

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

John C. Hayes, Circuit Court Judge

Appellate Case No.: 2017-00828

John Jabbar Greene #219696,..... Petitioner,

vs.

State of South Carolina, ...Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2008-GS-22-456 through 460

The State of South Carolina)
Plaintiff,) Transcript of Record
vs.)
John Jabbar Greene,) April 28 through
Defendant.) May 1, 2009

B E F O R E :

Honorable William Jeffrey Young
Georgetown County Courthouse
Georgetown, South Carolina

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

Will Andrew, Esquire
Attorney for Plaintiff

Eric Fox, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

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Georgetown County Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : W. Jeff Young
TRIAL TYPE : Criminal
PANEL ID : 08GS22456-460
COURTROOM CTR

Sorted by: Random Nbr

DESCRIPTION : STATE VS. JOHN JABBAR GREENE Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Junge, Nancy M	64	W	F	(✓)	(X)	()	
2 Thompson, William K	133	W	M	(✓)	(✓)	()	
3 Sweat, James W	131	W	M	(✓)	(✓)	()	
4 Winns, Lois P	148	B	F	(X)	()	()	
5 Lathan, Travis C	72	W	M	(X)	()	()	
6 Sherrill, Elizabeth A	126	W	F	(✓)	(X)	()	
7 Greene, Roadia K	47	B	F	(✓)	(✓)	()	
8 Gunby, Mona Z	49	B	F	(✓)	(X)	()	
9 Gilroy, Paul S JR	42	W	M	(✓)	(✓)	()	
10 O'brien, Gilles Erin M	99	W	F	(✓)	(X)	()	
11 Sumpter, Fred L JR	129	B	M	(✓)	(✓)	()	
12 Elliott, Lewis R JR	36	W	M	(✓)	(✓)	()	
13 Rutledge, Evonne	120	B	F	(X)	()	()	
14 Fetzer, Daniel R	38	W	M	(✓)	(X)	()	
15 Beach, Jeanette D	5	B	F	(X)	()	()	
16 Suplizio, Caroline A	130	W	F	(✓)	(✓)	()	
17 Palmer, Barbara J	104	B	F	(X)	()	()	
18 Holmes, Lisa M	54	B	F	(✓)	(✓)	()	excused - record
19 Morris, Samantha N.	93	W	F	(✓)	(✓)	()	
20 Ward, Carol B	139	W	F	(✓)	(X)	()	
21 Brockhausen, Joan D	9	W	F	(✓)	(✓)	()	
22 Torppa, Donald P	134	W	M	(✓)	(X)	()	
23 Johns, Tonya D	61	W	F	(✓)	(X)	()	

Georgetown County Circuit Court

RANDOM STRIKE SHEET

JUDGE NAME : W. Jeff Young

TRIAL TYPE : Criminal

PANEL ID : 08GS22456-460

COURTROOM CTR

DESCRIPTION : STATE VS. JOHN JABBAR GREENE

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STPLTFF	DEF	CRT	REMARKS
24 Ehalt, Carol F	34	W	F	(✓)	(✓)	()	
25 Raymond, Linda E	109	W	F	(✓)	(X)	()	
26 Pack, April P	103	W	F	(✓)	(X)	()	
27 Mcconnell, William T	83	W	M	(✓)	(X)	(✓)	
28 Card, James M	17	W	M	(✓)	(✓)	()	
29 Adams, Kimberly S	1	W	F	(✓)	(✓)	()	
30 Frasier, Shakira E	40	B	F	(X)	()	()	
31 Grant, Judy Ann	44	B	F	(✓)	(✓)	()	
32 White, Anita C	142	B	F	()	()	()	
33 Marchant, Thos M III	81	W	M	()	()	()	
34 Voltaire, Debra	137	W	F	()	()	()	
35 Johnson, Stephanie	63	W	F	()	()	()	
36 Eaddy, Charles E	32	B	M	()	()	()	
37 Zimmerman, Sarah M	149	W	F	()	()	()	
38 Verville, Edward G	135	W	M	()	()	()	
39 Roberts, Richard J	115	W	M	()	()	()	
40 Brown, Teona S	11	B	F	()	()	()	
41 Litton, Jill M	78	W	F	()	()	()	
42 Lacy, Cathy L	68	W	F	()	()	()	
43 Richardson, Sherry P	112	W	F	()	()	()	
44 Gresham, Leann P	48	W	F	()	()	()	

Total Number of Jurors:

44

** END OF REPORT **

1 (On the record, April 28, 2009.)

2 THE COURT: Solicitor, you ready to call the first
3 case?

4 MR. ANDREW: Yes, sir, Your Honor.

5 THE COURT: And what would that case be?

6 MR. ANDREW: It's the State versus John Jabbar Greene,
7 Your Honor, and if I may - would you like for me to read the
8 indictments?

9 THE COURT: Please.

10 MR. ANDREW: Mr. John Jabbar Greene has been indicted
11 and been charged with burglary second degree violent. This is
12 - the allegations, John Jabbar Greene did in Georgetown County
13 on or about January 18th, 2008, enter without consent with the
14 intent to commit a crime therein a building of Coastal
15 Construction [sic] located at 4293 Highmarket Street and that
16 John Jabbar Greene did enter the building while armed with a
17 deadly weapon, and this is in violation of 16-11-312,
18 Subsection B; also been charged with 2008-GS-22-0459, that's
19 one count of armed robbery. The indictment reads that John
20 Jabbar Greene did in Georgetown County, on or about January
21 18th, 2008, while armed with a deadly weapon, specifically a
22 sawed-off shotgun, did take and carry away personal property
23 of a Walter Thomas, specifically \$200 U.S. currency from or in
24 the immediate presence of Walter Thomas with the intent to
25 deprive Walter Thomas of possession by use of force, threats

1 or intimidation. This is in violation of Section 16-11-
2 330(A); also, another count of armed robbery, the allegations
3 that John Jabbar Greene did or that indictment reads that John
4 Jabbar Greene did in Georgetown County on or about January
5 18th, 2008, while armed with a deadly weapon, to wit, a sawed-
6 off shotgun did take and carry away personal property of Harby
7 Moses, to wit approximately \$45 currency from or in the
8 immediate presence of Harby Moses with the intent to deprive
9 Harby Moses of possession by use of force, threats or
10 intimidation and this is in violation of 16-11-330 subsection
11 A of the South Carolina Code of Laws; also, 2008-GS-22-0456,
12 that's one count of kidnapping. The indictment reads that
13 John Jabbar Greene did in Georgetown County on or about
14 January 18th, 2008, unlawfully seize, confine, inveigle, decoy,
15 kidnap, abduct or carry away one Harby Moses without authority
16 of law and this is in violation of Section 16-3-910 of the
17 South Carolina Code of Laws. Last indictment is one count of
18 kidnapping, 2008-GS-22-0457. Indictment reads that John
19 Jabbar Greene did in Georgetown County on or about January
20 18th, 2008, unlawfully seize, confine, inveigle, decoy, kidnap,
21 abduct or carry away one Walter Thomas without authority of
22 law. This is in violation of Section 16-3-910 of the South
23 Carolina Code of Laws.

24 THE COURT: Thank you.

25 All right, ladies and gentlemen of the jury panel, we are

1 about to begin the trial of the State versus John Jabbar
2 Greene. There are several questions that I must ask you -
3 Madam Clerk ---

4 (Court and Clerk confer.)

5 THE COURT: All right, ladies and gentlemen of the
6 jury, you are already under oath, and again, there are some
7 questions specific to this case, I asked you general questions
8 earlier and I found you all to be qualified, but I need to
9 make sure that you understand a few things.

10 First of all, what the Solicitor has read out to you is
11 merely an indictment. That does not in any way mean that Mr.
12 Greene is guilty of the indictment. In fact, he is presumed
13 to be innocent. Now, also, he does not have to produce any
14 evidence in this case and he does not have to testify. The
15 sole burden in this matter is on the State to prove his guilt
16 beyond a reasonable doubt, but now, in those questions I need
17 to know is there anybody in this jury panel who has been
18 related by blood or marriage to the Defendant, Mr. Greene, or
19 any of the victims who were stated earlier in the indictment;
20 if so, please stand, and what I'm going to do is, the State
21 and the Defense, I'm going to ask that you face the jurors.
22 I'm not going to make the jurors come down, and ~~that when we~~
23 strike them a little later they can just stay where you're at.
24 Okay? So, is anyone related by blood or marriage to the
25 Defendant or any of the victims in this matter?

1 (No response.)

2 THE COURT: All right, thank you, no one is standing.

3 Has anyone on the jury panel ever had a close personal or
4 social relationship with either the victims or the Defendant
5 Mr. Greene in this matter?

6 Yes, ma'am. What's your juror number?

7 MS. DRAYTON: Juror Number 31, Shawyna Drayton.

8 THE COURT: All right, yes, ma'am, and what, what is
9 your relationship to the Defendant?

10 MS. DRAYTON: I know him on a personal level.

11 THE COURT: Okay, and how do you know him on a
12 personal level?

13 MS. DRAYTON: I was his girlfriend.

14 THE COURT: You were his girlfriend.

15 I think that's close enough that I will allow you to be
16 excused. Thank you, ma'am. Thank you for your honesty.

17 All right, I'm going to read out a list of the possible
18 witnesses in this case, and I just need for you to listen
19 carefully. There's a long list. The first one is Mr. Harby
20 Moses of Coastal Structures. He's the owner of Coastal
21 Structures. Walter Thomas, he's an employee for Coastal
22 Structures. Dustin Morris, he's of the Georgetown Sheriff's
23 Department; Mr. John Seale, also of the Georgetown Sheriff's
24 Department; Mr. George Smith of the Georgetown Sheriff's
25 Department; Bill Pierce of the Georgetown Sheriff's

1 Department; Noel Smith of the Georgetown Sheriff's Department;
2 Joyce Whalen of the Georgetown Humane Society, formerly of the
3 Georgetown Sheriff's Office; Michael Thacker of the Georgetown
4 Sheriff's Office; Kimberly McGill, a forensic scientist with
5 SLED; Chris Geno of the Georgetown Sheriff's Department; Mr.
6 Franklin Lincoln, Sr., of Amelia Drive here in Georgetown; and
7 Mr. Franklin Lincoln, Jr., also of Amelia Drive here in
8 Georgetown.

9 Do any of the jurors, potential jurors know any of these
10 people that I have just listed out; if so, please stand and
11 state your juror number. Yes, sir, please stand.

12 MR. DOZIER: Juror Number 30.

13 THE COURT: All right, and who do you know?

14 MR. DOZIER: Franklin, Jr.

15 THE COURT: Franklin Lincoln, Jr. How do you know Mr.
16 Lincoln, Jr.?

17 MR. DOZIER: Same neighborhood.

18 THE COURT: Same neighborhood. Do you believe that
19 you - that you would give any greater weight to his testimony
20 in this matter or that it would prejudice your ability to make
21 a fair and impartial verdict for this Defendant or the State?

22 MR. DOZIER: I just don't want to be a part of it since
23 I know him.

24 THE COURT: I'm going to excuse this juror. All
25 right, thank you. You are excused.

1 Anyone else?

2 (No response.)

3 THE COURT: All right, now, is there anyone in this
4 matter who has ever been represented by or is currently
5 represented by Mr. Will Andrew of the Solicitor's Office? If
6 so, please stand.

7 (No response.)

8 THE COURT: Does anyone know either personally or
9 professionally Mr. Eric Fox, who is the Defense counsel for
10 Mr. John Jabbar Greene; and if so, please stand and tell me
11 what your association might be.

12 (No response.)

13 THE COURT: All right, thank you. No one is standing.
14 Does any - I think I've already asked you about it, does
15 anyone know the Defendant John Jabbar Greene, in a particular
16 way? Ma'am, one person has already stated so.

17 (No response.)

18 THE COURT: All right, thank you.

19 Now, at this time I'm going to - although the Defendant
20 does not have to present any witnesses, I've told you that,
21 does the Defense have any witness list, Mr. Fox?

22 MR. FOX: No, Your Honor.

23 THE COURT: All right, thank you.

24 Is there any personal, political, religious or any other
25 reason that would make it difficult for any of you to serve as

1 a fair and impartial juror in this case? If so, please stand.

2 (No response.)

3 THE COURT: Thank you. No one is standing.

4 Has any one of you, a family member or close personal
5 friend ever had an encounter with law enforcement that would
6 have left you or them with certain feelings about law
7 enforcement; if so, would those feelings make it difficult for
8 you to serve as a fair and impartial juror in this matter? If
9 so, please stand.

10 (No response.)

11 THE COURT: No one is standing. Thank you very much.

12 Has any one of you, a family member or close personal
13 friend ever had any dealings with the Solicitor's Office, and
14 if so, that would make it difficult for you to render a fair
15 and impartial verdict in this matter?

16 (No response.)

17 THE COURT: Thank you. No one is standing.

18 Has any one of you, a family member or a close personal
19 friend ever been incarcerated, and if so, would that make it
20 difficult for you to serve as a fair and impartial juror in
21 this matter?

22 (No response.)

