably send you home and we'll start this case tomorrow. It is going to have to be finished tomorrow -- it'll have to be finished by Thursday night. So my jury will only be for tomorrow and Thursday.

As a result of that, I need to tell you upfront that we may have to go a little late tomorrow night, and I don't mean nine o'clock late. We've gone up here as late as 4:00 in the morning, but we won't do that. But I'm going to have to get to a point tomorrow night that we can leave knowing that Thursday will be your last day here.

So answer the questions and any -- the questions with that in mind, that tomorrow night we're going to need you a little past 5:00, probably till about 6:30, maybe even 7:00. And keep that in mind, so if you have a problem with that, I need you to let me know.

All right. First thing I'm going to here is ask the attorneys for the State and the attorneys

8

for the defendant to stand up, introduce themselves and their client. I'm going to ask you if you've ever been represented by any of these attorneys in the past or are you currently represented by the attorneys, or do you have any close business or personal relationship with the lawyers or with the defendant. Okay.

MR. OVERBY: May it please the Court, Your Honor?

Good afternoon, ladies and gentlemen. My name is Stan Overby. I'm the Assistant Solicitor with the Tenth Circuit Solicitor's Office.

With me here today is Deputy Solicitor Catherine Huey with our office, Investigator Craig Gardner of the Anderson Police Department, and my boss, Solicitor David Wagner.

THE COURT: Yes, sir.

MR. LUCAS: Hadden Lucas with the Public Defender's Office. This is my cocounsel, Gordon Senerius, and my client Damorius Gaines.

THE COURT: Mr. Gaines, if you would, just stand up and turn around so I can ask them...

THE DEFENDANT: (Complying.)

THE COURT: Okay. Thank y'all. All right. First, have any of you been represented in the past

9

or are you currently represented by any of the attorneys in this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Do any of you have any close business or personal relationship with any of the attorneys in this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Do any of you have any close business or personal relationship or you're related by blood or marriage to any of the attorneys or the defendant in this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Okay. I know you've been questioned to death. I have just a few additional questions that I need to ask you.

And I'm assuming the State doesn't have anything else you need me to ask.

(No response.)

THE COURT: State, y'all don't have anything you need me to ask other than these?

MR. OVERBY: No voir dire.

THE COURT: Okay.

MR. OVERBY: No additional voir dire.

THE COURT: All right. Ladies and gentlemen, any of you or your immediate family work in law

enforce -- law enforcement -- excuse me -- or are you employed by any law enforcement agency? If so, please stand.

PROSPECTIVE JURORS: (Standing.)

THE COURT: Yes, sir. Give us your -- we'll start over here. I know you've probably answered this before. Again, I've been sitting back there watching CNN all morning so I apologize, but if you would give us your name and number.

PROSPECTIVE JUROR: I'm Juror No. 70. My name is Mark Darlak. My son is in law enforcement.

THE COURT: Where?

PROSPECTIVE JUROR: In Hilton Head, South Carolina.

THE COURT: Sorry?

PROSPECTIVE JUROR: Hilton Head, South Carolina.

THE COURT: I gotcha.

PROSPECTIVE JUROR: He was in Anderson.

THE COURT: Okay. So he is currently employed in law enforcement?

PROSPECTIVE JUROR: That is correct.

THE COURT: All right. Would that prevent you from being fair and impartial in this case?

PROSPECTIVE JUROR: No, sir.

THE COURT: And can you render a verdict in this case based only on the evidence that you hear in this courtroom and disregard the fact that your son may be in law enforcement?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you, sir. Yes, ma'am.

PROSPECTIVE JUROR: I am Elizabeth Chapman. My number is 53. And my husband works for the City of Easley as a police officer.

THE COURT: Okay. And can you be fair and impartial in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: And can you render a verdict based only on the evidence in this case and set aside the fact that your husband is a police officer?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you, ma'am. Yes, sir.

PROSPECTIVE JUROR: I have family and close friends that are in law enforcement.

THE COURT: Give us your name and number.

PROSPECTIVE JUROR: It's 17. Chris Bishop.

THE COURT: Okay. How close of family?

PROSPECTIVE JUROR: If have first cousins.

THE COURT: Okay. Can you put that aside and render a verdict in this case based only on the evidence that you hear in this case?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you, sir.

I assume that this was presupposed by the previous question, but any -- do any of you have any close family members that work for the Solicitor's Office or the Public Defender? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

MR. OVERBY: Your Honor, may we approach briefly?

THE COURT: Sure.

(Sidebar discussion.)

THE COURT: Any of y'all real baseball fans in here? No? I'll tell you that I often wondered what umpires and pitchers and managers and pitchers talk about when they meet at the mound and put their hands over their faces. If it's based on what I hear up here, because I realize that seemed sort of mysterious, they're not saying anything. They're just sort of yapping and asking how ya' doing? It's not as mysterious as it looks. It just can't be on the record.

I just -- I feel like jurors need to know as

13

much about what's going on as legally possible. And often times, we have to have off-the-record comments like that for legitimate reasons, but they're not that serious. So maybe I'm the only one that wonders what pitchers and managers say. I'm just getting old, I think.

All right. Has anyone on the panel or your immediate family ever been the victim of a robbery or burglary? If so, please stand.

PROSPECTIVE JURORS: (Standing.)

THE COURT: Yes, sir. Give us your name and number.

PROSPECTIVE JUROR: My name is Oshea Robinson, Juror 210.

THE COURT: Okay. And was it you or a member of your family?

PROSPECTIVE JUROR: My first cousin.

THE COURT: Okay. Will that fact prevent you from rendering a verdict in this case, assuming that burglary or armed robbery or robbery is a potential element?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. And can you set that aside and render a verdict based only on the evidence that you hear in this case?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you, sir. Yes, ma'am.

PROSPECTIVE JUROR: Kelly Gavier and my aunt and uncle were robbed.

THE COURT: Okay. How long ago was that?

PROSPECTIVE JUROR: About eight or nine years ago.

THE COURT: Okay. Assuming that that may be an element that you hear, and, again, I don't know for sure, but can you set that aside and render a verdict based only on the evidence that you hear in this case?

PROSPECTIVE JUROR: Yes.

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

PROSPECTIVE JUROR: Wanda Balkman, Number 22. Our house was burglarized about 20 years ago.

THE COURT: Okay. And can you set that aside and render a verdict based only on the evidence that you hear in this case, assuming that that may be a potential element in front of you?

PROSPECTIVE JUROR: Yes.

THE COURT: If you can't, now is the time to tell me. If you don't think you can be fair and

15

impartial, I'd rather know now.

PROSPECTIVE JUROR: Yes. I can be fair.

THE COURT: Okay. And can you set that experience aside and render a verdict based only on the evidence that you hear in this courtroom?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you, ma'am. Y'all agree on six?

THE ATTORNEYS: (Affirmative responses.)

THE COURT: Has any member of the panel or a family member ever had a crime committed against them that they thought involved drug usage by the perpetrator? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Okay. All right. I want you to listen real carefully because this is an unusual question, but is there any member of the panel who believes that identifications -- and that's identifications of people -- by law enforcement are always accurate? If you believe that they're always accurate, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: All right. Unless I'm missing something, any other voir dire questions other than witness list from the State?

MR. OVERBY: None, Your Honor.

MR. LUCAS: None from the defense, Your Honor.

THE COURT: Okay. All right. Ladies and gentlemen, I'm going to read to you a list of potential witnesses in this case. And what I'm doing is reading two separate lists. I'll do the best I can to mentally scratch off names that I've already read. But if I read a name twice, that doesn't mean anything.

I'm going to ask the same question after I finish this list that you've been asked before. I'm going to ask you if you have any close business or personal relationship or you're related by blood or marriage to any of the potential witnesses in this case.

Don Hodges of the Anderson Police Department, Hanisha Patel, W.J. "Doug" Bell, Logen Baker, Karissa Carson, Karry Glenn, Sherika Harper, Connie Gaines, Kevin Matheson with the Anderson County Sheriff's Office, Craig Gardner with the Anderson Police Department, Jacob Saxon with the Anderson County Sheriff's Office, Lieutenant Hamby of the Anderson County -- or the Anderson Police Department, Kerry Glenn, Paul Glenn, Officer Haden Jones, Deputy M.T. Brooks, or Damorius Gaines, the

17

defendant?

I know that's a long list and I may have read two names at least once or read two names twice, but do any of you have any close business or personal relationship or are you related by blood or marriage to any of those potential witnesses in this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: All right. Ladies and gentlemen, do any of you need to speak to me personally or privately about any of the questions I've just asked you or about any other concern you might have about serving on this jury? I'm perfectly happy to come up here and speak to you privately about things, so does anyone need to speak to me?

PROSPECTIVE JURORS: (No responses.)

THE COURT: Do any of you know of any reason whatsoever that you could not be a fair and impartial juror in this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Nobody needs to speak to me personally about any -- any problem in this case? I used to say "any problems," and then I had a lady come up and ask me a property tax question one time. After 16 years, I've learned one or two things.

18

PROSPECTIVE JUROR: (Standing.)

THE COURT: Okay. Yes, ma'am.

PROSPECTIVE JUROR: I have a question.

THE COURT: Yes, ma'am. Give us your name and number first. We have to put it on the record.

PROSPECTIVE JUROR: Yes. Diane Callaham; Juror 42.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: And you had asked if we knew any of the attorneys.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: I don't know any of them, but I know you.

THE COURT: Well, is it a good thing you know me?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. I never know.

PROSPECTIVE JUROR: You represented me in my divorce.

THE COURT: I know. My wife, after doing this for almost 17 years, when I go to Publix or any Ingles or anything like that or Lowe's, people walk up to me and their first question is always, "Are you that judge?" And then my wife says, I'm always ready to fight from that point forward because it's

19

either, "You sent my brother to jail" or "You helped me out." Yeah, I remember you. You're okay.

PROSPECTIVE JUROR: Okay.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: 262; but I don't know if it's Catherine.

THE COURT: I'll tell you what, come up and talk to me. Are you Ms. Visor?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Come on up.

PROSPECTIVE JUROR: 262; Mana Visor.

THE COURT: Okay. I'm going to let you go. Apparently, you may be -- I mean ---

PROSPECTIVE JUROR: I know her. Yes.

THE COURT: Yeah. Okay. I'll let you go.

PROSPECTIVE JUROR: Okay. Thank you.

THE COURT: All right. 262 is excused for the week.

PROSPECTIVE JUROR: (Standing.)

THE COURT: You need to speak to me? Come on up.

PROSPECTIVE JUROR: (Complying.)

THE COURT: What's your name and number for the record?

PROSPECTIVE JUROR: Elizabeth Chapman; 53.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: I know Gordon.

THE COURT: Oh, okay. How do you know him?

PROSPECTIVE JUROR: How do I explain it? Let's see. My husband Bill, Bill Sanders is his good friend and like a -- kind of like a dad to my husband.

THE COURT: Okay.

PROSPECTIVE JUROR: We tailgate.

THE COURT: Do you think that might prevent you from being fair? The other lady knew Ms. Huey, so I'm taking her for the week.

PROSPECTIVE JUROR: I would -- I would try to be fair.

THE COURT: What's your number?

PROSPECTIVE JUROR: Fifty-three.

THE COURT: Okay. I'll let you go.

PROSPECTIVE JUROR: Thank you.

THE COURT: Fifty-three is excused for the week. Anybody else?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Come on up.

PROSPECTIVE JUROR: Yes, sir. I don't -- I don't hear very well, but did you say Paul Glenn? Is he a cop or is he just an individual?

THE COURT: Hold on and I'll tell you. I'm seeing those for the first time. It was Paul Glenn. Is he a policeman?

MR. SENERIUS: No, sir.

THE COURT: He's not a policeman.

PROSPECTIVE JUROR: I know a Paul Glenn.

THE COURT: Come on up, ma'am.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Give us your name and number just quietly.

PROSPECTIVE JUROR: I'm Sherry Moore, 175.

THE COURT: Okay. Who is the Paul Glenn?

MR. OVERBY: He works with the towing company.

PROSPECTIVE JUROR: Does he work for Michelin? I work for Michelin.

MS. HUEY: No, ma'am.

PROSPECTIVE JUROR: All right. I wanted to make sure.

THE COURT: All right. Thanks. No, I'd rather you tell me something that might be a problem than find out later.

Anybody else? I'm getting ready to pick this jury, so speak now or forever hold your peace.

PROSPECTIVE JURORS: (No responses.)

THE COURT: All right. The one thing you've

22

had is the benefit of seeing how the other jury was picked. That sometimes is something that takes me forever to explain, but you've seen how it's done. We're going to pick 12 jurors and one alternate.

Again, just for the whole crowd before you panic, we will -- we have things that we have to resolve in this case, motions that we have to hear, that will take all afternoon. We're going to start the case in the morning about 10:00 and we'll go till 7:00. Okay.

All right. You can pick the jury.

THE CLERK: (Complying.)

THE COURT: I will tell you while he's doing that, that in the time that I've been a judge, again, which doesn't seem as long as it's been, but it has been almost been 17 years.

When I first started this job, the statute required that jurors be selected by a person with a vision impairment. So they literally would put capsules in a bingo thing and draw them out. And sometimes makes me wonder if I've gotten too old because that seems absurd to me, but we finally came into the computer age in South Carolina about 12 years ago and started doing it by random selection with the computer.

23

I'm old enough to remember when I was at Furman, I took a computer programming course and there was an IBM computer which was just literally just an IBM computer that was in a glass sealed room. And if you were just one of the peons like me that was taking the course just to graduate from Furman, you could not touch that IBM computer.

And now at my house, I bet you I have at least ten computers that are stuck in a drawer somewhere. Lord knows what's on them. I don't want to know. I guess what I'm saying is, I'm old enough to remember when there weren't cell phones. My children have no clue what that's like.

I want y'all to be thinking while he's doing that about the possibility of going ahead and swearing this jury today and let me do the initial charge and then sending them home just to buy a little time for tomorrow. That way you can start tomorrow with your opening arguments and introduction of evidence. Okay.

MR. LUCAS: We don't have any objection, Your Honor.

THE COURT: Okay.

THE CLERK: All right. Ladies and gentlemen, we'll do this like we did the previous. I'll call

your name. And when I do, if you'll come forward, stand in front of me, turn around and face the audience. And if you are selected for the jury, you will go to the jury box.

Our first potential juror is Number 195, Sharon C. Powers.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please excuse the juror.

THE CLERK: Juror No. 13, Anna L. Beam.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please excuse the juror.

THE CLERK: Juror No. 17, Christopher G. Bishop.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please excuse the juror from the trial of this case.

THE CLERK: Juror No. 122, Jacob R. Hunt.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat the juror.
THE CLERK: Juror No. 186, William R. Otter, Jr.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please excuse the juror.
THE CLERK: Juror No. 182, James A. Norman.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat Mr. Norman.
THE CLERK: Juror No. 175, Sherry P. Moore.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat Ms. Moore.
THE CLERK: Juror No. 171, Virginia C. Mitchell.

PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat Ms. Mitchell.
THE CLERK: Juror No. 42, Diane M. Callaham.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat the juror.
THE CLERK: Juror No. 210, Oshea Robinson.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat the juror.
THE CLERK: Juror No. 70, Mark L. Darlak.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
MR. LUCAS: Please excuse Mr. Darlak.
THE CLERK: Juror No. 26, Tammy R. Bradley.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?

27

MR. OVERBY: Please excuse Ms. Bradley from the trial in this case.

THE CLERK: Juror No. 38, Tonya P. Bryant.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please seat Ms. Bryant.

THE CLERK: Juror No. 223, Evelyn M. Sims.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please excuse the juror from the trial in this case.

THE CLERK: Juror No. 91, Dana C. Fore.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please seat Ms. Fore.

THE CLERK: Juror No. 51, Amber N. Chambers?

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please seat the juror.

28

THE CLERK: Juror No. 238, Jimmy Stevens.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat Mr. Stevens.
THE CLERK: Juror No. 123, Jill A. Hutchins.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please excuse Ms. Hutchins.
THE CLERK: Juror No. 176, Alex A. Morales.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat Mr. Morales.
THE CLERK: Juror No. 125, Dennis J. Jackson.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please excuse the juror from the trial in this case.
THE CLERK: Juror No. 56, Melvin J. Clark, Jr.
PROSPECTIVE JUROR: (Approaching.)

29

THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please excuse Mr. Clark.
THE CLERK: Juror No. 271, Waldon White, Jr.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please excuse Mr. White.
THE CLERK: Juror No. 239, Shannon L. Stickler.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please excuse Ms. Stickler.
THE CLERK: Juror No. 178, Rachel M. Ellison.
PROSPECTIVE JUROR: (Approaching.)
THE CLERK: What say you for the State?
MR. OVERBY: Please present the juror.
THE CLERK: What say you for the defense?
MR. LUCAS: Please seat the juror.
THE CLERK: Your Honor, that's 12 so we'll move to our alternate.
THE COURT: All right.

30

THE CLERK: Juror No. 256, Phillip S. Tompkins.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please excuse the juror.

THE CLERK: Juror No. 52, Emily C. Chamblee.

PROSPECTIVE JUROR: (Approaching.)

THE CLERK: What say you for the State?

MR. OVERBY: Please present the juror.

THE CLERK: What say you for the defense?

MR. LUCAS: Please seat the juror.

THE CLERK: Your Honor, that is our 12 and the alternate.

THE COURT: Okay. All right. Ladies and gentlemen, I know you've been sitting here all morning. I need to, first, send you back to the jury room for a few minutes. There is a distinct possibility that I'm going to bring you back in, and I'll just give you an idea about how this trial goes.

I will first -- the Solicitor -- Solicitor -- excuse me -- the Solicitor will call the case and read out what it's about. Then I'm going to give you a short, probably ten-minute, overview of how

31

this case will proceed. And then we move directly into opening statements and witnesses.

We are not going to do the opening statement and the witnesses until tomorrow. I may go ahead and give you my overview and swear you in in a few minutes. I need to run that by the lawyers. Again, I'm doing that just to save some time tomorrow and to get us a little ahead of the game. But what I need you to do first is go back and just have a seat in the jury room for ten minutes max.

When you come back in, Mr. Robinson, I'm appointing you foreman of the jury. You'll get -- you'll be the only person in this group, along with the alternate, that has an assigned seat. And you'll have to sit in that first seat right there. Everyone else, y'all can sit wherever you want. Although, the alternate needs to sit there.

So go give us a minute to let me run this plan by. At the very most, you will come back in here for 10 to 12 minutes and then I'm going to send you home for the day.

So, again, thanks for your patience. Every time you leave this courtroom from this point forward, I will tell you don't discuss this case. I'm giving you that for the first time. Don't

32

discuss this case. You should never talk about this case at all until you've heard all the witnesses, you've heard all the opening and closing statements, and I've read to you the law in this case. You can talk about anything else you want for the next few days but this case. So give me ten minutes.

(At 1:02 p.m., the jury left the courtroom.)

(From 1:03 to 1:18 p.m., brief recess.)

MR. OVERBY: There is one thing we'd like to put on the record before we bring the jury out, Judge.

THE COURT: Okay. Are y'all ready? He's going to put something on the record before we bring the jury in.

MR. LUCAS: Yes, sir, Judge.

MR. OVERBY: With respect to 2017-GS-04-01675 and Indictment No. 2017-GS-04-01680, these charges are for two counts of possession of a handgun by a person convicted of a crime of violence. They are the subject of a motion to sever by the defense.

While State's position is that legally speaking these are appropriate charges under the definitions and the statute. Understanding that there is a potential here for down-the-line review, the State won't be proceeding forward on those charges.

33

THE COURT: Okay. Yeah, and I think that's right. So you understand that they are dropping those charges?

MR. LUCAS: Right. I understand, Your Honor.

THE COURT: Okay.

MR. LUCAS: That will result in us having two motions that we don't need to hear.

THE COURT: Right. Yeah, I think that's -- I mean, look this is one of those things that this jury is going to hear the case. The more serious charges are going to be dealt with, and I think that's smart to do that. That takes away a lot of the issues that I would want to rule to make it possible. Okay. You want to bring them in?

THE BAILIFF: (Complying.)

(At 1:21, the jury entered the courtroom.)

THE COURT: Okay. Thank you. Ladies and gentlemen, we neglected to call the case earlier. I'm going to do that. What my intention is, is to then swear you in. And I'm going to go ahead and give you my 8 to 12-minute overview of the court system charge today just to buy a little time tomorrow. Then we'll send you home today.

We're going to then take a lunch break which is late, obviously, for all of us. And then come back

this afternoon and we'll be working on this case all afternoon, but it's no point for you to stay here.

Okay. You can call the case.

MR. OVERBY: May it please the Court, Your Honor? This is Indictment No. 2017-GS-04-01674, the *State v. Damorius Dontavis Gaines,* charged with attempted armed robbery and possession of a weapon during the commission of a violent crime.

Indictment No. 2017-GS-04-01676, the *State v. Damorius Gaines,* charged with kidnapping.

And Indictment No. 2017-GS-04-01681, the *State v. Damorius Gaines,* charged with armed robbery and possession of a weapon during the commission of a violent crime.

THE COURT: Thank you, sir.

THE CLERK: Ladies and gentlemen, if I could have you stand and raise your right hands, please.

THE JURORS: (Complying.)

THE CLERK: Do you and each of you solemnly swear or affirm that you shall well and truly try and a true deliverance make between the State of South Carolina and the defendant whom you shall have in charge and a true verdict render according to the law and the evidence? If you will, say "I do."

THE JURORS: (Collectively:) I do.

35

THE CLERK: Have a seat.

THE JURORS: (Complying.)

THE COURT: All right. Mr. Foreman and ladies and gentlemen, if you'll give me 10 to 12 minutes, I promise you this will save us some time tomorrow.

First thing I want to tell you is, that I am always physically hot in this courtroom. I've been -- the temperature is hard to maintain, but, quite frankly, if you see me sweating up here, it's just my natural order so don't be alarmed.

The first thing I want to tell you is, you just heard the Solicitor's Office read from these indictments. The fact that a person has been indicted in this state should never be discussed by and you in your jury discussions. An indictment, which you will have with you when you begin your deliberations, is literally just a piece of paper that is filled out that starts this process. This defendant has pled not guilty to these charges.

The fact that he's been indicted of these charges is not an indicia of guilt at all. It should not be discussed by you. You should never say to yourselves or another person, well, he's been indicted so he must be guilty. That's not true.

He has plead not guilty. And throughout this

36

trial, he will be cloaked with the cloak of innocence. It's obviously a very serious constitutional right that we have that he is presumed not guilty until you as a jury, after hearing all the evidence and after hearing my jury charge to you, remove that cloak of innocence or not guilty from around his shoulders.

He sits in this courtroom today not guilty, and he will sit after all the testimony has been given as not guilty and will only be guilty if you strip him of that presumption of being innocent after your deliberations. So the fact that he's been indicted shouldn't be discussed by you at all. And, again, you'll have these pieces of paper with you when you begin your discussions and your deliberations.

Now, ladies and gentlemen, I just want to take a few minutes to tell you a couple of things about the way we'll proceed.

The first thing I want to tell you is, that something that has grown to concern me the longer I've been at this job, and that is the influence of television on jurors. My mother passed away last March. I used to tell jurors all the time, she called me all the time asking me and telling me how exciting my job must be because she watched every

37

television show with lawyers and judges. And I almost kind of hated for her to come the first time and watch a trial because it was not nearly as exciting as it is on television.

Obviously, things are going to move slower than you might expect them to move. That is by predesign. This courtroom is a place of honor, and I mean that and believe that to my very soul. This case will not be finished in 1 hour with 22 minutes of commercials. It's going take us a full two days, and we will be hustling to finish it in two days. We'll have to go late tomorrow.

But I've watched jurors sometimes grow fidgety and a little bit anxious because they just think things are not moving quickly. I think that you will see that the system works fabulously, but it works very slow. And as I said, that is by design. So don't get frustrated. That's my concern.

The other thing is, that you and I will have very different roles during the course of this trial. You're the judges of the facts. You will listen to witnesses who will testify from this witness stand. You will have some video; some documents. You'll have to determine what the facts are in this case. I'm the judge of the law.

Anytime there's an objection, this entire afternoon while you're at home, I'll be dealing with legal matters. Our roles never cross.

In other words, if you see me reacting to a witness's testimony and think that I have an opinion about whether or not that witness is telling the truth or not, you should disregard any opinion you think I have. Number one, I don't have an opinion, but, number two, it doesn't matter. You are the sole people in this courtroom who can determine what the facts are in this case.

Necessarily, as I'll tell you at the end of this case, you'll have to determine the credibility of witnesses. Credibility in South Carolina simply means believability. You're going to be sitting there watching these witnesses testify. You'll have to determine who you believe.

And at the end of this trial, I will give you probably a 30 or 40-page charge on the law. And I'm warning you now, I have to read that to you. But our roles don't cross. You have to take the law as I give it to you during the course of the trial and at the end of the trial as the law in this state. And I will assume that you have determined the facts, and I'll accept those facts.

39

And at the end of this case, you'll take the law as I give it to you, apply it to the facts as you determine them to be, and that's how you reach your verdict.

Again, during the course of this trial, there is going to be objections. During every objection, I'll send you out of the courtroom because I want to put on the record both sides of the argument. If you sit back there for 10 minutes and you think you should only be back there for 5, what is more likely is you will sit back there for 25 minutes and you think you should only be back there for 5.

Don't get frustrated with the lawyers who are making objections. That's their job. Get frustrated with me. In addition to being the judge of the law, once this case starts, I'm in charge of this case and how it proceeds. So if you get frustrated while you're sitting there, if you get frustrated in the back, don't get frustrated at the State or defense. Get frustrated with me because it's my job to continue with it on.

And as I said, don't get frustrated with the lawyers whose make objections. I will promise you that there's a high probability that there will be an objection made. I'll send you out of the

40

courtroom. We'll argue it for 15 minutes. I'll bring you back in the courtroom, and there may be an immediate objection and I'll send you back out. That's not just to give you exercise, but, quite frankly, that happens in almost every trial. And I can watch jurors sometimes get irritated at lawyers. That's their job to make objections.

So, again, if you get frustrated at any point during the course of this trial, don't get frustrated with the lawyers. Get frustrated at me for not moving along quick enough.

Now, ladies and gentlemen, tomorrow we will start with the opening statement. That is not evidence, but an opening statement is an opportunity for the lawyers to tell you a little bit about this case and then tell you what they intend to prove.

Then we'll go immediately into testimony. And as I said, all the test -- all the witnesses will testify from this witness stand. After we have finished with the testimony, the lawyers will have the opportunity to give you their closing statement.

The opening statement and the closing statement are not evidence. The witness's testimony between the two is evidence, so you just need to take that into account.

41

After the closing statements by the attorneys, I will then, as I said, have to sit down with you and read to you 30 -- 27 to 30 pages of law in this case. I understand that that gets frustrating for jurors. The reason I read it is for consistency sake so that anybody in any courtroom in the state is getting the same charge on these matters, but it is sometimes frustrating because I try to read as best I can.

I tell jurors all the time, I read to two groups of people in my life. I read to my children to make them go to sleep, and I read to jurors to keep them from going to sleep. So I'll do the best that I can, but at the end you need to be prepared to sit for about an hour while I read to you the law in this case. And, again, that is the law that I determine during the course of the trial applies to the facts of this case.

I -- I don't know whether or not there's going to be publicity or not. I have no idea, but I'm ordering you right now not to read anything in the paper, listen to anything on the radio, or watch anything on television that concerns this case. I realize that's hard, but I'm ordering you to do that because it is an obligation you have. I'm asking

42

you to do -- to not do any of that because if you do, I have to deal with you. And because I've ordered you now not to do it, if we find out that you did, then you're going to have to unfortunately deal with me in a different setting, and I don't want to have to do that.

But with the internet being so pervasive, with anything on the news, anything on a computer, I'm asking you not to look up anything about this case, not to research anything, not to do any kind of work on the computer or listen to anything you might hear on the radio or television. I promise you, you will know more about this case by tomorrow night or by Thursday night than anybody in the world. The only thing you could do if you look it up on the internet or talk to friends is mess up something that you might hear. It is very important.

We spent all morning basically qualifying you and picking you. Now you're sort of in a capsule until the end of this case. That includes the fact that you can't talk to your family about the facts of this case. That I understand is very difficult, but if anybody in your family or any of your friends ask you if you're on this jury, you need to say, "I can't talk about that until Thursday." If they're

43

really good friends and they're really good family, they'll understand and not push you. If they're not, they'll push you.

The reason you don't talk to people is there is the chance, and it is a pretty good chance, that they might say something that would sway you in one direction or the other. And it won't be based on anything. It'll be based on something they heard, not what you know.

Again, you will know more about this case than anybody in the world by Thursday night, so please don't talk to family members or research this case on the internet or be subject to any publicity in this case at all. I'll keep a close watch, but sometimes things slip by and I'm asking you not to read or either listen or watch.

The other thing I'm going to tell you is that you should not deliberate on this case at all until you've heard both sides of the case and I charge you on the law. That means that you cannot talk about this case in the jury room or talk about what you think about this case or a particular witness. You can't talk about it amongst yourselves. You can talk about anything else in the world except this case. Again, the reason you do that is because you

44

can't make up your mind until you've heard both sides, and that's a very important fundamental right that we all have.

So please don't do any of that that I've just gone over. And if you have a problem or if someone pushes you to talk about this case or calls you or contacts you in any way and you are bothered by it, you let Annie Ruth or one of the bailiffs know. She'll let me know, and I promise you I'll take care of it.

When you're coming to and from court, keep that little button on. Lawyers will not talk to you. People around the courtroom or the courthouse area will avoid you. It's not because they don't like you, but it's because they know that no one should be talking to jurors. And, again, if you are accosted by anyone or if anybody tries to talk to you, you let me know and I promise I will deal with it in a pretty harsh manner, so let me know if there's a problem.

The last thing I'm going to tell you is, that this is a criminal case. You've heard again from the indictments which are not to be consider, but it is a criminal case. That means that the State in this case has the burden of proving each and every

45

element of their allegation for -- by proof beyond a reasonable doubt.

Now, at the end of this trial, I will give you a longer description of what reasonable doubt is, but I want you to be thinking from the very beginning. Reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. That is a one-sentence description of what reasonable doubt is.

Each of you will have to work that out in your own head and as a group once you begin deliberating, but I want you to know something from the get go and from the very beginning, that that is a burden that the State has. As I told you, the defendant sits here with a cloak of righteousness or innocence about his shoulders, and that will only be removed by you.

Okay. That is what I would've said tomorrow. It's a little shorter than what I would've said. I know you're hungry and I know you need to get out of here. I'm going to ask that you be in the jury room by 10:00. You may wonder why we start at 10:00 and go late. Quite frankly, I'm one of those judges that many years ago an older judge told me, you know, you need to understand that people have to be

46

in the courtroom an hour before you have to be, so you need to be aware of that. So I start at 10:00. It's not because I sleep until 9:30, but we will start at 10:00. And we probably will go tomorrow night until 6:30 or so. We'll break at a natural point tomorrow night.

All right. Again, you've been very patient. I appreciate it. I will see you tomorrow at 10:00. If you have any problems, let the bailiffs or Mr. Shirley know, and I promise you I will take care of that problem immediately. Have a good night.

A JUROR: Be here tomorrow at 10:00?

THE COURT: Ten o'clock tomorrow. Are we going to stay up here?

THE CLERK: Yes.

THE COURT: We're going to be on the fourth floor looks like probably. She'll show you.

By the way, that brings up one more issue if y'all have 30 seconds. Mr. Foreman, from this point forward, the only communication between you, as a group, and me will be in writing. So, Mr. Foreman, if there's a problem back there, if you have questions, I need you to write it out on a piece of paper. Put the time and the date and sign your name and knock on that door. If I can help you with an

47

issue, I will. If I can't help you, I will call you in and tell you that's not something I can do. But from this point forward, that will be the only way we can communicate.

MR. FOREMAN: Yes, sir.

THE COURT: Okay. Y'all have a great night. See you tomorrow.

(At 1:38 p.m., jury left the courtroom.)

THE COURT: All right. What time do y'all want to come back at? I'm hungry and I've got a couple of errands to run. It's 1:30. Come back at 2:45? 2:45 starting and we'll argue the motion and put it on the record. I know that things have changed here in the last minute. And y'all, I'm not going to hurry back, but I'll be here between 2:45 and 3:00. And then we'll put on the record anything you need to put on the record. Okay.

MR. OVERBY: Yes, sir.

THE COURT: All right. By the way, any objection from the State on the selection of the jury?

MR. OVERBY: None, Your Honor.

THE COURT: From the defense?

MR. LUCAS: None.

THE COURT: Okay. See y'all in a little bit.

48

(From 1:39 to 3:05 p.m., lunch recess.)

THE COURT: My understanding is, we had a conversation off the record and that the only motions that we really need to deal with are the motion in limine to exclude opinion testimony et al and a motion in limine in regards to the CI. So we'll do those after we do the *Jackson v. Denno* hearing.

MR. OVERBY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. OVERBY: The State calls Investigator Craig Gardner to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you give the Court today in this case with be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir.

THE CLERK: If you'll take the witness stand and state your name and spell your last name for the reporter, please.

THE WITNESS: Okay. My name is Craig Gardner. My last name is spelled, G-a-r-d-n-e-r.

INVESTIGATOR CRAIG GARDNER,

having been produced and first duly sworn as a witness on behalf of the State, then testified as follows:

JACKSON V. DENNO EXAMINATION

BY MR. OVERBY:

Q. Investigator Gardner, where are you employed, sir?

A. I'm employed with the Anderson City Police Department in Anderson, South Carolina.

Q. And what is your role with the Anderson City Police Department?

A. I work in the street crimes unit, which is I do pretty much gang intelligence and assist in investigating violent crimes to assist in our investigations unit.

Q. Okay. Some of your duties -- what are some of your duties and responsibilities in that role?

A. Maintain databases on the re-occurring offenders. Keep track of known gang members in the city.

As far as assisting investigations, I'm at times provided case files to follow-up on when they have an overload, and I work the case as an investigator.

Q. Okay. And were you in this role in February of

2017?

A. Yes, I was.

Q. Okay. On into March of 2017?

A. Yes, sir.

Q. Okay. Did you happen to come into -- or were you assigned a case involving an armed robbery at the Dollar Tree located off South Main Street, as well as the Little General located off of South Murray Avenue?

A. Yes, I was.

Q. Okay. Were you assigned that case?

A. Yes.

Q. Okay. Eventually, without going too far down the road in terms of how we got here, but eventually did you come into contact with the defendant, Mr. Gaines?

A. Yes, I did.

Q. Okay. Did Mr. Gaines provide you a statement?

A. No. He did not provide me a written statement.

Q. Okay. But did he speak to you about this particular case?

A. Yes, sir. I did speak with him.

Q. And did you record those in an incident -- record those statements in a written recording in your incident report?

A. The conversation I had with him, I did document in my supplemental ---

Q. Okay.

A. --- about the contents of our interview.

Q. Okay. Now, who initiated that particular conversation?

A. He did.

Q. Okay. And how did he do so?

A. He left me a letter in our city jail, which was an envelope with my name on it, addressed to me, where he was wishing to speak with me.

Q. Okay. Was he in custody at that time?

A. He had already been served with the warrants on -- related to this case.

Q. Okay. And so he was presently incarcerated?

A. He was.

Q. Okay. Did you eventually allow him to come up and speak with you?

A. I did.

Q. Okay. Did you advise him of his Miranda rights?

A. Yes, sir.

Q. Okay. And in so doing, just give the Court a brief idea about what those are.

A. You're talking about the Miranda or the ---

Q. Yes, the Miranda. The Miranda.
A. Okay. We basically advise them they have the right to remain silent. Anything that they say can and will be used against them in a court of law.

That's the beginning of the Miranda. It's a form we fill out. We ask them a series of questions about their education, whether they can read or write.