23 THE COURT: All right, ladies and gentlemen, have any
24 of you ever been the victim of a crime that would make it
25 difficult for you to be fair and impartial in a criminal

1 matter? If so, please stand.

2 (No response.)

3 THE COURT: Thank you. No one is standing.

4 Is there any juror member out there who has any knowledge
5 about what the Solicitor stated when he read the indictment,
6 that if you have any knowledge about the allegations that you
7 have brought in this courtroom outside of what you will hear
8 in this courtroom. Does anybody have any information as to
9 that?

10 (No response.)

11 THE COURT: All right, thank you. No one has stated
12 so.

13 Now, is any member of the jury panel a member of a victim
14 advocacy group, that would be Mothers Against Drunk Drivers, a
15 victim's advocacy group or any group that takes a position on
16 a particular crime or any part about law enforcement? Does
17 anybody have any particular thing?

18 Yes, ma'am.

19 MS. SUPLIZIO: I'm juror number 130. I worked with Sarah
20 Brady on the gun control in Washington.

21 THE COURT: You worked for who?

22 MS. SUPLIZIO: Sarah Brady.

23 THE COURT: Okay, and that is on a, on a gun
24 particular thing? All right, I'm - all right, you all got her
25 number? You all understand?

1 MR. ANDREW: Yes, ma'am.

2 THE COURT: All right, yes, ma'am.

3 MS. GUNBY: I'm not sure if this constitutes or not,
4 but however, I'm a member of Mothers Against Drunk Driving. I
5 do donate to that organization.

6 THE COURT: All right, well, now that the attorneys
7 know that they can use that information. I don't believe
8 there's any information here concerns anything about driving
9 under the influence, but thank you very much.

10 MS. GUNBY: Yes, sir.

11 MR. ANDREW: What was her number, Your Honor? I'm
12 sorry.

13 THE COURT: Excuse me, what's your number, ma'am?

14 MS. GUNBY: Oh, my number?

15 THE COURT: Yes, ma'am.

16 MS. GUNBY: I'm sorry, 49.

17 THE COURT: All right, thank you.

18 MS. GUNBY: Uh-huh.

19 THE COURT: All right, does any member of the jury
20 panel know of any reason whatsoever that you could not serve
21 as a juror in this case with basically particular emphasis
22 being placed on your ability to be fair, impartial to both the
23 State and the Defendant? If so, please stand.

24 (No response.)

25 THE COURT: Thank you. No one is standing.

1 Now, for anybody who stood up earlier, SLED or the
2 advocacy groups, would your - ma'am, would you all please
3 stand? I think two of you stood up.

4 Yes, ma'am. Would your being a part of the Sarah Brady
5 movement concerning handguns would that in any way effect your
6 ability to be impartial and fair to the Defendant in this
7 matter?

8 MS. SUPLIZIO: I don't think so.

9 THE COURT: Okay, thank you.

10 MS. SUPLIZIO: It was about 15 or 20 years ago.

11 THE COURT: Thank you, all right, thank you.

12 Now, ma'am, in the back, you were a member of Mothers
13 Against Driving [sic]?

14 MS. GUNBY: Yes, sir.

15 THE COURT: Would that in any way effect your ability
16 to be fair to the State as well as to the Defense and the
17 Defendant in this matter?

18 MS. GUNBY: I don't think so.

19 THE COURT: All right, well, thank you, ma'am. Thank
20 you for your honesty.

21 All right, we will now go through the procedure of
22 selecting the juries. The Clerk will call your name. If you
23 would please stand in your seat and then the State will have
24 five strikes. The Defense will have ten. Thank you, five and
25 ten.

1 They've got to do a little computer problem here. So,
2 we've just got to work through that. You understand. Thank
3 you, and once we select this jury I will not swear you. You
4 will come back at 2:30 to be the juror on this case.
5 Everybody else that does not get picked for this jury will be
6 excused for the balance of the week. All right, thank you.
7 Cross your fingers. Attorneys, I'll remind you that before
8 you strike if you have a challenge to any one of these jurors
9 you'll have to do so before they are sworn. All right, thank
10 you.

11 THE CLERK: When I call your name, you will stand
12 where you are, and if I say take a seat in the jury box then
13 you bring all your belongings, if I tell you to take a seat in
14 the jury box; okay?

15 Juror Number 64, Nancy, and I didn't pronounce your name
16 right the first time.

17 MS. JUNGE: Junge.

18 THE CLERK: Junge, okay, what says the State, stand
19 right there, what says the State?

20 MR. ANDREW: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. FOX: Please excuse the juror.

23 THE CLERK: All right, you may be seated.

24 Juror Number 133, William Thompson.

25 What says the State?

1 MR. ANDREW: Please present the juror.
2 THE CLERK: What says the Defense?
3 MR. FOX: Please seat this juror.
4 THE CLERK: Please come forward, take a seat in the
5 jury box.
6 THE COURT: If you have any personal effects please
7 bring them with you at this time.
8 THE CLERK: Juror Number 131, James Sweat. What says
9 the State?
10 MR. ANDREW: Please present the juror.
11 THE CLERK: What says the Defense?
12 MR. FOX: Please seat this juror.
13 THE CLERK: Please come and take a seat in the jury
14 box.
15 Juror Number 148, Lois Winns.
16 What says the State?
17 MR. ANDREW: Please excuse the juror from the trial of
18 this case.
19 THE CLERK: You may be seated.
20 Juror Number 72, Travis Lathan.
21 What says the State?
22 MR. ANDREW: I apologize. What was the number, Madam
23 Clerk?
24 THE CLERK: 72.
25 MR. ANDREW: Please excuse the juror from the trial of

1 this case.

2 THE CLERK: All right, you may be seated.

3 Juror Number 126, Elizabeth Sherrill. What says the
4 State?

5 MR. ANDREW: Please present the juror for the trial of
6 this case.

7 THE CLERK: What says the Defense?

8 MR. FOX: Please excuse this juror.

9 THE CLERK: All right, you may be seated.
10 Juror Number 47, Roadia Greene.

11 What says the State?

12 MR. ANDREW: Please present the juror in the trial of
13 this case.

14 THE CLERK: What says the Defense?

15 MR. FOX: Please seat this juror.

16 THE CLERK: Please bring your belongings and take a
17 seat in the jury box.

18 Juror Number 49, Mona Gunby.

19 MS. GUNBY: Yes, ma'am.

20 THE CLERK: What says the State?

21 MR. ANDREW: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. FOX: Please excuse this juror.

24 THE CLERK: You may take a seat.

25 Juror Number 42, Paul Gilroy, Jr.

1 What says the State?

2 MR. ANDREW: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. FOX: Please seat the juror.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 99, Gilles O'Brien. Number 99?

7 MR. ANDREW: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. FOX: Please excuse this juror.

10 THE CLERK: You may take a seat.

11 Juror Number 129, Fred Sumpter, Jr.

12 What says the State?

13 MR. ANDREW: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. FOX: Please seat this juror.

16 THE CLERK: Please take a seat in the jury box.

17 Juror Number 36, Lewis Elliott, Jr.; Juror Number 36,

18 Lewis Elliott, Jr.

19 What says the State?

20 MR. ANDREW: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. FOX: Please seat this juror.

23 THE CLERK: Please come and take a seat in the jury

24 box.

25 Juror Number 120, Evonne Rutledge.

1 What says the State?

2 MR. ANDREW: Please excuse the juror from the trial of
3 this case.

4 THE CLERK: All right, you may take a seat.

5 Juror Number 38, Daniel Fetzer.

6 What says the State?

7 MR. ANDREW: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. FOX: Please excuse this juror.

10 THE CLERK: You may take a seat.

11 Juror Number 5, Jeanette Beach.

12 What says the State?

13 MR. ANDREW: Please excuse the juror from the trial of
14 this case.

15 THE CLERK: All right, you may take a seat.

16 Juror Number 130, Caroline - Caroline, what's your last
17 name?

18 MS. SUPLIZIO: Suplizio

19 THE CLERK: Suplizio, please stand for me.

20 MS. SUPLIZIO: It's 103.

21 THE CLERK: You're - is it - you're 103?

22 MS. SUPLIZIO: Yes.

23 THE CLERK: No, we've got 130 on that.

24 MS. PACK: I'm 103.

25 THE CLERK: You're 130?

1 MS. PACK: 103.
2 THE CLERK: You're 103? All right.
3 MS. SUPLIZIO: But I've been actually saying 130.
4 MR. ANDREW: Yeah, I have her for 130, Madam Clerk.
5 THE CLERK: You're - today you're 130, okay?
6 MS. SUPLIZIO: All right, okay.
7 THE CLERK: All right, okay. What says the State?
8 MR. ANDREW: Please present the juror.
9 THE CLERK: What says the Defense?
10 MR. FOX: Please seat this juror.
11 THE CLERK: All right, please come and take a seat in
12 the jury box.
13 All right, Juror Number 104, Barbara Palmer.
14 What says the State?
15 MR. ANDREW: Please excuse the juror from the trial of
16 this case.
17 THE CLERK: You may take a seat.
18 Juror Number 54, Lisa Holmes.
19 What says the State?
20 MR. ANDREW: Please present the juror.
21 THE CLERK: What says the Defense?
22 MR. FOX: Please seat this juror.
23 THE CLERK: Please come and take a seat in the jury
24 box.
25 MR. ANDREW: I'm sorry, Your Honor. May we approach?

1 THE COURT: Yes.

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury venire.)

4 THE COURT: Ms. Holmes, would you please come forward
5 in front of the court reporter?

6 (Whereupon, an on-the-record bench conference with Juror
7 Number 54, Lisa M. Holmes, counsel for the State and Counsel
8 for the Defense was held in the presence but out of the
9 hearing of the jury venire.)

10 THE COURT: 54, were you previously charged with a
11 crime against a federal institution, could possibly more than
12 one year?

13 MS. HOLMES: Uh-huh.

14 THE COURT: Why didn't you say that earlier?

15 MS. HOLMES: I didn't think because I didn't do any
16 time for it. I just had like two years probation.

17 THE COURT: The question was whether you could have
18 been sentenced to more than one year. Do you understand?

19 MS. HOLMES: Uh-huh.

20 THE COURT: I'm going to dismiss her. What's your
21 juror number?

22 MS. HOLMES: 54.

23 (Whereupon, the following takes place in open court.)

24 THE COURT: Juror Number 54 is excused and is
25 dismissed and is disqualified from the trial of this case.

1 Thank you, ma'am.

2 THE CLERK: Judge, she's excused for cause; right?

3 THE COURT: That's right. He's not to be charged with
4 a strike. Thank you.

5 THE CLERK: All right, Juror Number 93, Samantha
6 Morris.

7 What says the State?

8 MR. ANDREW: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. FOX: Please seat this juror.

11 THE CLERK: Please come and take a seat in the jury
12 box.

13 Juror Number 139, Carol Ward.

14 What says the State?

15 MR. ANDREW: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. FOX: Please excuse this juror.

18 THE CLERK: You may be seated.

19 Juror Number 9, Joan Brockhausen.

20 What says the State?

21 MR. ANDREW: Madam Clerk, I've got a note that she was
22 excused.

23 THE CLERK: Oh, it was Juror Number 90.

24 MR. ANDREW: 90.

25 THE CLERK: Yeah, right.

1 MR. ANDREW: I'm sorry, okay, thank you.
2 THE COURT: Thank you.
3 THE CLERK: Yeah, okay, what says the State?
4 MR. ANDREW: 19?
5 THE CLERK: 9-0.
6 MR. ANDREW: 9-0, thank you, I'm sorry.
7 Please present the juror.
8 THE CLERK: What says the Defense?
9 MR. FOX: Please seat the juror.
10 THE CLERK: Please come and take a seat in the jury
11 box.
12 Juror Number 134, Donald Torppa.
13 What says the State?
14 MR. ANDREW: Please present the juror.
15 THE CLERK: What says the Defense?
16 MR. FOX: Please excuse the juror.
17 THE CLERK: All right, take your seat.
18 Juror Number 61, Tonya Johns.
19 What says the State?
20 MR. ANDREW: Please present the juror.
21 THE CLERK: What says the Defense?
22 MR. FOX: Please excuse the juror.
23 THE CLERK: You may take your seat.
24 Juror Number 34, Carol Ehalt.
25 What says the State?

1 MR. ANDREW: Please present the juror.
2 THE CLERK: What says the Defense?
3 MR. FOX: Please seat this juror.
4 THE CLERK: Please come and take a seat in the jury
5 box.
6 Juror Number 109, Linda Raymond.
7 What says the State?
8 MR. ANDREW: Please present the juror.
9 THE CLERK: What says the Defense?
10 MR. FOX: Please excuse the juror.
11 THE CLERK: You may take your seat.
12 Juror Number 103, April Pack.
13 What says the State?
14 MR. ANDREW: Please present the juror.
15 THE CLERK: What says the Defense?
16 MR. FOX: Please excuse this juror.
17 THE CLERK: You may take your seat.
18 Juror Number 83, William McConnell.
19 What says the State?
20 MR. ANDREW: Please present the juror.
21 THE CLERK: Any challenges from the Defense?
22 MR. FOX: I'm sorry, the number again, Madam Clerk,
23 83?
24 THE CLERK: Juror Number 83.
25 MR. FOX: One moment, please.

1 Please excuse this juror.

2 MR. ANDREW: May we approach?

3 THE COURT: Proceed, come forward, please, the
4 attorneys.

5 (Whereupon, a bench conference was held in the presence
6 but out of the hearing of the jury venire.)

7 THE CLERK: We'll go back to Juror Number 83.

8 THE COURT: That's correct.

9 THE CLERK: That was Juror Number 83, William
10 McConnell; right? Where is William McConnell?

11 THE COURT: Please stand, sir.

12 THE CLERK: Yeah, and you had said seat the juror;
13 right?

14 MR. ANDREW: Yes, ma'am.

15 THE CLERK: All right.

16 MR. FOX: Ma'am, after re-consulting I had, gave it
17 the wrong number. I would like to seat this juror.

18 THE CLERK: Okay.

19 MR. FOX: Based on wrong information on my part.

20 THE CLERK: Thank you.

21 THE COURT: Thank you.

22 MR. FOX: Glad to have him.

23 THE CLERK: Juror Number 17, James Card.

24 What says the State?

25 MR. ANDREW: Please present the juror.

1 THE CLERK: Any challenges from the Defense?
2 MR. FOX: No, Your Honor.
3 THE CLERK: Please take your seat in the jury box.
4 THE COURT: All right, that completes the 12. We're
5 going to have two alternate jurors. The State will be
6 entitled to one strike. The Defense will be entitled to two.
7 THE CLERK: Juror Number 1, Kimberly Adams.
8 What says the State?
9 MR. ANDREW: Please present the juror.
10 THE CLERK: What says the Defense?
11 MR. FOX: Please seat the juror.
12 THE CLERK: Please come and take a seat in the jury
13 box.
14 Juror Number 40, Shakira Frasier.
15 What says the State?
16 MR. ANDREW: Please excuse the juror from the trial of
17 this case.
18 THE CLERK: All right, take a seat, please.
19 Juror Number 44, Judy Grant.
20 What says the State?
21 MR. ANDREW: Please present the juror.
22 THE CLERK: What say the Defense?
23 MR. FOX: Please seat this juror.
24 THE CLERK: Please come and take a seat in the jury
25 box.

1 THE COURT: What was your number again, please, ma'am?

2 MS. GRANT: 44.

3 THE COURT: 44.

4 THE CLERK: 44.

5 THE COURT: Okay, all right, would you call out the

6 names of those who have been selected again, please?

7 THE CLERK: The jurors selected to serve are - I'm

8 sorry.

9 THE COURT: And do not swear the jury, please, ma'am.

10 THE CLERK: Do not?

11 THE COURT: Do not.

12 THE CLERK: Okay, we have Juror Number 64, all right,

13 Juror Number 133, William Thompson; Juror Number 131, James

14 Sweat; Juror Number 47, Roadia Greene; Juror Number 42, Paul

15 Gilroy, Jr.; Juror Number 129, Fred Sumpter, Jr.; Juror Number

16 36, Lewis Elliott, Jr.; Juror Number 130, Carolina Suplizio;

17 Juror Number 93, Samantha Morris; Juror Number 9, Joan

18 Brockhausen; Juror Number 34, Carol Ehalt; Juror Number 83,

19 William McConnell; Juror Number 17, James Card; and the first

20 alternate is Juror Number 1, Kimberly Adams. The second

21 alternate is Juror Number 40, Shakira Frasier, I'm sorry, Judy

22 Grant, Juror Number 44, Judy Grant.

23 THE COURT: Is that it, Madam Clerk?

24 THE CLERK: Yes, Your Honor.

25 THE COURT: All right, thank you.

1 Ladies and gentlemen of the jury panel, that will
2 complete your work for this week as jurors. I'm going to
3 release you all. I'm going to ask you all just stay for a few
4 minutes and then I'm going to let you all go to lunch as well,
5 but everyone, thank you very much for your willingness to
6 serve today. You may go back to your families and your
7 businesses and your employers. Thank you. Thank you very
8 much.

9 (Jury venire exits courtroom.)

10 THE COURT: Thank you, ladies, and gentlemen. You are
11 the lucky ones and we appreciate your service in this case.

12 I am going to release you now as well to go to lunch but
13 rather than going back to your businesses we will start back
14 here - it's 12:15, probably two o'clock would be sufficient
15 time. Does that give everybody sufficient time?

16 MR. FOX: Yes, Your Honor.

17 MR. ANDREW: Yes, Your Honor.

18 THE COURT: If you will be back here ready for jury
19 service at two o'clock this afternoon. Now, again, you'll be
20 sworn at that time and then we will commence this case, but it
21 is very important, these lawyers that you see here, they have
22 a - they're officers of this court, and you may know some of
23 them in some way. If you see them and they don't speak to you
24 they're not being rude, they're just trying to be good
25 lawyers. So, whatever you do don't ask anybody if they know

1 anything about this case, but at this point in time I'm going
2 to dismiss you for lunch. If you'll be back at two p.m.
3 Thank you very much.

4 Any exceptions or anything else from the State or the
5 Defense?

6 MR. FOX: None, Your Honor.

7 MR. ANDREW: None, none from the State, Your Honor.

8 THE COURT: Thank you. Have a nice lunch. One of
9 your fellow jurors has a restaurant downtown. So, you may go
10 to her and give her a little patronage there.

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

13 THE COURT: All right, Mr. Fox, I think you had a
14 pretrial motion?

15 MR. FOX: I do, Your Honor. I have three. I think
16 we addressed, one is to sequester witnesses, also make that
17 motion so that they can testify ---

18 THE COURT: Any objection to that, Mr. Solicitor?

19 MR. ANDREW: Yes, sir, Your Honor. There's numerous
20 witnesses and I don't have them all here at the present time.
21 I don't know that - I think the Defense has to show some
22 reason how he may be prejudiced by not sequestering the juror.
23 It's going to make it difficult for me.

24 THE COURT: How, how we - because some of these are
25 victims. How would you be prejudiced by that?

1 MR. FOX: Well, Judge, I believe he's - he can keep
2 his investigating officer and I believe the victims, also. If
3 there's someone, for instance, a SLED agent ---

4 THE COURT: I would certainly think the victims would
5 have a right to be here.

6 MR. FOX: Yes, sir. So, I'm only referring -
7 there's the Whites [sic], Franklin and Franklin, Jr., if
8 anyone is not present in the courthouse, of course, we don't
9 have any - can't sequester those that aren't here, those that
10 are coming from Columbia. I simply don't want those other
11 than the victims and the investigating officer to sit in here,
12 listen to other testimony and potentially testify from what
13 they hear on the witness stand rather than their own
14 recollection. That's all, Your Honor.

15 THE COURT: Well, which witnesses are you talking
16 about specifically?

17 MR. FOX: Any of them, Your Honor, any witness in
18 any case. It's always a risk. I don't think anyone would
19 do it deliberately, but I want them to come in and testify
20 fresh from their own memories and recollections rather than
21 what they may have heard or infer from the questions that
22 are asked from either of the lawyers in the case. Now,
23 there'd be no prejudice, I can show no harm before the fact
24 because I don't know, of course, but I certainly don't think
25 there's any harm to the State, those that are here can

1 certainly be consulted with at any time. A good number of
2 them, again the victims and investigating officer will be
3 right there for the State.

4 THE COURT: Anything further from the State?

5 MR. ANDREW: Well, like I say, Your Honor, my
6 difficulty is I've got so many witnesses. I've got some of
7 them coming in at different times, I mean, even though they're
8 here, I mean, and I say here, in Georgetown County. Some of
9 them are getting off work. It's going to make it difficult.

10 THE COURT: Okay, in an abundance of caution I am
11 going to grant the Defense motion except for the victims.
12 They all have a right to be here for the trial of that matter
13 and any person who is directly involved, but I'm going to
14 grant the motion. This is a very serious charge that he's
15 facing and I would rather err on the side of protecting his
16 rights at this point. All right, thank you. Yes, sir.

17 MR. FOX: The remainder, the other two, one is I
18 believe there will be testimony from some of the officers or
19 an officer from the Georgetown County Sheriff's Department
20 regarding the use of a bloodhound to track a scent from crime
21 scene to what turned out to be a trailer where the Defendant
22 was, and I previously handed the Court this, the State of
23 South Carolina Supreme Court case of State v. White which sets
24 forth the criteria for the admissibility of that evidence.
25 Quite frankly, so, I would object to that absent the showing

1 by the State that they meet the criteria as set forth in State
2 v. White.

3 THE COURT: All right, what I will do is I will defer
4 any ruling on that until such time as the State actually calls
5 that witness. They may decide not to. So, I'm not going to
6 rule on something that is not yet before me.

7 MR. FOX: Yes, Your Honor.

8 THE COURT: Thank you, the third motion.

9 MR. FOX: And finally, the final motion would be to
10 suppress any reports or testimony from any forensic experts
11 from SLED with regard to DNA tests that were done. Samples
12 were taken from Mr. Greene, as well as a couple of other
13 people and then compared to evidence that was recovered in
14 connection with this crime, and I would suppress that as not -
15 their consent was ostensibly obtained from Mr. Greene, the
16 police followed this trail with the bloodhound to a trailer
17 where Mr. Greene and others were, based on that ---

18 THE COURT: But wasn't the consent, wasn't it a
19 consent to search?

20 MR. FOX: It was. My position, of course ---

21 THE COURT: I mean, the other people gave their
22 consent was my understanding.

23 MR. FOX: Well, it was a consent to each person.
24 Although it says consent to search form like you would do at
25 the residence or a car it clearly and it says on there for DNA

1 sample. So, each person was responsible solely for
2 themselves. Obviously Mr. Greene can't consent for myself or
3 anybody else. I start the position it's a warrantless search.
4 See, the State, the burden is on the State to show there's an
5 exception, there may be shown to be freely and voluntarily,
6 not in the course of consent given, but again, we have a
7 warrantless search; and so, the Fourth Amendment of the United
8 States constitution requires, I believe, the State to make a
9 showing that they fit into an exception.

10 THE COURT: Mr. Andrew.

11 MR. ANDREW: And we're prepared to have that hearing if
12 I can check - he's here. Okay, I have my officer here. We're
13 prepared to offer the testimony to that and our position is
14 there was consent given, consent was knowing and voluntarily
15 given without coercion, any undue influence by the officer.

16 THE COURT: All right. We'll proceed on that issue at
17 this particular time.

18 Would you please swear the witness? All right, then this
19 is just going to be on that one issue. We're not going to go
20 ahead and have a pretrial on everything. All right, thank
21 you.

22 Whereupon, George Smith was called to the stand, duly
23 sworn by the Clerk and testified as follows:

24 THE CLERK: Thank you. Please be seated. State your
25 name for the record.

1 MR. SMITH: George Smith.

2 THE COURT: Mr. Andrew.

3 MR. ANDREW: Thank you, Your Honor.

4 EXAMINATION

5 BY MR. ANDREW:

6 Q Investigator Smith, just state your position and where
7 you're employed, please.

8 A I'm a lieutenant of investigations with Georgetown County
9 Sheriff's Office.

10 Q Okay, and how long have you been employed in that position?

11 A I have been in investigations since roughly 1993, left for
12 about a year, came back.

13 Q Okay.

14 A And began back into investigations.

15 Q And as part of your role as an investigator you do
16 investigate crimes here in Georgetown County?

17 A Yes, I do.

18 Q That includes talking to witnesses and gathering evidence?

19 A Yes.

20 Q And did you have an occasion to work a case concerning a
21 John Jabbar Greene back in January of '08?

22 A Yes, I did.

23 Q Okay, are you familiar with that case?

24 A Yes, sir.

25 Q Okay, tell the Court briefly what led you to the residence

1 where Mr. John Jabbar Greene, who was a suspect at the time,
2 was located?

3 A At the time our dog hound, dog, bloodhound dog tracking
4 team had tracked through a trail in the wooded area behind
5 where the victim's business was.

6 Q Okay.

7 A And they located something there, an item and the dog
8 tracked to a mobile home behind that area.

9 Q And about how far is where this location was in relation
10 to where the crime took place?

11 A It was less than a fourth of a mile, maybe an eighth.

12 Q Okay, and how soon after the crime was committed as
13 reported to you by the victims did you locate that particular
14 location?

15 A Once we arrived on scene it wasn't probably 30 minutes if
16 that.

17 Q Okay, and once you got to that location did you come in
18 contact with a Mr. John Jabbar Greene?

19 A Yes, I did.

20 Q Okay, and did you obtain a buccal swab from Mr. Greene?

21 A Yes, I did.

22 Q Okay, and prior to obtaining that buccal swab did you
23 advise Mr. Greene - well, what did you advise Mr. Greene of in
24 order to obtain that buccal swab?

25 A I read Mr. Greene a voluntary consent to search for a

1 buccal swab.

2 Q Okay, and did you explain to him his rights concerning
3 whether or not he had to give that and is that explained in
4 that paper?