Then we read them Miranda, ask them to initial if they understand it. And I, myself, usually ask them a second time, "Do you fully understand what your Miranda is?" which he stated he did.

And then I go through the waiver of Miranda. And after completing that, I explain a couple of words like pressure, coercion, or things such as that in the waiver. He stated he fully understood everything and he wanted to talk. And then I had him sign the waiver, and then we talked.

Q. Okay. I'm going to show you what I'd like to have marked as State's Exhibit No. 1. Investigator Gardner, can you tell me what that is?
A. That's a waiver of rights form from the City of Anderson Police Department.
Q. Okay. And is that the waiver of rights form that you gave to Mr. Gaines in this particular case?

A. Yes, it is.

Q. And you gave that him prior to speaking to him or asking him questions?

A. I pulled this form out. Laid it in front of him. Told him I had to go through the process of advising him of his rights. This is the form that -- that I read to him and then had him initial and sign.

Q. Okay. So he initialed each one of the individual rights?

A. That's correct. He initialled each line by -- I'm sorry -- the initial waiver. He initialled each line that he understood what each line of Miranda meant ---

Q. Okay.

A. --- and that he understood it.

Q. And did he eventually sign where it indicated that he understood his rights?

A. Yes. At the bottom here on the waiver of rights form, he signed the bottom line that he understood his rights and he was waiving his rights.

Q. And he also signed that he was waiving his rights, as well?

A. That's correct.

Q. Okay. Did you at that time begin your

conversation with him about the subject matter of this case?

A. I did.

Q. Okay. Did he at any time while giving statements to you indicate that he did not want to speak about the subject matter of this case?

A. No, he did not.

Q. Okay. Did he at any time indicate that he felt coerced or threatened to provide that particular statement?

A. No, sir.

Q. Did he in any way -- did he in any way indicate that this was not a completely free and voluntary act to provide these statements?

A. No, sir.

Q. Okay. Tell the Court what he told you after you gave him those particular warnings.

A. When we started the conversation, he just -- I told him I wanted to find out what he wanted to talk to me about as far as, you know, this robbery was concerned. And his main thing was to tell me that he wasn't a violent person.

And then there were several other things we talked about. But, I mean, as far as the robbery goes, every time I would speak about the robbery or

the incident he'd been charged with, he would just always tell me that he wasn't a violent person.

Q. Okay. Did he -- you did not audio or video record this interview?

A. No, sir. We did not have that in investigations at the time.

Q. Now, did he indicate to you where he had been staying during this time?

A. Yes. He did tell me that he had been staying with his mother who lived on, I think, it's [redacted] East Franklin Street and that he had also previously stayed with a girlfriend in Fairview Gardens on Williamston Road, but most recently he'd been staying with a female who he had been seeing on the house on Cleveland Street, which was three-quarter or I'd say less than a mile from where his mother lived.

Q. Okay. Did he identify who that female was?

A. Yes, he did.

Q. And who was that?

A. He named her as Sherika Harper.

Q. Okay. And you said that he didn't -- that he stated he didn't know anything about the robberies?

A. When I first started talking to him, yes, he said he didn't know anything about the robberies,

that -- and then several times he just repeated he wasn't a violent person.

Q. Okay. Did he ask you anything during the course of this investigation -- during the course of your interview?

A. Not off -- I can't -- I can't remember ---

Q. Okay.

A. --- specifically what he asked.

Q. Would looking at your incident report help to refresh your recollection?

A. Yes.

Q. Let me -- let me back it up just a little bit so that you -- so that maybe we can highlight the portion I'm talking about here.

Did you ever show him the surveillance camera still that came from this particular case?

A. Yes, I did.

Q. Okay. What did he say in response to being shown that still?

A. I remember showing the photo. I was describing to him about where a camera was located and that a photo had captured an image of the offender at that specific location.

And when I started speaking of a camera and a photograph, he just kind of leaned back in his

chair, I would say as in just like he was surprised that something like that was fixing to come available.

At that time I pulled out a Xerox copy of the photo that I had cropped from the actual video of the offender, and I showed him the picture. And when I showed him the picture, I can't remember exactly what words he said. I'm looking here trying to find it, but he was -- I mean, he was shocked that there was a video. And he looked at the video and made a remark.

Okay. I -- when I showed him this, I was tell -- I was telling him how the person walked out the store and pulled the mask off and faced -- faced the camera. And when I showed him the picture, he looked at the photo and then looked at me and said, "I don't know what you're talking about."

Q. And did he -- was there anything else that he told you as part of that?

A. Umm...

Q. Did he continue to deny?

A. He just -- he -- yes. He continued to deny it. Again, telling me when he was looking at the picture that "I'm not a violent person." That was just what he kept saying, but again denying that that was him

in the photograph.

Q. Okay. Now, what I want to draw your attention to is the end, roughly, of your conversation. Did he say anything -- did he say anything specifically or ask you any questions specifically in relation to the location of these armed robberies?

A. Yes. When I showed him the video -- I mean, not the video, but the photograph while we were talking, he presented me with the question. I want to make sure I get the words right, but it was, "Why would I rob a store right across the street from my house?"

And then I responded to him with, you know, why I thought a person would do that. And then I asked him about the video -- I mean the -- yeah, the video in the picture again and having to face that photo or video at a later date. And his opinion was basically that he would deal with that then, but until then...

Q. Okay. Did you take any photographs during this proceeding?

A. Yes, I did.

Q. Okay. What photographs did you take?

A. While I was interviewing Mr. Gaines, we were in the interview room. And as we wrapped up the

interview, I asked him if I could take a couple of photographs of him, that I wanted to get a photograph of him from the front and side view. And he stood up and allowed me to take a picture.

I took a picture of him like facing me. Then I took a picture of him at an angle looking away so I could get the side view and profile of his face.

And then I wanted to take a quarter turn back towards me so I could an angle across his face, not so much just a complete side profile. When I went to take that picture, he said, "No. That's enough. No more pictures," and I stopped.

Q. Okay. Did he voluntarily take those photographs, the initial photographs?

A. Yes. He willingly let me take the first two photos.

MR. OVERBY: I'm going to have these -- I'd like to have these marked, Your Honor, as State's Exhibit 2 and 3 for the purposes of this hearing.

(State's Exhibit Nos. 2 and 3 were marked for identification.)

BY MR. OVERBY:

Q. Investigator Gardner, I'm handing you what has been marked as State's Exhibit 2 and 3. What are those pictures of?

A. This first picture listed as Exhibit No. 2 is the frontal picture I took of Mr. Gaines. And the picture in Exhibit 3 is the side view photo that I took of Mr. Gaines.

Q. And those photos fairly and accurately depict him as you observed him on that day?

A. Yes, sir.

Q. Okay. And he voluntarily consented to those photographs?

A. Yes, sir.

MR. OVERBY: Your Honor I'd like to move, and I don't think I did this earlier, but State's 1, 2, and 3 into evidence for the purposes of this hearing only.

THE COURT: Any objection?

MR. LUCAS: No, I do not, Your Honor.

THE COURT: Without objection.

(State's Exhibit Nos. 1, 2, and 3 were received into evidence.)

BY MR. OVERBY:

Q. Okay. And you mentioned this very briefly, but I want you to repeat it for me. What did he say when you -- what did he say when you asked him to take another photograph?

A. Once I asked him -- when he was standing with

the side view, I asked him to turn -- make like a turn -- like a quarter turn back towards me so that I could get a photograph, not just from the side profile, but a cross profile of his face. And when I held my phone up to take a picture, he said, "Oh, no. I know what you're doing. No more pictures. I'm done," and then I stopped.

Q. Did he have any -- was there any other -- any further communication that was had between you two?

A. Case specific, no. We may have just spoke briefly walking back to the jail, but nothing related to the case. We ended the interview then.

MR. OVERBY: Investigator Gardner, I have no further questions for you. Please answer any questions Mr. Lucas has for you.

THE WITNESS: Okay.

JACKSON V. DENNO CROSS-EXAMINATION

BY MR. LUCAS:

Q. Just a couple of questions, Investigator Gardner. You interviewed Mr. Gaines on March 13, 2017?

A. On what?

Q. March 13, 2017.

A. I can't say specifically that it was that day, but it was around that time period ---

Q. Okay.

A. --- around the first week or two in March.

Q. And you prepared your supplemental report the following day?

A. Yes. My supplemental, after talking with Mr. Gaines, was written on the 14th.

Q. Okay. Now, did you take any notes when you spoke with Mr. Gaines?

A. I don't recall having anything jotted down. Nothing that was like imperative.

Q. Well, did you take any at all that might've been in a not full paragraphs or a full rendition of what he said?

A. I don't recall taking any notes. Just we sat there and talked.

MR. LUCAS: Okay. Nothing further.

THE COURT: Anything on redirect?

MR. OVERBY: Nothing, Your Honor.

THE COURT: Okay. Thank you, sir. You can step down.

THE WITNESS: Okay. Thank you.

(Witness excused.)

THE COURT: Any other witnesses?

MR. OVERBY: None for the purpose of this hearing, Your Honor.

63

THE COURT: All right. What are you trying to introduce through him?

MR. OVERBY: We're trying to introduce the oral statements that Mr. -- the oral statements that Mr. Gaines provided to Mr. Gardner -- to Detective Gardner after the -- after he was essentially placed under arrest. He was already under arrest.

We're trying to avoid that aspect of testimony, but he had the warrant served on him. He was clearly in custody at that point. He voluntarily came and talked to Detective Gardner who memorialized the statements that were made in a supplemental -- in a supplemental report.

THE COURT: But wasn't his statement that he did do it? Wasn't that his statement?

MR. OVERBY: Well, he never insomuch says "That wasn't me" or that "I didn't do it." He says, essentially, "I'm not a violent person." He ducks the question.

But more specifically, he states five things, Your Honor, of really big importance, that he lives in Georgia -- lived in Georgia, that he was staying with his mother on Cleveland -- lived with his mother and that he was also staying off Cleveland Street, that he'd been dating a girl by the name of

64

Sherika Harper, that essentially this matter is for argument in terms of what the meaning of that statement is.

He didn't say, "I didn't do it." He said, "I wouldn't rob nobody. I'm not a violent person." And then he also asked the question, "Why would I rob a store by my mother's house -- right by my house?" Those are statements of a tremendous amount of significance.

Now, also, "I don't want to do any more photographs" when he's asked to do a specific photograph. Those are the statements of significance that the State would seek to introduce.

THE COURT: Okay. Yes, sir.

MR. LUCAS: Your Honor, I think that for purposes of *Jackson v. Denno*, it seems pretty clear that the statement is admissible and not coerced. Given there's no admission by Mr. Gaines, it seems that under 403 this is likely to just confuse or mislead the jury if the State's using it to argue that Mr. Gaines made an admission. And, in fact, Mr. Gaines is, I quote, saying, "I didn't rob anybody. I'm not a violent person."

THE COURT: What about the photograph where he stops him? That's what -- that's the only thing

65

that, I mean, that's not a statement. He basically said, "I don't want to take that third photograph."

MR. LUCAS: The photographs express a conduct I think, Your Honor. So he -- I mean, he didn't ask him to stop photographing. It's not a statement per se.

THE COURT: Yeah, but I mean what about the admissibility of that as a statement?

MR. LUCAS: I don't see that it's really relevant, Your Honor. It's not ---

THE COURT: Yeah, I got a little bit of a problem with him. I mean, the first part of it, I don't have any problem with where he lived, who he lived with.

The problem I've got is he -- he basically said "don't take my picture in that angle," right?

MR. OVERBY: That's correct, which is admissible under the hearsay rule.

MR. LUCAS: Well, Your Honor, I take the position that the probative value of that is extremely slight. And that the State is using it to argue that he doesn't want his picture taken because he's guilty, and that's prejudicial, Your Honor. I think that prejudice outweighs the extremely limited probative value.

66

THE COURT: Well, if it wasn't prejudicial, he wouldn't want it in. I mean, I -- I' -- I mean, I don't think anything is coerced, and the rest of it's factual. I'll allow the statement in.

I'm going to have to think about the photograph though because basically what you -- I mean, you're trying to backdoor that he didn't want a picture made from the side by him stopping his statement. He called it a day at the point where, you know, obviously it's ---

MR. OVERBY: He -- he stopped his statement, Your Honor, after the attempted photograph -- the photograph was attempted to be taken. I mean, he asked ---

THE COURT: Well, put it this way, did anything happen after he said, "No, that's it"?

MR. OVERBY: Nothing -- nothing further after that.

THE COURT: I mean, all he's doing is stopping his statement, and I understand. I mean, I get the -- the where the -- what you would introduce in court. I'm just not so sure that the stopping of statement is a statement. He says that's it. I don't want to do it.

MR. OVERBY: In relation to the particular

67

photographs, I think that's what pushes it over the threshold, Judge.

THE COURT: All right. Well -- well, I'll let everything in except the stopping of the photograph. I think -- I understand what you're saying, and I believe that he -- he stopped the -- the interview. It was at an opportune time for him, but I don't think you can get in him stopping the interview as a statement that he didn't want a picture made from the angle of the camera, which is what I've assume everybody's saying.

So for the purposes of the -- I'll allow everything except when he ends his statement because bending over backwards, and factually that's what he did. He said, "I'm done. I'm stopping." So I'm not sure that that refusal to go any further can be introduced as a statement pursuant to *Jackson v. Denno*. So everything else comes in except the ending part.

Okay. Anything else we need to do before your motions from the State?

MR. LUCAS: No, Your Honor.

MR. OVERBY: Nothing from the State.

THE COURT: Y'all mind giving me ten minutes to slam a sandwich back real quick? I might be in a

68

better mood. All right. I'll be back in ten minutes literally.

(From 3:30 to 3:56 p.m., recess was taken.)

THE COURT: Okay. So we've got two motions, a motion in limine to exclude lay testimony and a motion to exclude hearsay statements?

MR. OVERBY: That's correct, Your Honor.

THE COURT: Whichever one you want to start with.

MR. LUCAS: If we can do the hearsay motion first, Your Honor.

THE COURT: Okay. So that's the CI?

MR. LUCAS: That -- that's correct, Your Honor.

THE COURT: Okay.

MR. LUCAS: So based on the incident report, there is an Officer Vaughn where Gardner is going to testify that they received a tip from a reliable confidential informer -- informant. And the tip was that the informant told them that the person who robbed the Dollar Tree store in Anderson a couple of weeks ago was recently arrested. And the informant said that the person who robbed it was "Georgia boy" and he was arrested in a traffic stop.

And our position, Your Honor, is that it's obviously a hearsay statement, that is the informant

69

telling the police officer, and it's being offered for the truth of the matter asserted that "Georgia boy" robbed the Dollar Tree. And because of that, it's hearsay and also no exception. So it's hearsay without exception. It's not to be excluded.

And I think the State is going to argue that they are actually offering it for -- not for the truth of the matter asserted, but to show why they undertook an investigation.

I think the fact that they're offering that there was a robbery and it was committed by a person known as "Georgia boy" and they're later going to offer testimony that Damorius Gaines is known as "Georgia boy" makes it pretty clear that they are offering it for truth. And since there's no exception, Your Honor, we think it has to be excluded as inadmissible hearsay.

THE COURT: Okay. Yes, sir.

MR. OVERBY: May it please the Court, Your Honor?

The substance of the statement that we're going to offer is essentially this, that -- well, Investigator Gardner can testify to it if you'd like to hear the proffer so that you can hear exactly what he's going to say.

THE COURT: Yeah, why don't we do that so we've got a record too.

MR. OVERBY: Okay. Sounds good.

THE COURT: Come on up. We'll proffer the testimony.

MR. OVERBY: The State calls Investigator Gardner.

THE COURT: And you're still under oath.

THE WITNESS: Yes, sir.

THE COURT: Okay. Yes, sir.

PROFFER EXAMINATION

BY MR. OVERBY:

Q. Investigator Gardner, you've already testified that you came to be involved in this matter back early March; is that correct?

A. Yes, sir.

Q. Okay. Did you have any leads when you started this investigation?

A. Yes, I did.

Q. Okay. What leads did you have?

A. During the time I was assigned this case, the person that I was working with or the partner of mine was Investigator Vaughn.

He told me that he had received a call from an informant of ours that me and him both use from time

to time. And that he was told that we need to be looking for a guy named "Georgia boy." And I was like, okay. And he said, "Well, we need to get in touch with this informant because he's got some information."

So a phone call was made and he told us that we need to be looking for this specific individual, that he's the guy that we need to be looking for as far as the robbery of the Dollar Tree. And he told us that he knew that he had a girlfriend named Sherika. He actually didn't say Sherika. It was Shamita, Sherika. He didn't know exact -- the exact name, but he was very close to that.

And also said that -- that we could probably find out who he was if we looked in our reports, because about a week or so prior to the date they were talking to him on the day individuals in a traffic stop with Marquis Glover right there in that specific neighborhood on Cleveland Avenue.

Q. Okay. So he didn't know the name of the individual at all?

A. He did not.

Q. He just knew that he went by Georgia boy?

A. That's the only name he knew.

Q. And did he indicate that he had firsthand

knowledge of the fact that he was the individual involved in this?

A. No, he did not.

Q. Okay.

A. Just -- just whatever -- he said that's what he heard.

Q. That's what he heard?

A. Yes.

Q. Okay. And what did you do based off of that?

A. Like any other tip that we get, whether it be from this type of informant or through crime stoppers, it's something that has to be investigated to either eliminate or see if there warrants more recent follow-up on it to further -- to see if they're involved in the crime we're investigating.

Q. Okay. And what did you do specifically as it related to that information?

A. Specifically, I went and started going through our report system. I did locate a traffic stop. I believe it was Officer Saxon had done. It was there right around the area of Cleveland Avenue where Marquis Glover had been stopped in a traffic stop. And there was an individual who was in the car with him on that traffic stop by the name of Damorius Gaines.

Q. Okay. What did you notice about Mr. Gaines' residence?

A. About his residence?

Q. In other words ---

A. Oh, when I first pulled the ID pack where it had place of birth, it had that he was from Georgia.

MR. OVERBY: Okay. I have no further questions. Please answer any questions defense counsel may have.

THE WITNESS: Yes, sir.

CROSS-PROFFER EXAMINATION

BY MR. LUCAS:

Q. So it's my understanding that you personally spoke with this tipster by phone?

A. It was by a telephone conversation. That's correct.

Q. And he told you that he actually didn't have any personal knowledge about who committed the robbery of Little General?

A. His information to me was that the word on the street was, and he gave us the name that we need to be looking for him.

Q. So he didn't actually have any personal knowledge?

A. As far as -- I mean, I can't say he did or

didn't, but what he told me was what he heard was and that's who we needed to be looking for.

Q. So someone else told that to him?

A. We presumed that.

Q. Well, you don't think he was a witness, do you?

A. No.

Q. You didn't put that in any of your reports?

A. You're talking about my CI being a witness?

Q. Yes, sir.

A. Oh, no. No. No. He didn't.

Q. So he doesn't have any personal knowledge?

A. No. Not as far as being an eyewitness. No.

Q. So his knowledge is based upon what he heard on the street?

MR. OVERBY: Objection, Your Honor. Calls for speculation.

THE COURT: Okay. Overruled. Go ahead. We're just proffering.

MR. LUCAS: Sure, Your Honor. I'll move on from that.

BY MR. LUCAS:

Q. Later on after speaking with this CI, you subsequently interviewed Sherika Harper?

A. Yes, sir.

Q. And -- and you got information from her that

Damorius Gaines is known as "Georgia boy"?

A. That's correct.

MR. LUCAS: Okay. Nothing further.

THE COURT: Okay. Anything on redirect?

MR. OVERBY: Nothing, Your Honor.

THE COURT: Okay. Thanks. You can step down.

(Witness excused.)

THE COURT: What do you expect to use to get that in, that somebody called and said, "the word on the street is." That's almost hearsay within hearsay.

MR. OVERBY: Judge, this is a -- I'd like to present a case. I've presented this to the defense counsel. This is *State v. Brown*, a Supreme Court case 317-SC-55, 451 SC.2d 888 from 1994.

THE COURT: '94?

MR. OVERBY: Yes, Your Honor. And I'd like to point you directly actually to the last page of the this. It's six pages for reference and headnote 12 to 13.

The bottom line is, is that this CI tip, this anonymous tip that happens every day in law enforcement, got the ball rolling for the investigation to start with Mr. Gaines. It is the pinnacle of -- it is the top of the iceberg

76

essentially in terms of ---

THE COURT: Right.

MR. OVERBY: --- this case. So without that, you don't get to the fact that Mr. Gaines is identified as part of this -- as a member of this -- or a person in this traffic stop. You don't get the fact that he has a girlfriend named Sherika Harper. You don't get a picture of Mr. Gaines. You don't get the statements of Mr. Gaines. And you most certainly don't get the opportunity to compare what'll ultimately be the number one thing in this case, the comparison of the video surveillance to the photographs, physique, and appearance of Mr. Gaines in terms of establishing identity.

So for the purposes of this particular case, we're offering it simply to show why law enforcement began to investigate Mr. Gaines as a possible suspect in this particular case.

As Investigator Gardner mentioned, the CI doesn't have personal knowledge of this. He says, "You need to look at this individual. This is what people are saying."

And so the bottom line is, is this is what people are saying. Gets the -- gets us to these particular locations where eventually Ms. Harper

77

identifies Mr. Gaines and everything along the way down the road.

So it's actually very similar to *State v. Brown* in that sense because that's the limited purpose for which we're offering it.

THE COURT: But why can't you -- I mean, in Brown, it doesn't say what the statement was, but let's say -- let's just use this for example that they got a crime stoppers tip.

MR. OVERBY: Okay.

THE COURT: Wouldn't he get up and say, "We got a crime stoppers tip and that started us looking," but not -- you can't say what a phone call message was.

MR. OVERBY: Well, he -- he's not going to say all of that, Judge. I mean, our purpose is only to offer -- and I apologize for proffering too much essentially ---

THE COURT: No, that's okay.

MR. OVERBY: --- at this point. Our point is, is what -- there's really three key elements that we want to get in this thing -- into this -- through this tip.

An individual named "Georgia boy" is who they need to look at, that he was involved in a traffic

78

stop, and that Sherika Harper is his girlfriend. That's it. And that's just the substance and totality of the tip.

MR. LUCAS: Your Honor, if I -- if I may respond briefly.

THE COURT: Sure.

MR. LUCAS: The fact that they're offing -- they want to offer that it was committed by "Georgia boy." They're offering that for the truth of the matter asserted.

Secondly, there's no way to determine that this tip was indeed from a reliable confidential informant. They refused to provide us any information that would suggest the reliability.

And, third, there's a real simple way to deal with this. They can have Investigator Gardner simply testify he got a tip. And as a result of that tip, they did certain things in the investigation. There's no reason to go beyond that to all -- to all of those things.

THE COURT: Which is the way I would think you would do, because I got a tip. I don't think you can go -- I mean, if his name on the street is "Georgia boy," I don't know. I don't see any rules of evidence -- any exception that would allow him to

79

go into the detail.

If you want to say he got a tip from the CI, I think that's fine. I just don't think you can go into the other three -- into those three details which I think Gardner's saying.

Brown, it was mistrial and the judge did not declare a mistrial when two police officers said what they -- that they received information that started them to establish surveillance about pretty general things, receiving complaints from the neighborhood and from being familiar with the neighborhood.

The defense said those were hearsay. The Court says they aren't because they're not entered for the truth of the matter asserted. Being familiar with the neighborhood or getting a tip, that's one thing, but it's hard for me to believe that the introduction of Georgia boy and a certain police officer isn't entered for the truth of the matter asserted. I think you can say he got a tip. I just don't think you can say what the tipster told him in that detail.

I don't know how that's not being admitted or being admitted to prove a particular fact. That's a lot of detail to be introduced, rather than I got a

80

tip and I went to look at these documents.

MR. OVERBY: I think the problem is, it's context, Judge. I mean, the fact of the matter is, is we're not saying that the CI -- I mean, essentially the CI is saying, "Go look at this guy."

THE COURT: Right.

MR. OVERBY: That's -- that's the number one thing. That's how the investigator ---

THE COURT: He's saying I heard people on the street say go look at this guy.

MR. OVERBY: Correct. And so, ultimately, that's how we get to the whole point as far as all this is concerned.

Now, you know, I guess the thing is, is that we're going to have Deputy Saxon testify about the traffic stop. We're going to have Sherika Harper testify that he is -- she is, in fact, Damorius Gaines' ex-girlfriend. All of these things are going to kind of come in play, and she's going to testify that he goes by "Georgia boy."

All of those -- the fact that the CI directed him to investigate an area without actually saying -- without actually pointing out or actually inserting because he actually says, "Georgia boy did this." Without actually highlighting that, is just

81

merely establishing that there's a tip.

THE COURT: I think he can say he got a tip and, therefore, he went to these things. I don't think -- it goes way beyond the contextual to say, "Hey, I heard on the street that you need to go look at a guy who was arrested on January 1st who goes by the name Georgia boy, and the word on the street is he did this." That is abject hearsay with it, but the investigator is saying, "I got a tip and I went to look." That's fine.

MR. OVERBY: Okay.

THE COURT: And I think you get to her, the girlfriend. You get to the arrest. You get to what we're really talking about here which is an ID of this guy by saying he got a tip and he went and looked at two or three different areas.

MR. OVERBY: Okay. Just so I'm clear in terms of making sure that -- in terms of the way that it comes in. He received the tip that led him to an incident report that this individual -- that this individual was involved -- well, excuse me. He received a tip that led to a traffic stop that had -- well, he didn't ---

THE COURT: Well, here's what you do. He received a tip. And as a result of that tip, he

82

then did X, Y, Z.

MR. OVERBY: Right.

THE COURT: And he went to the reports, but you can't go into what some tipster said he was told. You can't go into the details of it, Georgia boy, the girlfriend, and the date of this.

All he's got to say is -- I mean, he's done what he needs to do. He got a tip and that started him investigating and he did -- he went to the police reports of the arrest that day. I think that's fine.

MR. OVERBY: Okay. Very well, Your Honor. Thank you.

THE COURT: Okay. So it comes in, but just the detail of it if you got to it.

Okay. Now, let's go to this motion excluding lay testimony by, I guess, the girlfriend and the mother of identification.

MR. LUCAS: Yes, Your Honor. We may need to proffer on this one, as well. I've outlined the expected testimony in my motion, but essentially the basis of the motions that Rule 701 allows lay witness opinion testimony if it's rationally based on a perception of a witness or that's helpful and a clear understanding of either of the witness's

83

testimony or determination of fact at issue.

We're saying here, Your Honor, first, as to Sherika, it's not rationally based on her perceptions because she's saying that while she made an identification of Mr. Gaines initially, she did so because she was mad at him and wanted him to stay in jail, and that, in fact, it's not him.

THE COURT: All right. Well, let me -- let me just assume for an instant to shorten the proffer -- to avoid the proffer. I'm assuming that your motion is to keep them from saying that they think that's him on the video.

MR. LUCAS: Yes, sir, Your Honor. So that -- that comes in as lay opinion testimony under Rule 701, which is pretty limited. So if that's going to come in, it has to be rationally based upon the witness's perception, helpful and clear understanding of the testimony or determination of fact and issue and not requiring any special expertise.

So we're taking the position that this testimony by Sherika and Mr. Gaines' mother doesn't help provide a clear understanding because they're both now saying that's not him.

And, in addition, Sherika is saying that she

84

lied when she first identified him on the video. Well, that doesn't help provide a clear understanding. That's clear as mud. And then, in addition, it's certainly not rationally based upon her perception.

THE COURT: Okay. Yes, sir -- or yes, ma'am.

MS. HUEY: Your Honor, I believe Mr. Lucas has indicated that Ms. Harper is going to change her statement. So initially what happened is because Sherika's name has come out because of a tip and everything else, Detective Gardner goes to speak with her and initially shows her a still from the surveillance. And she says, "Yeah, that looks like Damorius Gaines, but it's a little fuzzy."

He's say, "Okay. Well, let me show you the actual footage."

THE COURT: She watches the whole video?

MS. HUEY: Correct. So and then she immediately says, "Yep. That's Damorius Gaines."

Well, as we're preparing for trial, we all went to meet with Sherika. And Sherika is in the courtroom, Judge, if we need to proffer testimony. And she indicated, let's say, that she's very unwilling -- not willing to be here, Judge. She's not trilled about it. Okay.

85

THE COURT: I understand.

MS. HUEY: And that may be because she is the victim of an assault by Mr. Gaines, which we do not plan on getting into, but for the Court's reference.

She then tells us that she didn't really look at the video and she just said that so that he would stay away from her and stay in jail because he was -- she was tired of him beating on her. Something along those lines.

So that's what we anticipate her saying; however, she unequivocally stated that it was him in that video to Detective Gardner. She wrote her own statement. She signed her own statement. And so we would seek to impeach her if she does change her statement on the stand, Your Honor.

THE COURT: Yeah, I mean, I'll be happy to proffer here, but I don't -- if you want to proffer, I need to take a one minute, but I can't -- I read this at lunch. I can't see too many instances where I would grant this motion because what she and her mother are saying, whether they change their mind now or not, that become a priority of this statement too. They're basically saying, "I think that's him." Let's say in the worst case scenario they say, "I think that's Mr. A." I'm not sure that's an

86

opinion. That's just what they think.

Now, factually, if they change their opinion, I think the State has a right to show them their prior inconsistent statement if they indeed change it. I'm a little hesitant in putting them on the record now and proffer it just because I think that may cause trouble later. I think it may be a problem. We'll have three different statements then.

MR. LUCAS: Your Honor, it's the -- the case law is real clear that it is lay opinion testimony.

THE COURT: Yeah.

MR. LUCAS: And that it seems to me if she's saying one thing then and one now, that's not assisting the jury to understand the fact at issue and shouldn't be admissible under 701.

THE COURT: Okay. Well, assuming that that's what I'd hear, I'm going to deny that motion and then we can take it up. I mean, I -- I just don't -- I think -- I'm not sure that it's relevant they change their mind as to this motion as to whether or not it's an opinion. I think it's a factual issue that the jury has to determine whether or not that their testimony is credible either then or now. I'm just not sure I agree with you that it's opinion testimony. Okay.

87

MR. LUCAS: And, Your Honor, there is one further thing, and we can either deal with it today or tomorrow.

THE COURT: Oh, let's do it today.

MR. LUCAS: Well, let's do it today. If this is that -- if you're ruling that this can come in under 701, we want to also have a *Neil v. Biggers* hearing for Sherika, given that when the investigator came to meet with her at the jail, the first thing he told her was that he wanted to talk about Damorius Gaines, which suggests an identification. I suspect it's probably out of line, but Anderson Police Department policy is, as well.

THE COURT: Do you have the people here to do that kind of hearing?

MS. HUEY: We can, Judge. We would disagree that it's a *Neil Biggers* hearing. It's not a showup in that sense. Again, Sherika was clearly someone that was involved in this case from the tip and -- and so on. She knows him. They dated. She was a logical person to go to see if this is Damorius.

THE COURT: Yeah, I just -- I don't -- I'm not sure it's a *Neil v. Biggers* issue. I think it is more of a factual issue as to whether or not this

88

jury -- both of y'all are going to be arguing either to believe her or not to believe her. If she testifies now to something different than she said later, the State has the right to cross-examine her on the prior inconsistent statement. I'm not sure it's opinion testimony. That's where we maybe disagree.

MR. LUCAS: Your Honor, we'll withdraw the request for a *Neil v. Biggers* hearing.

THE COURT: Okay. Look, I want -- I want both of y'all to be able to cover your bases and prepare your record. I'm going to make copies of both of these motions apart because I realize that my tone may have been to discourage a proffer, but assuming that everything went in your favor, I'm not sure that I'll rule that way. So I'll make them Court's Exhibit 1 and 2.

Okay. Can y'all think of anything else that might come up in the next two days that we need to deal with?

(No responses.)

THE COURT: Y'all have explored every -- every opportunity to get this resolved, right? I assume you have.

MR. LUCAS: We haven't engaged in any further

89

plea negotiations, Your Honor, but if y'all are offering anything, we'll certainly listen to it.

MS. HUEY: We can discuss that, Judge, outside the presence.

THE COURT: Yeah, y'all discuss that, and I'll wait around for a little bit. I mean, listen, this is going to come down to ID'g him, whether or not the jury, if he was going to see this picture and is going to see Mr. Gaines.

I mean, we can all -- we can nibble around the edges and I understand why you do it and I can sometimes work with it, but really they're going to be sitting there looking at Mr. Gaines and they're going to be looking at the picture. And they're going to have the testimony of his mother and his girlfriend and the police officers.

Y'all talk about it and I'll sit around, but I'll stick around. But I think we've covered everything, unless y'all can think of something else.

(No responses.)

THE COURT: Okay.

MR. LUCAS: Not at this time, Your Honor.

MR. OVERBY: Nothing from the State.

THE COURT: Okay. I'll see y'all at 10:00

90

then. Y'all talk and I'll stick around.

(The proceedings concluded at 4:22 p.m.)

September 5, 2018

THE COURT: Let me just go on the record real quick about Juror 238. I told the parties off the record that when I got here this morning, I had a note just with his name on it and his number and I'll make that an exhibit.

The parties agreed that I could talk to him privately. That was a very good idea because he had an issue in Chicago 35 years ago with his younger brother who was the victim of a criminal act. And he said that he didn't answer the question yesterday about him or his family, but he said he thought he could put that aside. When he went home last night, he realized he could not. And he was very upset emotionally, so I let him go. Does everybody agree with that, State?

MR. OVERBY: Yes, Your Honor.

MR. SENERIUS: Yes, sir.

THE COURT: Okay. All right. Are y'all ready to get started?

MS. HUEY: Yes, sir.

MR. OVERBY: Yes, Your Honor.

MR. LUCAS: Your Honor, if I may have five

91

minutes. I'd like to take my client back to the jury room. I just have a brief issue to discuss with him.

THE COURT: Okay.

(From 10:26 to 10:31 a.m., brief recess.)

THE COURT: Okay. Are y'all ready?

MR. LUCAS: We are, Your Honor.

THE COURT: Okay. You can bring them in.

THE BAILIFF: (Complying.)

(At 10:31 a.m., jury entered the courtroom.)

THE COURT: Okay. Thanks for your patience this morning. We had an issue we had to deal with and, obviously, we've lost a juror so we've got the alternate who is now part of the jury.

The one thing I didn't tell you, and it may be the first time I've ever told -- failed to tell the jury this in a long time. If you need a break at any time during the course of this trial, just raise your hand and get my attention. We will take a break no questions asked.

We usually take breaks every hour and a half because, quite frankly, I don't like sitting still, so -- but if you need one in between, just raise your hand, get Annie Ruth's attention or get mine, and we will take five or ten minutes.

92

All right. We're going to hear the opening statements now. As I told you yesterday, these aren't evidence, but please pay attention.

Yes, sir.

MS. HUEY: May it please the Court?

THE COURT: Yes, ma'am.

MS. HUEY: On February 16th of 2017, an African American male armed with a handgun and wearing a mask attempted to enter the Little General at 1001 South Murray in the city limits of Anderson.

Luckily for the employees who were inside, they had just locked the door so he was unable to gain entry. He ran around to the back of the building, he's got that gun in his hands, and lifted his mask, what looked like a toboggan on the top of his head. And for a brief second, you can catch a glimpse of his face uncovered behind that Little General convenient store. The entire incident was captured on video, as well.

About 20 minutes later, so it's been about eight o'clock at night, the same male dressed the same, ski mask over his face, armed with a gun, enters the Dollar Tree at 910 South Main, also in the city limits of Anderson.

This time the store was open. He gets into the

93

store and he tries to get into the office. And, luckily, Logen Baker who was the manager there, spots him. She gets into the office before he can get there, locks the door, calls the police, and they're en route. The police department is very close by.