5 A Yes, sir.

6 Q And just so we're clear I see you're looking at a piece
7 of paper. What are you looking at?

8 A It's the, the original voluntary consent to search that I
9 read to Mr. Greene and he signed.

10 Q Okay, and was there anything that would indicate to you
11 that Mr. Greene did not understand what you were reading to
12 him?

13 A No, sir.

14 Q And after you read these rights to him and the consent to
15 search did he indicate that he understood those rights?

16 A Yes, sir.

17 Q Did you ever put any kind of undue influence or coerced
18 him to give consent to this?

19 A No, sir.

20 Q Did you ever deny him any water or anything that he
21 requested?

22 A No, sir.

23 Q Did he appear in any way to you to seem like he was under
24 any undue influence or pressure?

25 A No, sir, he didn't appear to be in any duress at all.

1 Q Okay, and did he sign and consent to give you that buccal
2 swab?

3 A Yes, sir.

4 Q Okay, and is that indicated, is that his signature on
5 that voluntary consent form?

6 A Yes, sir.

7 MR. ANDREW: I guess we need to mark this as Exhibit A
8 at this time, Your Honor.

9 THE COURT: Just mark it as Exhibit Number A for
10 identification.

11 MR. ANDREW: And for these purposes I guess we'd
12 introduce this at this time.

13 THE COURT: All right, any objection as to that, Mr.
14 Fox?

15 MR. FOX: Is that for the purpose of this hearing?

16 THE COURT: For this hearing.

17 MR. ANDREW: For the purpose of this hearing.

18 MR. FOX: Right, no, of course, no objection, Your
19 Honor.

20 THE COURT: All right.

21 (Whereupon, Court's Exhibit Number One [Voluntary Consent
22 to Search Form] appropriately marked.)

23 BY MR. ANDREW:

24 Q And when was that paper signed?

25 A January 18th, 2008, approximately 8:02 a.m.

1 Q And that was done in your presence?

2 A Yes, sir.

3 Q And did you advise the Defendant of the investigation
4 that you were handling?

5 A Yes, sir.

6 Q And how did you obtain those swabs? Did you handle the -
7 did you get the swabs?

8 A Yes, sir.

9 Q Okay, and what did those swabs entail? What did you do?
10 What was the process as far as obtaining those?

11 A I used two sterile cotton tip swabs, removed them from
12 their packaging, swabbed the inner lining of his cheeks and
13 placed them into a cardboard sleeve to let them dry for a few
14 moments.

15 Q Okay.

16 A Before then packaging them.

17 Q And basically just so we're clear, it's just putting a -
18 like a Q-tip inside the Defendant or the suspect's cheek?

19 A Yes, sir.

20 Q Did he object at any time to any of this going on?

21 A No, sir.

22 Q Okay, no further questions.

23 THE COURT: Thank you, Mr. Fox.

24 MR. FOX: Thank you.

25 EXAMINATION

1 BY MR. FOX:

2 Q Investigator Smith, how long was it - you say it was 30
3 minutes from the time you responded until you found Mr. Greene
4 at this trailer. Do you know how long since the robbery?

5 A Approximately, approximately, yes, sir.

6 Q Right, but it took you some time to respond to the scene;
7 correct?

8 A Yes.

9 Q Okay, do you know how long from the time the robbery
10 occurred until you all responded?

11 A The first officer arrived on scene?

12 Q Yes, sir.

13 A I would have, I would have ---

14 Q Or actually, go ahead and answer that question.

15 A I'm sorry?

16 Q I didn't mean to talk over you. I apologize. I guess
17 the actual question I'm asking you is do you know how long
18 before the blood - that bloodhound responded, the dog tracking
19 team responded?

20 A They were on scene probably 10 to 15 minutes after I
21 arrived.

22 Q Okay, and it was based on the bloodhound's trail it took
23 you to Mr. - the trailer where Mr. Greene was.

24 A Yes.

25 Q And led you to request the sample; correct?

1 A Yes.

2 Q Okay.

3 MR. FOX: And Judge, I realize we're not going to
4 try the whole case.

5 THE COURT: Right, that's right.

6 MR. FOX: But I'm going to ask a couple, I'm going
7 to explore a couple of questions.

8 BY MR. FOX:

9 Q You didn't have any kind of matching description for Mr.
10 Greene, when I say you I mean the police in general that
11 you're aware of. There wasn't a description of a man of his
12 height, build, etcetera, wearing his clothes, that type thing?

13 A There was a rough description that was given, but also
14 found in the house were other items that went along with
15 making us suspicious that he was the suspect.

16 Q Okay.

17 A Would you like me to go into those items?

18 Q Not at this time.

19 A Okay.

20 Q You indicated you read him this voluntary consent to
21 search form; correct?

22 A Yes.

23 Q Do you recall whether you read in its entirety to Mr.
24 Greene?

25 A Yes, I did. I read the entire thing to him.

1 Q And this is actually a form that's more typically used
2 for, refers to premises and/or property, usually use this when
3 you're serving a warrant on a house, for a vehicle, that type
4 of thing; correct?

5 A For any type of property, yes, sir.

6 Q Okay, did you describe to Mr. Greene the - you've
7 indicated what the process was. Did you describe that to Mr.
8 Greene beforehand as he was determining whether he would give
9 consent?

10 A Yes, sir, I explained to him that I would like to take
11 what would be referred to as a DNA sample to match with,
12 excuse me, items found at the crime scene. I explained to him
13 that they would be called buccal swabs, which was two cotton
14 tip Q-tips basically that I would swab the inside lining of
15 his mouth to obtain buccal cells. That was, that was what I
16 explained to him.

17 Q Okay, you indicated the Defendant did not ask any
18 questions. You testified that he indicated, Mr. Greene
19 indicated he understood his rights. In what way did he
20 indicate he understood his rights?

21 A After I got completed reading it to him I asked him if he
22 would consent to me swabbing the inside of his mouth for the
23 DNA buccal swab sample and he agreed. He said yes and he had
24 to open his mouth in order for me to do so.

25 Q Technically that's a - I understand.

1 A I couldn't have forced his mouth open.

2 Q But the question specifically was whether he understood
3 his rights. I understand.

4 A He said yes he understood it.

5 Q All right, before he gave consent, he indicated, you
6 asked him, "Do you understand these rights"?

7 A Yes.

8 Q And he answered in the affirmative?

9 A Yes.

10 Q Okay, how long had you been there in the trailer with Mr.
11 Greene and the Whites, the two other gentlemen, before you
12 asked for that consent to search, roughly?

13 A This particular one?

14 Q Yeah.

15 A Maybe 15 minutes, if that.

16 Q Okay, was Mr. Greene handcuffed at the time?

17 A I don't - no, sir, he wasn't handcuffed.

18 Q Okay, was he, from your point of view, was he in custody?

19 A No, sir.

20 Q But you read him his rights; correct?

21 A Yes, sir.

22 Q Okay, was he free to leave?

23 A No, sir.

24 Q Okay, so, he wasn't physically restrained in custody but
25 he also was not free to leave the premises.

1 A That was based on the search of the residence. They gave
2 us consent to search it and he was under investigative
3 detention but he wasn't under arrest.

4 Q Thank you. That's all the question I have.

5 THE COURT: Thank you, anything further from the
6 State?

7 MR. ANDREW: Nothing from the State, Your Honor.

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

9 A Thank you.

10 THE COURT: Mr. Andrew, you have any other, further
11 evidence?

12 MR. ANDREW: Nothing further from the State, Your
13 Honor.

14 THE COURT: Okay, Mr. Fox, based upon what you have,
15 do you have any or what you've heard do you have other
16 evidence at this point in time that it was not given with
17 consent?

18 MR. FOX: I do not, Your Honor, no, sir.

19 THE COURT: Excuse me?

20 MR. FOX: No, Your Honor, I do not.

21 THE COURT: Thank you. All right, based upon what
22 I've heard this, the limited testimony for the purpose of this
23 hearing I find that the swab, consent was given properly and
24 I'm not saying it's admissible into evidence. There'll need
25 to be some more foundation set for that, but the swab was

1 taken in accordance with the laws of this state and I will
2 allow it to proceed at that point. So, your motion, Mr. Fox,
3 is, therefore, denied.

4 All right, anything further before we recess for lunch?

5 MR. ANDREW: Nothing from the Sate, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. FOX: Nothing, Your Honor.

8 THE COURT: All right, we will be in recess until two
9 p.m. Thank you.

10 OFF THE RECORD

11 (On the record.)

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Please be seated. Before you bring the
15 jury in I've got something I need to bring up with the
16 attorneys.

17 All right, when I was reviewing I saw one of the victims
18 earlier, Mr. Harby Moses. He's originally from Sumter. I
19 just wanted to disclose it to you. I thought he might have
20 just been a witness in this case. When I was reading the
21 indictment I see that he was a victim. Now, Mr. Moses and I
22 we go back a long way, but we - I mean, he was a number of
23 years younger than I was. We went to the same high school.
24 Mr. Moses has lived down here for probably 30 years, not in
25 Sumter, but when I saw he was one of the victims I just wanted

1 to disclose that to both of you all. Again, we have no
2 professional connections other than the fact that I've known
3 him for a long time. That would be the only thing, but I
4 wanted to bring that up before we bring the jury out. Do you
5 have any objection, Mr. Fox?

6 MR. FOX: None, Your Honor.

7 THE COURT: Anything from the State?

8 MR. ANDREW: No, sir, do you think you could be a fair
9 and impartial?

10 THE COURT: I really do. Well, I'm glad you asked so
11 I could put it on the record that I do. All right.

12 MR. ANDREW: No objection, Your Honor.

13 THE COURT: Thank you. Thank you.

14 You want to bring the jury in now?

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: You all came in the right order. Mr.
18 Elliott, I'm going to ask that you be the foreman of the jury.
19 So, I'm going to ask that you sit in this front seat right
20 here. So, ma'am, if you would move down just one seat. Thank
21 you.

22 All right, Madam Clerk, if you would please swear the
23 jury.

24 (Whereupon, jury sworn by Clerk.)

25 THE COURT: Thank you.

1 Ladies and gentlemen of this jury, before we begin this
2 trial I want to tell you that this trial will probably be
3 different from what you might expect. You know, many people
4 do not have an opportunity to actually attend a court session
5 as you are doing now, and may think that from watching TV or
6 movies or anything like that that trials are always full of
7 high drama, intense action and riveting circumstances. While
8 all these things may be true at times, this trial is not for
9 entertainment. It is a fundamental part of our democracy, a
10 search for the truth in an effort to make sure that justice is
11 done between the State and this Defendant. Therefore, it is
12 often slow, deliberate and repetitive. The opposite of what
13 you may have seen or read in most books concerning courtrooms.

14 This courtroom is a place of honor, dedicated to the
15 protection of citizens' rights through what may have been
16 called the greatest justice system ever created. The
17 attorneys appearing before you are advocates for their
18 parties they represent, but first and foremost, they are
19 officers of this court, sworn to uphold the integrity and
20 fairness of our judicial system and to help you in the search
21 for the truth. You should expect them to be professional,
22 competent and ethical in their representation. Remember, too,
23 that they - you have taken an oath to try this case and reach
24 a fair and just verdict and just as you are, they're
25 professionals and you are as well. Thank you for accepting

1 this important community service.

2 Now, ladies and gentlemen of this jury, we are about to
3 try the case of The State versus John Jabbar Greene, the
4 Defendant. What I will now say is intended to serve as an
5 introduction to the trial of this case. These remarks are not
6 a charge on the law in this case. I will instruct you on the
7 law applicable to this case at the end of this trial before
8 you retire to consider your verdict. This is merely an
9 explanation of the procedure that we will follow in the trial
10 of this case so that you may better understand what may be
11 happening.

12 Now, during this trial you are not going to be allowed to
13 take notes, okay? Because the State will present the evidence
14 in such a way that at the end you should not have to refer to
15 any notes, but sometimes notes are such that one person takes
16 a note, they may not be listening or once something gets
17 written down it tends to take on a factual basis, whether or
18 not it is.

19 Now, the Defendant here is charged in indictments filed
20 with this court for the crimes of two counts of kidnapping,
21 two counts of armed robbery and one count of burglary in the
22 second degree. These will be explained to you in detail
23 later. The indictments, however, are simply the charges by
24 which the case is brought into the court. It is not in any
25 sense evidence of any of the allegations that are contained

1 therein. The Defendant has pled not guilty to this
2 indictment. The State, therefore, has the burden of proving
3 each and every element of the indictment beyond a reasonable
4 doubt and it will be your duty, ladies and gentlemen of the
5 jury, to decide whether the State has met that burden. The
6 Defendant does not have to prove anything, and if he decides
7 not to testify or present witnesses, you are not to hold that
8 against him. Your purpose today as jurors is to find and
9 determine the facts. You are the sole judge of the facts and
10 if any time I make a comment regarding the facts you must
11 disregard it. You are to determine, you are to determine the
12 facts from the testimony that you hear from this witness
13 stand, what is presented as exhibits in this court and then it
14 is up to you based upon the inference of that evidence which
15 you may feel may be properly be drawn from that evidence. It
16 is especially important that you perform your duty of
17 determining the facts diligently and conscientiously because
18 ordinarily there is no way to correct an erroneous
19 determination of the facts by you the jury. On the other hand
20 and with equal emphasis, the same law that makes you the
21 judges of the facts makes me the judge of the law. The law
22 that's given to you by the court is the only law that you can
23 consider, regardless of what you may have heard. You must
24 accept and follow it even though you may disagree with it. I
25 cannot tell you what the facts are and conversely you cannot

1 tell me what the law is. You must accept it.