He keeps on moving toward the stock room where the cashier is doing her end-of-the-night duties. He puts a gun in her face and demands that she go back to her register to get the money. He gets away. Once -- he leads her up the aisle, gun to her back.

Once he gets her up to the register, she's able to open it, and he gets away with about $300. Takes off running out the store and gets away. It all happens very quickly. Again, this incident is captured on video, but, of course, he's masked the entire time.

So as you listen to this case, these are the charges that we have. We have an attempted armed robbery. The possession of a weapon during the commission of a violent crime, which is attempted armed robbery. Pretty self-explanatory. Then we also have armed robbery, kidnapping, and, again, a possession of weapon during the commission of a

94

violent crime, that armed robbery.

I don't think there will be much question that these crimes were committed. The only thing you might have a little bit of trouble with is kidnapping because people often think about movies and TV and someone getting tied up and put in a trunk and driven away. And, yes, that's kidnapping, but kidnapping is also literally being carried away, seized, forced to move from a stock room up to a register. That's where the kidnapping comes in.

So I think there will be little question that this crime was actually committed. The question that you'll have to answer upon listening to the evidence that comes from this witness stand over today and possibly into tomorrow is, did this defendant, Damorius Gaines, commit those crimes?

Now, the State has the burden of proof, and that is a high burden. It is beyond a reasonable doubt, but it is not beyond every doubt. There are few things in life we know with absolute certainty. And if the standard was beyond every doubt, that's what you'd hear all the time, right? But you hear beyond a reasonable doubt.

As jurors, you were picked because of your backgrounds, your education, your experience,

95

your -- your life lessons. You bring all that together. You don't leave that outside this courtroom. You bring it in with you as you listen to the evidence presented in this case. And that's what we're going to ask you to do today. Thank you.

MR. LUCAS: Now a robbery happened, but it was not committed by Damorius Gaines. Mr. Gaines is here today facing these serious charges because this is a case of mistaken identification.

Now, these charges are extremely serious, but the case is actually relatively simple factually. The main issue of fact for you to determine this week is whether the man shown on the surveillance footage at the Little General is Damorius Gaines.

And you're going to get to watch a tape of that and see several still shots. And what you'll see is a masked man with a ski mask push onto a door, and it's locked, so he walks around the side of the store.

And when he walks around the side of the store, he takes his mask off. And when he does that, you can see his face clearly. It's for a matter of seconds that you can see his face clearly. And when you see his face, you're going to see that the man at the Little General is not Damorius Gaines.

96

Now, you're also going to hear today that there is a absolutely no physical evidence. None connecting Mr. Gaines to the crime at the Little General or at the Dollar Tree. There's no blood. There's no DNA. There's no fingerprints and no evidence from either crime or from either store like money was recovered from Mr. Gaines.

Now, you're also going to hear testimony that there's no eyewitness, no employee from the store who is going to say that the robber was Damorius Gaines. And you're going to hear that Mr. Gaines, he asked to speak with police. He requested to speak with the investigator. And when he did, he denied committing this crime. And he told them, "I'm not a violent person. I didn't rob them."

And he told the investigator that in March of 2017. And he has remained consistent in that. And that's why he's plead not guilty today and put his faith in your hands.

Now, the State does not want this case to be simple. They want you to believe some things that really don't make a whole lot of sense. They're going to ask you to believe that, no, that a shake of the head means yes. And they're going to ask you to believe that a mark on the neck of the man shown

97

in the video at the Little General is a tattoo, and that it's a tattoo to the exclusion of anything else.

Now, there's a principle philosophy known as Occam's razor and it's not that complicated, but it's how I can explain it to you, but it stands for the idea that when there are two answers to a question, the simplest one is usually the correct answer. And I think in layman term -- layman's terms, what that means is that you should use your common sense to evaluate this.

Now, at the end of this case after you've heard all of the evidence, it may be at the end of today, it may be the end of tomorrow, I'm going to come back and I'm going to ask you to find Damorius Gaines not guilty based on the evidence that you hear.

And that evidence is going to be, you've seen the video, that you've seen the photos, and it's not him. And based upon that -- that evidence, I'm going to ask you to find that he was misidentified and that he did not commit either crime. Thank you.

THE COURT: Okay. You can call your first witness.

MR. OVERBY: May it please the Court, Your

Honor? At this time the State calls Karissa Carson to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

THE CLERK: If you would take the witness stand please, ma'am, and state your name and spell your last name for the reporter, please.

THE WITNESS: Karissa Carson, C-a-r-s-o-n.

KARISSA CARSON,

having been produced and first duly sworn as a witness on behalf of the State, then testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Good morning, Ms. Carson. How are you?

A. Fine.

Q. Okay. Where are you previously emp -- or where are you presently employed?

A. Wendy's and back at Dollar Tree.

Q. Okay. So when you said "back at Dollar Tree," you had left for a little bit ---

A. Yes.
Q. --- and now you've come back?
A. Uh-huh.
Q. Okay. Are you from Anderson originally?
A. Yes.
Q. Okay. How many kids do you have?
A. Three.
Q. Three?
A. (Nonverbal response.)
Q. Okay. Previously, about when did you leave Dollar Tree the last time before you started back?
A. June the 3rd, 2018.
Q. June 3, 2018?
A. (Nonverbal response.)
Q. And what did you do for Dollar Tree at that time?
A. Cashier.
Q. You were a cashier. Have you returned to that role?
A. Yes.
Q. Okay. And the Dollar Tree in question, where's that located? Do you know the actual address?
A. No.
Q. Is it off -- is it off Main Street?
A. Yes.

Q. Okay. Is it in Anderson County?

A. Yes.

Q. Okay. And how long had you been employed at that store prior to the events that we're here for today?

A. About a year.

Q. Okay. About how much an hour did you make while you were there? Do you know?

A. 7.49.

Q. Okay. What are some of your duty -- what were some of your duties and responsibilities?

A. Cashiering; making sure the front was clean; making sure everything was basically, you know, stocked up, pulled to the front, just...

Q. Did those duties fluctuate throughout the day? Did you have certain duties a little toward in the evening towards closing time?

A. Yes.

Q. What kind of duties did you have?

A. Basically, sweeping up the floor, going to the stock room, getting the drinks, and then basically recovering.

Q. Okay. And managing the cash -- managing the cash register, as well?

A. Yes.

Q. Okay. And you were employed at that location on the night of February 16, 2017, correct?
A. Yes.
Q. Can you tell me what happened?
A. On that night, I was going to the stock room to get the drinks. And as I was finishing getting the drinks, I -- the door busted open and I looked up and there was a gun in my face.
Q. Okay. And the stock room in question, where is that in relation to the front entrance of the store?
A. The back part of the store.
Q. Okay. So it's all the way in the back?
A. Uh-huh.
Q. And when you say doors were pushed open, the stock room is sealed by double doors; is that correct?
A. Yes. It's got double doors.
Q. Okay. And you said somebody put a gun in your face?
A. Yes, sir.
Q. Did you -- were you able to make out the individual's face when that happened?
A. No, sir.
Q. Why was that?
A. Because he had a ski mask on.

Q. Okay. Did he have anything else that you noticed?

A. No. Just black gloves.

Q. Okay. And a gun, correct?

A. Yes.

Q. All right. What did he do at that point or what did you do at that point once that happened?

A. I was basically just stuck in the moment shocked.

Q. So you were shocked, scared?

A. Yes.

Q. Okay. What did he do at that point?

A. He told me to come on, to go to my register to open the register and give him cash.

Q. Okay. So he told you to come to the register and open the cash?

A. Yes.

Q. Now, you didn't want to do that, did you?

A. No, sir.

Q. Okay. So that was against your will?

A. Yes, sir.

Q. All right. Now, when he told you -- when he took you to the cash register, were you able to open it initially?

A. No, sir. I had to get an item to scan it to

total it out to open it because I couldn't open it without my manager.

Q. Okay. Did he give you that item, or did you take it?

A. He took the item.

Q. Okay. So he took the item and gave it to you to scan?

A. To scan it.

Q. All right. And you filled the cash reg -- you filled his bag at that point?

A. No. He filled his own bag.

Q. He filled his own bag?

A. And he threw the till on the floor.

Q. Okay. And he told -- threw the till on the floor ---

A. Yes.

Q. --- with all the change in it?

A. Yes.

Q. About how much was in there? Do you recall?

A. I want to say about 240 something. I'm not for sure how much was in there.

Q. Okay. And describe the gun in question.

A. That, I just know it was something black in my face. That's all I seen.

Q. I understand. I understand completely. Did

you notice anything about his appearance? His height? weight?

A. No. I just noticed his voice, like he was trying to disguise his voice a little bit, like, you know, muffle it a little bit.

Q. Okay. He was trying to muffle it a little bit?

A. Yes.

Q. What happened after that happened? What happened after that occurred?

A. After that, my manager called the police -- she was calling the police as, you know, she was in the office or whatnot, but he ran out the door. And I seen that, you know, he cut through the little path that we have back there.

Q. Okay. So he ran to the right?

A. Yes.

Q. And how soon did the police arrive after that event?

A. I want to say about 10, 15 minutes probably.

Q. Ten or 15 minutes?

A. Probably. Probably lesser than that. Like I said, I -- I was just ---

Q. I understand.

A. --- out of it.

Q. I understand. Did you provide a statement to

the police when they came in?

A. Yes.

MR. OVERBY: Okay. I have no further questions for you, Ms. Carson. Please answer any questions the defense counsel may have for you.

THE COURT: Any questions?

MR. LUCAS: No questions for this witness.

THE COURT: Okay. Thank you, ma'am. You can step down.

(Witness excused.)

THE COURT: Yes, sir.

MR. OVERBY: May it please the Court, Your Honor? The State calls Logen Baker to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE CLERK: If you would take the witness stand, please, ma'am, and state your name and spell your last name for the reporter, please.

THE WITNESS: Logen Baker, B-a-k-e-r.

MR. OVERBY: Your Honor, before I begin, may Ms. Carson be excused from her subpoena?

THE COURT: Absolutely. Yes, ma'am. Thank you.

LOGEN BAKER,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Ms. Baker, where are you presently employed?

A. Caris Healthcare.

Q. Caris Healthcare?

A. Yes.

Q. Okay. What do you do for Caris Healthcare?

A. I am an office manager.

Q. You're an office manager?

A. Yes, sir.

Q. How long have you been employed there?

A. Since March of last year.

Q. Are you originally from Anderson County?

A. No. I'm from Georgia.

Q. From Georgia?

A. Uh-huh.

Q. When did you move to Anderson County?

A. Back at the end of 2014.

Q. Okay. Why did you move to Anderson County?

A. My husband wanted to move up here and have a farm.

Q. Okay. And when you moved up here, where were you employed at that time?

A. At Dollar Tree.

Q. Okay. And that Dollar Tree, do you know what the address of that Dollar Tree was?

A. I was currently, when I first moved here, at the one on Clemson Boulevard on Station Drive. And then shortly after, I went to 910 South Main Street.

Q. Okay. And that's the one you were employed that's the subject of why we're here today?

A. Correct.

Q. Okay. What did you do for Dollar Tree?

A. I was a store manager and district trainer.

Q. Okay. And what kind of duties and responsibilities did you have in that role?

A. I basically hired all the employees, trained them; dealt with all the cash handling; store ordering; unloading trucks; managing inventory, and all the other processes; doing the nightly deposits and counting the safe; and over four other managers.

Q. Okay. So you had responsibilities over several managers as well -- as well as your own responsibilities?

A. Yes.

Q. Okay. And as a store manager, what responsibilities do you have in reference to the -- in reference to the funds that you received or the store makes on a given day?

A. Pretty much I have to, you know, make sure everything is even at the end of the day. So throughout the day, I have to go to the bank. I have to make several deposits during the day and at night. I have to make sure that the safe is correct and that the cashier's tills are correct, and pretty much just watching sales throughout the day.

Q. Okay. Do you have any responsibilities -- well, does the Dollar Tree have any security measures that are in place at the store?

A. Yes. At that time we had a CCTV camera.

Q. And commonly called a surveillance camera, correct?

A. Correct. Yes.

Q. Okay. And did you have any responsibilities or did you have access to this particular equipment?

A. Yes. It was in the office. I had access to view it throughout the day.

Q. And it records in realtime?

A. That is correct.

Q. And so you're able to see live what's happening on the TVs ---

A. Yes.

Q. --- out there throughout the store?

Okay. Were you employed at this location on the night of February 16, 2017?

A. I was. Yes.

Q. Okay. What -- what happened?

A. Pretty much, it was a few minutes after 8:00, I believe. And I was getting ready to do a pickup on Karissa, my cashier's drawer because she had more than what was needed in a drawer, which is $75 to $100.

And we were getting everything ready for the end of the night. She was filling the drink coolers and sweeping and emptying the trash cans, and I was getting the deposit stuff ready and counting the safe.

And she was towards the back and she told me that she needed a minute, that, you know, she needed to go fill the drink coolers. And I was like, "That's fine. I got time. I'm not ready yet anyway's."

So as she was back there, I noticed somebody walking up and they had a mask on and then ran in

the door. And I had gone quickly shuffled back -- backwards into the office, shut the door, and locked it and started calling 9-1-1 because I realized what was about to happen.

And they were only like five minutes away. They used to come pretty regularly and get there pretty quickly for people that were stealing during the day and so forth.

He was banging on the door and yelling, trying to get me to let him in the office, and I pretty much just sat there quietly because I was trying to pretend like I wasn't really in there. I don't know if he saw me fully or not, but I was just hoping for the best.

And then he ran straight back to the stock room where Karissa was getting the drinks. And as he was doing that, I was watching it on the camera while I was on the phone with police. And they were asking me a lot of questions and told me to stay on the phone with them until they arrived on the scene.

He then pointed the gun at her and had her come up front and had it in her back as she walked up to the front of the store. She was over at register one, I believe. And he was trying to yell at her, trying to get her to open the cash register. She

was kind of panicked just trying to figure out what to do.

He handed her an item so she could scan it because if you hit cash, it will open once you scan an item, because they can't open their drawers any other way unless a manager does it for them with their code.

He then got all the money out of the register that he could, and then threw it down on the ground. We used to keep some money up under the till, so I think that he had recognized that, that's why he had pulled it up and then dropped it.

Q. Let me ask you a few more questions -- a few questions ---

A. Okay.

Q. --- just kind of a little bit of details. It's a very good recitation.

A. Okay.

Q. What -- when you said that he -- you saw him coming, was he inside the store when you saw him coming or outside the store when you saw him?

A. He was right outside the front door. I could see through the front door. And, you know, I saw him as he started to enter so ---

Q. Okay. So he -- you saw him as he started to

enter. What did he look like to the best of your recollection? Do you recall?

A. Well, I couldn't really tell because he had on a long sleeve black shirt and pants and a ski mask and gloves, so all I could see was the skin color which was African American.

Q. Okay. Could you tell the height? weight? anything? height? build? Anything along those lines?

A. Height had to be at least six-foot, I would think. I'm pretty sure. We have, you know, a measurement thing on the door, so I -- I can't really see it very well from far away, but...

Q. Okay. And let me ask you, was he ---

A. He was pretty muscular to me.

Q. Okay. And you say clothing-wise, he was wearing a black shirt?

A. Yes.

Q. And gloves?

A. Uh-huh.

Q. And a mask?

A. Uh-huh.

Q. And you said pants. Do you remember what kind of pants they appear to be?

A. Blue jeans.

Q. Okay. Did you notice anything about his shoes or anything along those lines?

A. I didn't notice his shoes.

Q. Okay. Did you notice if he had a gun?

A. Yes.

Q. Okay. So he did have a gun. Did you notice anything about the gun in particular?

A. I don't -- I don't know what type or anything. I just remember seeing a gun.

Q. So you called the police and you were in there. You're watching all this happen in realtime?

A. Uh-huh.

Q. How soon after did the police arrive?

A. It was fairly quickly. Like I said, they're right down the road. I would say five to ten minutes.

Q. Okay. And did you see which direction the individual ran off in?

A. When he ran out the store, I believe he ran towards the right towards Franklin Street.

Q. Okay. Towards Franklin Street.

A. Yes, sir.

Q. That -- that's an intersection that's right there close by?

A. Right. Yes.

Q. Did -- when the police arrived, did you give them a statement?

A. I did.

Q. And did they ask to look at your surveillance footage?

A. They did.

Q. Okay. Did you show them your surveillance footage?

A. We did look at the surveillance footage together. Yes.

Q. Okay. I want to ask you some more specific questions about the surveillance.

A. Okay.

Q. That branch was equipped with surveillance cameras as you've testified. Where are the surveillance cameras in the store?

A. We have different ones. There's one towards the front where the registers are, one in the stock room, one over by I guess register three, and I can't remember where the other one is.

Q. Okay. But they capture essentially four different angles?

A. Correct.

Q. And it's live?

A. Yes.

Q. And you're able to view it immediately after that?

A. Yes.

Q. Okay. And did you allow the police to view the footage that evening?

A. I did.

Q. And did you allow them to view it from all the angles?

A. Yes.

Q. Okay. I'm going to show you what I'd like to have marked as State's Exhibit No. 4. Ms. Baker, can you tell me what that is?

A. This is the video surveillance from Dollar Tree from that night.

Q. Okay. And how do you know?

A. Because I watch -- I watched it and watched you copy this ---

Q. Okay. And ---

A. --- from the surveillance.

Q. --- and does it fairly and accurately depict what you observed from the surveillance video and in your personal recollection from that evening?

A. Yes. All the events are true.

Q. And has it been modified, changed, or altered in any way?

A. No, sir.

MR. OVERBY: Okay. Your Honor, at this time I'd like to move State's Exhibit No. 4 into evidence.

THE COURT: Any objection?

MR. LUCAS: None, Your Honor.

THE COURT: All right. Without objection.

(State's Exhibit No. 4 was received into evidence.)

MR. OVERBY: Okay. Permission to publish, Your Honor?

THE COURT: Yes, sir.

(State's Exhibit No. 4 was published to the jury.)

BY MR. OVERBY:

Q. And you're able to see it, correct, Ms. Baker?

A. Yes.

Q. Okay. On this disk that is State's Exhibit 4, you have four files that are here, correct?

A. Yes.

Q. Are those the respective feeds that you captured for the police and that you observed on that evening?

A. Yes.

Q. Okay. I'm going to open the first file, which

for the record is CH -- labelled CH01, open parentheses, entry, closed parentheses.

In relation to the -- and these are time stamped; is that correct?

A. Yes.

Q. So the time -- and the time stamp is accurate?

A. Uh-huh. Yes.

Q. Okay. So this was about 8:03?

A. That's correct.

Q. And it's on February 16th. This camera is looking at what?

A. The front door.

Q. The front door of the store, and that's towards -- is that towards Franklin or what does that face? Is that towards Main Street?

A. Yes.

Q. Okay.

A. Franklin Street is to the right.

Q. And just for clarification here, run it back to the beginning. You saw this individual come in beforehand?

A. As -- when -- because I was standing by the office, I could see him walking in.

Q. Okay. So that's him coming in. Now, I'm going to show you on this video the feed that is marked

CH03, register two, or open parentheses, reg two.

Okay. In this bottom corner here, what is that?

A. That would be where he was standing.

Q. Okay. But are you -- where are you?

A. In the office.

Q. Okay.

A. The office is right there.

Q. So this is the office ---

A. Yes.

Q. --- that's back over here in the bottom left corner of the screen?

A. Yes.

Q. Okay. And he tries to knock on it, and then he runs up the aisle?

A. Correct.

MR. LUCAS: Your Honor, I'm going to object on this basis that it's improper at the time and in testimony. The jury can watch the video. It's not proper for it to be narrated. It's an opinion.

THE COURT: Okay. Well, I'll let her describe what's going on. Only describe it. So overruled, but you're protected for the record.

BY MR. OVERBY:

Q. And back there in the back is where?

A. That is the stock room where Karissa was at the time ---

Q. Okay.

A. --- grabbing drinks.

Q. I'm going to open the file that is marked CH06, open parentheses, exit, closed parentheses.

A. So that is the stock room.

Q. Okay. And you're able to see this live?

A. Yes. And that's Karissa getting the Pepsi drinks for the Pepsi cooler.

MR. LUCAS: Your Honor, the same objection. The witness doesn't actually have any personal knowledge of this. She did not actually see this. The jury can watch the video and determine for themselves what happened.

THE COURT: Okay. No. I understand and that's overruled. I'll let her describe what's going on in the video.

BY MR. OVERBY:

Q. And I'd like to go -- now I -- I'm going to open File No. CH03, open parentheses, reg two. I apologize. Meant to do reg one.

And this fairly and accurately depicts what you observed on that evening?

A. Yes, it does.

Q. Now, you had already called the police by this point, correct?

A. I had. Yes. I called as he had walked in and I was observing what was going on through the camera and through our two-way mirror that is right there outlining the office.

Q. Okay. I'm going to show you one last clip and it's actually one we've already seen, CH01, open parentheses, entry, close parentheses. 8:03. And he leaves at 8:04:50, correct?

A. Yes.

MR. OVERBY: I have no further questions for this witness. Please answer any questions defense counsel has for you.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Good morning, Ms. Baker.

A. Good morning.

Q. It was your testimony that you were in the back of the store when this occurred?

A. No. I was in the office.

Q. Where is the office located relative to the front door?

A. If you walk in the front door, it's straight to

the left.

Q. How far away from the front door in terms of feet would it be?

A. Maybe 20 feet.

Q. And it was also your testimony that you placed the 9-1-1 call to the police?

A. Yes. That is correct.

Q. And you would've spoken with a police dispatcher?

A. Yes.

Q. And described what happened?

A. Yes.

Q. And the police responded pretty quickly to the scene?

A. They did. Yes.

Q. And it was a matter of what, maybe, ten minutes, less than that?

A. Yes. I would think so. The police station is right down the road.

Q. And did you speak with a police officer after they arrived?

A. Yes. I spoke with several.

Q. Do you remember the names of the officers you spoke with? I know it's been a long time.

A. I'm sorry. I don't.

122

MR. LUCAS: Okay. That -- that's fine. No further questions.

THE WITNESS: Okay.

MR. LUCAS: She can be excused, Judge.

THE COURT: All right. Anything on redirect?

MR. OVERBY: Nothing on redirect, Your Honor.

THE COURT: All right.

MR. OVERBY: May this witness be relieved of her subpoena?

THE COURT: Yes, sir. Do you agree with that?

MR. LUCAS: That's fine.

THE COURT: Okay. You can step down. You're excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Okay.

MR. OVERBY: At this time, the State calls Lieutenant Don Hodges to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir, I do.

THE CLERK: If you would take the witness

stand, please, sir, and state your name and spell your last name for the reporter, please.

THE WITNESS: Lieutenant Don Hodges, Jr., H-o-d-g-e-s.

LIEUTENANT DON HODGES, JR.,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Lieutenant Hodges, where are you employed, sir?

A. The City of Anderson Police Department.

Q. Okay. How long have you been employed there?

A. Approximately, a little over 12 years.

Q. Okay. And do you have prior law enforcement experience?

A. Yes, sir, I do.

Q. Okay. Where else have you worked in law enforcement?

A. I've also worked at the sheriff's office for 13 years, City of Anderson for 4 years before that, and the City of Belton for a year.

Q. Okay. So all in all, you have roughly 30 years of experience in law enforcement?

A. Yes, sir.

Q. As a lieutenant, what are some of your duties and responsibilities?

A. Supervise the officers on the road. Back them up if they request it. Go to different calls as needed.

Q. Okay. And when you say "go to different calls," I mean, what kind of calls are we talking?

A. Usually the more serious in nature calls. Something that involves bodily injury, armed robberies, stuff like that.

Q. But it could be something as simple -- it could be something simple too?

A. Yes, sir. It could be something simple as my units are tied up and then I go answer an alarm call.

Q. Are you essentially a first command first responder?

A. Yes, sir, I do.

Q. How long have you been in that role?

A. As lieutenant over shift, since February, a little before -- excuse me. January of last year.

Q. Since January of last year?

A. Yes, sir.

Q. Were you in that position on the night of February 16, 2017?

A. Yes, sir, Your Honor, I was. Yes, sir, I was.
Q. I appreciate it, but he's the judge. Were you on duty on that particular day?
A. Yes, sir, I was.
Q. Okay. Did you become involved in an investigation of an armed robbery at the Dollar Tree in this case?
A. Yes, sir, I did.
Q. Okay. And that's the -- that Dollar Tree, do you know the location of that?
A. 910 South Main Street, Anderson, South Carolina.
Q. And that's in Anderson County, correct?
A. Yes, sir. Within the city limits.
Q. Okay. Sounds good. I'm going to show you what I'd like to have marked as State's Exhibit No. 5 and 6.
THE COURT: Did you have an objection to those? You're just as an exhibit now; is that correct? Have you entered them into evidence?
MR. OVERBY: I have not entered them into evidence.
THE COURT: All right.
BY MR. OVERBY:
Q. Can you tell me what those are photographs of?

A. Aerial views of South Main Street area and from East River Street down to Johnson Street.

Q. Okay. And do you know these particular areas?

A. Yes, sir.

Q. Do they encompass the Dollar Tree?

A. Yes, sir, they do.

Q. Okay. And do they fairly accurate -- and accurately depict the areas that you know of?

A. Yes, sir, they do.

MR. OVERBY: Okay. Your Honor, at this time I'd like to admit photograph -- or these -- these exhibits -- State's Exhibit 5 and 6 into evidence.

THE COURT: Any objection?

MR. LUCAS: None, Your Honor.

THE COURT: Okay. Without objection.

(State's Exhibit Nos. 5 and 6 received into evidence.)

BY MR. OVERBY:

Q. Okay. And, Mr. Hodges, you're -- or Lieutenant Hodges, you're able to see the ---

A. Yes, sir.

Q. --- screen there, correct? Okay. This is State's Exhibit No. 5. Or, actually, let's start with State's Exhibit No. 6. That's going to give us a little bit clearer look here. Are you able to see

the Dollar Tree on this photograph?

A. Yes, sir, I am.

Q. Okay. Why don't you come down here and will you point to where the Dollar Tree is on this map?

A. This is the Dollar Tree at the end of my pen.

Q. Okay. So that is the Dollar Tree at the end of your pen?

A. Yes, sir.

Q. Okay. And that's where you were dispatched on this particular day?

A. That was the original call. Yes, sir.

Q. Okay. Go ahead and have a seat. I'm going to leave that up there for just a minute. I'm going to ask you a couple more questions.

A. (Complying.)

Q. What time were you dispatched to this location?

A. Approximately, 8:03 p.m.

Q. 8:03 p.m. And that's in ref -- what was that in reference to?

A. In reference to an armed robbery that was in progress at the Dollar Tree.

Q. Okay. And how did Anderson City know that an armed robbery was going on?

A. Somebody called our 9-1-1 dispatch center. And the 9-1-1 dispatch center advised us, and we were en

route.

Q. And what time did you arrive on scene?

A. Myself, approximately three to four minutes later.

Q. Three or four minutes later?

A. Yes, sir.

Q. And what shift was this specifically?

A. Specifically, it's alfa shift. It's right at the change of shifts.

Q. Okay. And what officers in question were on your shift that were working on this?

A. Officer Darryl Foster, Officer Haden Jones, Officer Lucas Crow, and several others.

Q. Okay. What was your first step when you -- when you were dispatched to this location?

A. Get somebody to the incident scene.

Q. Okay. And who went to the incident scene?

A. Officer Haden Jones and Officer Lucas Crow.

Q. Okay. So they went there first?

A. Yes, sir.

Q. At this time were there any witnesses that observed anything in the nearby vicinity?

A. When I arrived on scene, I spoke with a gentleman who stated he saw somebody run across the street.

MR. LUCAS: Object to hearsay.

THE COURT: Yeah, sustained.

MR. OVERBY: Yes.

BY MR. OVERBY:

Q. Without telling me what anybody told you ---

A. Yes, sir.

Q. --- were there any witnesses that you identified?

A. Yes, sir.

Q. Okay. Do you know what that one -- remember what that witness's name is?

A. No, sir, I do not.

Q. Okay.

A. I wrote it down in my notes.

Q. Okay. Would looking at your notes help to refresh your recollection of this individual's name?

A. Yes, sir.

Q. (Complying.)

A. Yes, sir. His name was Paul Glenn.

Q. Okay. Thank you. All right. So Mr. Glenn saw -- Mr. Glenn indicated he had seen something, correct?

A. Yes, sir.

Q. All right. During the course of this investigation at the Dollar Tree, did you become

aware of another incident?

A. Yes, sir, I did.

Q. Okay. What was the nature of that other incident?

A. Some -- a county deputy told us that he had spoke to the people.

MR. LUCAS: Object to hearsay.

BY MR. OVERBY:

Q. Without telling anybody what somebody specifically told you, what information did you receive about another -- about another incident?

A. An incident had occurred at the Little General store.

Q. Okay. And on -- and now I'd like for you to come down and point this out for everybody.

A. (Complying.)

Q. Can you highlight on this map where the Little General store is?

A. Yes, sir. It's at the end of my pen right there (indicating).

Q. Okay. So just being clear as far as this is concerned, this (indicating) is the Dollar Tree?

A. Yes, sir.

Q. This (indicating) is the Little General store?

A. Yes, sir.

Q. Right around the corner ---

A. Yes, sir.

Q. --- correct?

A. Correct.

Q. I mean, approximately, how far do you -- would you guess that is?

A. In a direct path ---

MR. LUCAS: Objection. Speculation.

THE COURT: Well, if he knows, he can testify. Overruled.

THE WITNESS: Probably 2 to -- 2 to 400 yards away.

MR. OVERBY: Okay. Thank you. You can have another seat.

THE WITNESS: (Complying.)

BY MR. OVERBY:

Q. So you have Officer Jones and Officer Crow at the Dollar Tree. About what time did you find out this information about the Little General?

A. Approximately, 8:20.

Q. 8:20. Okay. And at that time who did you send to investigate that?

A. I believe Officer Darryl Foster went over there, and there was another officer, I believe, from the other shift was on scene, as well.

Q. Okay. And in reference to the -- in reference to other resources, what else did you have that evening to try ---

A. I requested an Anderson County Sheriff's Office K-9 unit to respond to attempt to track the subject that fled the Dollar Tree.

Q. How important is it to be able to find the individual in question on that night?

A. Very important, so in case -- just so nothing else would happen.

Q. Okay. And in that particular instance, where did the K-9 go to?

A. The K-9 started there in the parking lot at the Dollar Tree and went back towards the Little General store.

Q. Okay. Now, was that consistent with your understanding of the other witness?

A. Which witness?

Q. Paul Glenn.

A. No, sir, it was not.

Q. Okay. What -- and, essentially, why was that inconsistent?

MR. LUCAS: Object, Your Honor.

MR. OVERBY: That's not asking for hearsay, Judge.

THE COURT: What's your objection?

MR. LUCAS: Hearsay, Your Honor.

THE COURT: Yeah, I -- overruled. I think he can -- obviously, he can't testify about what somebody told him.

BY MR. OVERBY:

Q. But that was not consistent with your understanding of what the witness ---

A. No, sir, it was not.

Q. Okay. Now, I'm going to show you State's Exhibit No. 6 -- or No. 5. Pardon me. What's different about this map as opposed to the other map?

A. It's a little bit -- it covers more area.

Q. Okay. When you are looking for an individual, how do you essentially deploy your resources in finding those folks?

A. First, we -- I told the units in the area to spread out and be on the lookout for anything that didn't fit.

Q. How wide of a net do you cast?

A. It just depends. Usually, a three to four-block area. Didn't specifically say this officer go here. I just said spread out in the area.

Q. Okay. And they're all out there trying to look for individuals?

A. Yes, sir.

Q. And they were all out there looking in this particular area?

A. Yes, sir.

Q. Now, you said the K-9 track ---

A. Uh-huh.

Q. --- well, first, if you'd come down here and point out where the Dollar General -- or where the little -- Dollar Tree and Little General is on this map for the jury.

A. (Complying.) Okay. This (indicating) is the Dollar Tree, and that (indicating) is the Little General.

Q. Okay. So the K-9 track -- you can go back up there. Just follow my pen.

A. (Complying.)

Q. --- is starting here (indicating) ---

A. Yes, sir.

Q. --- and going here (indicating)?

A. Yes, sir.

Q. Okay. Where did the K-9 track continue from that point?

A. Went on around the building, the Little

General, yes, and sort of cut through the little alleyway between that white speck back towards Main Street.

Q. From the Little General?

A. Oh, excuse me. No. More down -- down Murray Avenue.

Q. Down Murray Avenue?

A. Yes, sir.

Q. So this way (indicating) ?

A. Yes, sir.

Q. What did you discover -- getting back to the Little General. What did you discover about the Little General or what had happened?

A. Unknown subject wearing a ski mask, dark clothing, came up, pulled on the door. The door is locked. Came back around from the ---

MR. LUCAS: I'm going to object, Your Honor. He doesn't have any personal knowledge as to that. It's all based on what he's been told.

MR. OVERBY: He is the supervising officer of the investigation on the scene and he is receiving all the information from the sources to be able to determine how to deploy his assets.

THE COURT: Yeah, I'll let him testify about what he knew, as long as he doesn't testify about

what someone told him.

BY MR. OVERBY:

Q. Go ahead, Lieutenant Hodges.

A. Came away from the front door, made a left around the edge of the building, back towards, I believe, where the kerosine pump tank is, pulled the ski mask off, and then exited the frame.

Q. And how did you know that that was the case?

A. I have -- I have seen the video.

Q. Okay. But how did you know -- were you advised there was a video?

A. Yes, sir. I was advised there was a video.

Q. Okay. Did you view that video on that night?

A. Yes, sir, I did.

Q. Okay. Were you able to establish that it was the same person?

A. General description matched and very close time frame.

Q. Okay. Now, did you find that individual on that particular night?

A. No, sir.

Q. Okay. And when that happens, what do you typically do?

A. Officers will just do the initial incident report and then investigate it. Whichever

investigator is assigned to the case will pick it up.

Q. Okay. So it's turned over to investigations?

A. Yes, sir.

Q. Did you have any further involvement in this matter?

A. No, sir.

MR. OVERBY: Okay. I have no further questions for this witness. Please answer any questions defense counsel has for you.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Now, Officer Hodges, you testified that you supervise the dog track; is that correct?

A. I was supervising the unit on scene, sir.

Q. And as part of that, you were aware of a ---

A. Yes, sir.

Q. --- dog track? Now, the dog was deployed at the Dollar Tree, correct?

A. Yes, sir.

Q. In the area where the suspect had last been seen?

A. Yes, sir.

Q. And it was your testimony that he then tracked around ---

A. Yes, sir.
Q. --- to the Little General?
A. Yes, sir.
Q. Now, are you aware that when he went to the Little General, the dog alerted on a dark jacket that was hanging on the side of a trash can?
A. I knew a jacket was there. I didn't know a dog had alerted to it.
Q. Be fair to say that the dog located the jacket?
A. I'm not sure, sir, because if the dog located it first or it was found -- seen first by somebody else.
MR. LUCAS: I'll be happy to show you an incident report to refresh your recollection.
Permission to approach, Your Honor?
THE COURT: Sure.
BY MR. LUCAS:
Q. (Approaching.)
A. Okay. It says, "K-9 Maverick located a dark jacket hanging on the side of a trash can."
Q. And K-9 Maverick would be the tracking dog ---
A. Yes, sir.
Q. --- correct? And he was following a scent from the Dollar Tree to the Little General?
A. Yes, sir.

Q. And he hit on this jacket?

MR. OVERBY: At that point I'm going to object, Your Honor, because I don't think that's within his personal knowledge. I don't have any problem with the direction at which he went, but whether or not he hit on that jacket or not, he wasn't there. He can't to testify to that.

THE COURT: All right. I'll let him testify if he knows. If he doesn't know, he can just say, "I don't know."

THE WITNESS: I don't know.

BY MR. LUCAS:

Q. But the report says that Maverick located the jacket?

A. The report does say that. Yes, sir.

Q. And from there, the dog then tracked around the Little General?

A. In that area. I believe he went down Murray Avenue down towards Sayre Street.

Q. Okay. So he cont -- went to the Little General and then continued the track on down?

A. Yes, sir.

Q. Now, are you aware if this dark jacket was collected?

A. No, sir, I am not.

Q. Are you aware if any photographs of it were taken?

A. No, sir, I am not.

Q. Are you aware if it was placed into evidence?

A. No, sir, I am not.

Q. So to your knowledge, it wasn't collected?

A. I've no knowledge one way or the other.

Q. But you have no knowledge that it was collected?

A. I have no knowledge that was collected or it was not collected.

Q. So you don't know?

A. I do not know. Yes, sir.

Q. Okay. Now, kind of changing topics, moving away from that. Your notes indicated that you spoke to Mr. Paul Glenn?

A. Yes, sir.

Q. And you spoke to him minutes after this robbery happened ---

A. Yes, sir.

Q. --- at the Dollar Tree?

A. Yes, sir.

Q. Okay. Do you also speak to his wife?

A. I do not remember speaking to his wife. No, sir.

Q. Do you recall that they were in the same car together, a towing business, right next to the -- to the Dollar Tree?

A. No, sir, I do not.

Q. Okay. But you spoke with Mr. -- with Mr. Glenn?

A. Yes, sir.

Q. You take a statement from him?

A. No, sir, I did not.

Q. Are you aware that no statement was taken from him until August 2018?

MR. OVERBY: Objection.

MR. LUCAS: If he knows, Judge.

THE COURT: Well, yeah, if he knows. If he doesn't, he can just say, "I don't know."

THE WITNESS: I don't know.

MR. LUCAS: Okay. Thank you, sir. Nothing further.

THE COURT: All right. Anything on redirect?

MR. OVERBY: I have no further questions, Your Honor.

THE COURT: Okay. You can step down.

THE STATE: May this witness be excused from his subpoena?

THE COURT: Sure. If you would, just wait just

142

a second. We're going to take a quick break.

Ladies and gentlemen, I'm going to send you back. I didn't ask you this. I don't want to embarrass anybody, but is there anybody who's a smoker here that's climbing out of their skin? As a former smoker, I know how that feels.

(No responses.)

THE COURT: Okay. Good. You should all be healthy, but I am going to take a break now. We'll take about ten minutes. Please don't discuss the case.

(At 11:32 a.m., jury left the courtroom.)

THE COURT: Okay. I got an e-mail. I need to go talk to Judge McIntosh for about five minutes and I'll be back. It'll probably be ten minutes to be honest with you.

(From 11:33 to 11:55, recess was taken.)

THE COURT: Okay. Bring them in.

MR. OVERBY: Judge?

THE COURT: Yes, sir. Hold on a minute.

MR. OVERBY: I apologize. Can we approach real quick, Judge?

THE COURT: Sure.

(Sidebar discussion.)

THE COURT: Okay. You can bring them in.

143

THE BAILIFF: (Complying.)

THE COURT: We'll put on the record on the next break.

MR. OVERBY: Thank you, Your Honor.

(At 11:57 a.m., jury entered the courtroom.)

THE COURT: Just for the record, there's a question. "Can you take notes?" And if so, they need pen and paper.

Ladies and gentlemen, you cannot take notes. So I understand why you would. At the end of this case, I'll be back there to talk to you personally off the record and I'll explain why, but I'll make that a Court's exhibit.

Okay. Thanks again for your patience. Everything takes twice as long, and I tried to warn you, but my fault.

Okay. You can call your next witness.

MR. OVERBY: Thank you, Your Honor. At this time the State calls Karry Glenn to the stand.

THE WITNESS: (Approaching.)

THE COURT: And, Your Honor, one additional point. May Lieutenant Hodges be excused?

THE COURT: Sure. Yeah, yeah. Yeah, I'm sorry. Absolutely.

(Witness excused.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir.

THE CLERK: If you'll take the witness stand and state your name and spell your last name for the reporter, please.

THE WITNESS: Karry Glenn, G-l-e-n-n.

KARRY GLENN,

having been produced and first duly sworn as a witness on behalf of the State, then testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Ms. Glenn, where are you employed?

A. I don't work.

Q. Okay. What is --- could you pull the microphone a little closer?

A. I don't work.

Q. Okay. But does your husband work?

A. No.

Q. Okay. Do you assist in a business?

A. Yeah, we have a -- every now and then with a friend.

Q. Okay. And where is that?
A. At Good Brothers Towing.
Q. Okay. Good Brothers Towing. Do you know where Good Brothers Towing is?
A. 805 South Main Street.
Q. Okay. 805 South Main Street. I'm going to show you -- you've been in the courtroom this whole time, haven't you?
A. Yes, sir.
Q. Okay. I'm going to show you what's been marked -- or what is in evidence as State's Exhibit No. 6. First of all, have you seen this map before?
A. Yes, sir.
Q. Okay. Lieutenant Hodges testified that that's (indicating) the Dollar Tree?
A. Correct.
Q. And that's (indicating) the Little General?
A. Yes, sir.
Q. Where were you -- did you have an opportunity to see anything on the night of February 16, 2017?
A. Yes, sir.
Q. And where were you when that occurred?
A. At Good Brothers Towing, 805 South Main.
Q. Right there (indicating)?
A. Yes, sir.

MR. SENERIUS: Can she speak up just a little louder?

THE COURT: She can.

THE WITNESS: Yes, sir.

THE COURT: There you go.

BY MR. OVERBY:

Q. Okay. So right here (indicating)?

A. Yes, sir.

Q. Approximately, how far is that distance from the -- that location to the Dollar Tree?

A. I don't know exactly. I just know it's catty-corner.

Q. Is it less than a football field?

A. Oh, yeah.

Q. Okay. So in reference to that, tell me kind of how you were positioned and what you saw?

A. We were sitting like straight and we was facing towards, I think it's, Sayre Street. I don't know -- yeah, down that way ---

Q. Okay. Were you ---

A. --- towards the front of Dollar Tree.

Q. So you were facing -- you were sitting here (indicating)?

A. Yes.

Q. And you were facing towards Dollar Tree?

A. Yes, sir.
Q. Okay. And what were you sitting in?
A. A truck.
Q. Okay. And what time was it? What time of day was that?
A. I don't know. It was at night.
Q. It was at night?
A. Yes.
Q. Okay. And what was it that you saw?
A. I saw a man run across the street in between two buildings. He had blue jeans on and a dark, looked like a hoody.
Q. Okay.
A. And I heard sirens, so I put two and two together.
Q. Okay. How long after that did you hear the siren?
A. About two or three minutes.
Q. Was it going fast or slow?
A. Fast.
Q. Okay. So running. Where did he run specifically?
A. Straight across the street.
Q. Okay. Straight across the street?
A. Yes, sir.

Q. And did he run between anything?

A. Yes, sir. In between the -- that building and that, yes, sir.

Q. These two?

A. Yes, sir.

Q. Okay. And did you see anything else?

A. No, sir.

Q. Did you tell law enforcement about that?

A. Yes, sir.

Q. What was the lighting like on that day?

A. It was getting dusty dark.

Q. Okay. But you were -- and you were in the truck and you were sitting right there?

A. Yes, sir.

MR. OVERBY: Okay. I have no further questions. Please answer any questions defense counsel has for you.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Now, Ms. Glenn, you spoke with law enforcement on that night?

A. Yes, sir.

Q. And you provided them with a description of the person you saw running across the street?

A. Yes, sir.

Q. Okay. Do you remember what you told them?
A. I just told them we saw a guy run across the street with blue jeans and dark hoody.
Q. And you later provided them with a statement, correct?
A. That's correct.
Q. It was a written statement?
A. Yes, sir.
Q. And in that statement, you said that the man was skinny and about five-foot-six?
A. He looked skinny.
Q. And he was five-feet-six inches tall?
A. Something like that. Between five-six and five-nine, somewhere around there.
Q. And he was running fast?
A. Yes, sir.
Q. And because of that, you concluded he was pretty young?
A. Yeah, he looked kind of young ---
Q. And to the ---
A. --- from the body figure. I couldn't see his face.
Q. I understand. Thank you. And I believe it was your testimony that he ran across South Main Street?
A. Yes, sir.

Q. So he ran from the Dollar Tree across South Main Street?

A. Yes, sir. In between the white building and the long building right here.

MR. LUCAS: I understand. Thank you. Nothing further, Ms. Glenn.

THE WITNESS: Okay. Thank you.

THE COURT: Anything on redirect?

MR. OVERBY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. OVERBY:

Q. Ms. Glenn, you said between five-six and five-nine?

A. Yes.

Q. It's a lot of differentiation, isn't it?

A. He was like five-six or so.

Q. Right. And it was later in the evening?

A. Yes, sir. It was dark.

Q. And the time you gave that statement that Mr. Lucas was referring to, how long after this event was that?

A. About seven, eight months, a year maybe.

MR. OVERBY: Okay. I have no further questions.

THE WITNESS: Okay. Thank you.

MR. LUCAS: Brief redirect, Your Honor.

THE COURT: All right. I'll allow it on this one, but now I got this one. Go ahead. I'll allow this one.

RECROSS-EXAMINATION

BY MR. LUCAS:

Q. So, Ms. Glenn, law enforcement did not even attempt to take a statement from you on the night this happened?

A. No, sir. They talked to my husband, which is Paul Glenn.

Q. And you were with him?

A. Yes.

Q. And they didn't take a statement from you?

A. No.

Q. And, in fact, they didn't take one until months later?

A. Correct.

MR. LUCAS: Okay. Thank you. Nothing further.

THE COURT: Anything else from the State?

MR. OVERBY: Nothing from the State.

THE COURT: You can step down. Thank you, ma'am.

(Witness excused.)

THE COURT: All right. You can call your next

witness.

MR. OVERBY: May it please the Court, Your Honor. The State calls Hanisha Patel.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir.

THE CLERK: If you would take the witness stand, please, and state your name and spell your last name for our reporter, please.

THE WITNESS: Hanisha Patel, P-a-t-e-l.

THE COURT: Yes, sir.

HANISHA PATEL,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Ms. Patel, where are you employed?

A. The Little General.

Q. At the Little General?

A. Uh-huh.

Q. Who is your employer?

A. Atoll Patel.
Q. Atoll Patel. And who is he in relation to you?
A. Dad.
Q. Okay. So is this a family-run business?
A. Yes.
Q. Okay. What do you do for the Little General?
A. Manager and sometimes cashier. Pretty much everything.
Q. Okay. And how long have you been working there?
A. About eight to nine years.
Q. Eight to nine years. Okay. And in terms of -- and so you're a manager, cashier, amongst other things. What are some -- what are some of the other responsibilities you have while working there?
A. Like inventory; schedule for employees.
Q. Okay.
A. Payroll.
Q. And in reference to that, who are some of the employees that you have?
A. Jimmy, Jimmy Strong and Doug.
Q. And Doug?
A. Yeah.
Q. And Doug is -- do you know -- do you know Doug's full name?

A. No, I don't know.

Q. Do you know the last name?

A. Bell, I believe.

Q. Doug Bell. Okay. On the night of February 16, 2017, was your family -- did your family own that -- own the Little General business?

A. Yes.

Q. And just for clarification, that's located where?

A. 1001 South Murray Avenue.

Q. 1001 South Murray Avenue. Were you advised something happened at your store?

A. Yeah, I was there.

Q. Okay. Well, were you in the store?

A. Yes.

Q. Okay. What -- tell me what happened essentially.

A. I was actually in the office, so, like, I didn't see anything, but after that I saw the camera. Somebody came from the left side of the building and tried to knock on the door, but the door was locked.

Q. Okay.

A. Tried to rob it.

MR. LUCAS: Your Honor, I'm going to object.

We can bring in the video. She doesn't have any personal knowledge.

THE COURT: Well, she can testify about what she saw that night.

MR. OVERBY: That's the extent of what I'm going to ask her about that.

THE COURT: Okay. All right.

BY MR. OVERBY:

Q. But the store was open at that time?

A. The store was locked.

Q. The store was locked, but were the business hours?

A. Yeah, it was open.

Q. Okay. So it was open for business, but the door was locked?

A. Yes.

Q. Do you know why the door was locked?

A. We were refilling the ATM. That's why.

Q. Okay. Now, did -- what did -- what did you do after this incident, after that part occurred?

A. I actually left after that. My brother was there.

Q. Okay.

A. But I know police came after that.

Q. Okay. The police came after it. Who reported

it to the police, if you know?

A. I think my brother called.

Q. Okay. What -- let's get to the crux of the matter which is the surveillance video. Okay. Do you have access to that in your -- in your possession?

A. Yes.

Q. Okay. And you have knowledge of how it works, everything along those lines?

A. Yes.

Q. How does this video -- surveillance video record?

A. Live.

Q. Oh, it records live. Okay. And so everything that it's recording is what the camera is seeing?

A. Yes.

Q. Okay. And what does it record to? Do you know?

A. Like how long?

Q. Well, what specifically? What device does it record to? Do you know?

A. To a hard drive.

Q. To a hard drive?

A. Yes.

Q. Is that hard drive on the premises?

A. Yeah.

Q. Okay. Approximately, how many cameras do you have?

A. About 16. Sixteen to 18.

MR. OVERBY: Okay. Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. OVERBY:

Q. I'm going to show you some photographs, which I'd like to have marked as State's Exhibit 7, 8, and 9.

Ms. Patel, I'm handing you photographs which have been marked State's Exhibit 7, 8, and 9. Do you know what those are photographs of?

A. Yes.

Q. What are they photographs of?

A. Of the Little General.

Q. Okay. Specifically, what are they photographs of?

A. Outside of the building.

Q. Okay. And more specifically than that, what is in those photographs?

A. Like a camera.

Q. Okay. Are they surveillance cameras?

A. Yes.

Q. Okay. And that's in State's Exhibit No. 7, I think you're holding there?

A. Yes.

Q. What's in State's Exhibit No. 8?

A. Same thing.

Q. Okay. Do you know where the cameras that are depicted in those are located?

A. Yes.

Q. Okay. In State's Exhibit No. 9, is there a camera in that?

A. No.

Q. Okay. Do you know what camera that is, that was? Is that where a camera was at one point?

MR. LUCAS: Object to leading.

THE COURT: I'm sorry?

MR. LUCAS: Leading.

THE COURT: Okay. Overruled.

MR. OVERBY: Okay.

THE WITNESS: Yeah, there was a camera, but it got stolen.

BY MR. OVERBY:

Q. Okay. But it got stolen?

A. Yes.

Q. Subsequent to this?

A. Yeah.

Q. After this?
A. Yeah.
Q. Okay. But those fairly and accurately depict the locations of those cameras?
A. Yes.
MR. OVERBY: Okay. Your Honor, I'd like to move State's Exhibit 7, 8, and 9 into evidence.
THE COURT: Any objection to those exhibits?
MR. LUCAS: Without objection.
THE COURT: All right. Without objection.
(State's Exhibit No. 7, 8, and 9 were received into evidence.)
BY MR. OVERBY:
Q. In reference to your store, where is that -- like if you're facing the front of your store, where is that camera?
A. Left side.
Q. On the outside?
A. Outside -- outside, left side.
Q. Outside, left side. Okay. And this camera?
A. Right sight.
Q. Okay. Same side of the building?
A. Yeah.
Q. Okay. And this area that formerly had a camera?

A. Back side, on the side.

Q. Okay. Which direction does that point?

A. Right side.

Q. Okay. Is there something back there that it's watching?

A. There's a kerosine tank.

Q. Okay. Thank you. When -- now if your business had law enforcement -- or your business had law enforcement come to it, correct?

A. Yes.

Q. And they wanted to look at surveillance video?

A. Correct.

Q. Okay. And you actually have seen the surveillance video, correct?

A. Yes.

Q. And you know how the surveillance video records? You said it records in realtime?

A. Yes.

Q. And that it is a -- and that it is recorded to a hard drive?

A. Yes.

Q. Which can be downloaded and presented?

A. Yes.

Q. You've had an opportunity to view that recording ---

A. Yes.

Q. --- again? And it fairly and accurately depicts -- well, you've had an opportunity to review that recording. I'm going to show you what I'd like to have marked as State's Exhibit 10. Ms. Patel, what is that?

A. This is a video recording from that night.

Q. Okay. And how do you know?

A. Because I watched it.

Q. Okay. And is that the same video recording you present -- that your business presented to police?

A. Yes.

Q. And does it fairly and accurately depict what the camera recorded?

A. Yes.

Q. And has that video, that copy, been modified, changed, or altered in any way?

A. No.

MR. OVERBY: Okay. At this time, I'd like to move State's Exhibit No. 10 into evidence.

THE COURT: Any objection?

MR. LUCAS: Without objection.

THE COURT: Without objection.

(State's Exhibit No. 10 was received into evidence.)

MR. OVERBY: Permission to publish, Your Honor?

THE COURT: Yes, sir.

(State's Exhibit No. 10 was published to the jury.)

BY MR. OVERBY:

Q. Now, on this disk you have three separate video files, correct?

A. Yes.

Q. And you've seen each one?

A. Yes.

Q. And what do they represent?

A. That's right.

Q. Different cameras?

A. Different. Yes.

Q. Okay. Different cameras. I'm going to play what's been marked, what is CH12. Have you viewed the entirety of this footage?

A. Yes.

Q. To the best of your recollection, is there anything of significance on it afterwards?

A. No.

Q. I'm going to play CH16 for you. Now, I'm going ask you about the time stamps here. These cameras are all synced with the same time stamp?

A. No. There's a time difference of daylight

savings.

Q. Well, between each -- between each camera, I mean. So in other words, the time stamp on one is the same as the time stamp ---

A. Yes.

Q. --- on the others. They're synced. Okay.

And I'd like to play CH14 for you. Asking an additional question about this time stamp. You said that they -- you said that this -- they're all synced, but you started to mention that they might not be accurate. How so?

A. Because we can't change the time. We have to call the global company to change the time, so we don't do that.

Q. Okay. So in other words, what affects that particular time stamp?

A. So it's an hour difference.

Q. It's an hour different. Is that for daylight savings time?

A. Yeah.

Q. Okay. So this is actually 7:40?

A. Correct.

Q. Okay. And this is what you gave to police on this evening?

A. Yeah.

Q. Okay. Did you have any other involvement in this case?

A. No.

MR. OVERBY: I have no further questions for this witness. Please answer any questions defense counsel has for you.

MR. LUCAS: No questions, Ms. Patel. Thank you for being here.

THE COURT: Okay. Thank you. You can step down. Released?

MR. OVERBY: Yes. Thank you, Your Honor.

(Witness excused.)

THE COURT: Okay.

MR. OVERBY: Beg the Court's indulgence for a minute.

THE COURT: Okay.

MS. HUEY: Your Honor, the State calls Sherika Harper.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in the case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir.

THE CLERK: If you'll take the witness stand,

please, ma'am, and state your name and spell your last name for the reporter, please.

THE WITNESS: My name is Sherika Harper, H-a-r-p-e-r.

SHERIKA HARPER,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MS. HUEY:

Q. Ms. Harper, I'm going to ask that you speak into that microphone so everyone can hear you in the courtroom.

A. All right.

Q. Ms. Harper, how old are you?

A. Thirty-six.

Q. And do you work anywhere right now?

A. No, I don't.

Q. How far did you go in school?

A. The tenth grade.

Q. And then you dropped out?

A. Yes.

Q. Can you read and write though?

A. Yes.

Q. Where do you live currently?

A. (No response.)
Q. Where are you staying right now?
A. In Anderson.
Q. And prior to coming to court today back in February of 2017, where did you live?
A. I stayed on Cleveland Street.
Q. On Cleveland Street. Do you remember the address?
A. [redacted] I think, or something like that.
Q. Ms. Harper, do you know the defendant in this case, Damorius Gaines?
A. Yes, ma'am.
Q. And how do you know him?
A. He's my ex-boyfriend.
Q. How long did you all date?
A. We dated for a few months.
Q. I'm sorry. A few months?
A. Yes, ma'am.
Q. And when y'all were dating, how much time would you spend together in a typical day?
A. When we was around each other, a lot I guess.
Q. You'd spend a lot of time together?
A. When we was around each other.
Q. Would you always spend the night with each other?

A. Sometimes.
Q. And would that be on Cleveland Street?
A. Yes.
Q. Any other places?
A. No.
Q. Did you call him Damorius, or did he go by another name?
A. Damorius.
Q. You called him Damorius?
A. Yes.
Q. And do you know where he lived or stayed?
A. He stayed with his mother.
Q. He stayed with his mother?
A. Yes, ma'am.
Q. Did you ever meet her?
A. One time.
Q. And do you remember her name?
A. No, ma'am.
Q. Do you remember where she stayed or lives?
A. No, ma'am.
Q. On March 9th of 2017, do you remember talking to Detective Gardner in the investigations division in an office there regarding the robberies at the Little General and the Dollar Tree on February of 2017?

A. I talked to him.
Q. Okay. Do you remember talking to him?
A. He asked me do I know him ---
Q. Okay. Hang on one second.
A. --- and several other people.
Q. I'm going to stop you right there for just a second. Did he show you -- when you were talking with him, did he show you a photo?
A. He showed me three different photos.
Q. All right. Ms. Harper, I'm going to show you what's been marked as State's Exhibit 11. Will you take a look at this photo, please?
A. (Complying.)
Q. Is that a photo that Detective Gardner showed you back in March of 2017?
A. Yes, ma'am.
Q. And is there a signature on that photo?
A. Yes, ma'am.
Q. And does that signature indicate that you told Detective Gardner that that photo looked like Damorius Gaines, your boyfriend at the time?
A. I said it was similar to him, but I could not see the picture.
Q. You said it was a little blurry?
A. Yes, ma'am.

Q. And you wanted to see a clearer picture?
A. I didn't tell him I wanted to see any pictures.
Q. I understand. At that time, you didn't say 100 percent that that was Damorius. You said it looked like him?
A. It was not 100 percent. No, ma'am, it was not.
Q. Okay. And then you signed that picture.
A. Yeah, I ---
Q. Did you sign -- wait just one second. Did you also look at a video from the surveillance?
A. I was asked to look at a video.
Q. Okay. And then once you looked at that surveillance video, did you then indicate to Detective Gardner that, "Yep. That's Damorius Gaines in the picture"?
A. No.
MR. LUCAS: Objection. Leading.
THE COURT: Hold on -- hold on a minute. What's your objection?
MR. LUCAS: Leading.
THE COURT: Yeah, try not to lead her, but I'll allow you to ask that question.
MS. HUEY: Your Honor, I would like to treat her as a hostile witness. She clearly doesn't want to be here today, so I am allowed to lead.

THE COURT: Any objection to treating her as a hostile witness?

MR. LUCAS: Could I have actually ---

THE COURT: Sure.

MR. LUCAS: --- a moment, Your Honor?

THE COURT: Sure. Ladies and gentlemen, this is something I may have to put on the record. This will not be a 20-minute break, but step back for 10 minutes. Don't discuss the case.

(At 12:28 p.m., jury left the courtroom.)

THE COURT: Okay. So you're making a motion to treat her as a hostile witness; is that correct?

MS. HUEY: Yes, sir, Your Honor.

(Brief recess.)

THE COURT: Okay. Yeah, the witness needs to use the restroom. I'll let you do it, ma'am, but you can't speak to anybody about this case.

THE WITNESS: Okay.

(From 12:31 to 12:35 p.m., a brief recess.)

THE COURT: Okay. Yes, sir.

MR. LUCAS: Your Honor, I do have a matter to deal with concerning Ms. Harper ---

THE COURT: Okay.

MR. LUCAS: --- and the fact that we're renewing our motion that her testimony is improper

lay opinion testimony. It shouldn't be admitted under Rule 701 on grounds that it's not rationally based on her perception because she stated two different things. And, also, that the fact that it shouldn't be admitted under *Neil v. Biggers* since it's suggestive and the officer first told her, you know, who he was looking and talking to.

And then, also, on 403 grounds that it's going to be likely to confuse the jury and that outweighs the probative value.

THE COURT: Okay. Yeah, and I'll deny those. I mean, you know, I think it goes to her credibility. It's something that obviously I suspect is going to be brought up.

MR. LUCAS: Yes, Your Honor. We also oppose at last, the State allowing treat her as a hostile witness.

THE COURT: Okay. I'm going to allow them to lead her only for now. I'm going to declare her a hostile witness. I think it'll move this along and also I think it's apparent that she maybe is a hostile witness.

MS. HUEY: Judge, really quickly.

THE COURT: Yeah.

MR. HUEY: Mr. Lucas brought up earlier in

pretrial motions that, again, and he just reiterated that Ms. Harper may indicate that the reason she gave a different statement at a later date is because she's scared of him or because she wanted him to stay in jail. I'm trying to avoid that.

THE COURT: Yeah.

MS. HUEY: So that's also another reason why I'm leading her, Your Honor, but that she would be instructed not to get into that certainly.

THE COURT: Any objection to that? I mean, obviously, I don't want that coming out in front of the jury.

MR. LUCAS: I'm not objecting to that, Judge.

THE COURT: Okay. Ma'am, just make sure you don't talk about the other case in which you're the complainant. Okay.

THE WITNESS: That's what lead up to this though. That's the whole reason why I said it.

THE COURT: What she said is that's the only reason why she said it. That's what it leads up to. I mean, you know, I can't have them hear about this other case. That's the problem. So just answer her questions. I'm allowing you to lead for that purpose. And we'll make -- you know, we'll have to deal with it if it pops up.

Okay. Are y'all ready?

MR. LUCAS: One moment please, Your Honor.

THE COURT: All right.

(Brief recess.)

MR. LUCAS: Your Honor, I think Ms. Huey would say that it's not a surprise that this witness is recalcitrant. And under the case law, and it's *State v. Bendoly*, 254 S.E.2d 287. The State can only declare a witness -- or only have a witness declared hostile if it's an actual surprise to them.

THE COURT: Well, look, here's the -- let's just be blunt. Here's the thin edge we're walking on, and I understand it's a problem for both of you, but from your position as the defendant's counsel, you obviously want to poke holes in her case.

The problem is, I'm trying hard to prevent her from just exposing to this jury that she is the complainant in another criminal case against this defendant, which would obviously be a significant problem for this jury. Obviously, it's something that can't come in, and I don't know any other way to do it other than to allow them to lead her.

So I think you're right on that. There's obviously -- everybody assumed that this witness might be recalcitrance as the words were said. I'm

going to allow them to lead in hopes that she doesn't blurt something out. Because if she does, we may be back here another day. I don't know how else to deal with it.

MR. LUCAS: So that -- that objection is overruled then I take it, Judge?

THE COURT: Yeah. And that's to both of y'all obviously. I mean, I understand it.

Okay. You can bring them back in.

THE BAILIFF: (Complying.)

(At 12:41 p.m., jury entered the courtroom.)

THE COURT: Okay. Thank you, again, ladies and gentlemen, for your patience. Okay.

BY MS. HUEY:

Q. All right. Ms. Harper, I believe we were talking about Detective Gardner showing you a video, and you identifying Damorius Gaines as the person in the surveillance video at the Little General; isn't that true?

A. I did in the video. Not the video ---

MR. SENERIUS: Your Honor, I can't hear.

THE COURT: Yeah, hold on. If you would pull the mike up.

THE WITNESS: Not in the video ---

THE COURT: Hold on, ma'am. Hold on a minute.

If y'all can't hear, y'all can move closer. Go ahead.

THE WITNESS: Not the video, but the picture.

BY MS. HUEY:

Q. Okay. Detective Gardner showed you a video and you said, "Yep. That's Damorius Gaines." Is that true or not?

A. No.

Q. Did you give a written statement that you wrote in your handwriting -- your own handwriting to Detective Gardner?

A. Yes.

Q. I'm showing you what's been marked as State's 12. Will you take a look at this statement?

A. (Complying.)

Q. Is that your handwriting?

A. Yes.

Q. And are those your initials on that statement?

A. Yes.

Q. And is that your signature on that statement?

A. Yes.

MS. HUEY: At this time, Your Honor, we admit State's 12 into evidence.

THE COURT: Any objection?

MR. LUCAS: Without objection.

THE COURT: All right. Without objection.

(State's Exhibit No. 12 was received into evidence.)

BY MS. HUEY:

Q. All right. Ms. Harper, I would like you to read this to the jury, please, State's 12.

A. "I, Sherika Harper, was shown a picture and could not identify by picture but by video. I -- I could -- the person in the video is Damorius Gaines."

Q. And that's the statement you gave on March 9th of 2017?

A. Uh-huh.

Q. And what is your address listed on that statement?

A. [redacted] Cleveland Avenue.

Q. And so then back to State's 11 that also has your signature, the photo of who you said looked like Damorius Gaines. Does that signature indicate that you viewed the video?

A. Yes.

MS. HUEY: Your Honor, at this time we admit State's 11 into evidence.

THE COURT: Any objection?

MR. LUCAS: Without objection.

THE COURT: Without objection.

(State's Exhibit No. 11 was received into evidence.)

BY MS. HUEY:

Q. Okay. So, again, this is State's 11, Ms. Harper, and this is the photo that Detective Gardner showed you, correct?

A. Yes.

Q. And as you indicated, the signature at the bottom is your signature; isn't that correct?

A. Yes.

Q. All right. And this signature indicates that you were shown the video and identified Damorius Gaines as the person in the surveillance video, correct?

A. I did.

MS. HUEY: That's all I have for this witness, Judge.

THE COURT: Okay. Yes, sir.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Now, Ms. Harper, you met with an investigator from the solicitor's office a few weeks ago, right?

A. Yes, sir.

Q. And isn't it true that you told him that in

contrast to your prior written statement, that you only said the video showed Damorius Gaines because you wanted him to stay in jail?

A. Yes.

Q. Now, you have seen this picture here. This is the picture that Investigator Gardner showed to you?

A. Yes.

Q. Does that picture show Damorius Gaines?

A. It does not.

Q. And when you met with Investigator Gardner, you were angry at Damorius, correct?

A. Yes, I was.

Q. And that was because y'all had just broken up, correct?

A. Yes.

MR. LUCAS: Nothing further, Your Honor.

THE COURT: Anything on redirect?

MS. HUEY: Your Honor, I need to approach, please.

THE COURT: Sure. Y'all come around to the side over here.

(Sidebar discussion.)

REDIRECT EXAMINATION

BY MS. HUEY:

Q. Ms. Harper, isn't it true that you're afraid of

Damorius Gaines?

A. No, ma'am, I'm not.

Q. Isn't that why you broke up with him because you're afraid of him?

MR. LUCAS: Objection.

THE COURT: What's your objection?

MR. LUCAS: She asked the question, Your Honor. She got an answer. That's all the State is entitled to.

THE COURT: Okay. I'll allow you to follow-up, but just one.

BY MS. HUEY:

Q. Isn't it true that's why you broke up with him because you were afraid of him?

MR. LUCAS: Objection, Your Honor.

THE COURT: Hold on. What's your objection?

MR. LUCAS: Relevance, Your Honor.

THE COURT: I'll allow it. Go ahead. It's overruled.

THE WITNESS: I broke up because we had problems. It wasn't because I was afraid of him.

BY MS. HUEY:

Q. I'm sorry. I couldn't understand you.

A. It wasn't because I was afraid of him. We had problems.

180

MS. HUEY: Okay. That's all I have, Judge.

THE COURT: Okay. You can step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Have you got a witness we can finish in ten minutes?

MS. HUEY: Yes, I believe so, Your Honor.

THE COURT: Okay. All right. Then call another witness.

MS. HUEY: Your Honor, the State calls Connie Gaines to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE CLERK: If you would take the witness stand, please, ma'am, and state your name and spell your last name for the reporter, please.

THE WITNESS: Connie Gaines, G-a-i-n-e-s.

CONNIE GAINES,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MS. HUEY:

Q. Ms. Gaines, how old are you if you don't mind me asking?

A. Fifty-four.

Q. And do you live in the area?

A. Yes. I live in Anderson.

Q. Okay. Where do you live?

A. On East Franklin Street.

MR. LUCAS: Your Honor, one moment. I have a matter of law briefly. It'll be quick.

THE COURT: Okay. Ladies and gentlemen, I need you to take a five-minute break. Please don't discuss the case.

(At 12:52 p.m., jury left the courtroom.)

THE COURT: Okay. Yes, sir.

MR. LUCAS: Your Honor, I just wanted to renew my objection on the grounds that its improper lay opinion testimony under 701. I'd incorporate my prior arguments from yesterday and also the memorandum.

And, in addition, Your Honor, I'd argue that it's improper as well, in that Ms. Gaines' testimony is more likely to confuse the jury and that outweighs the probative value.

THE COURT: Okay. And like I said, I'm -- I'm overruling that. I think it does go to her credibility only, but you're protected.

MR. LUCAS: Thank you, Your Honor.

THE COURT: All right. You can bring them back.

THE BAILIFF: (Complying.)

(At 12:53 p.m., jury entered the courtroom.)

BY MS. HUEY:

THE COURT: Okay. Thank you, ladies and gentlemen. Yes, ma'am.

BY MS. HUEY:

Q. Ms. Gaines, I believe we were talking about where you live in Anderson. Where do you live?

A. [redacted] East Franklin Street.

Q. [redacted] East Franklin?

A. Yes.

Q. Okay. If you could just speak into the microphone for me. Okay. How long have you lived at that location?

A. About three years.

Q. Three years?

A. Yes.

Q. And do you have any children?

A. Yes.

Q. How many children do you have?
A. Three.
Q. And what are their names?
A. Damorius, Kareem, and Dontravis.
Q. And what -- so Damorius Gaines who's present in the courtroom today, correct?
A. Yes.
Q. And how old is he compared to your other ones? Is the oldest? middle?
A. He's the oldest.
Q. He's the oldest child?
A. Uh-huh.
Q. What is your phone number?
A. I don't have a phone.
Q. Okay. Did you previously have a phone?
A. I did.
Q. And do you remember that number?
A. (864) 376-[redacted].
Q. Okay. So Damorius is your son, and was he staying with you on and off in February of 2017?
A. Yes.
Q. And did he have his own room there or did he sleep on the sofa? Do you remember?
A. Well, him and my -- my youngest son shared a room.

Q. Okay. And do you know Sherika Harper?
A. Not really.
Q. Did you know that she was dating your son back in February of 2017?
A. I heard of it. Yes.
Q. Did you like her?
A. I didn't know her.
Q. Did he always stay with you or would he all -- would he stay at other places, as well?
A. Other places.
Q. Ms. Gaines, do you remember speaking with Detective Gardner on March 9th of 2017 at your house?
A. Yes.
Q. He came to you and asked you about Damorius and the robberies at the Little General and the Dollar Tree; is that correct?
A. Well, actually, I didn't know about a robbery. I knew he was incarcerated for a ticket and something to do with the girl Sherika, but I knew nothing of a robbery.
Q. Without getting into that, Ms. Gaines, you spoke with Detective Gardner at your home though, correct?
A. Yes.

Q. Okay. And did he show you a photo at that time?

A. He did.

Q. I'm going to show you what's been marked as State's 13. Could you take a look at that photo?

A. (Complying.)

Q. Do you recognize that photo?

A. No.

Q. So are you saying that's not the photo that Detective Gardner showed you in March of 2017?

A. It don't look like it.

Q. Do you recall any other photos then?

A. He showed me a photo, but that's -- that one don't look like the one that he showed me.

Q. But he definitely showed you a photo?

A. Yes.

Q. And as a result of him showing you that photo, did you shake your head and say, "I don't know what's gotten into that boy"?

MR. LUCAS: Objection. Hearsay.

THE COURT: Hold on. Overruled. I'll allow that question.

THE WITNESS: I don't remember saying that.

BY MS. HUEY:

Q. You don't remember saying that ---

A. No, I don't.

Q. --- to Detective Gardner on March 9th of 2017 at your home?

A. No.

MS. HUEY: That's all I have at this time, Judge.