2 Now, until I advise you to begin your deliberations you
3 must not discuss this case with anyone, including your fellow
4 jurors, your family, your friends or anybody involved in this
5 case. Only after this case has been submitted to you at the
6 end of all the evidence and the charges on the law will you be
7 then directed to go to the jury room and discuss it, and at
8 that time and again the only time you may discuss it among
9 yourselves.

10 Now, as you go about, you may again run into one of the
11 attorneys in this matter. If they don't speak to you it's not
12 because they are rude. It's simply because they are good
13 officers of the court and understand that they're not supposed
14 to in any way discuss it. Now, during the trial, I don't know
15 if this is going to be on the newspaper or in the newspaper,
16 on the news but you are not to read any newspapers concerning
17 this or listen to any articles that may be published, and
18 again at this time anything on the Internet also counts and
19 any text messages or anything like that. Again, the only
20 thing that you're to consider is what comes out of this
21 courtroom from this witness stand or the exhibits that are
22 presented here in court. It is also important that you keep
23 an open mind throughout this trial and don't start your
24 consideration until you have heard all the evidence. It is
25 your solemn responsibility to determine the guilt or the

1 innocence of the Defendant and your verdict must be based
2 solely as it is presented here in this courtroom.

3 Now, in just a moment the Solicitor is going to give you
4 what is known as an opening statement. Now, what he's - and
5 the Defense will also have an opportunity to do that. Now,
6 what this is is just where they believe the case will go and
7 what they intend to present as evidence. In no way what they
8 are telling you at this time to be considered as evidence in
9 this matter. Again, the evidence will only be presented from
10 this witness stand or from the exhibits that are put into
11 evidence.

12 From time to time throughout this case you may hear one
13 of the attorneys say, "Your Honor, we've got a question of law
14 to be presented to the Court," and at that time I will dismiss
15 you from the courtroom because at that point in time, even
16 though I don't listen, I'm not the finder of facts, you are, I
17 may have to listen to some of the facts if a point of law
18 comes up; and therefore, you will be dismissed from the
19 courtroom while we do that, and you shouldn't hold that
20 against either lawyer or either side of this case because of
21 that. Likewise, because we are a country of laws and evidence
22 has certain rules I must decide if something comes in. So, if
23 one of the lawyers makes an objection, says, "Your Honor, I
24 object," don't hold that against them because all they're
25 trying to do is to be good stewards of the evidence that's

1 coming in. Now, if I allow it to come in or don't or sustain
2 the objection or overrule it, that is not to be held against
3 either side who made that objection. It's just that I'm
4 deciding on how the evidence should be handled.

5 Now, in determining, again, what the true facts would be
6 you have the right to listen and determine the believability
7 of the witnesses. As I stated it will be my responsibility to
8 determine whether the evidence comes in, but you are allowed
9 to weigh the evidence. You can believe part of it or none of
10 it, whatever you want to do because, again, you are the
11 finders of fact. You can consider any bias that they may
12 have, any reason that they may know the facts that they're
13 trying to present or not present. So, that's, again, for your
14 consideration and you have the right to consider anything that
15 is on the record to help you evaluate the testimony of the
16 witnesses. That means it is your responsibility to pay close
17 attention to these witnesses and observe the witnesses and
18 listen throughout this trial. It is your additional
19 responsibility, Mr. Foreperson, to preside in the jury room
20 and then be the jury's spokesperson here in court. It will
21 also be your duty to write the verdict at the proper time, but
22 I will give you further instructions on that at the conclusion
23 of this case. In order to preserve everyone's rights I will
24 give the parties an opportunity to object to anything that I
25 have said. Any exceptions from the State?

1 MR. ANDREW: None from the State, Your Honor.

2 THE COURT: Any exceptions from the Defense?

3 MR. FOX: None, Your Honor.

4 THE COURT: All right, we will now begin the trial.

5 Mr. Solicitor.

6 MR. ANDREW: Thank you, Your Honor.

7 THE COURT: You may proceed with opening
8 argument.

9 MR. ANDREW: You know, I'm glad His Honor mentioned CSI
10 and things like that about the process of the way you see it
11 on TV versus the reality because I do think there is a
12 misconception in today's society based on these CSI shows and
13 some other things that, you know, the police work and
14 everything is wrapped up in an hour, but as you can tell just
15 from me reading the indictments, it takes a little bit longer
16 than that for not only the police to do their job but for the
17 case to come to court, and that's no fault of the Defendant at
18 all, but the reality of it is the practical limitations that
19 we have, you know, they don't have to abide by on TV, but some
20 of the good things the TV and everything he brought out is,
21 you know, some things are still true and that is our jury
22 system, and as the Judge has pointed out to you you're going
23 to be the triers of fact. Regardless of what I say, you know,
24 my opinion of the case, you're going to be the ones to decide
25 the fate of Mr. John Jabbar Greene and whether or not he's

1 guilty or not guilty of these crimes. Now, having said that
2 about, you know, the CSI and all that, the good thing about
3 Georgetown County is, you know, a lot of times you see on
4 television these high intelligence crimes, using these glasses
5 where you can see in the dark and all that. Well, luckily it
6 hasn't got to Georgetown County where our criminals are
7 involved in that kind of process yet, and what you'll find
8 most of the crimes that are committed here are committed out
9 of convenience and by unsophisticated criminals and that's
10 what we've got here with Mr. John Jabbar Greene and what the
11 evidence is going to show you is that on January 18th of last
12 year Mr. John Jabbar Greene entered a business, Coastal
13 Structures, that it happened in the early morning hours.
14 You're going to hear testimonies from the victims of that
15 case, one of them being the owner and the other one being an
16 ~~employee, that was present during that time and they're going~~
17 to tell you the story of a man covered coming in there with a
18 shotgun and you're going to hear him describe the shotgun and
19 robbing them at gunpoint. Now, the reason I said crime of
20 convenience all of this took place approximately 500 yards or
21 so from where the Defendant was residing. Now, the good thing
22 about having unsophisticated criminals and these crimes of
23 convenience it does allow the police to and being a small town
24 allows the police to respond quickly, which you're going to
25 hear evidence of in this case, and to develop a suspect based

1 on the investigation they did and they were able to not only
2 develop a suspect but within a short amount of time collect
3 critical evidence in this case, and within an hour or a couple
4 of hours of this crime actually taking place and that's what I
5 was talking about some of these truths remain, will remain
6 true even though you're not on TV. It is true that your best
7 evidence is usually collected within that first hour or near
8 that time when a crime is freshly committed.

9 The thing I want to talk to you about and the other truth
10 that remains, remains so is that it is the State's duty and
11 like I say I'm just here to present the evidence but the State
12 will need to prove these elements or these crimes were
13 committed beyond a reasonable doubt and that's provided in our
14 constitution and it's something we all hold dear, but I want
15 to talk to you a minute about, you know, what beyond a
16 ~~reasonable doubt is and His Honor is going to explain the law~~
17 to you. He's going to explain reasonable doubt and certainly
18 if I say anything that contradicts what he says go with him,
19 you know, but what I want to point out to you is, you know,
20 don't leave your common sense at home; okay? We're not - we
21 don't have Mr. Greene on video the entire time this thing was
22 planned till the time that he got back to the house. Okay?
23 It's going to require you to use your common sense and piece
24 some of these things together to show not only that he
25 committed the crime but what he did afterwards, but hopefully

1 you'll use your common sense and do that and why I bring that
2 up is because, you know, a lot of times I think people believe
3 that it's beyond a reasonable doubt means that I've got or the
4 State has to eliminate all doubt. Well, our judicial system
5 has realized that that would be an impossible burden. We'd
6 never convict anybody of any crime if we had to do that and I
7 want you focus on the reasonableness of it; okay, the
8 reasonable doubt. You know, it's okay to piece things
9 together and link them together and make some assumptions of
10 things that happened between certain times as far as how the
11 evidence is going to play out and I'll talk to you more about
12 that at the end, but when it says a fair trial I just want you
13 to know that means be fair to the Defendant but also be fair
14 to the State and evaluate the evidence with a clear mind and
15 just with the notion that you need to be fair and be
16 reasonable. Like I say, ~~don't leave your common sense at the~~
17 door.

18 I want to talk to you just briefly about the crimes
19 because I know you hear armed robbery, you hear kidnapping and
20 you hear burglary but you may not know exactly what the law
21 requires of that. There are elements to each one of those
22 offenses, and like I said, His Honor is going to talk to you
23 about that at the end of trial and certainly more or better
24 than I can explain it to you, but just to give you an idea,
25 what we're going to prove to you happened is that Mr. Greene

1 went into this place, this business in the early morning hours
2 armed with a weapon, okay, and he did take money from these
3 two individuals. Okay, that's the burglary is the entering of
4 the building with intent to commit a crime and obviously I
5 suggest if you believe somebody entered a building with a gun
6 and took money that you'll believe that that crime was
7 committed.

8 The armed robbery, also is a person armed with a weapon
9 and taking something of value from somebody or something off
10 their person. And that's Mr. Greene taking money while at
11 gunpoint.

12 And the kidnapping I think that's a little troublesome
13 for people in this kind of case because usually when you think
14 of a kidnapping, you know, you think about binding somebody
15 up, throwing them in a trunk and taking them somewhere, but I
16 think when you hear His Honor explain the charge you'll
17 understand that if you, if you do an action like Mr. Greene
18 did where he pointed a gun and to the point where these people
19 were scared to move, were denied their liberty to be free or
20 to make actions of their own but to move on their own that in
21 itself is kidnapping. Okay, if you deny somebody that, you
22 take that away from them then you've committed the crime and
23 it's a kidnapping, and those are the essential, I mean, the
24 charges that we have before you here today. Like I said,
25 you're going to be the judges of the facts. I'm just going to

1 present testimony, present evidence. You're going to decide
2 what weight you give this evidence. You're going to decide
3 what credibility that you give these witnesses when you hear
4 from them, whether it be the victims in the case or the
5 officers in the case, and you know, I'll touch back or go back
6 and just talk to you about your common sense. I mean, you do
7 these things everyday. When you meet somebody the first time
8 or even later on, you do it whether you're aware of it or not,
9 you're sizing up whether that person is being honest with you,
10 if they have any motivation to lie to you, if they've got any
11 ulterior motive to tell you things, and you know, you do it
12 every day even when you just meet somebody you're sizing them
13 up and that's what we're asking for is to take a look at these
14 witnesses and the evidence that's presented and put your own
15 weight and the value on it and determine if there's any
16 motivation to them, and it's my hope at the end of this trial
17 once you've done all that if you'll be reasonable and be fair
18 then you'll see that the evidence points to Mr. John Jabbar
19 Greene and it's your duty if that evidence meets those
20 elements beyond a reasonable doubt it's your duty to come back
21 with a guilty verdict and I don't want you to be afraid that
22 you're passing judgment on somebody. I mean we are asking you
23 to judge the witnesses, but we're not asking you to judge Mr.
24 Greene's character or anything else. We're just asking you to
25 apply the evidence and the testimony to this case and apply

1 them to the elements of the crime and if that evidence proves
2 to you through the testimony or the actual physical evidence
3 that this crime was committed and you believe it was John
4 Jabbar Greene then it's your duty if it's done beyond a
5 reasonable doubt, it's your duty to come back with a guilty
6 verdict. So, I just ask you to be fair and we'll try to move
7 it along as quickly as possible. Thank you.

8 THE COURT: Mr. Fox, for the Defense.

9 MR. FOX: Thank you, Your Honor. May it please the
10 Court.

11 Good afternoon, ladies and gentlemen. Again, my name is
12 Eric Fox. It's my privilege to be with you here today
13 representing Mr. John Jabbar Greene. John, would you stand up
14 for me.

15 (Complies with request.)

16 MR. FOX: He's the Defendant in this case. You've
17 heard his name, and again it is my privilege to represent him.

18 One of my favorite authors is Mark Twain and he said,
19 "It's a terrible death to be talked to death." So, I figure
20 if that's true it's even worse to be talked to death by
21 lawyers. I'm going to try not to repeat everything that's
22 been said, but first of all, thank you for your time. I know
23 every, each and every one of you has some place you'd rather
24 be. None of you jumped up for joy undoubtedly when you got
25 your summons to come for jury duty, but I can't emphasize

1 enough, along with the Judge and Mr. Andrew, truly in the
2 democracy along with voting and serving your country in a time
3 of war this really is one of the most important things you can
4 do. You may have read recently about a reporter, an American
5 reporter who was arrested and sentenced, tried and sentenced
6 to eight years in prison over in Iran. That was just a week
7 or so ago. She was literally arrested, tried behind closed
8 doors by the lawyer and sentenced within less than 72 hours.
9 That seems inconceivable to us here. Clearly we have a better
10 system than they have there, but I think even some of the
11 places you think are, as being modern democracies they settle
12 these kinds of issues with panels of lawyers or judges,
13 rather. They have three or five judges that sit, they're
14 trained professionals, they're lawyers, but I think we've got
15 a better system because we take the collective wisdom of the
16 community at large. Lawyers have a lawyers' focus on things
17 and that may be very good for deciding matters of law but
18 these are lawyers' focuses, just like you wouldn't want all
19 doctors or all farmers or all firefighters, very, very
20 important.

21 One thing I want you to keep in mind, and the Judge has
22 already alluded to this, you heard the phrase reasonable
23 doubt. The State has and carries with it throughout this
24 entire trial right up through your deliberations and your
25 verdict the burden of proof. It rests with the State. That's

1 why, for example, Mr. Andrew stood up and spoke first. It is
2 why he will present the State's evidence first because he has
3 the burden of proof. What that means is what it sounds like.
4 They've got to prove this happened. Mr. Greene does not have
5 to disprove or prove it didn't happen, prove it wasn't him.
6 It's been said it's impossible to prove a negative. So, we do
7 not require the Defendant to disprove his guilt or prove his
8 innocence. That standard, the Judge will define it for you in
9 more detail at the end of the case, is beyond a reasonable
10 doubt. Volumes, giant stacks of books that would fill this
11 courtroom have been written on what that means, but it's
12 pretty much what it sounds like. A reasonable doubt is a
13 doubt for which you can find a reason and that doesn't just
14 mean some fanciful reason that you made up. There is a judge
15 from Horry County who used to say, "You may have a doubt
16 whether there is salt in the Atlantic Ocean in Myrtle Beach,
17 but that's not a reasonable doubt, okay." Okay, a reasonable
18 doubt in this context means a doubt based on the evidence or a
19 lack of evidence that you have available to you that's
20 presented during a trial. That is based on, can be based on
21 your evaluation of the witnesses, what they say, what they
22 don't say, what they can observe and what they might not have
23 been able to observe. Beyond a reasonable doubts means that
24 you are satisfied in your own mind as much as you can be
25 without having been present because of course none of us were

1 present when this robbery happened, but you are satisfied as
2 much as you can be, which can never be 100% because you
3 weren't there to see it, but as much as you can be that the
4 crime was committed and that it was committed by Mr. John
5 Jabbar Greene. I don't think we're going to have any dispute
6 that a crime was committed. There is no doubt these gentlemen
7 in the early morning, just started the business day were
8 approached by someone with a gun, took their money and fled,
9 no doubt about that, but the very big question, a very big
10 doubt that it was John Greene, but I simply ask you to keep in
11 mind throughout the trial whatever reasonable doubt means.
12 Again, the Judge will define it for you particularly at the
13 end of the case. When you keep in mind always the burden of
14 proof is with the State and if you're not satisfied at the
15 end, that they have not met their burden of proof, they have
16 not convinced you beyond a reasonable doubt that Mr. Greene is
17 guilty, then you are duty bound by your oath to return a
18 verdict of not guilty. You're probably aware, I'm sure we all
19 know South Carolina at one time was a colony of Great Britain
20 and an awful lot, in fact, really our jurisprudence and the
21 law of the courts come down from England. In England you have
22 in criminal cases perhaps three verdicts, it's actually three
23 verdicts, guilty, he did it; not guilty, he didn't do it; or
24 not proven, which is not beyond reasonable doubt. We've
25 merged, but it has the same effect, if a jury in Britain were

1 to bring back a verdict of not proven it has the same effect
2 as a not guilty verdict, and the Defendant goes free. Well,
3 over time we simply merged the last two. In the United States
4 we don't have that. So, if you believe, obviously if you're
5 convinced beyond a reasonable doubt the Defendant is guilty
6 your verdict would be guilty. If you believe either, if
7 you're convinced, if you're convinced he didn't do it or you
8 just don't believe that it's been proven beyond a reasonable
9 doubt you are duty bound by your oath to return a verdict of
10 not guilty, and I believe that after you hear everything, hear
11 from all the witnesses, see all the exhibits and hear the
12 instruction of the law that Judge Young will give you at the
13 conclusion of the case you'll return a verdict of not guilty.

14 THE COURT: Thank you, Mr. Fox. The State may call
15 their first witness.

16 MR. ANDREW: Thank you, Your Honor. The State calls
17 Walt Thomas.

18 Whereupon, Walter Thomas was called to the stand, duly
19 sworn by the clerk and testified as follows:

20 THE CLERK: Please state your name.

21 MR. THOMAS: It's Walter Thomas.

22 DIRECT EXAMINATION

23 BY MR. ANDREW:

24 Q Mr. Thomas, would you please tell this jury where you're
25 employed?

1 A Yes, at Coastal Structures on Highmarket Street here in
2 Georgetown.

3 Q Okay, how long you been working there?

4 A Fifteen, 16 years.

5 Q Okay, and more specifically if you could - where exactly
6 is Coastal Structures? Where is the building located?

7 A It is on Highmarket Street, 4293. We are directly across
8 the street from Bobby's Appliance, just two residential houses
9 separate us from the Winyah One Stop and it's known I think
10 over the years as the Graves Community.

11 Q Okay, and were you working back during the early morning
12 hours of January 18th of 2008?

13 A Yes, sir.

14 Q Okay, and do you remember what day of the week that was?

15 A It was a Friday.

16 Q Okay, and how is it that you remember that that's a
17 Friday?

18 A Typically the way our construction crews work they
19 normally do four ten hour days when it's possible if the
20 weather has not been bad and usually we don't have many crews
21 coming by on Friday. Typically they're in and out from about
22 5:30 till 7 o'clock Monday through Thursday, but Friday they
23 typically don't come by there unless there's just some special
24 job going on at a location.

25 Q Okay, so, it'd be fair to say it's a lot busier during

1 the other days of the week?

2 A Yes, sir.

3 Q Are you all pretty much Monday through Friday?

4 A Yes, sir.

5 Q You all are closed on Saturday and Sunday?

6 A Yes, sir, unless we have some sort of special job to do
7 at a plant or something.

8 Q Okay, and tell the jury specifically what do you all do
9 there?

10 A Okay, we are a licensed general contractor for North and
11 South Carolina. We build commercial buildings, do not do any
12 residential. We also do industrial work for companies such as
13 IP and the steel mill and ---

14 Q And then describe for the jury if you would your business
15 as far as what buildings or equipment is at your place of
16 business.

17 A Okay, we have a modular office that sits close to
18 Highmarket Street that houses the estimators and Mr. Moses and
19 the secretarial and bookkeeper staff and then behind that
20 building is a warehouse approximately a hundred feet and a
21 fenced in area where we keep tools and equipment that are not
22 out on the job site.

23 Q Okay, and what time do you typically get to work in the
24 mornings?

25 A I typically get there right at five o'clock.

1 Q Okay, and what's the purpose of getting there that early?

2 A Okay, our crews, well, first of all, I try to just get
3 everything in order for the coming day and our crews start
4 coming by there usually around 5:20 or 5:30 depending on the
5 location of the job to get ice, to pick up any kind of a hand
6 tool or a small piece of equipment or whatever that they may
7 need that day to perform the job they're doing.

8 Q Okay, so, from what time - generally on any given day
9 when do the crews start coming in and when is the last crew
10 out? Is there a kind of a pattern of things that go on there
11 or ---

12 A Yes, pretty much. Most every job the crew is expected to
13 be there at the job site by seven o'clock.

14 Q Okay, so, most of the time they've already been in your
15 place and out prior to seven o'clock I would guess if they've
16 got to be at the site at seven.

17 A That's exactly right. In other words, if they're working
18 say in Myrtle Beach they'll be by there about 5:30. If
19 they're working here in Georgetown they might be, you know, a
20 quarter to seven coming by.

21 Q Okay.

22 A But that pretty much ends, you know, by a quarter to
23 seven say they're all mostly on their way to the jobs.

24 Q And how long have you been getting there at five, 5:30 in
25 the mornings? Since you been working there?

1 A Ten years or so.

2 Q And are you usually the first one there?

3 A Yes, sir.

4 Q Who - when's the next time you see somebody else that may
5 be there, typically?

6 A Typically Harby is the next person to come and he's
7 usually there 5:20 to 5:30.

8 Q Okay, let me take you back to this particular day. When
9 you first got there on this Friday was there anybody else
10 there?

11 A No, there was no one else there.

12 Q Okay, and what did you do? Tell the jury what you did
13 when you got there.

14 A Unlocked the office, started the coffee, went and
15 unlocked the gate to the fenced in area at the warehouse and
16 unlocked the warehouse and then went back up to the office.

17 Q Okay, and when you say unlock that gate is that a gate -
18 is it a closed-in gate in the property? Can you describe that
19 for me?

20 A It's a chain-link fence, the same type gate and it's, you
21 know, we keep our big equipment, backhoes, that sort of thing
22 in that area.

23 Q Okay, let me, let me have you look at what's been
24 premarked as State's Exhibit One and let me keep it this way
25 for now. Let me have you look at it and tell me can you.

1 recognize what this is? Can you see it? I can see you've got
2 glasses on.

3 A No, I can see fine.

4 Q Okay, okay.

5 A Just got to see, get the lay of the land.

6 Q Well, just tell me first if you recognize what it is.

7 A Yes, I do.

8 Q And is that a fair and accurate description of the
9 property where you work and the surrounding area?

10 A Yes, it is.

11 Q Okay.

12 MR. ANDREW: At this time I'd like to publish it for
13 the jury.

14 THE COURT: Any objection?

15 MR. FOX: No objection, Your Honor.

16 THE COURT: Plaintiff's, State's Exhibit Number One
17 without objection.

18 (State's Exhibit Number One [Aerial Photograph] admitted
19 into evidence and appropriately marked.)

20 BY MR. ANDREW:

21 Q I think you can do it right there. I may need you to
22 step down, Mr. Thomas, if you would.

23 A Yes, sir.

24 Q But describe for the jury, would you, where your property
25 is.

1 A Okay, this would be the office building, and of course,
2 this is Highmarket Street or 521. This is the warehouse that
3 we - I mentioned earlier and this area is the fenced in area
4 where we keep equipment and supplies.

5 Q Okay, and would you tell the jury, please, where this
6 fence runs that's on this back property?

7 A The fence basically runs from right at the - it goes just
8 behind the building and then down this side, basically the
9 cleared area that you see is all fenced in.

10 Q Okay, and I'll ask you to speak up a little bit just so
11 everybody can hear you down there.

12 A Okay.

13 Q But describe, describe this area as far as is there any
14 fence there?

15 A The fence stops right, might go straight across from the
16 back of the building and this, this line, the fence stops
17 right along here and this is a wooded area.

18 Q Okay, and on this, on the morning back on January 18th,
19 2008, is this pretty much how the lay of the land was then?

20 A Yes, sir.

21 Q Okay, and I'm assuming you drove there?

22 A Yes, sir.

23 Q Where do you park your vehicle? Where did you park it
24 that morning more specifically?

25 A (Indicates on Exhibit One.)

1 Q Okay, and did you notice anything out of the ordinary
2 before Harby Moses got there?

3 A No, sir.

4 Q Okay, when did, when did something unusual happen?

5 A Okay, I had - as I had mentioned earlier I had been back
6 to the office, and Harby had came to work and he had parked,
7 which is typically right in this area behind the building.

8 Q Okay.

9 A There is, the entry steps to the back door is just a
10 little platform thing right here.

11 Q Okay.

12 A And I had been back to the warehouses, and as I came back
13 up and started up the steps I heard a voice.

14 Q Okay, did you know where that voice come from at that
15 point?

16 A It was in the proximity of Harby's truck and ---

17 Q Okay, and where was he in relation to where you all were
18 at?

19 A Okay, the truck was parked right here.

20 Q Okay.

21 A And the steps go right there, and I was starting up the
22 steps and probably there was a ten foot span between the steps
23 and the front of his vehicle.

24 Q Okay, what did you do when you heard the voice?

25 A The first thought came to my mind was one of our field

1 guys had came in while I was in the warehouse without me being
2 aware of it and I figured it was just one of the guys saying
3 something and I didn't understand what this person said and I
4 was right at the landing and I turned to see who it was
5 thinking it was one of our guys.

6 Q Did you see anybody?

7 A At that time I saw the gentleman who robbed us and ---

8 Q Where did you see him at?

9 A He was standing right in front of Harby's truck when I
10 saw him.

11 Q Okay.

12 A And ---

13 Q So, could you tell what direction he had come from?

14 Did you have any idea from the voice of where he was?

15 A Well, when I heard the voice and turned, like I say, he
16 was standing right in front of the truck.

17 Q Okay.

18 A And here using common sense I would assume that he came
19 from this direction.

20 Q Okay, but you didn't see him till he was right there.

21 A Did not see him until he spoke.

22 Q Okay, when you turned and saw him what did you notice?

23 A The first thing I saw that he was pretty much covered up
24 and he was carrying a gun.

25 Q Okay, and what did you do when you saw ---

1 A I was, like I say I was right at the door and I just
2 yanked the door open and ran in the building and yelled to
3 Harby that there was someone outside with a gun.