THE COURT: All right. Any questions?

MR. LUCAS: Just one, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Ms. Gaines, Investigator Gardner showed you a picture of your son -- well not -- not of a -- showed you a -- showed you a picture of a surveillance footage video, correct?

A. Uh-huh.

Q. Investigator Gardner showed you a picture?

A. Yeah, the picture.

Q. And when you saw that picture, you shook your head no?

A. Correct.

Q. Because it was not Damorius Gaines?

A. Correct. I'm shaking my head no. Maybe I didn't say no, but I'm shaking my head no because I'm shocked at everything that's been said to me.

Q. So when you looked at the photo, you did not identify it to be ---

A. No, I did not.

Q. --- Damorius Gaines?

A. I did not.

MR. LUCAS: Okay. Thank you.

THE COURT: Anything on redirect?

REDIRECT EXAMINATION

BY MS. HUEY:

Q. I'm sorry, Ms. Gaines. So do you deny saying, "I don't know what's gotten into that boy"?

A. I do. I deny it. I don't remember saying that.

MS. HUEY: That's all I have, Judge.

THE COURT: Okay. Thank you, ma'am. You can step down. And can she be released? Any objection to her being released?

MR. LUCAS: Oh, no, Your Honor. That's fine.

THE COURT: All right. You're released.

(Witness excused.)

THE COURT: All right. Ladies and gentlemen, we're going to break for lunch now. You've been very patient this morning, and I know we've been throwing things at you left and right.

We will start court back at 2:30. I have a

188

very brief hearing that I'm going to do right before I bring you back in that has nothing to do with this case. There's a possibility that -- it has a possibility of getting out of hand, so I'm going to ask that you be back in at -- in the jury room at 2:30. And I'm going to ask Annie Ruth to keep you back there. You're safe, but I'm just going to keep you back there so you're not exposed to what I might be exposed to.

So have a good lunch, don't talk about this case, and don't look up or read anything about it.

(From 1:01 to 2:46 p.m., lunch recess.)

THE COURT: Okay. I guess we need to put that on the record at least.

MR. SENERIUS: Yes, Your Honor.

THE COURT: So what -- what's -- tell me on the record what you told me off the record. I can't -- I don't think I can describe it as well as y'all can.

MR. OVERBY: Sure.

THE COURT: I'm not trying to put you on the spot. I just am not sure that I know exactly what it is.

MR. OVERBY: Well, I don't know if he wants to -- the defense wants to make note or object to

189

the lateness of this particular disclosure, but I will gladly -- gladly put it on here.

At lunch, just shortly after we had broken, it was actually more around 1:40 or so, Investigator Gardner came to my office. We began to sit there and discuss the case.

At that point, he indicated that he had spoken with -- he indicated to me that he -- that subsequent to the testimony -- or pardon me -- subsequent to his discussions with Sherika Harper about the identification of this individual, of the defendant in this case, she had come to him or she had gone to him really in the same transaction, Judge, just shortly thereafter and asked, "Can I get some help?" That's essentially what my understanding of it was.

At that time Investigator Gardner informed her, "I can't promise anything, but I'll talk to the judge." Ms. Harper was on failure to appear or failure to comply warrants with the City of Anderson for three counts of trespassing at the time when she was pulled out of the jail. That's the testimony that's going to be elicited here in just a minute from Investigator Gardner.

But once that testimony was provided -- or once

190

that information was received from him after he pulled her out of jail, she asked for this. He went and subsequently spoke to the magistrate. I don't know who the sentencing magistrate was, Judge, in this particular matter, but he apparently said something to the effect of, "Ms. Harper -- just help Sherika Harper. She just helped me out with a case. Do what you can for her."

And I don't mean to put words into Investigator Gardner's mouth. I'm just checking with him. I did not know about that prior to that particular point. Once I learned of it, we obviously pulled Mr. Lucas over and then disclosed that information to him.

THE COURT: Okay. And, obviously, Ms. Harper was gone so that's the problem.

All right. Y'all are -- the defense, you're aware of this and you have no objection to us proceeding; is that correct?

MR. LUCAS: We are, Your Honor. We think it's a Brady violation, but it's been disclosed as soon as the Solicitor's Office learned of it. We think it would be grounds for a mistrial motion, Your Honor, but we're not so moving at this time. After discussing with Mr. Gaines, it's his decision to move forward.

191

THE COURT: As long as he understands he can't make it late. I mean, once you ---

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Let's bring them in.

MR. LUCAS: Your Honor, just a brief -- brief matter of law first.

THE COURT: Okay. Hold on.

MR. LUCAS: In terms of Investigator Gardner's testimony, I want to ensure that there's no mention of -- or questions concerning Connie Gaines making a statement to him regarding drug use by the defendant. I think that's clearly inadmissible.

MR. OVERBY: State does not intend elicit any such information and has instructed Investigator Gardner to specifically refrain from mentioning drug use.

MR. LUCAS: Okay. That takes care of that, Your Honor.

And to the extent there is an identification testimony by Investigator Gardner, we're objecting to that under *Neil v. Biggers*. We think in terms of Sherika, it makes it suggestive because he goes into the room and tells her that she -- or tells Sherika that he wants to talk about Damorius Gaines and then

192

shows her a picture. It's the equivalent of a single person stand up. We think that ought to be excluded for that reason.

THE COURT: Okay. What's y'all's position on that?

MR. OVERBY: Judge, I think that what we intend to elicit has Connie Gaines has testified. She has admitted that she's seen this photograph. She denies making a statement that is specifically mentioned. There's no way that, "I don't know what's gotten into that boy."

And at this point, we're entitled pursuant to impeachment for a prior inconsistent statement to show extrinsic evidence that she did make that statement through Detective Gardner.

MR. LUCAS: Your Honor, it would be my position that she didn't make a prior inconsistent statement. She testified that when she spoke with Investigator Gardner that she shook her head no and indicating that the picture he was showing her was not Damorius Gaines. That's not inconsistent with her testimony and it's not ---

THE COURT: Well, here's the thing, he can testify about what he saw and you can cross. And if he -- you know, I think that, again, goes to

193

credibility of his testimony.

Anything else? The drugs are not being talked about. The shaking of the head and identification. You said three. Was that three?

MR. LUCAS: Pardon me, Judge?

THE COURT: You said there were three issues. I think I -- I mean, I'm just making sure I got them. You said the drugs were one.

MR. LUCAS: Drugs were one.

Neil v. Biggers is two. I assume you're denying that. I just wanted it on the record.

And then the third is that Ms. Gaines' statement is not inconsistent; therefore, under 613 shouldn't be subject to impeachment.

THE COURT: Okay. And -- and, again, that's off the record. And, again, I think it goes to the credibility, but we'll go from there.

All right. You can bring them in.

THE BAILIFF: (Complying.)

(At 3:13 p.m., jury entered the courtroom.)

THE COURT: Okay. Ladies and gentlemen, I'm sorry that took a little while longer, and I hope you didn't -- weren't subjected to anything back there, but we will move forward.

What we're going to have to do after the State

194

finishes their testimony, and I think we will today, we'll have to take a break while y'all leave and I have to hear motions, just to give you a heads up. I don't know how long it's going to be, but there will be a planned longer break for motions at that point.

Okay. You can call your next witness.

MR. OVERBY: Thank you, Your Honor. May it please the Court? At this time the State calls Investigator Craig Gardner to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, sir.

THE CLERK: If you'll take the stand, please, sir, and state your name and spell your last name for the reporter, please.

THE WITNESS: My name is Craig Gardner. The last name is spelled G-a-r-d-n-e-r.

INVESTIGATOR CRAIG GARDNER,

having been produced and first duly sworn as a witness on behalf of the State, then testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Good afternoon, Investigator Gardner. How are you today?

A. Good. Thank you.

Q. Okay. Where are you employed, sir?

A. I'm employed with Anderson City Police Department.

Q. In what capacity are you employed with the Anderson City Police Department?

A. I'm a corporal. I'm assigned to the street crimes unit, work gang intelligence, and assist working cases with the investigation's division.

Q. Okay. And how long have you been employed with the Anderson City Police Department?

A. Since October of 2012.

Q. Okay. Do you have any prior law enforcement experience?

A. Yes. I've been in law enforcement 21 years prior to coming to Anderson where I was a sergeant on the street crimes unit and gang intel for the City of Greenville.

Q. Okay. And that was with Greenville City you said?

A. Yes, sir.

Q. Okay. And for -- that was for 21 years you said?

A. Yes, sir.

Q. So you have roughly 30 -- 30 or so years of law enforcement?

A. I'm closing in on 28.

Q. Closing in on 28. Okay. What are -- what is your present role with -- as an investigator? What is -- what are some of your duties and responsibilities?

A. My primary role right now is gang intelligence. I maintain databases of known criminal gang members in the city of Anderson. I share intelligence with law enforcement agencies that investigate similar crimes. But in the process, any crimes that are gang related crimes, they get assigned to me to investigate, basically due to the gang intel and the gang invest -- investigations part that we do.

But it's common that many times, because I've worked investigations previous to coming to Anderson, if there's backlogs of violent crime cases, sometimes they'll assign cases to me to investigate.

Q. Okay. And talk to us -- is that how this came to be involved -- you became involved in this

particular case?

A. During the time that I was assigned this case, our unit was temporarily shut down because of manpower problems. I was reassigned to the investigations division where I was sent upstairs to investigate violent crimes cases and property crimes cases to assist investigations because of their lack of manpower, as well.

Q. Okay. And when did you become involved in this case?

A. It was around March of 2017.

Q. Okay. When you first got involved, what was the first thing that you did? What was the first thing you understood about what you needed to figure out?

A. When I was first assigned the case, I knew that we had to find a lead. We had to find something to work, because at that point there was nothing other than two videos that we had.

And one video showed somewhat of a sub -- partial of a subject but had no idea who he was, so we had to somehow try to cultivate some leads for the case.

Q. Okay. So you had the opportunity to view both videos?

A. I did.
Q. And both those videos that were played here in court today?
A. They were the same two videos. One from the Dollar Tree and one from -- I'm sorry. The Dollar Tree videos and the other one from the Little General.
Q. That's okay. And the video from the Little General is the one that you're essentially referring to about the facial -- facial -- face review?
A. That's correct.
Q. Okay. In looking at these two robberies, what did you discover -- what did you discover at that time of the two?
A. Well, when we first got the case, we thought based on how everything played out that night, we thought that someone had tried to rob or robbed the Dollar Tree and then left there and tried to rob the Little General, which made no sense to me whatsoever because if you had completed the crime, the last thing you want to do was take the risk of being caught committing another.

But once we started putting different things together that night, looking at dog tracks and people who were talked to, it began to come into

question that possibly the Little General may have been the first targeted robbery. And then after that was a failed attempt, that the individual went to the Dollar Tree and successfully completed a robbery.

Once we started looking at the time frames on the videos, then I noticed that there was almost an hour discrepancy between the Dollar Tree and the Little General, but we knew that the time stamp for the Dollar Tree was factual, that when we received a call, it was like 8:03 p.m., and the time on the video was 8:03 p.m.

But looking at the Little General video, it was showing that it was an hour advanced. So we knew that that wasn't possible because we were on the scene around the store before the time was actually on the video showing that attempt occurred, so we knew that that time stamp was incorrect.

In a nutshell, we finally figured out that the Little General was the first stop. And then after that, the robbery occurred at the Dollar Tree.

Q. And just to clarify some of those points, you've had the opportunity to see the videos and you discovered that from the CAD reports?

A. That's correct. From a CAD report from our

central dispatch.

Q. Okay. And the time stamp on the Little General video showed what?

A. I don't remember the exact time. I'm thinking it was like 8:00 something, but it was later around nine o'clock. Again, the actual time where the 9-1-1 call was received by dispatch was around -- right there around 8:00 or a minute or two after.

Q. So it was before -- so an hour in advance would be before that?

A. That's correct.

Q. Now, you had your video. You had your image essentially. What was the next step in your investigation? Did you have anything else?

A. The next step in our investigation was that we received a tip.

Q. Okay.

A. We received a tip with some information. So with that tip, I was able to locate an incident report through our incident reporting system with Anderson Police Department. And when locating that report, I was able to get names of two individuals that were involved in a traffic stop.

I pulled photos of those two individuals to use for comparison to the video, and then I pretty much

started investigating this case with what I had at the time.

Q. Okay. In reference to the -- in reference to this tip, who did the tip come from?

A. The tip came from a confidential informant that has ---

Q. Was that individual anybody -- are such tips commonly relied upon for you in your investigations?

A. Yes. I mean, a lot of times we -- until we get a tip, we really have -- we just don't have an angle to work at the time, unless we had something come up through crime scene evidence.

Q. Did that tip come from anybody who has testified in this courtroom here today?

A. No, sir.

Q. Talk about what you did after you received this tip.

A. Once I received this tip, like I said, I pulled an incident report which was involving a traffic stop. With the info that was on that incident report, I pulled information on two individuals. One who was an individual named Marques Glover, and another who was an individual named Damorius Gaines.

When I looked at the photos of these two individuals, I knew immediately that the Glover

subject was not a subject of interest due to the characteristic features of his face, plus I knew the individual from previous dealings. And he was a much smaller and skinny individual.

When I saw the picture of Gaines, he had more of the physical characteristics of being a larger build individual, and that was somebody that -- that could potentially be a suspect in this case that needed to be investigated further.

Q. Okay. And what was your next step in terms of investigating Mr. Gaines' potential involvement in this matter?

A. Once I figured out where Mr. Gaines -- or saw where Mr. Gaines resided, I was going to try to make contact with someone at that residence which was supposed to be a mother that lived at the residence at [redacted], I think it's, East Franklin Street.

Q. Okay. And I'm going to show you what has been marked and placed into evidence as State's Exhibit No. 5. Could you come down here and help me to identify a location?

A. (Complying.)

Q. Are you familiar with this map, sir?

A. Yes, I am.

Q. Okay. For the jury's -- in order to assist the

jury, would you mind utilizing this Sharpie to mark where the Dollar Tree is?

A. You want me to actually mark it or just point to it?

Q. Mark it and just label it with a "DT" if you would, sir.

A. (Complying.) That's the Dollar Tree.

Q. Okay. Doesn't show up quite as well there. Let's try and do this. Doesn't really show up too well either. Tell you what, put a circle around it.

A. Okay.

Q. Okay. And would you mark where the Little General is on this map?

A. You want me to put "LG" or just circle it?

Q. Just circle it.

A. This (indicating) would be the Little General.

Q. Okay. Now, in relation to those things, could you please mark where Ms. Gaines' residence is?

A. Okay. Her residence is going to be right in here (indicating), and that would be right about there (indicating).

Q. Okay. So do me a favor and just mark "G," "GH," or something along those lines for Gaines' home.

A. And "LG"?

Q. And "LG."
A. Okay.
Q. Okay. Do you know the approximate distance between these particular dist -- these particular locations?
A. I wouldn't know the actual yardage, but I know that it would be less than one-tenth of a mile.
Q. Okay.
A. Much less than one-tenth of a mile from both locations.
Q. Okay. So right around all in the same block here?
A. Yes, sir. About a block distance.
Q. Okay. You can have a seat again, sir.
A. (Complying.)
Q. So Ms. Gaines lived at [redacted] Franklin Street?
A. That's correct.
Q. And what did you do at that time?
A. At that time I went to [redacted] East Franklin Street, knocked on the door. I was greeted by a lady named Connie Gaines.

I advised her who I was and why I was there and I wanted to talk to her about her son. When I walked in, started out she told me that he lived there from time to time, that ---

MR. LUCAS: Object to hearsay, Judge.

THE WITNESS: --- I think she ---

THE COURT: Yeah, hold on a minute. What's the objection?

MR. LUCAS: Hearsay. "She told me," and then he's saying what she told.

THE COURT: Yeah, just -- you can't testify about what someone told you.

BY MR. OVERBY:

Q. Let's come back because Ms. Gaines has already obviously testified as far as this conversation is concerned, but did you show her a photograph?

A. I did.

MR. OVERBY: Okay. And, your Honor, just for the record, I'm presenting what has been marked but not yet admitted at this time as State's Exhibit No. 13.

THE COURT: Any objection to that being introduced?

MR. SENERIUS: He hasn't tried to introduce it. He's just talking.

THE COURT: Okay.

MR. OVERBY: I'm about to try and enter it, Your Honor.

BY MR. OVERBY:

Q. Is that the photograph you showed Ms. Gaines?
A. Yes, it is.
Q. How do you know?
A. Because immediately after I left her house, I made a note on the bottom left-hand corner of the photograph.
Q. Okay. And did she look at that photograph?
A. Yes. While I was there and when I was talking to her about the reason I was there, I showed her that picture because we had talked briefly about what had happened and why I was there. And when I showed her the picture, she just kind of like shook her head in disgust and said, "I don't know what's got into him."

MR. LUCAS: Objection, Your Honor. We've covered this. That's blatant hearsay.

THE COURT: I understand.

MR. OVERBY: Judge, she clearly denied the statement previously when she was on the stand. She denied making that statement in its entirety. He was there. He was the other party.

THE COURT: Folks, let me send you out for just a few minutes. Please don't discuss the case.

(At 3:28 p.m., the jury left the courtroom.)

THE COURT: Tell me where I'm wrong. A prior

inconsistent statement under 801 is it -- is not hearsay, but wouldn't you have to ask Ms. Gaines that?

MR. OVERBY: We did.

THE COURT: Right.

MR. OVERBY: We did. We asked ---

THE COURT: But then wouldn't you have to show her a prior -- I mean, he can't testify about what she testified to.

MR. OVERBY: Well, we gave her the time, place, location of all of the -- of these events ---

THE COURT: Right.

MR. OVERBY: --- and asked her about this circumstance. And we made very sure it was certain. Very certain to ask her on redirect and gave her another opportunity to deny whether that statement was made. So in that sense, we've established the foundation that's necessary to ---

THE COURT: Yeah, but isn't that inconsistent statement her statement, and you would have to -- for it not to be hearsay, you'd have to ask her under 801. I mean, he can't testify about what she said because it's hearsay. Look at 801.

MR. OVERBY: Well, Judge, I'm looking at 613 because it's not -- it's being offered ---

THE COURT: Well, look at 801. Look at 801 real quick and just tell me if I -- what I'm missing.

MR. OVERBY: Okay.

THE COURT: I mean, it is obviously hearsay, so it has to come in under an exception ---

MR. OVERBY: Okay. In State v. ---

THE COURT: --- which would be a prior inconsistent statement.

MR. OVERBY: And statements which are inconsistent with the declarant's testimony under Subsection D(1)(a).

THE COURT: Right. So wouldn't you have to introduce her prior statement -- inconsistent statement through her, not through another witness?

MR. OVERBY: Well, if she denies making the statement, then you can deal with the impeachment aspect of this which goes to Rule 613, prior statements of a witness. And that's how this statement comes in, a prior inconsistent statement of the witness.

THE COURT: Tell me what 613 says.

MR. OVERBY: "613(b) Extrinsic evidence of a prior inconsistent statement of witness."

THE COURT: Right.

MR. OVERBY: "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given an opportunity to explain or deny the statement. If the witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as rule -- defined in Rule 801(d)(2)."

But she's not a party-opponent.

THE COURT: I understand. All right. What's -- what's y'all's position on this because 613 and 801 both deal with it. I think your objection is under 801, and I'm not sure that 613 doesn't apply.

MR. LUCAS: Yes, Your Honor. We -- our position is that it has to come in through Ms. Gaines, and they've already impeached her.

THE COURT: Well, I think what they're saying is that his testimony is an extrinsic statement; am

I correct?

MR. OVERBY: That's correct, Your Honor.

MR. LUCAS: Well, there was the argument, Judge, that the extrinsic -- extrinsic statement is the actual exhibit that he wrote on the other statement.

THE COURT: I don't know.

MR. OVERBY: No. No. The extrinsic statement is specifically, "I don't know what's gotten into that boy." She denies making that statement. She denied it on the stand. She was asked twice, and she said, "No. I never made that statement."

As a result ---

THE COURT: So under 613, extrinsic evidence is allowed, but I'm just wondering if his testimony is extrinsic evidence or is not required to be in writing.

MR. OVERBY: Well the ---

MR. LUCAS: I don't think it's extrinsic evidence, Your Honor. It's oral.

MR. OVERBY: The rule doesn't say how it's got to be documented in terms of that aspect because clearly he can testify as to whether or not somebody made that statement or somebody denies it under the rule.

MR. LUCAS: Your Honor, under that logic, anybody could get up and say that anybody else said anything and then come in. It would blow away the hearsay rule.

MR. OVERBY: It's being offered for impeachment, Your Honor. That's the difference. If it's offered for impeachment, that's different than -- that's different than it being offered for the truth of the matter asserted.

THE COURT: Do you intend to call Ms. Gaines again? Does anybody intend to call her?

MR. OVERBY: She's already had an opportunity to deny the statement or admit that statement.

THE COURT: Hold on a minute. Let me go back here and look at it in writing. I can't pull it up. I'll be right back. We'll take a break.

MR. OVERBY: Yes, Your Honor.

(From 3:34 to 3:40 p.m., a recess was taken.)

THE COURT: I can't pull anything up here. We were looking back there at a 2017 case, *State* -- *State v. Barnes*, which would allow. It's actually opposite as I said. It does not require extrinsic evidence to be introduced -- introduced through the person who has made the inconsistent statement. So I understand your objection, but I'm going to allow

it. Okay. Now, all he's going to say is she shook her head.

MR. OVERBY: He's going to say she shook her head. And he's going to say, "I don't know what's gotten into that boy."

THE COURT: Okay. All right. You can bring them back in.

THE BAILIFF: (Complying.)

(At 3:41 p.m., the jury entered the courtroom.)

THE COURT: Sorry for that delay, ladies and gentlemen. My computer went down up here. I had to go to the back and then come back out here so let's continue. Yes, sir.

BY MR. OVERBY:

Q. Investigator Gardner, did you show Ms. Gaines a picture when you went and visited her on that particular evening?

A. Yes, I did.

Q. And this is the picture that you showed her, correct, State's Exhibit No. 13?

A. Yes. This is the picture.

Q. And in response to seeing that picture, what did Ms. -- Ms. Gaines do?

A. She shook her -- she shook her head like in disgust, and then she said, "I don't know what's

gotten into him."

Q. And this is the exact picture that you showed her with your notes?

A. Yes, sir.

MR. OVERBY: At this time, Your Honor, I'd like to admit State's Exhibit No. 13 into evidence.

THE COURT: Any objection to that admission?

MR. LUCAS: No objection, Your Honor.

THE COURT: Okay. Without objection.

(State's Exhibit No. 13 was received into evidence.)

BY MR. OVERBY:

Q. After meeting with Ms. Gaines, what did you do?

A. After -- I believe after I met with her, she had given me some more information, but I ended up locating another individual in our city jail that I spoke to about this case, as well.

Q. Okay. And who was that individual?

A. It was a female by the name of Sherika Harper who was said to be the -- the girlfriend of Mr. Gaines at that time.

Q. Okay. How did you discover that?

A. I was given that information by the mother of the defendant, Damorius Gaines.

Q. Okay. Now, what did you do as far as

Ms. Harper was concerned?

A. When I located her in our city jail, I went down to the jail and asked to have her pulled so I could take her up to the investigations division and talk with her.

When we got up there, she started asking questions, and I told her she wasn't being charged with anything and that I just needed to talk with her about her relationship with an ind -- with an individual named Damorius Gaines. She told me that she knew him. She told me that they were ---

MR. LUCAS: Objection. Hearsay.

THE COURT: Hold on a minute.

MR. OVERBY: Without telling us what ---

THE COURT: Hold on a minute. Hold on a minute. What's your objection?

MR. LUCAS: Hearsay, Judge.

THE COURT: All right. Officer, you cannot say what someone else told you. Sustained.

THE WITNESS: I'm sorry.

THE COURT: That's okay.

BY MR. OVERBY:

Q. With -- without saying what Ms. Harper told you ---

A. Okay.

Q. --- okay, did you show her anything at that time?

A. Yes, I did.

Q. What did you show her?

A. I showed her a Xerox photograph that was cropped off of a video from the robbery that occurred -- the attempted robbery that occurred at the Little General on Murray Avenue.

Q. Okay. Very similar to what you showed Ms. Gaines; is that correct?

A. That is correct.

Q. All right. Was it -- was that photograph now what's been admitted as State's Exhibit No. 11?

A. Yes. That's the photograph that I showed her, showed Sherika Harper.

Q. Okay. That's the photograph you showed that's in State's Exhibit 11?

A. Yes.

Q. And she gave you a statement?

A. Yes, sir, she did.

MR. OVERBY: Okay. Now --- Court's indulgence, Your Honor.

BY MR. OVERBY:

Q. At that point, okay, does Ms. -- did Ms. Harper identify Mr. Gaines in that photo?

A. She said that it looked like him.

MR. LUCAS: Object, Your Honor.

THE COURT: Yeah, hold on a minute.

MR. LUCAS: I don't know why I keep having to make this same objection.

THE COURT: Well, you shouldn't. I mean, he can't -- he can't say what someone else told him.

MR. LUCAS: I'd move ---

THE COURT: Hold on a minute. Y'all, listen. Let me just tell you, I've sat here two days. Y'all let me finish or let me finish. He cannot say what someone else told him, so sustained.

MR. LUCAS: And I'd move to strike, Your Honor.

THE COURT: It's stricken.

BY MR. OVERBY:

Q. In any event, what did you do after meeting with Ms. Harper?

A. I showed her a video from the Little General that was taken from that case.

Q. Okay. And based off what happened there, what did you do?

A. Based off of what happened with her?

Q. Based off of -- based off of what -- after your conversation with Ms. Harper, based off your conversation with Ms. Gaines, based off what you

observed, what did you do at that point?

A. I took her back to the detention center.

Q. Okay. Now, did Ms. Harper ask you for anything after your conversation?

A. When I was turning her over to the jail, she did.

Q. Okay. What did she ask you for?

A. She asked me if I might could see if the judge would help her out.

Q. What was she in jail for at that time?

A. She was in jail for bench warrants for the offense of trespassing.

Q. Okay. And that was in Anderson City Jail?

A. That was.

Q. Okay. What did you tell her in response?

A. I told her that if I saw the judge, I would ask him. I couldn't make any promises, but I would mention it to him.

Q. And what did you do at that time?

A. When I was leaving the jail, I saw the judge. It was one of the judges that was walking into the police department, and I stayed true to my word to her. I saw the judge, I just -- I told him what she had asked. And I told her -- you know, I just -- I said to the judge, "I'm just asking for her if you

can."

Q. How long -- how quickly did that whole process happen?

A. Very briefly. I mean, just quick as I could turn her over, she mentioned it. As soon as I was walking out, I asked the judge and mentioned it to him in passing.

Q. Did you promise her anything before you pulled her out of jail?

A. No.

Q. Did you promise her anything before she talked to you?

A. No, I did not.

Q. Did you promise her anything when she was having a discussion about the photograph?

A. No, I did not.

Q. Okay. Did she receive any assurances whatsoever when looking at the photograph in the video?

A. No, she did not.

Q. Okay. Thank you. Now, what did you do after Ms. Gaines was taken back to the detention center and what was your next step?

A. My next step after that was to send in a request for arrest warrants on Mr. Gaines.

Q. Okay. And at that point, what happened -- what happened from there?

A. The warrants were approved. I picked the warrants up from the judge's office and signed them and had them served on the defendant on Mr. Gaines while he was in the -- in the city jail.

Q. Now, Mr. Gaines -- did Mr. Gaines ask to speak with you?

A. He did.

Q. Okay. Let me ask you a question. Before you went and -- how did Mr. Gaines ask to speak with you actually?

A. He handwrote a letter and put it in an envelope and passed -- he gave it to one of the detention officers, and it was forwarded up to my desk in investigations. And it was on my desk when I came in the following week.

Q. Okay. And he was in custody at that time?

A. He was.

Q. Okay. Now, what did you do in relation to his personal effects?

A. While he was in the jail, I did call the detention center and asked what type of clothing he was wearing at the time that he was arrested.

After learning what he was wearing, I secured a

search warrant to go recover one item of clothing that I thought was important to the case from the attempted robbery at the Little General.

Q. And what was that item of clothing?

A. It was a pair of black Nike tennis shoes.

Q. Okay. I'm going to show you what I'm now having marked as State's Exhibit No. 14. Investigator Gardner, what is that?

A. That is the pair of tennis shoes that Damorius Gaines was wearing at the time he was booked into the city jail.

Q. Okay. And is that a photograph of them?

A. That is a photograph.

Q. Does it fairly and accurately depict what you observed?

A. Yes, it does.

MR. OVERBY: Your Honor, at this time I'd like to enter State's Exhibit No. 14 into evidence.

THE COURT: Any objection?

MR. LUCAS: Without objection.

(State's Exhibit No. 14 was received into evidence.)

BY MR. OVERBY:

Q. Okay. You said these shoes are black. It's a black and white photo obviously.

A. Yeah, that's a black and white Xerox copy. They were -- they're black -- dark black and slightly shiny ---

Q. Gotcha. Thank you.

A. --- leather shoes.

Q. Thank you. Now, Mr. Gaines wrote you a letter to come talk to him.

A. Yes, he did.

Q. Okay. What did you do with that when he had sent you that letter?

A. Once I got the letter, I went down to the jail and asked to have Mr. Gaines pulled so that I could sign him out and take him back upstairs to talk with him.

Q. Now, he approached you about talking to him; is that correct?

A. Yes, he did.

Q. Okay. What did you do at that point when he was brought up to you to start talking?

A. The first thing I did was tell him before I could ask him any questions or talk with him in any way that I would have to advise him of his Miranda rights, and I would have to read those rights to him and make sure that he understood those rights.

Then if he wished to talk to me, I would have

to read him a waiver of rights, meaning that he was waiving his right to have an attorney present at the time.

And then I -- he would have to let me read that to him and he would have to also sign that waiver of rights, agreeing to talk with me without a lawyer. And then we could sit and talk about why he needed to talk to me.

Q. Okay. I'm going to show you what's been marked at State's Exhibit No. 1. Can you tell me what that is, Investigator Gardner?

A. This is the waiver of right forms that I read to Mr. Gaines.

Q. Okay. And you know that how?

A. I know this because this is my handwriting and it's my signature. And that's the one I pulled from my case file from our interview.

MR. OVERBY: Okay. Your Honor, at this time I'd like to the move State's Exhibit No. 1 into evidence.

THE COURT: Any objection?

MR. LUCAS: None, Your Honor.

THE COURT: All right. Without objection.

(State's Exhibit No. 1 was received into evidence.)

BY MR. OVERBY:

Q. Okay. Based off that information, so he was advised of his Miranda rights. Was there any concern about whether or not he wanted to speak with you? Did he indicate he wished to speak with you?

A. No. He -- he was wanting to talk to me.

Q. Okay. So he didn't express any concern about not talking to you or anything like that?

A. None at all.

Q. You didn't coerce him in any way?

A. In no way.

Q. Okay. In fact, he requested it, right?

A. That's correct. Matter of fact, on the waiver there's actually a portion at the bottom to where I go over it like word by word where it actually says, you know, we're making sure that you aren't being threatened, pressured, or coerced in any way.

And I actually went over that individually and had him initial the way those lines -- those words confirming that he had not been pressured, threatened, or coerced in any way to sign this waiver.

Q. And those are his initials next to each one of these points?

A. They are. It's down on the bottom line right

above my signature and his signature.

Q. Okay. So what did Mr. Gaines tell you about where he was living at the time?

A. That he was living -- he had been living with a female at, I think it was, Fairview Gardens, but most recently he had been staying with a female on Cleveland Avenue.

Q. On Cleveland Avenue?

A. And had also been staying with his mother some on Franklin.

Q. What -- what specific address on Cleveland Avenue?

A. It was [redacted] Cleveland Avenue.

Q. Okay. I'd like to show you what we've already marked here, but I'm actually going to show you State's Exhibit -- yes. I'm going to show you State's Exhibit No. 5 again. If you'd come back down here.

A. (Complying.)

Q. Could you mark where that address is on this map, sir?

A. It's going to be right here (indicating), and I'll put a circle around it.

Q. Thank you.

A. I'll put [redacted].

Q. So those are the two addresses he's indicated that he lived at?

A. That's correct.

Q. In relation to these other areas up here?

A. That's correct.

Q. Okay. And one of them was female you said. Who is that female?

A. That female at [redacted] Cleveland Avenue was Sherika Harper.

Q. And the other one was Ms. Gaines at [redacted] East Franklin?

A. That's correct. His mother, Connie Gaines.

Q. Okay. What did you notice about certain physical traits of Mr. Gaines?

A. At the time I was speaking with him, I observed his build, his height. But what stood out to me most of all was certain characteristics about his facial build.

His lower jaw almost had a protruding feature. And then with the facial hair on his jaw, it really jumped out at me when comparing what I was seeing compared to the video from the Little General store.

Q. Okay. And when you -- did he ask you -- did he admit to these robberies?

A. He did not.

Q. Okay. Did he ask you any questions in response to your questions about this?
A. He asked me one question I can recall.
Q. What was that question?
A. He said, "Why would I rob a store across the street from my house or from where I lived," one of the two.
MR. OVERBY: Court's indulgence?
THE COURT: Okay.
BY MR. OVERBY:
Q. Did you do anything else at that time?
A. I did tell him that there -- after I had talked with him about the case, I did tell him about the photograph that I had not told him about before.
Q. Okay. Well, and specifically in reference to him, did you ask him to do anything?
A. Oh, after -- after we talked during our interview, I did ask him if he would mind standing up so I could take a couple of pictures of him.
Q. Okay. Did he agree to that request?
A. He did.
Q. Okay. I'm going to show you what's been marked as State's Exhibit Nos. 2 and 3. Can you tell me what those are?
A. This is the frontal photograph that I took of

Mr. Gaines looking at him face-to-face.

Q. Before you do that, just tell me what it is. That's the -- you can put it down, please.

A. Okay.

Q. That's the frontal photograph of Mr. Gaines?

A. That's correct.

Q. Does it fairly and accurately depict the way you observed Mr. Gaines on that day?

A. Yes, it does.

Q. Okay. And what's in the other photograph?

A. It's another photograph of Mr. Gaines, having him stand and face to the side so that I could get a profile shot of his face.

Q. And he voluntarily provided these photographs?

A. He did.

Q. Does that photograph fairly and accurately depict him as you observed him on that day?

A. Yes, it does.

MR. OVERBY: Okay. At this time I'd like to move State's Exhibit Nos. 2 and 3 into evidence.

THE COURT: Any objection?

MR. LUCAS: No objection, Your Honor.

THE COURT: Without objection.

(State's Exhibit Nos. 2 and 3 were received into evidence.)

BY MR. OVERBY:

Q. Okay. And this is State's Exhibit No. 2 and State's Exhibit No. 3. At the conclusion of the interview, did you have any further involvement in this matter?

A. After the interview, I took him back to the -- back to the city jail.

Q. Now, okay. I do want to ask you a couple of questions about these videos more specifically. You've been out to the Little General since this incident, correct?

A. I have.

Q. You're familiar with it?

A. I am.

Q. And you've obviously viewed the Little General video numerous times, correct?

A. I have.

Q. I'm going to show you a series of photographs. I'm going to show you what I'd like to have marked as State's Exhibit Nos. 15, 16, 17, and 18. Can you tell me what those are photographs of?

A. Exhibit 15 is the store, the Little General. And it's a picture of the side of the store where a propane tank was located.

Q. Does it fairly and accurately depict the Little

General?
A. Yes, it does.
Q. Okay.
A. Exhibit 16, this photograph is the same side of the Little General store, just taken more of an angle from towards the back when looking from the front of the store.
Q. Does it fairly and accurately depict the store -- that angle of the store?
A. Yes, it does.
Q. Okay.
A. Photo No. 17, this is the footpath leaving from the back corner of the Little General store going back towards the street that runs right behind the Little General. I can't recall the name of it.
Q. Okay. And does that fairly and accurately depict that?
A. Yes, it does.
Q. Okay. And the final photo?
A. That's another photograph showing the back lot behind the Little General and the road that runs behind it ---
Q. Okay.
A. --- back down towards Franklin.
Q. And does that fairly -- fairly and accurately

depict that area?
A. Yes, it does.
MR. OVERBY: I'd like to move all of these into evidence, Your Honor, 15, 16, 17, and 18.
THE COURT: Any objection?
MR. LUCAS: Without objection, Your Honor.
THE COURT: Without objection.
(State's Exhibit Nos. 15, 16, 17, and 18 were received into evidence.)
BY MR. OVERBY:
Q. Now, I will publish these. That's the side of the Little General?
A. That's correct.
Q. Okay. That's an additional angle?
A. That's correct.
Q. Where in -- this is the direction -- how is this -- these photo -- how are these photographs related to the Little General surveillance video?
A. You want me to come down and point to it?
Q. Sure. Sure. If that'll make it easier.
A. Okay. From -- from the video itself, from watching from the rear of the building, on the video you see an individual come up from this side of the building and go around the front of the store.
And then a few moments later, you see the

individual come back from around the store and walk this way, and then eventually walk off from that store.

Q. And this is a pretty -- there's a footpath here, is there not?

A. That is. There's footpaths where a lot of foot traffic walks from the Little General back to -- I can't remember the name of the street right behind it, but one block over is where South Main Street is at.

Q. Let me -- let me show you the map. Let's ---

A. Okay.

Q. --- take a look at the map. That would probably help a little bit.

A. It's the Patrick -- Patrick Street ---

Q. Okay.

A. --- which runs between East Franklin and Johnson.

Q. Okay. And this last photograph here, Number 18, what does that depict?

A. That is looking across the back lot from the Little General, looking across the area going back towards Patrick Street towards the area of Franklin.

Q. Okay. Towards the area of Franklin ---

A. Of Franklin Street ---

Q. --- so ---

A. --- which runs back in there.

Q. --- so right, going back this direction?

A. Okay.

Q. Is that correct?

A. It is. This (indicating) is the Little General. Patrick Street running here (indicating). And the lot -- side lot here was looking across the area, the little field across Patrick Street back towards the area of where South Main Street and Franklin Street is located.

Q. Perfect. Thank you so much, Detective Gardner.

I'm going to show you three final photographs. You had an opportunity to view this surveillance video many times you testified earlier, correct?

A. That's correct.

Q. What is depicted in -- I tell you what, let's mark them. I apologize. Let's mark these -- I'm going to hand you up what's been marked as State's Exhibits 19, 20, and 21. Can you tell me what's in these three photographs?

A. Yes. The photograph marked Exhibit 19, it's a photograph looking at the front of the Little General store. It's from an angle shining across the front of the store from one side towards the

other side where the propane tank is. And it's a video of an individual wearing jeans, black shoes, and a thick black or dark gray colored sweatshirt with a hoody trying to push the front door in to get into the Little General.

Q. Okay. And was that from the surveillance video?

A. That is from the surveillance video.

Q. And does that -- is that a fair and accurate still?

A. Yes, it is.

Q. Okay.

A. The other video -- I'm sorry. The other picture, Exhibit No. 20, is the same type of photograph, but it's showing from a camera from the other side showing across towards from the opposite side of the store.

In this video, you can see the same individual dressed in the exact same clothing, but from this side you can see that he's holding a -- what looks clearly to be a pistol in his right hand.

Q. And is that a fair and accurate -- is that a still from the video?

A. Yes, it is.

Q. Is that a fair and accurate depiction?

A. Yes, it is.

Q. And the final photo, sir?

A. The final photo is a photo marked as Exhibit 21. It is an image from the video where the individual from the previous photographs walked. When he left the store, he walked around the store past where the propane tank was located and removed his mask and gave us that one shot of his face.

Q. Okay. And is that a still from the video?

A. Yes, it is.

Q. Does it fairly and accurate -- accurately depict what's in the video?

A. Yes, it is.

MR. OVERBY: Your Honor, I'd like to move all these into evidence.

THE COURT: Any objection?

MR. LUCAS: None, Your Honor.

THE COURT: All right. Without objection.

MR. OVERBY: It's 19, 20, and 21 for the record.

(State's Exhibit Nos. 19, 20, and 21 were received into evidence.)

BY MR. OVERBY:

Q. What do you notice about this photograph in terms of the person's attire?

A. In this one, it's not as clear as the actual photograph, but he's -- he's wearing a hoody -- I mean, I'm sorry. He's got either like a toboggan hat or a ski mask that's pulled over his head and face. He's wearing a dark colored bulky like sweatshirt and blue jeans. He's wearing the black, looks like leather tennis shoes. They're -- they're almost a shiny color.

Q. Okay.

A. And he was holding something in his hand, but wasn't really clear in that picture.

Q. You can see that pretty clearly in this picture, can't you, sir?

A. Yes. In that video, the item in his right hand is more clear, which was the revolver or a handgun.

Q. Okay. And here's the picture, correct?

A. That is correct. That's the same individual that was standing at the front of the store and walked around the store. And in this image, he had already put away the item he had in his right hand and pulled the -- the mask up over the top of his head and revealed his face on the video.

Q. Investigator Gardner, in reference -- you said that this all started because of a traffic stop, correct? In other words, a tip about a traffic

stop?
A. That's correct.
Q. Who's the officer involved in that stop? Do you know?
A. The officer that conducted that traffic stop was Jacob Saxon.
Q. Okay.
A. At the time he was employed with the City of Anderson Police Department.
Q. Okay. Do you remember where that traffic stop occurred?
A. I know it was in the area of Cleveland Avenue. I think it was at one of the intersecting streets with White Street right there within a block or so of the Cleveland Avenue area.
MR. OVERBY: Okay. Thank you very much for answering my questions, Investigator Gardner. Please answer any questions defense counsel has for you at this time.
MR. LUCAS: Judge, may we have a five-minute recess, please?
THE COURT: Sure. Ladies and gentlemen, take five minutes. Please don't discuss the case.
(From 4:15 to 4:25 p.m., recess was taken.)
THE COURT: Are y'all ready?

MR. OVERBY: Sure.

MR. LUCAS: Yes, Judge.

THE COURT: Bring them on in. We're ready.

THE BAILIFF: (Complying.)

(At 4:26 p.m., jury entered the courtroom.)

THE COURT: All right. Ladies and gentlemen, thank you for your patience. All right.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. Now, Investigator Gardner, there aren't any fingerprints that connect Damorius Gaines to the Little General, are there?

A. None that I'm aware of.

Q. Nor to the Dollar Tree?

A. None that I'm aware of.

Q. Any blood?

A. No.

Q. Any DNA?

A. No.

Q. Did y'all recover any property from the robbery in Mr. Gaines' possession?

A. No.

Q. At his home?

A. I would say "no" to include all of them.

Q. Okay. So it would be fair to say that there's

not any physical evidence connecting Mr. Gaines to either the Little General or the Dollar Tree?

A. Based on the items you asked me about, no.

Q. Okay. Thank you. Now, to talk about your investigation. Before you got a tip, you didn't have any reason to suspect Damorius Gaines?

A. I had no lead at all.

Q. And you never developed any alternative suspects?

A. I never got any other tips or information.

Q. And we've not heard any testimony that you made an effort to do so?

A. I had nothing to follow. I had nothing to follow-up on. That's the only tip I got.

Q. Now, did you compare the video to any mug shots?

A. No. I didn't actually compare it to mug shots. I -- once I talked with your client, I had photographs that I used to look at the video still shots with.

Q. You run it through any facial recognition software?

A. We don't have anything like that.

Q. Now, the initial description of the suspect was six-feet, 160, right?

A. I think there were several, but the most repetitive description was around six-foot tall.

Q. Okay. And the initial report in the CAD detail is 160 pounds, right?

A. That's what was given to dispatch.

Q. And Ms. Glenn said five-six to five-nine, right?

A. That's correct. Again, another estimation from a person's point of view.

Q. Now, let's move onto Connie Gaines. Now, there's certain states that as a matter of law have to record interviews. Are you aware of that?

A. I am.

Q. And you're aware that it's a good practice to preserve an objective record of what happened?

A. I do.

Q. What was said or not said?

A. Uh-huh.

Q. Now, are you are equipped with any recording device?

A. I am now as a -- when I wear a uniform working patrol, I have a body camera, but I did not at the time. And my conversation with her wasn't as much of an interview as a conversation, but it was at her house, not in our police department. And even at

that time, we didn't have video or audio capability in our interview rooms.

Q. Well, you testified yesterday at a pretrial hearing that you had a phone that you took with you.

A. I did.

Q. And that's a Smartphone, correct?

A. It is.

Q. And the Smartphone has the capability to record video and audio, does it not?

A. It does. I'm not a smart user. It's a Smartphone, but I'm still trying to learn how to use it.

Q. Well, I'm not either, but we'd agree it's pretty easy to do. You hit the ---

A. I did not -- I did not have the phone with me. I don't always -- I did not have it with me. The only thing I had was a folder in my hand when I was talking with her.

Q. So you made a choice not to record it?

A. I did not make a choice. I just did not have it with me.

Q. But you could've brought it, couldn't you?

A. I -- yes, sir. I could've done a lot of things, but I did not think to bring that phone with me at that specific moment.

MR. LUCAS: Beg the Court's indulgence.

BY MR. LUCAS:

Q. Now, on March 9th you went to speak with Connie Gaines; is that correct?

A. Yes, sir.

Q. And the purpose of going to speak with her was to show her a photograph; is that correct?

A. Yes, sir. Somewhat. Yes, sir.

Q. Now, when you handed the photograph to Ms. Gaines, she looked at it and shook her head no; is that correct?

A. That's incorrect.

MR. LUCAS: Permission to approach, Your Honor.

THE COURT: Yes, sir.

BY MR. LUCAS:

Q. This is your supplement report dated March 9th?

A. Yes, sir.

Q. And I am flipping over to page two. And in your report, it says, "Ms. Gaines looked at the picture and then shook her head."

A. That's correct, but not as you animated there. It was not the same type of shaking her head in response to saying no.

Q. Now, to say somebody shakes their head, that typically indicates no, correct?

A. No, sir.

Q. And this motion, a shake, that has a common understanding, does it not?

A. It has -- it can mean several things in response to several type of emotions or answers.

Q. Now, just a minute ago you testified that she shook her head in dismay?

A. That's correct.

MR. LUCAS: Your Honor, permission to approach?

THE COURT: Sure.

BY MR. LUCAS:

Q. I'm going to show you your report once more and please tell me if you can find anywhere in here where you indicate that she shook her head in dismay.

A. I don't have to look because I didn't say in dismay. I just said she shook her head.

Q. So you didn't put that in your report?

A. I did not.

Q. Okay. Now, you're trained to write accurate reports?

A. As accurate as I can. That's correct.

Q. Truthful reports?

A. That's correct.

Q. To include all the details?

A. As much as I can recall when I'm writing a report. That's correct.

Q. And you do that because you know you're going to rely on it in the future?

A. And be held accountable for it in the future.

Q. And to testify based on that?

A. That's correct.

Q. Sometimes a year or more later?

A. That's correct.

Q. And nowhere in your report, you'll agree with me, that you put, "She shook her head in dismay"?

A. I did not say dismay. She shook her head and then made the comment that we discussed earlier.

Q. Now, after you showed her this photo, you didn't have her sign it, did you?

A. No, sir. She handed it back to me and then started talking to me about her son.

Q. And neither did you have her sign an affidavit of photo identification?

A. I did not.

Q. And you would agree with me that it's best practice to do that?

A. At that point I was trying to get information that would lead me to believe that I was on the right track of a suspect to be further investigating

for this crime of robbery.

Q. But you'd agree that it would be a best practice?

A. I wasn't per se showing her a photo lineup. I was just showing her a picture from the robbery scene. I wasn't asking her to pick someone out of a lineup to show to give a photo display sheet so-to-speak.

Q. Well, you showed the same photo to Sherika, didn't you?

A. I did.

Q. And you had her sign an affidavit?

A. That's -- had her sign what?

Q. You had Sherika sign an affidavit of photo identification?

A. I may have. I don't recall. I know she did it. She signed a statement -- a statement form. That's a -- that's a written statement. That's not a photo identification form.

Q. And you didn't have Ms. Gaines sign that or sign a similar statement, did you?

A. No. I did not ask her to provide me a written statement because she knew nothing about the robbery. I was there only to see if perhaps -- to speak with her son if he would've been there, but

because he wasn't, then I spoke with her.

Q. And she never said the person in the photo was her son, did she?

A. She never said that he was not.

Q. Let's talk about Sherika Harper now. Now, you went and spoke with Ms. Harper on March 9th, correct?

A. I think that's correct.

Q. And she was actually at the Anderson City jail when you spoke with her?

A. That's where I located her. Yes.

Q. Now, you didn't record that either, did you?

A. Like I stated before, there's no audio or video equipment that was available in investigations at the time of that interview, so none was used.

Q. But you had a Smartphone that could record video?

A. Again, it's not common practice to use our phones for that. We -- we have certain policies. And at the time this took place, we did not have the actual policy and the -- the equipment set up to use that in our investigations.

Q. Now, right after you pulled Sherika out, you immediately told her, "I want to talk about your relationship with Damorius Gaines and what you know

about him."

A. Not immediately, but, yes, ultimately when we got upstairs and we sat down. She asked me a couple of questions about herself, and I told her the reason I was there was I would like to ask her several questions about an individual named Damorius Gaines who I had heard was an ex-boyfriend or maybe even still boyfriend of hers.

Q. Now, in your report it says that the first thing you told her is that you were not charging her with anything or asking about any arrest, correct?

A. That's correct.

Q. And then the very next thing is that you wanted to talk about Damorius Gaines?

A. That's right because she was asking me if she was fixing to be charged with something. I told her no, she was not being charged with anything.

Q. And then you -- you didn't ask her about anyone else during that interview as ---

A. There was no one else that I knew to ask her about other than Damorius Gaines. That's the only person I had connected to her.

Q. And you went there to show her a picture from the Little General surveillance video?

A. I went there to show her a picture?

247

Q. Well, that -- that's -- that was one of the purposes for your visit, to speak with her ---

A. Yes. It was one of the purposes. You're correct. One of the purposes was to let her look at a video or a photograph to see if she could identify the person in that photograph or that video, which I thought would've been the most suitable person being that she had a personal relationship with the individual.

Q. Wouldn't you agree that it's suggestive when you're going to ask for an identification to first tell the person who you're looking for?

A. Well, I didn't tell her that I was looking for Damorius Gaines. I simply asked her or made the statement that I would like to talk to her about Damorius Gaines. It was someone that -- that she knows.

I wasn't saying I was wanting her to identify him as the person in this crime or anything. I just simply wanted to talk to her about an individual that she knew whose name was Damorius Gaines.

Q. And you didn't mention anybody else?

A. I didn't have anybody else to investigate at the time. It's the only name I had.

Q. And then you showed her the picture?

A. And I showed her the picture.

Q. That's suggestive, isn't it?

A. She didn't immediately say "yes" or "no" when she looked at it. She said she wasn't sure at that time because of the ---

MR. LUCAS: That's -- I'm going to object to that.

THE COURT: Yeah, just make sure you just answer the question.

THE WITNESS: Okay.

BY MR. LUCAS:

Q. Now, at this time on March 9th, Sherika Harper was locked up, correct?

A. She was.

Q. And she was in on three 30-day bench warrants, correct?

A. Yes, sir. It was bench warrants for misdemeanors.

Q. She'd been locked up since February 28th, correct?

A. I can't tell you exactly which day she came in. I don't know. I just knew that she was in the jail when I went there.

Q. The 28th sound about right?

A. I'll take your word for it. If you've got

something that says she was an intake on the 28th, I'll agree with you.

Q. Well, she hadn't been in there for 30 days, had she?

A. She had not been in there long, I don't believe.

Q. Okay. So you talked with her?

A. Yes, sir.

Q. And then after finishing this conversation, she asked for -- asked you for help, correct?

A. That's correct.

Q. How long after you finished your initial conversation did she ask you for help? Was it before you even left the interview room?

A. No. No. No. We were -- had already left investigations, went down the stairs, went through the doors to get in the back booking, went down the hallway and waited for them to open the doors to where she could be turned back over to detention.

And when I was taking my cuffs off of her hand on which is a common practice because she's an inmate, she was outside of the detention center. When I was taking them off, she asked me, "Do you think you can talk with the judge and she if he can help me out?"

And I told her, "Sure. I'll mention something to him. I'll let him know that you cooperated with me and I'll put a good word in for you. You know, I can't promise, but if he does, I don't have a problem with it."

Q. So it was before you'd even left the jail?

A. I was back in the -- where I turned her over to the detention personnel. It was long after our conversation had ended about what we talked about earlier upstairs.

Q. Now, you testified that you're trained to write detailed accurate truthful reports, correct?

A. As best as I can. That's correct.

Q. And not omit details?

A. That's true. That's correct.

Q. Nowhere in your report did you make any mention of that?

A. You're absolutely right because I had completely forgot about that conversation until being reminded of it today because it was not a long promising-type conversation. It was an in passing question, and then a response from me. And then a quick -- or just a quick mention to the judge, and then I was back on my way back up to my office.

Q. But you spoke with Sherika on March 9th?

A. That's correct.
Q. And isn't it true that your report is also dated March 9th?
A. That's correct.
Q. So you wrote it the same day?
A. That's correct. I wrote about my investigation.
Q. Still fresh in your mind?
A. Yes, sir.
Q. And you omitted it completely?
A. I'm not going to say I omitted it. I forgot about it and did not include it in my report.
Q. But it's not in here?
MR. OVERBY: Objection. Asked and answered.
THE COURT: Yeah, you can wrap that up.
MR. LUCAS: Yes, sir.
THE COURT: I'll allow you to answer -- ask one more question.
MR. LUCAS: Yes, Your Honor.
BY MR. LUCAS:
Q. And, in fact, you just disclosed that at lunchtime today?
A. As I previously stated, I had not even recalled that conversation or even thought about it until today when something came up about her intake and

release. And I was -- that's the moment I thought, I did speak with her and then I went to advise the Solicitor that I did have that conversation, but it was something that was very brief and nothing that had a whole lot of substance to the conversation, but I advised him of that conversation today.

Q. And, in fact, Ms. Harper got out of jail that same day, didn't she?

A. I personally do not know what day she got out. After I talked with her that last day, I never talked to her again until weeks till I saw her on the street, several weeks later. I couldn't tell you exactly what day she got out, but, again, if you have something that states the day that's showing she's out, I would not disapprove. It's on the release papers.

Q. And she got out early then?

A. I think she did get out earlier than what she was supposed to have gotten out. Yes.

MR. LUCAS: Beg the Court's indulgence for just a moment.

THE COURT: Okay.

MR. LUCAS: Permission to approach, Your Honor?

THE COURT: Yes, sir.

BY MR. LUCAS:

Q. This may have refreshed your recollection, Officer Gardner.

A. You want me to make a comment, or are you just pointing to something?

Q. I'll ask the questions.

A. Okay.

Q. And then you can answer it ---

A. Okay.

Q. --- if that -- that -- if that suits. Isn't it true that she was released March 9th?

A. Yes, sir. Based on the release paper you showed me. That's correct.

Q. Okay. Thank you. Now, you testified a few minutes ago that the suspect was wearing black leather tennis shoes?

A. Yes, sir. That's -- they appeared to be black leather tennis shoes.

Q. And the precise words you used were "looks like black leather tennis shoes," correct?

A. From what I saw, they looked just like black leather tennis shoes. They looked like black leather shoes.

Q. But you couldn't be positive?

A. Not a hundred percent positive, but they appeared as such. They looked like them.

Q. Could you tell what make they were?

A. No, sir. I could not.

Q. So you couldn't testify whether they were Nikes?

A. I could not say that they were Nikes or not, but they were just the shiny black leather tennis shoes.

Q. And you couldn't say that they were Adidas?

A. No, sir, I could not.

Q. Reebok? Puma?

A. Under Armor, so on and so on. I could not say.

Q. And the reason you can't say is because you just can't see them close enough to tell?

A. Cannot see them close enough to make out a logo or see a design, but they had the appearance and they looked like -- like leather tennis shoes.

Q. So because of that, you cannot say with any certainty that the black shoes that Damorius Gaines was wearing matched those from the Little General or the Dollar Tree, right?

A. I could not say with certainty they were or were not the same shoes that he wore.

Q. Well, because you couldn't tell what kind of shoes they were?

A. Absolutely.

Q. Now, there are a lot of black tennis shoes in Anderson. And it would be fair to say that there are a lot of black guys in Anderson who own a pair of black tennis shoes?

A. A lot of people own black tennis shoes. I own black tennis shoes.

Q. I do too. Now, there's testimony earlier about a dog track, correct?

A. Yes, sir.

Q. And the dog went to a black hooded sweatshirt outside the Little General, correct?

A. I cannot speak on that from firsthand knowledge. I can only tell you what I have read in an incident report and what another officer has told me.

Q. I understand. But you did testify earlier that the man who robbed the Little General was wearing a black sweatshirt hoody?

A. It appeared to be a thick-style sweatshirt or hoody-type shirt jacket. I couldn't see perfectly what it was, but I could see that it was a thick, like a pullover sweatshirt or one that was the hoody-type sweatshirt. It was a thick-type shirt.

Q. You said hoody earlier?

A. Right.

Q. And, in fact, there was such a hoody found outside of the Little General, correct?

A. And here again, I wasn't there, but from -- if you're wanting me to say what I heard, hearsay, then I'm telling you what I heard was that it was a jacket.

Q. Well, you're the lead investigator on this case, right?

A. But not at that -- not on the scene that night. I took this case over after the fact.

Q. Well, but you're aware of everything that's in evidence for this case?

A. That's correct.

Q. And there is no black hooded sweatshirt that was collected?

A. No, sir. I don't think they found a black hooded sweatshirt. They located a jacket that appeared to have been discarded at the Little General and it was not collected. They did not deem it sufficient to their track.

MR. LUCAS: One moment please, Judge.

BY MR. LUCAS:

Q. Now, the track also went all the way to Hal's at 1835 South Murray, right?

A. I know that it went out South Murray. I don't

know exactly where the track stopped.

Q. Are you aware that it, in fact, ended at an abandoned house located there?

A. From what I know, it's just that they called off the track. I don't know that they -- that it just like ended there. I think they just -- it reached a point where they called it off.

Q. You ever look into seeing whether anybody stayed at this house at 1835 South Murray?

A. I've never been to that house. The direction the dog went based on the information that I had from working this case was that that dog had literally backtracked what was possibly the suspect that left the Little General to go to the Dollar Tree.

Instead of tracking a subject forward where he went after the dog showed that night and based on what I had read was the dog had simply picked the scent up and backtracked the path of the person who'd left the Little General to go to the Dollar Tree. So I never followed-up anywhere on it because it ended at a vacant house.

Q. So what you're saying is it might've started there? Is that -- if you're saying the dog has backtracked, your testimony is that ---

A. Based on what I learned from my investigation with the time stamps, the video, I believe the dog tracked backwards from the Dollar Tree to the Little General, which is where this incident started at the Little General and then went forward to the Dollar Tree.

Q. And South Murray Avenue, that's down a ways. And, in fact, that's going a good ways away from where that you say Damorius Gaines lived where his mother's ---

A. No, sir.

Q. --- house is?

A. No, sir.

Q. That's down farther away?

A. It's right in front of the Little General, one black away, a block and a half away. South Murray is the major road which runs directly in front of the Little General.

Q. But this ---

A. East Franklin runs beside the Little General and crosses South Main Street. And after you cross South Main Street, well, to the left there is the Dollar Tree. And if you go straight across South Main 50 yards to the right before you get to the next intersection is where his mother lives.

Q. Well, no. I'm talking about 1835 South Murray.
A. Oh, you said South Murray?
Q. Yeah. Yeah. Yeah. Yes. Okay.
A. I have no clue where 1835 South Murray is at.
Q. Be fair to say that's a bit further down, farther away?
A. I don't know. Like I said, I wasn't there for the track, but of all the officers that was there that night, I saw no reason for me to go back and check a vacant house. I'm sorry. I just heard you say South Murray.
Q. It's okay. We're both confused, so it's fine. Now, you went to go see Damorius Gaines on March 13th to change -- change subjects. So March 13th, you went to go interview Damorius Gaines.
A. I think that was the date. Again, I'd -- I'd have to see the actual date on the report, but I'm thinking it was the 13th, 14th, right there around that time period. The date is on my waiver of rights form where I had him sign the waiver of rights.
Q. And you went there to meet with him at his -- at his request, correct?
A. That's correct.

Q. And when you spoke with him, he denied committing either crime?

A. In his initial statement to me he did. He denied it, or not necessarily denied it because I didn't question him. He just said that he was -- well, here again, you want me to -- okay. I'll stop. I'm sorry.

MR. LUCAS: Judge, if I could briefly.

THE COURT: Sure.

BY MR. LUCAS:

Q. If I can show you a report. And does the report not say, "After talking about the robberies and realizing that Gaines was not going to admit to that?"

A. "After talking about the robberies and realizing that Gaines was not going to admit to them," that's -- yes. That's part of my sentence.

Q. So when you spoke to him on March 9th, he didn't admit to them, correct?

A. That's correct, but he never denied it either.

Q. Well, in fact, his reports -- or your report says that he told you, "I am not a violent person and would not rob nobody."

A. When I confronted him with direct evidence that I had in this case ---

Q. Well, that's ---

A. --- he would never say, "I did not do it." He just would state, "I'm not a violent person," and that's it.

Q. Which is not an admission, is it?

A. It's not an admission. No.

MR. LUCAS: Nothing further. Thank you.

THE COURT: Anything on redirect?

MR. OVERBY: Very brief, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. OVERBY:

Q. How long have you worked at the city for again? How long have you worked for the city police department?

A. For the Anderson City Police Department?

Q. Yes.

A. It's been almost six years, or a little over six years.

Q. Six years? Before that, you worked in Greenville?

A. Yes, sir. That's correct.

Q. Had either agency ever had facial recognition software?

A. That's television ---

Q. Okay. No facial ---

A. --- and it's very expensive.

Q. --- recognition software is ever used in either of your experiences at either law enforcement agency, correct?

A. Never.

Q. Okay. What happens if you take a video interview on your cell phone?

A. If I take a video interview on my cell phone, my cell phone then becomes evidence.

Q. And what do you have on your cell phone?

A. My personal stuff.

Q. There you go. So you don't want your personal stuff to go into property and evidence, do you?

A. Absolutely not.

Q. Now, Anderson City does not have audio and video recording at least at that time?

A. At that time they did not. No.

Q. Okay. So you're doing the best you can with it, right?

A. The best I -- the best I can with what I had available to my use.

Q. Okay. I appreciate it. Now, let me ask you this question because we've had a lot of discussion about why there's no physical evidence. Why is

there no physical evidence?

A. No physical evidence?

Q. Yes. Why don't we have DNA? Why don't we have fingerprints?

A. Because there was nothing that we could -- I mean, there was nothing to process. Nothing that we could find. It was -- he was apprehended immediately after the -- this incident.

Q. Well, on top of that, what was the robber wearing?

A. He was wearing gloves.

Q. And what?

A. And he had a firearm in his other hand and a hoody over his -- or a mask over his face.

Q. Okay. And back to this hoody. Okay. First of all, just to clarify this aspect of things, the Dollar Tree robbery happens at 7:40, right, or at eight o'clock, correct?

A. Right at -- yes, sir. Right at eight o'clock.

Q. The time stamp at the Little General is 7:40?

A. That's correct.

Q. Well, it's 8:40, but we've already heard that it's an hour before?

A. That's correct.

Q. Okay. And a guy is seen running the exact

opposite way from the Dollar Tree?

MR. LUCAS: I'd object to the ---

THE COURT: I'm sorry.

MR. LUCAS: Just objecting to his going on this way.

THE COURT: Okay. Try not to lead.

BY MR. OVERBY:

Q. My question is simply this: Why would somebody go back towards the Little General and drop a jacket after they've already done something at the Dollar Tree?

A. I wouldn't be able to explain that ---.

Q. Okay.

A. --- but -- well, I'm sorry.

MR. OVERBY: Okay. No further questions, Your Honor.

THE COURT: Thank you, sir. You can step down.

THE WITNESS: Okay. Thank you.

(Witness excused.)

THE COURT: You got another witness? One more?

MR. OVERBY: One more and it's very brief, Judge.

THE COURT: Okay.

MR. OVERBY: Your Honor, at this time the State calls Deputy Jacob Saxon to the stand.

THE WITNESS: (Approaching.)

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I swear.

THE CLERK: If you'll take the witness stand, please, sir, and state your name and spell your last name for the reporter, please.

THE WITNESS: My name is Jacob Saxon, S-a-x-o-n.

DEPUTY JACOB SAXON,

having been produced and first duly sworn as a witness on behalf of the State, testified as follows:

DIRECT EXAMINATION

BY MR. OVERBY:

Q. Deputy Saxon, where are you presently employed?

A. Anderson County Sheriff's Office.

Q. And what is your present role at the Anderson County Sheriff's Office?

A. I am a part of the uniform patrol division as a K-9 handler.

Q. Okay. And where were you previously employed?

A. Anderson City Police Department.

Q. In what capacity were you employed with the Anderson City Police Department?

A. I was part of the community action team also as a K-9 handler.

MR. SENERIUS: Could you repeat that? I didn't hear you.

THE WITNESS: I was a part of the community action team. I was a uniformed patrol as a K-9 handler, as well.

BY MR. OVERBY:

Q. Okay. And were you employed in that capacity on March 1, 2017?

A. Yes, sir.

Q. Okay. Did you have an opportunity to come across the defendant in this case?

A. Yes, sir.

Q. Okay. Describe how that occurred.

A. On March 1, 2017, I conducted a traffic stop on -- the violation was left of center at White Street and Thomas Street. I observed a Pontiac Grand Am operate left of center.

Q. Okay. When you made that traffic stop, who was the driver of that vehicle?

A. Marques Glover.

Q. And who was the passenger of that vehicle?

A. Damorius Gaines.

Q. Okay. And how did you identify Mr. Gaines specifically?

A. I just asked for his information ---

Q. Asked for his information ---

A. --- and ran it through dispatch.

THE COURT: Hold on a minute. Y'all can't talk over. Let him answer the question and then respond.

MR. OVERBY: I apologize, Your Honor.

THE COURT: It's all right.

BY MR. OVERBY:

Q. Okay. Did you speak with Mr. Gaines?

A. Very briefly, I did.

Q. Okay. And was this discussion captured on your body cam?

A. That's correct.

Q. Have you viewed that body cam footage?

A. That's correct.

Q. And were you in close proximity to the defendant when you were speaking with him on this night?

A. Very close.

Q. I'd like to show you what I am now having marked as State's Exhibit 22, 23, and 24. I'm now handing you what's been marked as State's Exhibit

22, 23, and 24. Can you tell me what those photographs are of?

A. All three of these photographs are of Mr. Gaines.

Q. Are they stills from your body camera?

A. That's correct.

Q. And do they fairly and accurately depict what you observed of Mr. Gaines on that day?

A. That's correct.

MR. OVERBY: Permission to move these into evidence, Your Honor.

THE COURT: Any objection?

MR. LUCAS: None, Your Honor.

THE COURT: Okay. Without objection.

(State's Exhibit Nos. 22, 23, and 24 were received into evidence.)

MR. OVERBY: State's Exhibit 22, State's Exhibit 23, and State's Exhibit 24.

Thank you, Deputy Saxon. I have no further questions for you. Please answer any questions the defense may have.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. LUCAS:

Q. When did you get your body camera, Officer

Saxon?

A. When I was hired with Anderson City Police Department.

Q. And what date would that have been?

A. I was hired at the end of December 2014. Started riding at the beginning of January. I was an uncertified officer at that time in 2015.

MR. LUCAS: Okay. Thank you. Nothing further.

THE COURT: Okay. Anything on redirect?

REDIRECT EXAMINATION

BY MR. OVERBY:

Q. You work solely with the uniform patrol, correct?

A. That's correct.

Q. Not with investigations?

A. No, sir.

MR. OVERBY: Nothing further.

THE COURT: Thank you. You can step down. Can he be excused?

MR. LUCAS: That's fine by me, Your Honor.

MR. OVERBY: Yes, Your Honor.

THE COURT: You're excused.

(Witness excused.)

THE COURT: Do y'all need a minute to just ---

MS. HUEY: Yes, sir.

270

THE COURT: Okay. Ladies and gentlemen, I'm going to give you about five minutes. My plan is to come back in and let the State finish. Then I'm probably going to send you home rather than keep you. We'll do our motions tonight and start tomorrow with the defense case. Again, we have to finish this case by tomorrow night, so bear with me. Don't talk about the case yet.

(At 5:11 p.m., jury left the courtroom.)

THE COURT: I'm just finishing this e-mail, and then y'all talk and make sure you're ready.

(From 5:11 to 5:21 p.m., recess was taken.)

MR. OVERBY: Co-counsel informed me that I neglected to admit one exhibit. I'd like to recall the last witness for the purpose of admitting one last exhibit.

THE COURT: Okay.

MR. OVERBY: And then I wouldn't have anything after that.

MR. LUCAS: We're okay with that, Judge.

(From 5:21 to 5:26, recess was taken.)

THE COURT: Okay. So we need to recall this last witness?

MR. OVERBY: Yes, Your Honor.

THE COURT: Okay.

271

THE BAILIFF: Ready?

THE COURT: Yes.

(At 5:26 p.m., jury entered the courtroom.)

THE COURT: Okay. Yes, sir.

MR. OVERBY: May it please the Court? The State calls -- recalls Deputy Saxon to the stand.

THE COURT: Come on up. You're still under oath obviously.

THE WITNESS: (Complying.)

CONTINUED REDIRECT EXAMINATION

BY MR. OVERBY:

Q. Deputy Saxon, who is the other individual in the traffic stop involving Mr. Gaines?

A. Marques Glover.

Q. He was the driver?

A. That's correct.

Q. Okay. I'd like to show you what I'd like to have marked as State's Exhibit No. 25. Can you tell me what that is a picture of, sir?

A. That is a picture of Marquis Glover on the traffic stop.

Q. Okay. And does that fairly and accurately depict what he looked like on that day?

A. That's correct.

MR. OVERBY: I'd like to move Exhibit No. 25

272

into evidence ---

THE COURT: Yeah, I assume no objection.

MR. LUCAS: No objection.

MR. OVERBY: --- into evidence and published. Okay. I have no further questions. Please answer any questions of Mr. Lucas.

THE COURT: Any questions about that? Any further questions?

MR. LUCAS: Oh, none, Your Honor.

THE COURT: Okay. Thank you. You can step down and you are really excused now.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Yes, sir?

MR. OVERBY: At this time the State rests, Your Honor.

THE COURT: Okay. Ladies and gentlemen, in every General Sessions or criminal trial at this point in the trial, we have to break for me to hear motions. It is a standard thing for every trial. I am working, as I've told the lawyers, against a hard wall of tomorrow night. So some time before midnight tomorrow, we've got to finish this case.

I had expected to take longer in the witnesses. I'm going to hear the motions now and go ahead and

273

send you home. I was a little bit worried about the fact that we'd be here until 6:30 or 7:00, and we finished earlier and I'm appreciative to both lawyers for that.

So I would ask you to be back in the jury room. Now, are we on the third floor tomorrow?

THE CLERK: Yes, sir.

THE COURT: We are on the third floor tomorrow, so look for Annie Ruth in the same spot. We're in a much smaller courtroom. Again, as I told the whole group, this is a very busy week. So we're going to have flip downstairs, and then on Friday have to be back up here. The only people that really have to work are the court reporters because there are two separate ones and they have to move all of their equipment.