4 Q Okay, and what about the person you saw? Where did they
5 - what did they do?

6 A They followed me right in the building.

7 Q Okay, and what happened after that?

8 A Okay, Harby's office is the last office. There is the
9 door here and then there's a hallway that runs the length of
10 the building. His office is right here. I went through here
11 and down this hallway and by the time I got there and Harby
12 realized something was really going on, the robber was
13 standing in the doorway with a gun.

14 Q Okay, all right, and what - did he say anything else to
15 you at that time?

16 A He was yelling for us to get on the floor and ---

17 Q Did you recognize the voice?

18 A No, I did not.

19 Q Okay, did you comply with his order to get on the floor?

20 A Yeah, on the floor, both Harby and I. There was a desk
21 between us and Harby was on the floor right here and I was on
22 the floor right here and he was like probably four feet away
23 from us.

24 Q Okay, and did you have a chance to look at him?

25 A There's one of the things that he was saying was, "Lie on

1 the floor and don't look at me." He was yelling, "Don't look
2 at me."

3 Q But did you get a look at him?

4 A Briefly, mostly what you saw was the gun.

5 Q And I understand, yes, sir, but what did you - tell the
6 jury what you did recognize, if anything.

7 A Okay, he was pretty much totally covered. He had on a -
8 what I'd call a black or a dark colored toboggan hat, that may
9 be an outdated term, young people may have a different term
10 for it now, I'm not real sure, and his face, facial area was
11 covered in what I would call a kind of a dark grey neck scarf
12 that had just been wrapped around, and the only visible was
13 eyes and you could see just a little complexion underneath his
14 eyes to know that it was a black man and not a white man.

15 Q Okay.

16 A He had gloves on.

17 Q And I guess his voice or his - could you tell it was a
18 man?

19 A Well, from his physique and the sound of his voice I
20 would almost guarantee it was a man and not a woman.

21 Q Okay, and did you notice anything else about him? Notice
22 anything in particular about the gun or anything else about
23 what he was wearing?

24 A It was a - the gun was a - and I'm not a gun fancier, but
25 it was a single barrel some type of shotgun look like a large

1 gauge. It had some duct tape on it I remember and he was
2 holding it, was wearing gloves and they were a dark color,
3 dark blue or black and more of a dress glove as compared to a
4 work glove or a driving glove or something like that.

5 Q Okay, and ---

6 A And he had a, I'm sorry, and he had on a dark colored
7 coat jacket type, kind of like an old Army pea jacket.

8 Q Okay.

9 A Almost not quite olive in color but certainly darker than
10 what you see around town with these guys that work at the
11 steel mill, darker than that, also heavier weight than that.

12 Q Okay, and did he tell you what he wanted?

13 A Yes, he demanded that we give him our money.

14 Q Okay, and is there any money in the business as far as do
15 you all have any cash or something?

16 A We had a little petty cash box that probably most of the
17 time approximately would have 50 bucks in it.

18 Q Okay.

19 A But I mean, there's no real money. I don't think - at
20 any construction company everything is handled either by check
21 or electronically now.

22 Q Well, tell the jury how you felt at this point.

23 A Well, we were very scared, just felt like your life was
24 about to come to an end. He just ---

25 Q Is he pointing a gun at you?

1 A He was pointing the gun and he was holding it and Harby
2 was like that and he pointed the gun and he would point back
3 at me and point back and he just, you know, praying that he
4 wasn't going to, you know, shoot one of us.

5 Q Did you feel like you could get up if you wanted to?

6 A No, sir, we were doing - I was doing my best to do
7 everything he asked me to do.

8 Q Okay, and what did he ask you to do and what did you do
9 in response?

10 A Well, just to lie on the floor and gave him the money.

11 Q Okay, what money?

12 A I had approximately \$200.

13 Q And this is out of your wallet or your pocket?

14 A Yes, that's correct, yes. He asked - did not ask
15 anything about any company money.

16 Q And what did he do after he got the money?

17 A After he had gotten the money in hand he didn't
18 immediately leave. He stood in the doorway and kept pointing
19 the gun back and forth, and it seemed like a long time but in
20 reality it probably was a very short time. It was probably
21 just a few seconds and then he ran down the hall and we heard
22 the back door slam.

23 Q Okay, and did you and Mr. Moses get up at that point?

24 A Yes, we did and I went down the hall and locked the back
25 door and Mr. Moses called.

1 Q And when you say he went out this back door this is that
2 door where you - the same door that he went behind you entered
3 in?

4 A That's exactly right. This would be right here.

5 Q Entered in?

6 A Yes, that's correct.

7 Q Okay, so, you never walked outside to see ---

8 A No, sir.

9 Q --- where he went or ---

10 A No, sir; no, sir.

11 Q --- you never saw him once he left the premises?

12 A No, sir.

13 Q Is that correct?

14 A No, sir.

15 Q Okay.

16 A I was, you know, actually to be honest I was - would have
17 been - was too afraid to try to go outside ---

18 Q I understand, yes, sir.

19 A --- and follow him or whatever. I was thankful that it
20 had worked out the way it was and I was still alive, and you
21 know, you can always make more money.

22 Q Yes, sir, about what time did it take place as far as
23 when he first got to you? Do you remember if it was dark
24 outside still?

25 A It was, it was wintertime. Of course it was January and

1 it was before daylight savings time.

2 Q Okay.

3 A It was dark.

4 Q Okay.

5 A And it was about six, somewhere in the 6:15 range.

6 Q Okay, and do you remember what it was like by the time
7 he left? Do you remember about how long it took? I know you
8 said it seemed like a long time but actually do you remember
9 how long it took?

10 A I don't know the answer. It did seem like a long time
11 but it was probably, you know, in real life it probably wasn't
12 more than two or three minutes.

13 Q Okay, and did you all contact anybody to report this?

14 A Yes, Harby called 911.

15 Q Okay, how long was it from the time you called 911 until
16 the police getting here?

17 A I think it was about 10 or 12 minutes. They were very
18 prompt.

19 Q Okay, and you've never, you don't know Mr. John Jabbar
20 Greene; do you?

21 A No, sir, I do not.

22 Q And did you have any idea - do you remember how tall
23 this person was or anything like that?

24 A I tell you what, laying prone on the floor it's hard to
25 say. I would, you know ---

1 Q I understand. Yes, sir. That's fine. All right, if you
2 would have a seat.

3 A Yes, sir.

4 MR. ANDREW: The Court's indulgence once second.

5 BY MR. ANDREW:

6 Q Just the last question, Mr. Thomas, but you described the
7 gun a little bit. Do you remember if it was a full length
8 gun?

9 A It was, it was - appeared to be a sawed-off single barrel
10 shotgun.

11 Q Okay, shorter than the normal length shotgun?

12 A Yes, sir.

13 Q Okay, please answer any questions - well, one last
14 question. You didn't give that individual permission to go in
15 that office; did you?

16 A No, sir.

17 Q Okay.

18 A He didn't ask for permission, he just - he came in.

19 MR. ANDREW: All right, thank you. Please answer any
20 questions Mr. Fox has for you.

21 THE COURT: Thank you. Mr. Fox, cross examination.

22 MR. FOX: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. FOX:

25 Q Mr. Thomas, referring you back to State's Exhibit One and

1 if you would step down again?

2 A Yes, sir.

3 Q Now, you indicated before this is the business and you
4 described the warehouse and the fenced-in area, Highmarket
5 Street up here.

6 A Yes, sir.

7 Q Behind are these - are these railroad tracks?

8 A That is correct, yes, sir.

9 Q And that cuts across the back of the property somewhere?

10 A Yes, it is behind the property.

11 Q And you see below that what appear to be some houses on
12 the opposite side of the railroad track.

13 A Yes, sir.

14 Q Okay, are you familiar with, generally with this area
15 back behind?

16 A No, sir, not really.

17 Q Do you know what's back there?

18 A I know there's a church back there because I can see the
19 steeple from our warehouse area but ---

20 Q Are there - do you know if there are more houses than
21 these three or four that you see?

22 A I believe there is.

23 Q Okay, in other words if you went up we see the road, you
24 see Highmarket and then across the top and down here it's been
25 labeled Amelia Drive runs parallel to the railroad tracks and

1 roughly Highmarket, if we continued what would be kind of off
2 the picture as you're looking out to the left, went up to the
3 left are there more houses in what would be this area to the
4 left of this picture?

5 A I can't answer that. I'm sorry.

6 Q Okay, now, this area immediately again as we look at the
7 picture to the left of your business what's this right in
8 here?

9 A That's just a large wooded area and there is a path that
10 runs up through here, that residence back here used to come
11 and go down to the Winyah One Stop or the Jane's convenience
12 store whatever.

13 Q Does this appear to be that path right there? It's
14 visible.

15 A It possibly could be. I mean, it's hard to say but it is
16 - it runs, comes out at the railroad track and runs all the
17 way up and it's been - the path was there before we ever moved
18 out there.

19 Q In other words, it's been worn down from so many people -
20 --

21 A Yes, sir.

22 Q --- walking on it. It's fairly dense through here, isn't
23 it, this path itself?

24 A The path is open but the trees, branches from the trees
25 cover the path pretty much.

1 Q And if you step more than a foot or two feet off the path
2 there's a lot of underbrush and brambles and low bushes and
3 that sort of thing; isn't there?

4 A Yes, there is, yes, sir.

5 Q Okay, be kind of difficult to get through there?

6 A There's some areas that probably is not as dense as
7 others, but, yes, if you get off the path much you get into
8 some pretty heavy overgrowth.

9 Q Is that - if I understood the fence that you have around
10 the back of your property, I say your property, this business
11 property, that doesn't go all the way up.

12 A No, sir, it does not.

13 Q Is that partly because it's kind of dense and a mess to
14 get through there?

15 A Well, in other words we have fenced this for security to
16 keep equipment and supplies in and in other words most of this
17 fence was on the property when Mr. Moses purchased it from the
18 old Creel Oil Company. So, we never had a need to extend it
19 on to the road.

20 Q You actually see people down there, excuse me for jumping
21 around, you say there's this path that goes through the woods
22 on the side of the property. Do you see people walking back
23 and forth?

24 A Yes, sir; yes, sir.

25 Q Okay, pretty much all day and all times of the day?

1 A Yes, sir, yes, sir. I don't know about night, but during
2 the day, yes.

3 Q When you're - during the hours that you're there.

4 A Yes, that's correct.

5 Q And lots of debris and trash and just kind of junk thrown
6 through there, wrappers and cans, that sort of thing?

7 A Some.

8 Q Okay, that's all the questions I have about that. You
9 can sit again.

10 Now, did you - once this person came in, had a gun,
11 demanded that you and Mr. Moses lay down, did you lay face
12 down?

13 A I laid more on my right side.

14 Q Okay, kind of on the side of your face?

15 A Yes.

16 Q Okay, now, did he reach - did you have your wallet in
17 your pocket?

18 A Yes.

19 Q In your back pocket, your hip pocket?

20 A Yes, sir.

21 Q Okay, did he reach in and grab it or did you take it out?

22 A I took it out.

23 Q Okay, did you give him your entire wallet?

24 A No, sir, I gave him the cash in it. I opened the wallet
25 where he could see what cash I had and I just took the cash

1 out because he didn't ask for the wallet, he asked for the
2 cash.

3 Q Okay.

4 A And I took the money I had and I, and I can't tell you
5 whether I handed it to him or whether I threw it on the floor.
6 I do not know.

7 Q Okay, but did you find your wallet after he had left?

8 A Pardon?

9 Q Were you able to find your wallet after the robber left?

10 A Oh, yes, yes.

11 Q Okay, do you know or could you see what Mr. Moses did?
12 Did he hand over his entire wallet or just the cash?

13 A Yes, he did.

14 Q The entire wallet?

15 A Yes, sir.

16 Q Okay, and you estimated it was ten minutes or so before
17 the police arrived?

18 A Yes, sir.

19 Q Okay, and he - from the time that this robber came up to
20 you outside till the time he left was three or four minutes?
21 Is that fair?

22 A I would think so, yes, sir.

23 Q Okay, okay, so, by the time the police arrive it's been
24 maybe 15 minutes from beginning to the arrival of the police?

25 A Yes, sir, that would probably be an approximate time I

1 would think.

2 Q Sure, now, do you recall how many officers arrived, came
3 to the scene?

4 A I can't tell you the number of officers but we understood
5 it was right at the shift change at the Sheriff's Department
6 and I believe there were 14 cars that came.

7 Q Okay, where - when they came where did they pull up
8 generally? They all pull up in the same area or different
9 areas?

10 A I believe there were two, either two or three cars that
11 arrived first. They came right in front of the building and
12 as the others were coming of course we were being questioned
13 by one of the sheriff's deputies and, you know, once we
14 finished that then there were cars in the front yard, cars,
15 you know, around toward the back, some parked across the
16 street.