So I'll see you on the third floor. Again, when you go in there, it's a very small courtroom, but we will finish this case and get it to you tomorrow, some time probably before lunch and your duties will be through by tomorrow hopefully. So have a great night and I ask you not to talk -- yes, sir.

THE JUROR: What time tomorrow?

THE COURT: 10:00.

274

THE JUROR: Ten o'clock.

THE COURT: 10:00. Like I said, if you come back by the courthouse, the lights will still be on in a little while. We're just going to finish that outside your presence.

So I'll see you tomorrow morning at 10:00. Please don't look at any television, listen to any radio, or read anything on the internet that may be about this case. Have a great night. Be safe.

(At 5:31 p.m., jury left for the day.)

THE COURT: Okay. Any motions from the defense?

MR. LUCAS: A motion for directed verdict, Your Honor. Based upon the insufficient evidence for all charges, we ask that you grant a directed verdict on all of them, Judge.

And specifically on the basis that the State has not shown that the defendant is Damorius Gaines beyond a reasonable doubt. They presented two witnesses who can identify him, both of whom now say that the man shown on the tape is not Damorius Gaines. So that's the basis of the motion, Judge.

THE COURT: Okay. What I used to say to defense lawyers is, I'm assuming you're incorporating all of your prior motions? We just

275

had a brand new Supreme Court opinion that says that doesn't protect you, but I think you've protected yourself very well. I'm going to deny your motion for directed verdict.

We will start tomorrow. Now, it would be easier -- I mean, do y'all have any idea how long you will take tomorrow? Makes a big difference for me from the jury charge whether I give it to you when we do our ---

MR. LUCAS: We're unsure at this time, Your Honor. We may not be putting up a case at all, but that's a decision we've yet to make.

THE COURT: Okay. Well, tomorrow morning what I'll do is have Mr. Gaines come up and I'll explain his Fifth Amendment rights first, and then we'll see where we are.

Now, if we break right after that, I've got the jury charge. It's pretty standard. We'll go over it, take a break after you finish your case and then go over it, but it is pretty standard. I mean, I'm sure anybody can poke some holes in it, but I'm just charging the statutes. So I'll see y'all tomorrow morning at 10:00, and I appreciate your work today. See you tomorrow.

MR. OVERBY: Thank you, Your Honor.

276

(The proceedings concluded at 5:33 p.m.)

September 6, 2018

THE COURT: All right. Well, let's go on the record then.

Mr. Gaines, come on up here. I'm going to put you under oath, and I need to ask you some questions.

THE DEFENDANT: (Complying.)

THE COURT: You have to excuse my voice. It's just failing.

THE CLERK: Do you solemnly swear or affirm the testimony you'll give the Court today in this case to be the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: I do. Thank you, sir.

THE COURT: Okay. Mr. Gaines, I need to talk to you. Obviously, you're on the record and you have your attorney with you. And I need to explain to you your Fifth Amendment rights and I'm sure you've talked to your lawyers about it, but I need to put it on the record.

Do you understand that you have a right in this courtroom to claim the protections of the Fifth Amendment right ---

THE DEFENDANT: Yes, sir.

277

THE COURT: --- your Fifth Amendment rights?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand that you can't be compelled to testify against yourself?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand if you don't testify, then I will explain to the jury that they cannot hold that against you in any way?

THE DEFENDANT: Yes, sir.

THE COURT: But for my sake, I need to know that it's freely, voluntarily, and intelligently made and it's your decision, not your lawyers or your families or anyone else's. In order for you to waive your Fifth Amendment rights, you have to do that freely and voluntarily.

THE DEFENDANT: I do, sir.

THE COURT: So have you talked to your lawyers about that decision?

THE DEFENDANT: Yes, sir.

THE COURT: And have you talked to them about whether or not you're going to put up a defense in this case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And have you made a decision?

278

THE DEFENDANT: Yes, sir.

THE COURT: And what's your decision?

THE DEFENDANT: I choose not to testify.

THE COURT: Okay. All right. Do you have any questions for me about that right?

THE DEFENDANT: No, sir.

THE COURT: Okay. Thank you.

Okay. I gave y'all a list and I understand I made you speed read. There's a couple things in here that I've taken out. And once you finish, let me just briefly tell you what they are. There are a couple of things that just got left in that I missed.

Just every time where I explain what a deadly weapon is, I'm not -- just for the last time, I read that long list of things. I'm just going to tell them for that sake of this case, a pistol is a deadly weapon. I'm tired of them looking at me when I explain what is dirk is, and they don't have any idea.

The prior record of the defendant, that's taken out because I don't think that came in. And also the prior record with any witnesses. I don't think that came in. And I'm taking the sentence out about intent, just about dissecting the brain. They

279

always look at me funny when I do that too. So other than that, do you have any initial objections to it from the State?

MR. OVERBY: Judge, I'm a little confused about your -- about the manner in which reasonable doubt is divided in terms of this. It says an alternative reasonable doubt charge and reasonable doubt. Do you charge both?

THE COURT: Yeah.

MR. OVERBY: Okay. So you do both.

THE COURT: Yeah, the alternative should've been taken out. It's just -- I mean, there's the -- there's the one sentence. And then there's the alternative which is just an extension of it. I'm just going to basically charge them the first page which is the one sentence, and then just say to further explain.

MR. OVERBY: Okay.

THE COURT: So the heading should've been ---

MR. OVERBY: I apologize for that.

THE COURT: No. That's okay. Anything from the defense?

MR. LUCAS: Not at this time, Your Honor.

THE COURT: Okay.

MR. OVERBY: Judge, I will say in regards to

280

the verdict form.

THE COURT: Yeah.

MR. OVERBY: I think that there's -- and I would imagine defense might share a little bit of a concern with this, as well. The separation of the charge of armed robbery, as well as the separate one page with the separation of the count of possession of a weapon during the commission of a violent crime, one -- they can't find a person guilty of one and not the other.

THE COURT: Right.

MR. OVERBY: In other words, they have to be found guilty together, so...

THE COURT: Yeah, and those were on joint indictments, but I think they're separate charges. I was going to explain to them when I got to the verdict form that if they found him guilty, then they would move onto the verdict form for possession of a weapon. But, yeah, I mean, I would -- I would go over that and that is logically consistent with the statute. I just wasn't sure how to do it because they were on the same indictment form.

MS. HUEY: Judge, if I may?

THE COURT: Yeah.

MS. HUEY: In the past for various other

281

trials, I think they put it on the same verdict form.

THE COURT: We can do that.

MS. HUEY: So that might make it less confusing, you know, proceed to second if you find guilty.

THE COURT: Yeah, we'll do that. I mean, I'm doing everything I can to make it simple for them, but...

Now, let me tell you just from a standpoint of this jury, when y'all finish, y'all can do that. We'll talk a break and y'all move that TV so I can see them.

MR. OVERBY: Not a problem, Your Honor.

THE COURT: All right. So you're not putting up anything. Do you have anything in rebuttal? And everybody I assume is going to open in full. That's sort of been knocked by the wayside by recent cases.

MR. LUCAS: Your Honor, as to the verdict sheet, we just object to guilty being put first. We did not ---

THE COURT: I understand.

MR. LUCAS: Based on our presumption of innocence.

THE COURT: I'm going to give you credit.

282

Seriously. I always explain to the jury, I realize that this sounds kind of absurd, but something has to come first, and I've never had anybody ask me about it so I give you credit for that. Yeah, I'll explain it to them. I mean, I -- I understand.

Okay. Then I'm going to tell them they've heard all the evidence they're going to hear. It's time for the closing statements. And then like I said, I'll explain to them that we'll have to take a break to move things around. And do y'all have any motions at all before we ---

MR. LUCAS: We've not officially rested yet, Your Honor.

THE COURT: Yeah, I mean, are you going to have any motions?

MR. LUCAS: I will have a renewal of the directed verdict motion. Also, Judge, since we've not presented any evidence, I wanted to confirm that we get to close last.

THE COURT: Yeah.

MR. OVERBY: Yeah, the State agrees, Your Honor.

THE COURT: So y'all are going to open and close? Yeah. All right. So the defense rested?

MR. LUCAS: That's correct, Your Honor.

283

THE COURT: Okay. And then ---

MR. SENERIUS: Judge, do we not have to do that in front of the jury?

THE COURT: Well, you will, but I wanted ---

MR. SENERIUS: Okay.

THE COURT: Do you have any motions that you're going to make? I just don't want to bring them in and send them right back out.

MR. LUCAS: Yes, Your Honor. We're renewing our motion for directed verdict based on insufficient evidence to find Mr. Gaines guilty of all the charges against him.

THE COURT: Okay. All right. And, obviously, I'll deny that motion, but I think you're protected for the record. So when we come in, y'all are going to rest and then we're going right into closing?

MR. OVERBY: Yes, Your Honor.

THE COURT: Okay. Bring them in.

THE BAILIFF: (Complying.)

(At 10:34 p.m. jury entered the courtroom.)

THE COURT: What I want to tell you is that at this point, I'm going to ask the defense. We've already talked about it. They're going to rest, which means that you'll have heard all the testimony that you're going to hear in this case, and we'll go

284

directly to closing statements.

As I told you yesterday, the closing statement is not evidence. The only evidence that you heard was upstairs from the witnesses and anything that was admitted into evidence.

Now after the closing statements, because of the setup in this smaller room, we're going to have to take a break and move that TV. Then I have a jury charge which is about 28 pages long. Now, the saving grace is that the older I get, the bigger the font gets. So it's not like 28 sentence of those pages, but it is significantly a long charge so bear with me on that. And I am sorry that we'll have to move you right out after the closing, but we have to to move everything around.

Again, if you need a break at any time during the trial or arguments or my charge, just raise your hand. Now once I start my charge, it's very difficult to take a break. So if you think you're going to need one for about 35, 40 minutes, raise your hands and I'll stop. Y'all have been very patient moving up and down. We stayed here awhile last night, so I appreciate your patience, but understand that while you're not here, we're not playing soccer upstairs or anything. Okay.

285

All right. Yes, sir.

MR. LUCAS: The defense rests, Your Honor.

THE COURT: Okay. All right. You ready for your closing statements?

MR. LUCAS: Just to confirm, Your Honor. I am protected on the record as a matter of our motion?

THE COURT: Absolutely.

MR. LUCAS: Thank you.

THE COURT: And just for the record, we made what was the normal motion that would've been made after he officially rested, but that was something that I assume everybody agrees with.

MR. OVERBY: Yes, Your Honor.

THE COURT: Okay. All right. Yes, sir.

MR. OVERBY: May it please the Court, Your Honor?

Ladies and gentlemen of the jury, Mr. Lucas, when this trial began, told you that this was actually a rather simple case and I don't disagree. Not one bit do I disagree. The fact of the matter is, an armed robbery occurred at both of these locations, the Little General and the Dollar Tree. No doubt about it.

The only thing, as Ms. Huey pointed out to you, that might be a little bit outside of your -- of the

286

typical understanding of a particular crime is the kidnapping aspect. The fact of the matter is, a kidnapping is simply a forcible taking of a person from one place to another. And that's what happened with Karissa Carson who was working at the store, taking back the storeroom up to the cash register to remove the money from the store.

Now after that, you deal with the armed robberies and the -- and what's going on here. This is a simple case. It is a case of identity. That's the issue, the crux of the whole matter. And the thing about armed robberies is this: If you're smart and you want to get away with it, you do absolutely everything you can to hide your identity.

You wear a mask. You wear a glove. You touch as little as possible. You get in. You get out. And you get to safety. And if you do all of that, you leave as little evidence behind as you possibly can.

And that's why armed robberies are about mistakes. Okay. Because if you've done it, there shouldn't be any mistakes left behind, but there's one big mistake here. One big mistake that Mr. Gaines, the robber of these two stores, made. He didn't count on the camera in the back of the

287

Little General. He pulled his mask up for you.

Now, when that mistake is identified by law enforcement, especially if the person's not apprehended that evening, and I'll get to that in a minute, you've got a clue, but you don't have much else. Because the truth of the matter is, is you don't have a name that goes with the face. So it's all about putting a name with that face.

And that's where the CI tip starts the ball. CI tips are common. They're used in law enforcement every day. And the bottom line is, some of them work out and some of them don't. But what they do end up giving you is a lead to start pulling a thread and start investigating.

And what we got from this tip was a traffic stop that a person who was involved or may have been involved was involved in a traffic stop with Marquis Glover.

So Investigator Gardner, acting on this tip, goes and pulls an incident report. And you heard Deputy Saxon testify about it. Out of that incident report, you get Marquis Glover, who you've seen a picture of and does not look anything like this individual at the Little General, and you get Damorius Gaines, the defendant in this case.

288

Investigator Gardner, he looks at it and he says, "Well, that matches it. Starting to match. It's worth following up on. He's got the build. The initial look."

So he goes and talks to mama. Now, he goes and talks to mama, Ms. Connie Gaines, about what he's got. He doesn't know yet that it's Mr. Gaines. He's just acting on a tip, acting on a lead. He goes and talks to her, and he shows her the photograph, the still.

And Ms. Gaines shakes her head and most importantly says, "That boy -- I don't know what's gotten into that boy." Now, she denied that on the stand yesterday. I'm not telling you the mother lies, but I need you to understand something very specifically. Investigator Gardner didn't go and get those warrants right after that conversation. Okay. He waited till after he talked to Sherika Harper. That gave him reason to believe that he was on the right path.

Had she gone, no, hell, no, then why even continue? The fact of the matter is, she did pretty much when shown something -- for those of you that have kids and know when something -- your child's done something wrong, she did something that pretty

289

much every parent has done, "I don't know what's gotten into that boy."

So the next step is, he goes and talks to Sherika Harper because he knows Sherika -- because he knows that Sherika and Mr. Gaines have had a relationship previously.

Now, Ms. -- Ms. Gaines has obviously had plenty of interaction with Mr. Gaines as his mom -- as his mother. Sherika Harper has had plenty of interaction with Mr. Gaines as his girlfriend. They've spent a lot of time together, per her own testimony. He know -- she knows what he looks like, much more than you or I or anyone. We've only had a short brief time -- we've only had a brief time to be able to see Mr. Gaines throughout this whole process. So her looking at this video is important.

Now, Investigator -- Investigator Gardner provides this still to her, says, "Can you tell me who this is?" And she looks at it and she says she's not too sure, but it looks like Damorius Gaines. Then he plays the video, and she says, "That is Damorius Gaines." And she signs that picture. She signs that statement saying specifically that, and I do want to put this statement up for you to see.

290

"I, Sherika Harper, was showed a picture and could not identify by picture, but by video I could. The person in the video is Damorius Gaines." Unequivocal. Dated 3/9/17.

Testifying in front of someone you are afraid of has got to be one of the hardest things you can do. And the fact of the matter is, Ms. Harper was afraid of Mr. Gaines. You know how you know she -- she was afraid? She denied it initially, but the way you know she's afraid is, did you catch where she said her address was when asked on the record? She said, "Anderson, South Carolina." That's an awfully big net to cast.

Don't you think that if you weren't afraid of somebody, you'd probably say where your address was? She don't want to -- she don't want anybody to know where she is. You probably won't find her again. That's the bottom line. She's terrified, but that's -- that's why that statement is more valuable than anything else. That identification is more valuable than anything else.

So then we get to the charges. Investigator Gardner figures he's got it, so he goes ahead and he gets warrants and places Mr. Gaines under arrest. Just the charge. Totally admit that.

291

Mr. Gaines voluntarily comes to talk to him. Says, "I want to come see you" by letter. So Detective Gardner gets him. Brings him on up to talk. Mr. Gaines confirms that he goes back and forth, essentially between his mom's house on East Franklin Street and Sherika Harper's place on Cleveland Avenue.

And in addition, he doesn't say that he didn't rob it. He says that he didn't rob anybody. Denies it. But he asks a question, and this is what's bazaar to me. This is what sets -- this is what kind of stands out about this. He asks, "Why would I rob somebody near my own house?" Okay. It's almost as if it's a can question, isn't it? It's a can defense.

If somebody finds me, well, I'll just say that it doesn't make sense to go and rob a place by my house. But you know what the answer to that question is, why somebody would rob something nearby his house? Because hunters hunt within their territory where they know where safety is. Where they can go and see the locations every day. That's why.

And if you're careful enough to put on a mask, put on gloves, get in and out in two minutes from

292

the store and you're careful enough to do all of that, you thought about this. You thought about this.

So let's talk about the investigation and what happened that night.

Court's indulgence a moment?

THE COURT: Sure.

MR. OVERBY: Okay. This is a map that Detective Gardner showed you key locations. Several witnesses showed you key locations of.

Okay. There's (indicating) the Dollar Tree right there, basically on the corner of Main Street and East Franklin.

Okay. There's (indicating) the Little General right around the block.

There (indicating) is where Connie Gaines lives -- or Connie -- Connie Gaines lives -- pardon me -- in East Frank -- off East Franklin Street, [redacted] East Franklin Street.

And there (indicating) is where Sherika Harper lives.

Karry Glenn is right here (indicating) when she says a man run from the Dollar Tree across the street through the church -- through a church and a building across Main Street.

293

Law enforcement arrives shortly thereafter. This phone call from Logen Baker comes in at 8:03 p.m. while the robbery is ongoing. She's in the manager's office, remember? He gets out the door at 8:05.

This robbery occurs at 7:40, but it's not reported. Eventually, law enforcement becomes aware of this at 8:20. The time stamp on the surveillance video shows 8:40, but you've already heard from the clerk and the owner, Ms. Hanisha Patel, that that time stamp is an hour off. Can't be changed. So this robbery occurs at 7:40. Makes a lot more sense. This is first, but all of law enforcement responds right here to the Dollar Tree.

You see Mr. Gaines come around this corner and take his mask off and put his gun away. Okay. Shortly around 7:40. And he waits about 20 minutes before he comes back up here to the Dollar Tree to do anything, because it's pretty conspicuous if you wear a mask and you have a gun out walking around on the street.

In other words, he's got to flip his mask off and put that down and sit and wait to see if anybody is going to come before he goes on to his next target. Otherwise, he's going to be seen. Somebody

294

is going to call 9-1-1.

So he sits and waits. He hits the store at 8:03, and then he's across the street toward safety. Law enforcement comes in. They think everything starts here. They get a dog. Law enforcement is looking at surveillance. They find out about this. They send a unit down there. The dog track starts at the Dollar Tree. The dog track follows backwards. Follows where Mr. Gaines came from.

Meanwhile, Mr. Gaines has run the sink, and this is track is going down this way and all the units are following, but he's got all sorts of safety over here. All sorts of safety over there.

And that's where the picture comes in. Okay. "Why would I rob a place close by my house?" Because you know exactly how to get away quick. You can hit those stores, get in, get out, get away quick. Of course, the picture is what that mistake is, right? So it all comes down to this.

Court's indulgence, Your Honor?

THE COURT: Sure.

(Playing the videotape.)

MR. OVERBY: One more time.

(Playing the videotape.)

MR. OVERBY: I want you to notice some things

295

in this. I want you to notice the build of Mr. Gaines. Okay. It's the first thing. I want you to notice the facial features. I want you to notice the fairly protruding jaw. I want you to notice the eye shadowing, the facial hair. I want you to take a good look. And I've got tons of pictures that I put into evidence for you, and you've had an opportunity to see Mr. Gaines yourself. And you can watch this video as many times as you want.

Also, Mr. Gaines is in possession of some black leather shoes. If you take a look at these -- I'm sorry. Look at these. If you take a look at this still from the surveillance video of the Little General, you can see the shine coming off of those black leather tennis shoes. Tennis shoes look a lot like this, along with Mr. Gaines.

But most importantly, ladies and gentlemen, that is what you've got to look at because this is Mr. Gaines, this is Mr. Gaines, and this is Mr. Gaines.

Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. We're going to have a lot of discussion -- there's going to be a lot of

296

discussion about that picture that you're going to hear. The judge is going to instruct you on the law. It is not proof beyond all possible doubt. It is proof that leaves you firmly convinced of the defendant's guilt.

We do not know and it is hard to know and very few things are known for certain in this world. That is why we have this burden. It's the highest burden in the justice system. I know it. I practice with it every day. I take it to heart, but, ladies and gentlemen, this is Mr. Damorius Gaines.

And I ask that you find him guilty of attempted armed robbery, possession of a weapon during the commission of a violent crime, two counts, armed robbery, and kidnapping. Thank you.

MR. LUCAS: We don't know exactly what happened on that night, but Mr. Gaines was not there. He did not commit these crimes. He is here charged with an extremely serious offense, and he's here because he was wrongfully identified by the police. And that was based upon a rush to judgment. It was based upon a bad investigation. And it was based upon an identification by Sherika Harper above all.

And Ms. Harper told you that she didn't tell

297

the truth to police, that when he said it was Mr. Gaines, she did so because she was angry at him and she wanted him to stay in jail.

The main issue in this case, the key factual issue is the identity of the person who committed the crime. And the State and Officer Gardner, they had assumed that Damorius Gaines committed this crime. They rushed to that judgment. And you have a video to watch and you've seen the video. You may see it many times, and I want you to compare it to this picture.

And what your role is to decide, is that man who was captured on surveillance footage at the Little General, is that Damorius Gaines? And I think there's some very important facts to note when looking at that picture.

First off, the skin color in this, it's lighter. I think you'll see that from the Dollar Tree, as well. Mr. Gaines' skin color, it's darker.

The nose is not right. The man in the photograph has more of a hook nose. Mr. Gaines' nose is more of a stub. It's not the same.

And the other thing that the State has not pointed out, but I think you'll see from the video, is that the man in both stores, he has a weird gate.

298

It almost looks like a limp or a hitch in his get along. There's been no testimony that when Mr. Gaines was arrested, that he had a limp or that he was injured in any way. That doesn't match up.

And, indeed, you may have seen him walk into the courtroom during jury duty here. He does not walk with a limp. He doesn't have a weird gate. Those are reasons to doubt the State's case. Reasons to find Mr. Gaines innocent.

Now, at the beginning of this case, I told you a number of things that you would and wouldn't hear. First off, you heard from Officer Gardner that there is absolutely no physical evidence connecting Mr. Gaines to either store, to either crime. No blood. No DNA. No fingerprints. They didn't recover a gun. They didn't recover anything taken from the store. They went to his mom's house. They didn't find any of the clothing. They didn't find the ski mask.

Now, Officer Gardner told you yesterday that might be because Damorius Gaines was careful. Well, there's another real good answer to that, and it's that he didn't commit the crime, that he is not guilty of this. That's a reason to doubt the State's case.

299

Now, you've also heard that Mr. Gaines, he denies committing this crime. He asked to go talk to Officer Gardner, and that's not something people do all the time. You go to talk to an investigator. They're going to try and trick you, try to get you to admit something. Mr. Gaines wanted to do that and he wanted to go talk to them. That's not guilty of this.

Investigator -- Officer Gardner, he showed Mr. Gaines a picture. And in response, Mr. Gaines said, "I'm not a violent person. I don't rob people." What that means is, no, he's not admitting anything. He's denying it. He denied it then in March of 2017. He's denied ever since then. And he denied it -- he denies it now because he's pled not guilty. He's asked for a jury trial. He's put his faith, his life in your hands.

You also didn't hear about any eyewitnesses who could identify Mr. Gaines as being the robber. In fact, you heard wildly different testimony about that. You heard from Officer Gardner that the initial call, the description of the robber was six-one on the tape. That's not Mr. Gaines.

You heard from Ms. Baker, six feet tall, muscular. She didn't give a weight. That's a

300

little closer, but that's still not Mr. Gaines.

And then you heard from Karry Glenn who officers didn't even bother taking a statement from until months later, that the man running across the street is a young black man, five-six to five-nine. That's not even close. And because they didn't find that out until months later, even though they knew she was there that night, didn't bother talking to her. Officer Gardner, he didn't take that into account. He didn't take that into account when he rushed to judgment. That is a reason to doubt the State's case.

Now, lastly, you also heard from Connie Gaines and from Sherika Harper. And Connie Gaines told you that she never identified her son from the video. That when -- well, actually, she was shown a picture. I'm sorry. When she was shown this picture, she shook her head and that is a nonverbal cue for no.

And you heard from Sherika, Sherika Harper, the ex-girlfriend. And she testified yesterday under oath that she said the man in the video was Damorius Gaines, but she only did it because she was angry at him. Remember they had just broken up and she wanted him to stay in jail. That is a reason to

301

doubt the State's case, as well. So keep all of this in mind when you're making your decision.

Now, to change gears. Let's talk a little bit about Officer Gardner and how he came to investigate this case. So he didn't get it right away, and he told you that initially he didn't have anything to go on, no leads to investigate.

And then he got a tip. And when he got the tip, he understood that it was suggesting Damorius Gaines. Well, when he had that tip, he already had these photos of Mr. Gaines. Had a chance to look at them. He didn't think that was enough to get a warrant. He didn't charge Mr. Gaines with anything at that point.

He then went to go talk to Connie Gaines who he says identified her son shaking her head and saying, "I don't know what's gotten into that boy." He's the one malign narrator. He's all over the place on that. He didn't videotape anything and he should have.

Now, he said that she said that with dismay. He didn't put that anywhere in his report. I let him look at it. I asked him to show me where it was. It's not there. That fact is as no, I submit to you, made it up.

302

But in any case, it's clear that he didn't think Connie Gaines had identified her son, and then that's clear because he didn't ask her to sign an affidavit of identification like he had Sherika do. He didn't have her initial that photo. And the reason he didn't was because she didn't identify her son. That much is clear. And you can also know this because he didn't get a warrant. He didn't charge Mr. Gaines right after speaking with Connie Gaines. He went to go talk to Sherika.

And when he went to talk to Sherika, almost the first thing he said was, "I want to talk to you about Damorius Gaines." That whole interview, he didn't mention anyone else. That suggests to her that when she is shown something, he showed her a picture soon after that suggested -- that suggests that she should say that this is Damorius Gaines.

Well keep in mind, Sherika was in jail. Sherika wanted to get out of jail. And she knew that if she told Officer Gardner what he wanted to hear, and that's clear he's telling her about it, that she could get out of jail and so she did. She wasn't under oath then. She's coming into court and testifying under oath that while she said that -- while she identified him then, that wasn't the

303

truth. That is not him.

You also heard from Officer Gardner that that very same day, in fact, before he had even left the building, that Sherika asked him for help -- for help with her charges, for help with her three 30-day bench warrants that she'd only served 9 days on. And he actually went and talked to the judge that very same day. That's not normal. He talked to the judge and he got her out. She got out of jail that same day. That's a quid pro quo. You tell me what I want to hear; I'll get you out of jail.

And Sherika, she's angry at Damorius Gaines. They'd just broken up, so she bit. But to her credit, she came back in yesterday and she told you that that was not the truth.

Now, after Officer Gardner got that identification from Sherika, then he got a warrant for Damorius Gaines. Then he charged him with these crimes. Well, Sherika was the reason he got the warrant. He didn't think that he had enough evidence to charge up -- or to charge Mr. Gaines before that, and he didn't.

Sherika has recanted. She's told you under oath that the man in the video is not Damorius

304

Gaines, and she's told you that she just said it because she wanted to stay in jail -- or she wanted him to stay in jail. So the whole basis of the State charging Mr. Gaines is out the window.

Now, there's some other reasons to doubt the quality of the State's investigation. First off, Officer Gardner didn't record anything. Everything is "he said, she said." He's an unreliable narrator. It's impossible to know what is actually taking place because there's no objective record.

Secondly, you heard it from Officer Gardner that he didn't consider the possibility that this could've been committed by someone else. He focused in with a laser-like focus, tunnel vision, you might say, in on Damorius Gaines. He didn't compare this photo to any other mugshots. That's standard police procedure. He didn't do that. He didn't do any more investigation whatsoever after hearing this tip that it was Damorius Gaines.

Third, you heard from Officer Hodges. It's the first officer that you heard from that he was responsible for the initial investigation, and he'd only been with Anderson Police Department for a short while at that point. And he told you that they didn't find anything that night. And because

305

of that, they turned it over to investigations.

Well, they should've found something that night. You'll recall hearing testimony about the dog track. Went straight to this hooded black sweatshirt at the Little General. The dog alerted on that sweatshirt, but they didn't collect it into evidence. That sweatshirt right there, that could prove whether this was committed by Damorius Gaines or somebody else, and they didn't collect it. They didn't do their job.

Now, the other thing you need to consider is that this tip is from a confidential informant. Officer Gardner, he testified he knows who the informant is, but he didn't bring him in to testify. He could have. You don't know who this confidential informant is. You don't know if he has any bias against Mr. Gaines, any personal grudges.

They haven't provided any information to you that he's reliable, they'd gotten any previous tips from him that they found to be substantiated. Normally, you hear the terminology "reliable confidential informant." They didn't say reliable. They said confidential informant. Take that into consideration.

Now, the State's case is that they want you to

306

believe that Mr. Gaines, he committed these two crimes because he lives about a block away or he was staying with his mother and Sherika who also lives close. They want you to believe that he is guilty because he lives close, and he's a black guy of somewhat similar build to the man shown on the video and that he's got black shoes.

Well, I've got on shiny black shoes. My co-counsel has shiny black shoes on. A lot of people have shiny black shoes. There are a lot of people who live in that area, I'd warn to guess, have black tennis shoes. I'd warn to guess that a lot of black people live in that neighborhood who have black tennis shoes. That doesn't narrow it down much. I've got shiny black shoes on, then charge me.

And the other thing is, when questioned about it yesterday, Officer Gardner, he said he couldn't tell that they were the same shoes he collected from Damorius Gaines. He photographed them, but when he testified yesterday, he couldn't tell you what brand the shoes were. He couldn't tell you if they were Nike, Adidas, what have you. So the fact that Mr. Gaines has black Nike shoes on, that doesn't prove a thing.

307

And yet, he stayed in the same area. Why would he rob a store that's right next to his mother's house? That doesn't make any sense. Why would you rob a store that's a block or a couple of blocks away from where he was staying? People might know you. People might recognize you.

Also, there's no dog track back to his mom's house or Sherika's house. The dog went the other way. Came from the other direction. That doesn't make a whole lot of sense.

Now, you've heard a bit about reasonable doubt and what that means, the State has to prove every element of every charge to the exclusion of every reasonable doubt. And you have to be 100 percent free of reasonable doubt today. If you had any doubt or any reason, you've got to vote not guilty.

And what's going to qualify as a reasonable doubt? These are some examples: She didn't do it. If that's the case, that's not guilty. Pretty sure she didn't do it. Not guilty. Probably didn't. Not guilty. I don't know if she did. Not guilty. State hadn't gotten past that one. She probably did. I don't think that's the case here. That's still not guilty. Pretty sure she did it. Still not guilty.

308

Now, really what it comes down to, is the man shown in the video or the photos, is that Damorius Gaines? That's the question you have to resolve. That photo, I don't think it's enough to get you there. There's some key differences. Look at the skin color. Look at that. Look at it in both of them. Look at the gate. Look at the nose. And when making your decision, remember that there are a lot of reasons to have doubt. That Mr. Gaines, he says he didn't do this.

There's no physical evidence to connect him to this. No eyewitness testimony. Remember all that when you're making your decision. And if you're going to have doubts, and you should, have them now. Don't have them on Friday. Don't have them next week. Don't have them next year, not 5 years or 10 years or 15 years or 20 years. Have them now because his life is on the line. Look at that photo -- look at the photos. Look at the video and find him not guilty.

THE COURT: Okay. Ladies and gentlemen, I'm going to send you out of the courtroom. Quite frankly, it's going to be 15 minutes so take as much time as you need. Use the restroom. When you come back in, I'll be reading this to you. I know it's a

309

little hot. Just try to get through it. Don't talk about the case yet.

(At 11:23 a.m., jury left the courtroom.)

(From 11:23 to 11:49 a.m., recess was taken.)

THE COURT: Okay. I want to get everything ready here. Anything we need to take up before we bring them in?

(No responses.)

THE COURT: I assume that's a no. Okay. Oh, man, I will tell you, that reading this to a jury is the single most horrible thing you have to do because you're looking at them the whole time, and they just get so tired of hearing you read by about page two. You can see it in their faces. Okay. You can bring them in.

THE BAILIFF: (Complying.)

(At 11:50 a.m., jury entered the courtroom.)

THE COURT: I'm having trouble with my voice, so bear with me. I do have to read this to you. As I just told the lawyers, it is one of the most difficult things you have to do because I understand how hard it is to hear someone read to you, especially when I'm asking you to comprehend all of it. So one of the reasons why we do read it though, as I told you yesterday, is for consistency sake.

310

But also when you begin your deliberations, if you need me to recharge you on any portion of this, I can actually give you exactly what I said.

Now, I will tell you that there are several occasions during the course of this charge, I've given it so many times, I'm certain that I will go a little bit off script, but it is generally consistent. Again, it is very difficult for me to start this and stop it. But y'all have been so patient, if you need to take a break for any reason, just raise your hand and get my attention. She's going to be outside because she's coughing too, but get my attention and I'll stop for any -- for any reason whatsoever.

All right. Ladies and gentlemen, I'm now required to charge you on the law in this case. And the first thing I want to tell you is, the first thing I told you all yesterday. The defendant in this case has been indicted on several charges. I'll explain it in a few minutes.

The indictment, as I told you, is not evidence. It is something you'll have in the jury room with you, but it should not be considered by you at all when you begin your deliberations.

As you will see, this indictment is just a

311

piece of paper that basically sets out the charges that are before you today. So don't consider it at all as evidence -- as evidence at all, but certainly not evidence of guilt. And, again, you'll have it with you, but it should not be discussed by you as anything other than the piece of paper that starts the process that led us here today.

Now, ladies and gentlemen, the indictment in this case -- the indictments in this case charge the defendant with several different offenses. The charges are attempted armed robbery, possession of a weapon during a violent crime, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime for that charge.

Now, when I get to the verdict form, Mr. Foreman, I'll explain that to you because it does create a little bit of an issue. Each indictment charges a separate and distinct offense. You must decide each indictment -- each indictment separately on the evidence and the law applicable to that charge. You can't be influenced by the decision you make in one indictment when you move to the other.

I will ask you, and, again, I'll explain this to you, the verdict form addresses each indictment

312

separately. So, again, you have to basically find guilt or innocence on each one and move to other one without being influenced by your decision on that.

Now, ladies and gentlemen, the defendant has pled not guilty to this indictment. And that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it's an important rule of law that the defendant in a criminal trial, no matter how serious the charge is, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations, but accompanies the defendant throughout the trial until you reach a verdict of guilt based on the evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence, the best way to describe it is the way that it's been described in courtrooms in this state for 200 years.

It is like a robe of innocence or righteousness

313

that is about his shoulders. It is still about his shoulders. And it will stay around his shoulders until you the jury determine that the State has proved every element of the causes of action beyond a reasonable doubt.

Now, I charge you that the presumption of innocence is not a mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled to, unless you the jury are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Now, I'm going to describe reasonable doubt to you in two different ways. You may be asking yourself again through the whole trial, "What is reasonable doubt?" The simplest way to describe it is the way I did yesterday. Reasonable doubt is a kind of doubt that would cause a reasonable person to act.

In the alternative and a much longer way, some of you may have experienced a jury trial in a civil case where you were told that it's only necessary to prove that a fact is more likely true than not true. That is a greater weight of the preponderance of the evidence.

In criminal cases, the State's burden of proof

314

must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in the world that we know with absolute certainty. And in criminal cases, the law does not require proof that become -- overcomes every possible.

If based on your consideration of the evidence you are firmly convinced the defendant is guilty of the crime charged, you must find the defendant guilty. If on the other hand you think there's a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Now, during this trial, as I said, you and I have very different roles. I'm the judge of the fact -- or the judge of the law -- excuse me. I've sent -- every time I've sent you out of this courtroom, I've made a decision on the law. And I have, along with my law clerk, put together this law that applies in this case.

So if I have given you any impression during the course of this trial that I believed a witness or I disbelieved a witness, if I have given you any nonverbal cue by turning red or raising my voice --

315

I don't think I have this week, but not that you've seen -- but disregard that. My opinion about whether or not a witness is telling the truth should have no bearing on your decision. You are the sole judges of the facts in this case.

And just as we will take your decision on the facts, you have to take the law as I give it to you now as the law in this case. You can't go back and deliberate and wish the law was different or hope that it is different or think that it's different. I'm giving you the law that you apply in this case. And as I said, you will take the law as I give it to you now, apply it to the facts as you determine them to be, and then you come up with a verdict that way.

Our roles never cross and they still don't cross. So, again, disregard anything that I have -- any indication I've given to you that I believe or disbelieve the witnesses or believe or disbelieve the lawyer. That shouldn't have any bearing.

Now, ladies and gentlemen, I charge you there are two types of evidence which are generally presented during a trial. There's direct evidence and there's circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such

316

as an eyewitness. It is evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the exist -- existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

I charge you the law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is there greater degree of certainty required for circumstantial evidence than on direct evidence. You should weigh all the evidence in this case. And after weighing that evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Now, necessarily part of the role you have to play is you have to determine the credibility of the witnesses. Credibility under the law in South Carolina simply means believability. You had a chance to watch them testify. You've had a chance to listen to them testify. You have to determine

317

whether or not you believe these witnesses or not.

You can believe everything that a witness said or you can believe nothing they say. You can believe a portion of what a witness says and disregard the remainder of their testimony. It's up to you, but you have to determine the credibility of those witnesses. And, again, that simply means believability. You have to determine whether or not a witness who says that they saw something was in a position to see that. And whether or not a witness had some ulterior motive for testifying in the way that they testified.

Now, ladies and gentlemen, I strongly charge you and I want to emphasize the fact that the defendant did not testify in this case is not to be considered by you in any way in your deliberations or in considering the question of guilt or innocence -- innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the Constitutional right to remain silent. And the assertion of this right must not be considered by you in any deliberations.

I repeat, under your oath, you're to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact

318

that this defendant did not testify should not even come up in discussion in the jury room. The burden of proof, as I've told you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, ladies and gentlemen, I charge you an issue in this case is the identification of the defendant as the person who committed the crimes charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict the defendant.

Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the defendant. You must consider the believability of each identification witness in the same way that you determine the believability of other witnesses.

You may consider whether the witness had an inadequate or adequate opportunity to observe the offender at the time of the offense. This will be affected by things such as how long or short a person had to observe the defendant. How far or

319

close a witness was, the lighting conditions, and whether the witness had a chance to see or know the person in the past.

Once, again, I instruct you that the burden of proof is on the State and extends to every element of the crimes charged and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed these crimes. If after examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Now, in order to establish -- establish criminal liability in South Carolina, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.

Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by you the jury from the circumstances surrounding the situation. The law says that the criminal intent may be inferred from the circumstances shown to have existed. This is how you make determination of

320

whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence, but intent may be established by an inference in the same way as other facts by taking into consideration the acts and the circumstances of the parties and all facts and circumstances of this case.

Criminal intent is a mental state, a consciousness of wrongdoing. It's up to you the jury to determine whether or not criminal intent was proven by the State.

Now, ladies and gentlemen, there has been evidence presented that witnesses may have made prior statements which are not consistent with the witness's present testimony. You may also use evidence of the earlier statement or earlier contradictory statements to determine the truth of the statements made in court. It's up to you the jury to decide whether to believe the earlier statements or testimony given at trial.

If a witness has shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust a witness's testimony as to other matters.

321

You may reject all testimony of that witness or give all or part of the testimony the weight that you think it deserves.

And just for the record, I'm skipping page 20. I think it got included.

All right. Ladies and gentlemen, I charge you the defendant is charged with armed robbery. In order to prove this offense, the State must first prove beyond a reasonable doubt that the defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation, or control so that the person could, if not overcome with violence or prevented by fear, keep possession of that property.

The State must prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the defendant's own use.

The slightest removal of property or the complete possession of the property, even for an instance by the defendant, is sufficient to show a taking and carrying away of the property. The taking and carrying away of property must have been

322

done with violence by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a weapon of deadly -- excuse me -- a deadly weapon depends on the facts and circumstances in this case. I charge you -- charge you that a pistol is a deadly weapon.

The defendant is also charged with attempted armed robbery. An attempt is an effort to accomplish a crime which does not succeed. An intent includes a specific intent to do a particular crime or criminal acts along with an act falling short of the fact intended.

The State must show more than mere preparation and intent. There must be some overt act committed in an effort to commit the crime. Intent means intending to result which actually occurs, not accidentally or involuntarily.

Intent may be shown by acts or conduct of a defendant and other circumstances which you may naturally and reasonably infer -- from which you may

323

naturally and reasonably infer intent.

Now, the defendant is also charged with kidnapping. The State must prove beyond a reasonable doubt that the defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abduct -- abducted, or carried away another person without authority of law.

To do a thing unlawfully is to do it willfully against the law.

Knowingly means with knowledge consciously, not accidently.

Seized means to take hold or suddenly or with force.

Confine means to limit -- limit, restrict or enclose within bounds, imprison or shut or keep up -- or keep in.

Decoy means to lure by or as if by decoy. A decoy is something to -- it's basically luring someone into a trap.

Inveigle means to lure or lead astray by false representation, promise, or other deceitful means.

Kidnapping is to remove a person against their will for an illegal purpose.

Carry away means to remove.

The State does not have to prove that the

324

defendant did all of these thing -- all of these things. Instead, if you find beyond a reasonable doubt that the defendant did any of these things, you may find the defendant guilty of kidnapping.

Something done without authority of law is something which the law does not sanction, permit, allow, condone, or provide justification for. The kid -- kidnapping does not have to be for any personal or monetary gain or for any illegal purpose, but may be for any reason whatsoever.

Now, ladies and gentlemen, the defendant is also charged two times with possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime.

Again, I charge you that a pistol in the law is a firearm in the State. In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime. Again, Mr. Foreman, that will be something

325

on the verdict form and I'll explain it to you.

Armed robbery and attempted armed robbery are violent crimes in the State. The State must prove beyond a reasonable doubt the weapon further advanced or helped the commission of a crime.

Now, ladies and gentlemen and Mr. Foreman, I'm going to explain this -- these jury verdict forms to you. I think they will become clear when you begin to deliberate, but -- and let me say this: On this verdict form, I have had to put either "guilty" first or "not guilty" first. You should not infer anything from the fact that on these particular verdict forms, the first choice you have is guilty of each act. Just one of them has to come first. The computer spit out guilty first, and that's what we have so don't infer anything from it.

The first verdict form is the armed robbery -- is the attempted armed robbery, so you'll have to make a decision, Mr. Foreman, about whether or not he's guilty or not guilty of attempted armed robbery.

If you find that he is guilty, then you will go down to the bottom of this page and make a decision about whether or not he is guilty or not guilty of possession of a weapon during the commission of that

326

crime. I think -- and, again, when you see it, it'll make sense to you, but as I charge you, in order to be guilty of possession of a weapon during the commission of a violent crime, you have to be guilty of a violent crime. Those are on the same indictment. You'll see that and they're on the same verdict form.

The second page is the kidnapping charge, and that is just you find him guilty of kidnapping or not guilty of kidnapping.

And the third page is the armed robbery. There's no real reason for those to be in that order. They just are. And, again, in order to charge -- to find him guilty of possession of a weapon during the armed robbery, you have to find him guilty of the armed robbery. So, again, it's like that on the verdict form.

Now, ladies and gentlemen, your verdict has to be unanimous. In other words, you have to all agree. When you begin your deliberations, if you have a question for me or you need for me to recharge you on any portion of this, I'm happy to do it. But I need you to just write that question out, put the time and the date on it, and knock on the door and Annie Ruth will call for me to give it to

327

me.

If I can answer a question and make your job easier, I will. If I can't answer a question, then I'll just bring you in here literally to tell you that the law prevents me from answering that question. If I can answer it, I will. If I'm prevented from doing it, I'll tell you that.

Now, at this time I'm going to send you back, but I'm going to ask that you not begin your deliberations. There's one page in this charge that I need to talk to the lawyers about. I'm also going to give the lawyers an opportunity to object to my charge, ask me to change it or alter it in some fashion. There's a possibility I may bring you back in and charge you on one particular item.

If I don't change my charge, in just a few minutes we'll deliver to you all the evidence in this case, the indictments, the verdict form, and let you begin your deliberations.

Now, is there -- Mr. Clerk, is there a videotape back there if they want to watch this?

THE CLERK: We would have to take it back there to them or bring them back.

THE COURT: Yeah, ladies and gentlemen, there is obviously a CD-ROM of some footage. We're not

328

set up to allow you to watch that back there. And I'm sorry. That's something that probably needs to change.

When you're ready and if you're ready, if you feel like you need to, I will bring you back in here. I'll clear the room and let you watch the video and repeat any portion of it or watch the end of it or watch -- you can watch it 15 times if you want. That's up to you. But the courtroom will be cleared so it'll just you and me in here, along with the court reporter who's always here.

So when you get to that point, if you get to that point, knock on the door. Just put a note that says you want to watch the video and we will queue it up and get it ready.

Now, again, don't begin your deliberations because there is one element I want to talk to them about. But at the very most, I'll bring you back in to read you three-quarters of a page and begin your deliberations. Thanks for your patience.

(At 12:14 p.m., jury left the courtroom.)

THE COURT: Obviously, I stopped pretty abruptly on page 20. Was there a statement by the defendant admitted? I don't think there was, and I got ready to read it and realized it was in here. I

329

don't think that there was an actual statement of the defendant admitted. So unless y'all want me to charge that from the defense, I'm not going to charge it. It just slipped by, and when I flipped that page and saw the heading and was trying to think ahead while I was reading.

MR. LUCAS: Your Honor, we -- we don't want that. The only issue I have is the first reasonable doubt charge, I think that you skipped -- instead of saying, "would cause a reasonable person to hesitate to act," I think you said, "would cause a reasonable person to act."

THE COURT: You think I thought hesitant -- you think I dropped hesitate?

MR. LUCAS: I think you left hesitate out. That was what I heard.

THE COURT: I don't think I did, but I'll -- rather than search it, I'll bring them back in and then reread that sentence, but I just really -- that page 20 is slipped by.

Okay. So I will bring them back in. Tell them -- bring them back in and tell them that if I misread that, I misread it, and I will reread that sentence. I thought I said hesitate to act, but it will take more time to cue it up.

330

Now, how are -- you know, if they want to watch this video, I have no idea how to work that thing.

MR. OVERBY: Judge, well, the first thing I can probably say is, it's pretty easy to set back up if they want to do it in here.

THE COURT: Yeah.

MR. OVERBY: I've been told this is a clean computer, so we could send that back there with them.

THE COURT: No. We ain't going to send that computer back. Now, I mean, I understand why. Let me tell you, I'd rather do it in here while ---

MR. OVERBY: Well, that's not a problem to set that up.

THE COURT: Okay.

MR. OVERBY: I can do that when they want to.

THE COURT: Yeah.

MR. OVERBY: I will say one thing about the statement of the defendant, a statement was offered by Investigator Gardner about this situation about essentially -- which we both argued in closing.

THE COURT: Right.

MR. OVERBY: And we essentially said, "Why would I rob a person, you know, anywhere around my house?" Obviously, we had a *Jackson v. Denno*

331

hearing as to the admissibility of that for voluntariness.

When I'm looking at the statement of the defendant, I think the jury also has to make a determination about voluntariness in that -- in that vein. So I'm a little bit concerned about the appellate aspect of that.

THE COURT: Well, if they don't want me to ask it. I understand and that's why I stopped because the statement was entered through a third-party witness ---

MR. OVERBY: Correct.

THE COURT: --- who was sort of a fragment sort of statement.

MR. OVERBY: Right.

THE COURT: But when I got to this page and was, you know, reading ahead is what I'm saying, which is probably a problem sometimes, it seemed to be more direct as to a direct statement by the defendant. So if you understand, then I'm not going to charge that and then I'm okay not to charge it.

MR. LUCAS: Judge, we're not asking for it.

THE COURT: Okay.

MR. LUCAS: And since we're not objecting, I don't think it's a possible appellate issue.

332

MR. OVERBY: A broad one, Your Honor.

THE COURT: All right. So I'm going to bring them back in and read that sentence. And then I'm going to tell them that we will set this up. If they're wanting to watch it, we'll come back in here. And I guess you better show somebody in here, Richard, good luck with explaining that to him, the machinery to him and how to start it. When it gets much beyond an ink pen, he's lost. He would expect me to say that. He would certainly say it to me.

What page is that on? I'm literally -- the -- the hesitate to act.

MR. SENERIUS: Five.

THE COURT: All right. Annie Ruth, you can bring them back in.

THE BAILIFF: (Complying.)

(At 12:19 p.m. jury entered the courtroom.)

THE COURT: You can relax. I just have one sentence to make sure I charge you correctively, so you won't be in here long.

Ladies and gentlemen, there's some discussion, and rather than find it in the record, I'm just going to recharge you on one sentence. If I misspoke, I misspoke, but I want to make sure that I said this correctly. It was the portion where I did

333

the one-sentence explanation of reasonable doubt, so I'm going to recharge that one sentence. And, again, if I said it wrong the first time, this is correct.

"A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act." That was what I thought I said, but there's some discussion about whether I did, so I want to make sure that I put "hesitate to act" in there rather than "cause a reasonable person to act."

All right. We will be sending back all of the evidence in just a few minutes. We're going to set up the video. You don't have to watch it, but if you want to watch it, let me know and we will do our best to bring you back in, again with the courtroom cleared. The Clerk of Court, myself, and the -- and, actually, I may excuse myself, but the court reporter will be here so you can watch.

Okay. Give me two minutes and we'll have it all back to you.

(At 12:21 p.m., the jury left the courtroom.)

THE CLERK: Your Honor, we have a question. It says, "Can we eat before we start deliberating or will lunch be provided?"

THE COURT: Lunch will we provided I guess.

334

I'm sorry.

(From 12:24 to 2:27 p.m., jury deliberated.)

THE COURT: Yeah, I got a question. They want me to explain reasonable doubt.

MR. LUCAS: Judge, I'll be happy to give them my version.

THE COURT: I really appreciate that.

MR. LUCAS: 99 percent when you tell them that ---

THE COURT: No. I understand that. You know, the best explanation for it is on page 6 of the charge is that second paragraph. And I would also tell them that this is a portion of the charge on reasonable doubt that I gave, but as far as the "proof beyond a reasonable doubt" and ends with "you must give the defendant the benefit of the doubt and find him not guilty." It's that whole paragraph.

And I'll ask them behind -- tell them I assume they don't want me to give them the whole charge again, but, I mean, that paragraph pretty well should cover it. And, quite frankly, that pretty much is the whole ball game right there. I don't know why we don't just charge that paragraph. Did y'all look at it too?

MS. HUEY: Judge, we don't have any of our

335

stuff.

THE COURT: All right. Here's what it says: Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in the world that we know with absolute certainty. In a criminal case, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you're firmly convinced the defendant is guilty of the crime charged, you must find the defendant guilty.

If on the other hand you find there's a real possibility that the defendant is not guilty, then you also find the defendant -- must give the defendant the benefit of the doubt and find him not guilty.

It's the second paragraph of the alternate charge, without all the bells and whistles. Otherwise, I got to call them in here and read the whole thing to them. I don't think that's what they want. So any objection from the State if I do that?

MR. OVERBY: None from the State.

THE COURT: From the defense?

MR. LUCAS: None from the defense.

THE COURT: Okay. Bring them on in.

336

THE BAILIFF: (Complying.)

(At 2:40 p.m., jury entered the courtroom.)

THE COURT: Okay. Mr. Foreman, I've got a question here and the question is, "Can the judge -- can the judge explain reasonable doubt?" Is that the question?

THE FOREMAN: Yes, sir.

THE COURT: Okay. What I'm going to do, and, again, I have a fairly long paragraph on reasonable doubt. There is a particular part of that in the middle of my charge on reasonable doubt that I'll read to you and then see -- and I will, again, read exactly what I said the first time, and we'll see if that helps.

"Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in the world we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty.

If on the other hand you think there's a real possibility that the defendant is not guilty, you

337

must give the benefit -- give the defendant the benefit of the doubt and find him not guilty."

And I realize that I am basically reading back to you something I read earlier, but I'm going to ask that you continue your deliberations. If you need something further than that, I'll be happy to do it for you. Okay. Thank y'all.

(At 2:41 p.m., jury left the courtroom.)

(From 2:41 to 3:18 p.m., jury deliberated.)

THE COURT: So, obviously, I don't need any hoopla from either side. Whatever happens happens. After this is over, I'll go back and talk to them. And as I told a lot of lawyers over the years, if they tell me anything that I think will help you in the future as lawyers or human beings, I'll tell you. They -- they sometimes say some surprising things.

MR. SENERIUS: Lawyers are human beings.

THE COURT: They are sometimes. This week they're kind of mutually exclusive. All right. You can bring them in.

THE BAILIFF: (Complying.)

(At 3:19 p.m., jury entered the courtroom.)

THE COURT: Okay. Thank you. Mr. Foreman, I understand you have a verdict; is that correct?

338

THE FOREMAN: Yes, sir.

THE COURT: If you would hand it to Mr. Shirley.

THE FOREMAN: (Complying.)

THE COURT: Okay. You can publish it.

THE CLERK: If it please the Court.

THE COURT: Yes, sir.

THE CLERK: This is the State of South Carolina, County of Anderson, in the Court of General Sessions, the case involving the *State of South Carolina v. Damorius Dontavis Gaines*, Defendant. This is the verdict in Case No. 2017-GS-04-01674. Charge, attempted armed robbery. We the jury find the defendant guilty of attempted armed robbery.

Charge, possession of a weapon during the commission of a violent crime. We the jury find the defendant guilty of possession of a weapon during the commission of a violent crime. That is dated September 6, 2018, Anderson, South Carolina, and signed by our foreperson.

In the State of South Carolina, County of Anderson, in the Court of General Sessions, this is the *State of South Carolina v. Mr. Gaines*, Defendant. The verdict in the case of Number

339

2017-GS-04-01676. The charge is kidnapping. We the jury find the defendant guilty of kidnapping. That is dated September the 6th, 2018, Anderson, South Carolina, and signed by our foreperson.

Then in the case of the State of South Carolina, County of Anderson, in the Court of General Sessions, the *State of South Carolina v. Mr. Gaines*, Defendant. The verdict in the Case No. 2017-GS-04-01681. Charge, armed robbery. We the jury find the defendant guilty of armed robbery.

In the charge of possession of a weapon during the commission of a violent crime, we the jury find defendant guilty of possession of a weapon during the commission of a violent crime. And that is dated September the 6th, 2018, in Anderson, South Carolina, and signed by our foreperson.

THE COURT: Okay. Ladies and gentlemen, on all of these charges, if the clerk read your verdict properly, would you raise your right hand?

THE JURORS: (Indicating.)

THE COURT: Okay. All right. I'm going to send you back for the last time. I will have to hear something real quick, then I'm going to come back and talk to you privately and off the record, so bear with me one minute.

340

(At 3:22 p.m., jury left the courtroom.)

THE COURT: Okay. Any motions or anything before?

MR. LUCAS: Your Honor, I'd like to renew our directed verdict motion.

THE COURT: Okay.

MR. LUCAS: Motion to set aside the jury verdict.

THE COURT: Okay. Thanks. And then, obviously, I'll deny that. What I'm going to do, did you ever get the paperwork up here?

MR. OVERBY: We need ---

THE COURT: A few minutes?

MS. HUEY: Yes, sir.

MR. OVERBY: --- a few minutes.

THE COURT: All right. I'm going to go back and talk to them. And, you know, as per my habit, I tell them to ask me anything. I'll let you know if they ask me something I think will help you. Okay. I'll be back in in just a minute.

MS. HUEY: Thank you.

THE COURT: Thank y'all.

(From 3:23 to 3:42 p.m., recess was taken.)

THE COURT: Do you still need more time? Actually, I'm going to need a little time to let

341

this jury get out.

MR. OVERBY: We're ready when you are, Judge.

THE COURT: Yeah, I'm going to -- I'm going to -- what I'm going to do is take a break here. I want them out because they want to go out, and then I'll come back in and do the sentencing. And I need to put on the record a couple of things they told me, which I want to put on the record. So I'll be right back. And then as soon as they get out, let me know. Okay. Okay. I'll be right back.

(From 3:42 to 3:47 p.m., recess was taken.)

THE COURT: Mr. Gaines, come on around. You got the sentencing sheets?

MR. OVERBY: Yes, Your Honor.

MR. LUCAS: Your Honor, we have a matter of law concerning the indictments.

THE COURT: Sure. Go ahead.

MR. LUCAS: We're moving for a mistrial on that basis, Your Honor. The grounds are that the three indictments, as kidnapping, armed robbery, attempted armed robbery, and the two weapons charges, were all sent back with the jury and ---

THE COURT: They are every time. I tell them, "You're going to have this in the jury room, but you can't consider it. He plead not guilty." That's

342

part of my charge to them. I mean, for 16 years I've charged that you're going to have the indictments with you, but you can't consider them. I think that was part of my little initial charge in my notes.

I mean, I'll let you make that motion and you're protected on the record, but you know, but, I mean, that's what I told them and that's what I tell every criminal jury. All right. But I understand. You're protected.

MR. LUCAS: And the basis would be it's equivalent to sending three paragraphs back with the jury making the State's case. I don't need to do that.

THE COURT: I gotcha. Okay. Y'all come on up because I do want to -- I want to go ahead and sign all this stuff and fill them out, and then I want to tell you what the jury told me.

And does armed robbery carry minimum of ten?

MR. OVERBY: That's correct, Your Honor.

THE COURT: Okay. We're on the record with the *State v. Damorius Dontavis Gaines*. Before I sentence him, I'm going put something on the record, but I'll be happy to hear from the defense.

MR. LUCAS: Well, as an additional matter, Your

343

Honor, I don't believe we ever got a ruling on our motion to quash the LWOP notice. I think we need to take that up as an additional matter.

THE COURT: I'm going to quash the LWOP notice.

MR. LUCAS: Thank you, Your Honor.

THE COURT: I mean, and I understand. I mean, if you want me to go into details, I'm not so sure that the Georgia statutes as they apply as they're compared to the South Carolina statutes would qualify.

But if you really want a reason, I think that the -- and I haven't looked at it in two weeks, but the shortage of time and space between the two convictions in South Carolina, I'm going to find as one continuing enterprise. And I'm going to tell you, I would go deeper into that, other than what this jury told me, but I'm going to knock all it goes as one.

MR. LUCAS: Thank you, Your Honor.

THE COURT: Anything else y'all want to tell me?

MR. LUCAS: Before sentencing, Your Honor?

THE COURT: Yeah.

MR. LUCAS: I'd like to bring to your attention, Judge, that while Mr. Gaines does have a

344

number of convictions, only four of them appear to me to be felonies -- two burglaries in Georgia, the burg second, nonviolent, in South Carolina, and an escape in Georgia. I don't know how that's classified.

My client tells me that's a misdemeanor. Everything else pretty much minor misdemeanors. What I'd also bring to the Court's attention, that the three burglaries, based on the incident reports, they occurred over a five-day span in December of 2010. They happened close together. I think that was a period -- a bad time for Mr. Gaines. I'd like you to take that into consideration.

Also, Your Honor, we would like -- like you to consider the fact that Mr. Gaines has a mother that he's close with. He has two children. He'd like a chance to remain -- get back involved in their lives again in the future.

And, lastly, Your Honor, I would ask that you take into consideration that in April of 2018, he was offered 15 years and then at trial 12. And we'd ask that you not impose a trial tax on him.

THE COURT: Okay. Anything from the State?

MR. OVERBY: Your Honor, that's a correct recitation of the record. I will note -- I will

345

note that there have been -- Mr. Gaines has been in and out for a good long while, and these are obviously three instances of burglary that he had committed in the past. And, obviously, it's progressed to armed robbery at this particular point, a pretty violent offense that we're dealing with here, Judge.

So I understand the defense's position. The State's position is Mr. Gaines is a recidivist violent offender. Wouldn't have issued the LWOP notice otherwise, and we ask that you impose sentence as such.

THE COURT: Okay. Let me tell you what this jury told me, and I normally -- you know, it's -- it is a -- an interesting legal discussion to have a discussion with a bunch of judges about whether or not there's a trial tax on people, whether you -- and I always take the position that you don't -- that you don't get punished for exercising your Constitutional rights.

When I first started this job 16 years ago, I was in the minority. I'm in the pretty serious majority now, but I'm going to tell you what this jury told me about that, which is really interesting because they were really emotionally engaged in this

346

thing, and all of them were upset -- male, female, African American, Caucasian. It didn't matter. They were all upset.

They -- it was not close. And just so you don't worry about it, it was not a split verdict, you had one person back there that was kind of holding out. Every single one of them, and I mean literally all 12 individually had a prayer out loud, and everyone of them asked me the same thing, "Please don't put him in jail too long."

And I went through and told them, I said, "You know, a couple of things you, you know, don't feel bad about this," because they felt bad. I said, "There is a record here and got some outstanding charges," and that didn't change any of them's mind. Not one of them said, "I want you to put him in jail for," and they had different amounts.

They were pretty serious about it. And I actually don't think that I have ever sentenced anybody based on what a jury has asked. I probably have altered a sentence a little bit, but I -- but this one was different. They did not want me to max you out, so I'm not going to.

But I -- you have a right to tell me anything. I'm happy to hear from you.

347

THE DEFENDANT: I don't have nothing to say, Your Honor.

THE COURT: Okay. All right. Mr. Gaines, what I'm going to do is, the jury has convicted you and, again, this was a very serious jury who really took their job seriously. And because of that, I am going to go with their wishes, which are obviously off the record and don't have any real bearing on legally what I need to do, but I'm not going to max you out on this.

On the kidnapping and the attempted armed robbery, the sentence is 20 years, suspended to 15, and 5 years probation. They all run concurrent. You got credit for all time served.

On the armed robbery, it's just a straight 15, so that ain't going to add any time to it.

And then on the two possessions of a weapon, those are five. Everything runs concurrent and you credit for any time served.

And, Mr. Gaines, let me tell you, this group really feels the same way I did. I don't know what to tell you. I mean, you're a young man. You're going to get out in plenty of time to be a human. And they're back there praying for you literally and worried about your mama and asked me if you had

348

children. I said, "Yeah, I think so."

I mean, they are -- it's been a long time since I've had a jury who was that emotionally invested in something, so I'm going along with what they asked me. Okay. And I understand that that probably doesn't make anybody happy, but that's they way I'm doing it.

MR. OVERBY: Thank you, Your Honor.

MR. LUCAS: Thank you, Your Honor.

(The proceedings concluded at 4:00 p.m.)

- - -

349

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 6th day of September, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 14, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

WITNESSES

Anderson Police Dept.
Craig A. Gardner

ARREST WARRANT NUMBER

2017A0420700282

ACTION OF GRAND JURY

TRUE BILL

JUL 18 2017

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2017-GS-04- 01676

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 18 2017 , **TERM**

THE STATE

VS.

DAMORIUS DONTAVIS GAINES

INDICTMENT FOR

KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on JUL 1 8 2017, the Grand Jurors of Anderson County present upon their oath:

KIDNAPPING

That Damorius Dontavis Gaines did in Anderson County, on or about the on or about February 16, 2017, unlawfully seize, abduct, confine, inveigle, decoy, kidnap, abduct, or carry away Karrissa Carson, by any means whatsoever, without the authority of law. This is in violation of §16-3-0910 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.

Catherine T. Huey

CATHERINE T. HUEY
DEPUTY SOLICITOR

WITNESSES

Anderson Police Dept.
Craig A. Gardner

ARREST WARRANT NUMBER

COUNT ONE 2017A0420700278
COUNT TWO 2017A0420700279

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 18 2017

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2017-GS-04- 01674

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 18 2017, **TERM**

THE STATE

VS.

DAMORIUS DONTAVIS GAINES

INDICTMENT FOR

COUNT ONE - ATTEMPTED ARMED ROBBERY
SC Code: § 16-11-0330(B)
CDR Code: 0026

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
SC Code: § 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

JUL 18 2017

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

COUNT ONE - ATTEMPTED ARMED ROBBERY

The defendant, Damorius Dontavis Gaines did on or about February 16, 2017, in Anderson County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force, threats, or intimidation, goods or monies from the person or presence of Jimmie Strong, an employee of Little General Store. All in violation of 16-11-0330(B) of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Damorius Dontavis Gaines, did, on or about on or about February 16, 2017, in Anderson County, South Carolina, while committing the crime of Attempted Armed Robbery, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 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.

Catherine T. Huey

CATHERINE T. HUEY
DEPUTY SOLICITOR

WITNESSES

Anderson Police Dept.
Craig A. Gardner

ARREST WARRANT NUMBER

COUNT ONE 2017A0420700281
COUNT TWO 2017A0420700283

ACTION OF GRAND JURY

TRUE BILL

JUL 18 2017

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2017-GS-04- 01681

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 18 2017, **TERM**

THE STATE

VS.

DAMORIUS DONTAVIS GAINES

INDICTMENT FOR

COUNT ONE - ARMED ROBBERY
SC Code: § 16-11-0330(A)
CDR Code: 0139

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
SC Code: § 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on JUL 1 8 2017, the Grand Jurors of Anderson County present upon their oath:

COUNT ONE - ARMED ROBBERY

The defendant, Damorius Dontavis Gaines, did on or about February 16, 2017 in Anderson County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as Cash in the amount of $314.00 from the person or presence of Karrissa Carson an employee of Dollar Tree. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Damorius Dontavis Gaines, did, on or about on or about February 16, 2017, in Anderson County, South Carolina, while committing the crime of Armed Robbery and Kidnapping, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 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.

Catherine T. Huey

CATHERINE T. HUEY
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA
356
COUNTY OF ANDERSON
STATE VS.
DAMORIUS DONTAVIS GAINES
AKA: Damorius Dontavius Gaines, Damorius Gaines
Race: Black Sex: M Age: 34
DOB: [redacted] SS#: [redacted]
Address: [redacted] Street
City, State, Zip: Anderson, SC 29624
DL# [redacted] SID# SC01771289

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0401676
A/W: 2017A0420700282
Date of Offense: 02/16/2017
S.C. Code §: 16-03-0910
CDR Code #: 0095

ENTERED

SENTENCE SHEET

Registry Not Required

*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: Kidnapping (30)
In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[signature] 79870 ~~68416~~
~~Catherine T. Huey~~, Deputy Solicitor SC Bar # Defendant Attorney for Defendant 101794 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 15 days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/6/18 cond

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections_____

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
*Fine: _____ $_____ Random Drug/Alcohol Testing ☐

§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 (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/ea	$
3% to County (if paid in installments)	$	$3.75
TOTAL		$128.75

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/~~Deputy Clerk~~: [signature]
Court Reporter: L. Scott
Presiding Judge: [signature]
Judge Code: 2131
Sentence Date: 9/6/18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 357

COUNTY OF ANDERSON

STATE VS.

DAMORIUS DONTAVIS GAINES

AKA: Damorius Dontavius Gaines, Damorius Gaines

Race: Black Sex: M Age: 34

DOB: [redacted] SS#: [redacted]

Address: [redacted] Street

City, State, Zip: Anderson, SC 29624

DL# [redacted] SID# SC01771289

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2017GS0401674
A/W: 2017A0420700279
Date of Offense: 02/16/2017
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS
TO: **Possession Of A Weapon During The Commission Of A Violent Crime** (5)
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials).
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

for Catherine T. Huey, Deputy Solicitor SC Bar # 79870 ~~68416~~ Defendant Attorney for Defendant 101794 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment
of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/6/18 Count 6

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections _____

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐

*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 (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/ea	$_____
3% to County (if paid in installments)	$	$3.75
TOTAL		$128.75

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/~~Deputy Clerk~~: Richard A. Hinley
Court Reporter: L. Scott
Presiding Judge: J. Edwards
Judge Code: 215
Sentence Date: 9/6/18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA
358
COUNTY OF ANDERSON
STATE VS.
DAMORIUS DONTAVIS GAINES
AKA: Damorius Dontavius Gaines, Damorius Gaines
Race: Black Sex: M Age: 34
DOB: [redacted] SS#: [redacted]
Address: [redacted] Street
City, State, Zip: Anderson, SC 29624
DL# [redacted] SID# SC01771289

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0401674
A/W: 2017A0420700278
Date of Offense: 02/16/2017
S.C. Code §: 16-11-0330(B)
CDR Code #: 0139

SENTENCE SHEET

ENTERED

*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: Attempted Armed Robbery (20)
In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine T. Huey, Deputy Solicitor	74870 ~~68416~~ SC Bar #	Defendant	Attorney for Defendant	101794 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 15 days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/6/18 Convictio

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections_____

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
*Fine: _____ $_____ Random Drug/Alcohol Testing ☐

§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 (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/ea	$_____
3% to County (if paid in installments)	$	$3.75
TOTAL		$128.75

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Richard A. Shirley
Court Reporter: L. Scott

Presiding Judge: [signature]
Judge Code: 2131
Sentence Date: 9/6/18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA | **IN THE COURT OF GENERAL SESSIONS**

359

COUNTY OF ANDERSON
STATE VS.
DAMORIUS DONTAVIS GAINES
AKA: Damorius Dontavius Gaines, Damorius Gaines
Race: Black Sex: M Age: 34
DOB: [redacted] SS#: [redacted]
Address: [redacted] Street
City, State, Zip: Anderson, SC 29624
DL# [redacted] SID# SC01771289

INDICTMENT/CASE#: 2017GS0401681
A/W: 2017A0420700281
Date of Offense: 02/16/2017
S.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: **Armed Robbery** (10-30)
In violation of § **16-11-0330(A)** of the S.C. Code of Laws, bearing CDR Code # **0139**
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[signature] 15 79870 ~~68416~~ | | 101794
~~Catherine T. Huey~~, Deputy Solicitor SC Bar # | Defendant | Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/6/18 Court

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections_____

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☑ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
*Fine: _____ $_____ Random Drug/Alcohol Testing ☐

§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 (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/ea	$
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 128.75

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/~~Deputy Clerk~~: [signature]
Court Reporter: L. Scott
Presiding Judge: [signature]
Judge Code: 213
Sentence Date: 9/6/18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA
360
COUNTY OF ANDERSON
STATE VS.
DAMORIUS DONTAVIS GAINES
AKA: Damorius Dontavius Gaines, Damorius Gaines
Race: Black Sex: M Age: 34
DOB: [redacted] SS#: [redacted]
Address: [redacted] Street
City, State, Zip: Anderson, SC 29624
DL# [redacted] SID# SC01771289

IN THE COURT OF GENERAL SESSIONS

ENTERED

INDICTMENT/CASE#: 2017GS0401681
A/W: 2017A0420700283
Date of Offense: 02/16/2017
S.C. Code §: 16-23-0490
CDR Code #: 0549

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: Possession Of A Weapon During The Commission Of A Violent Crime (5)
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

~~Catherine T. Huey~~, Deputy Solicitor	74870 ~~68416~~ SC Bar #	Defendant	Attorney for Defendant	101794 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/6/18 Conviction

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections_____

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling ☐

*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 (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/ea	$_____
3% to County (if paid in installments)	$	$3.75
TOTAL		$108.75

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/~~Deputy Clerk~~: Richard A. Shirley
Court Reporter: L. Scott

Presiding Judge: [signature]
Judge Code: 2131
Sentence Date: 9/6/18

SCCA/217 (04/2018)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of June, 2019.

RECEIVED
JUN 10 2019
SC Court of Appeals