17 Q Okay, were there any back around where Mr. Moses's car
18 was in that general area?

19 A I don't believe so.

20 Q Okay, but around, you say around towards the back like on
21 the side?

22 A On the side, yes, sir.

23 Q Okay, did you remain inside the building?

24 A I did.

25 Q Did they ever ask you to step back out and show them

1 where the robber had approached you?

2 A No, sir.

3 Q Okay, and you were able to see just the eyes more or less
4 visible on this person; is that correct?

5 A Yes, that's correct.

6 Q Okay, because the head was covered, hands had gloves on?

7 A Yes, sir.

8 Q Okay, not just dark skin, but had gloves.

9 A Gloves.

10 Q And was - how was he - was he holding - how was he
11 holding the gun?

12 A In his right, in his right hand or arm.

13 Q Okay.

14 A With, you know, the butt of it like against that as well
15 as I can remember.

16 Q All right, okay, in other words he's - like you would
17 normally hold any kind of firearm he was bracing the barrel or
18 the stock and has got the butt end back against his body; is
19 that fair to say?

20 A Except mostly he was holding it with one hand.

21 Q Okay, how high is that fence roughly that runs around the
22 back of there?

23 A It's typical chain link fence. I think it's six feet
24 high.

25 Q Okay, anything on top, barbed wire, anything to make it a

1 little higher?

2 A There are certain areas that has some barb - three
3 strands of barb wire, but I don't believe it goes all the way
4 around.

5 Q Okay, do you know roughly what area that is where the
6 barb wire is?

7 A Mostly across the front of the - or the area that would
8 face the back of the building.

9 Q Okay, the area closest to the building?

10 A Yes.

11 Q Okay, are you aware of any holes or gaps in that fence?
12 I realize it doesn't go all the way around but are there any
13 gaps or holes that you're aware of in the fence?

14 A No, sir.

15 Q Okay. Thank you. That's all the questions I have.

16 THE COURT: Redirect.

17 MR. ANDREW: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. ANDREW:

20 Q Mr. Thomas, you said you had been going there 10 years
21 from about 5 to 7 in the morning. Have you - do you, do you
22 typically notice a bunch of people walking in that path during
23 that time between five and seven?

24 A No, sir, it's usually later in the day.

25 Q Okay, on the particular date in question, the day this

1 incident took place, did you notice anybody walking that path
2 from the time you first got there till this incident took
3 place?

4 A No, I did not. Actually, and from standing on our
5 property looking into that wooded area you cannot see the
6 path.

7 Q Okay, how far - you can just see where the wood line is,
8 you know, again ---

9 A Yes, in other words, our property goes right up to the
10 wood line but the path itself is another, depending on how far
11 away from the property, anywhere from 10 to 20 feet over into
12 the wooded area.

13 Q Okay, thank you.

14 MR. ANDREW: No further questions, Your Honor.

15 THE COURT: Thank you. You may step down. Thank
16 you.

17 A Thank you, sir.

18 MR. ANDREW: The State calls Harby Moses.

19 THE COURT: Mr. Moses, come forward.

20 Whereupon, Harby Moses was called to the stand, duly
21 sworn by the clerk and testified as follows:

22 THE CLERK: Please be seated and state your name for
23 the record and spell your first name.

24 MR. MOSES: Harby Moses, Jr. It's H-A-R-B-Y.

25 DIRECT EXAMINATION

1 BY MR. ANDREW:

2 Q Mr. Moses, you were in the courtroom when Mr. Thomas was
3 testifying; is that correct?

4 A Yeah.

5 Q Tell the jury briefly how long you've owned this
6 business here, Coastal Structures.

7 A Well, I've owned the business for about 19 years. We've
8 been in this location for about 11 years, yeah, I think that's
9 about right.

10 Q Okay, and are you the owner of this business?

11 A I am.

12 Q And you heard me talk with Mr. Thomas about the
13 activities that you all go through in the morning. Explain to
14 the jury what your typical morning is like at Coastal
15 Structures.

16 A Well, it - I started some years ago going in. I've got
17 two children and, you know, I would try to get home at a
18 reasonable time. So, I would get up early in the morning and
19 go. So, I'd get up at five and go in and I'm usually at the
20 office anywhere between 5:15 and 5:30 Monday through Friday.
21 Walt is normally the first person there and then we have
22 several crews, five, six crews. It just depends.

23 Q And they're coming to pick up supplies.

24 A They're coming, you know, we have all different types of
25 tools. We have an ice machine, plus they may just come by.

1 Part of the reason I go in early is that I can be there when
2 they come in if they have questions about what's going on on a
3 particular job or we're wanting to shift somebody from here to
4 another job and those types of things we can get a lot of that
5 stuff worked out the first thing in the morning and they're
6 not waiting on me to get in or that type of thing.

7 Q Is there a noticeable difference in the activity between
8 Monday and Thursday and Friday?

9 A Absolutely. I mean, Friday is normally just Walt and I
10 there, and that's probably 90 percent of the time.

11 Q And did that hold true on this particular Friday
12 morning?

13 A Yes, it did.

14 Q January 18th, 2008?

15 A Yes.

16 Q Do you remember about what time you got there?

17 A It was probably around 5:20.

18 Q Okay, and was Mr. Thomas already there?

19 A Yes, he was.

20 Q Okay, and what did you do once you got there?

21 A Well, normally I come in and I'll get a cup of coffee
22 and usually until about six o'clock I'll read the newspaper,
23 read e-mails, just kind of work on the computer and normally
24 is reading the news and those types of things.

25 Q Do you do that in your office?

1 A I do that in my office, right.

2 Q Okay, and did you - what's been previously marked
3 Exhibit One you recognize what that is a photo of?

4 A Yes, and what Walt says is right. If you walk in - I,
5 you know, I always park in the back. Part of the reason is I
6 go up there because it's early in the morning there's not a
7 lot of people coming in and out. If I park in the front I
8 have subs, I have other people that ride by the office. If
9 they see I'm there then they, they'll come in, that type of
10 thing. So, I found out early on it was best just to park in
11 the back and from the front of the building you can't tell
12 that anybody is there.

13 Q Okay, and I believe Mr. Thomas testified you pretty much
14 park right at the back door?

15 A I do.

16 Q And when you got out that morning did you go straight
17 from your truck into the building?

18 A I did.

19 Q And into your office?

20 A Yes.

21 Q Okay, tell the jury when you first realized something
22 was going wrong that morning.

23 A Well, what Walt would normally do is I would get there.
24 I mean, he goes in in the morning and he'll start the coffee
25 and he'll clean up, kind of straighten up the office and that

1 type of thing, get the trash out, trashcans and those things
2 until I get there and then once I get there a lot of times he
3 would go out to the warehouse and do a few things and, you
4 know, be back and forth and I had come in and gotten a cup of
5 coffee and I was sitting there and I was reading some stuff on
6 the news on the computer and ---

7 Q Do you remember about how long you had been there before
8 you heard anything abnormal?

9 A It wasn't very long. I don't - I think I was still on
10 my first cup of coffee. So, it wasn't too long.

11 Q Okay.

12 A And you know, I was sitting back there and it's early in
13 the morning, and again, it was a Friday morning and you just
14 really don't expect anything to be going on, and I heard
15 hollering and, you know, I was kind of in a daze like, "What
16 in the world is Walt saying," and I - and ---

17 Q Did you recognize Walt?

18 A And I knew it was Walt and I ---

19 Q Excuse me, could you make out what he was saying?

20 A At the first time, no, and the second time I heard, "He's
21 got a gun, he's got a gun," and you could hear the fear in
22 Walt's voice, and I have two desks in my office, one that has
23 my computer on it and then my regular desk and the door is
24 kind of in front of me, and I stood up and as soon as I stood
25 up Walt came running in the office and behind him was a man

1 with a gun and he was just hollering at us to, "Get on the
2 floor, get on the floor."

3 Q The man with the gun.

4 A The man with the gun. So, as Walt ---

5 Q Let me ask you to stop just for a minute. Did you
6 recognize the voice?

7 A No.

8 Q Okay.

9 A No.

10 Q All right, what, what did you notice about the
11 individual at that time?

12 A Well, he was - well, I really didn't notice a whole lot
13 of anything. I, I - other than he had a gun and I got on the
14 floor like he was saying, and I was on one side of the desk
15 and Walt was on the other. We couldn't see each other.

16 Q Okay.

17 A But I was, as Walt said, I was laying on one side and I
18 was looking at the person and, you know, the biggest thing you
19 see is a gun.

20 Q Yes, did you recognize - could you describe the gun?

21 A Yeah, I mean, if I could describe anything it would, it
22 would be the gun, you know, it was a - I hunt and it was a
23 sawed-off shotgun. It looked like it was probably a 12 gauge.
24 I don't know that for sure, but I remember it was a short gun
25 and I remember sort of what the stock looked like and I

1 remember there was duct tape on it. I'm not sure why the duct
2 tape stuck out, but I remember that there was some of that on
3 there.

4 Q Do you remember what portion of the gun the duct tape
5 was on?

6 A It seemed like it was on the butt of it, but again ---

7 Q And I'm sorry you may have said, but do you remember how
8 many barrels were on the gun?

9 A It was a single shot gun.

10 Q Okay, all right, what did you do - well, did you notice
11 anything else about the individual?

12 A Well, I noticed he had gloves on. You know, of course
13 we noticed, I noticed he was wrapped up. I didn't pick up as
14 much as Walt did as far as what was on - he was wearing as a
15 hat. I do remember the scarf or something like a scarf around
16 his head, but probably the most interesting thing was that it
17 was a single barrel shotgun and that his gloves were almost
18 like a dress glove and it didn't look like, you know, when you
19 hunt, you know, and you're thinking of a gun you're thinking
20 of some hunting gloves or shooting gloves or something like
21 that. I mean, these were, you know, like something - I don't
22 know, a dress type glove.

23 Q Okay, could you tell if he was a man or a woman?

24 A From the - from his voice he was a man.

25 Q Okay, could you tell if he was black or white?

1 A You could see some complexion under where his face was
2 wrapped up and tell he was black.

3 Q Okay, and, all right, what did you do next after he told
4 you to get on the floor or after you were on the floor?

5 Q Well, he told us to get on the floor and he was
6 hollering to give him our money and unfortunately I didn't
7 think quite as quick as Walt did because I just pulled my
8 wallet out and threw it to him or threw it on the floor near
9 him, and I assumed Walt did the same thing. I didn't know
10 what he did, but, you know, he leaned down and picked them up
11 and I figured it was going to be over with. It was - it was
12 one of those things that was happening so fast that you really
13 didn't have time to get real scared. You just, you know, said
14 do this and you did it and - but the worst part was we gave
15 him the stuff and as Walt was describing he stood there and he
16 just kept pointing the gun back and forth between the two of
17 us and I had enough time I watched him do it a couple of times
18 and I thought to myself, "I'm going to die," and I turned my
19 head to the floor because I didn't want to see the flash of
20 the gun, and you know, I've got two daughters and I said, "You
21 know, I'm just - I'm not going to see them again."

22 Q Okay.

23 A And then, you know, it was probably seconds, I don't know
24 how much time, I turned around and he was gone and then I
25 looked up over the desk and I saw Walt and asked him if he was

1 okay, you know, we were both pretty shook up.

2 Q Did you hear him leave the building?

3 A No.

4 Q Okay, would it be fair to say you didn't give him
5 permission to come in the building?

6 A No.

7 Q And he took the wallet that you threw up there, at least
8 what was in it?

9 A Correct.

10 Q And did you feel like you could get up and move if you
11 wanted to ---

12 A No.

13 Q --- when he had you down on the floor?

14 A No.

15 Q Okay, what did you do after you noticed he was gone and
16 after you talked to Walt and found out he was okay?

17 A I got up and went down the hall and Walt, actually both
18 of us got up and went down the hall and Walt locked the back
19 door and I went to the front office and dialed 911 and then,
20 you know, I had - there was a woman on the 911 call and I told
21 her what was going on and I'm - she asked me several questions
22 and ---

23 Q And you told her pretty much what you're telling me
24 today?

25 A I told her that we had been held up at gunpoint and

1 where we were and those types of things and she asked me to
2 hang on and the next thing I knew she was actually talking to
3 me and an officer in his car and there were two cars that came
4 in the front and one, as I recall, went on by, I guess to go
5 and get on the other road. I don't know.

6 Q Okay, and how long was it before the officers got there?

7 A I would say less than 15 minutes.

8 Q Okay, and when you were talking to the officers and
9 relaying what you told us here today, were you in the building
10 the entire time?

11 A Yes.

12 Q Okay, so, you didn't see what all the officers were
13 doing while they were taking your statements and everything?

14 A No, no.

15 Q All right.

16 A I know as Walt said there were a bunch of them there
17 and, you know, the rest of the crew or and I say the crews,
18 the rest of the office staff starts coming in at 7:30 and by
19 the time they were coming in the entire front parking lot was
20 full of deputy, sheriff deputies' cars or police cars, and of
21 course ---

22 Q This was about 7:30?

23 A That's right, and I did think to try to call some of
24 them because they were going to be, you know, scared to death
25 when they drove up and they saw all this going on in the

1 front.

2 Q Yes, sir; yes, sir, I can understand that.

3 A We were actually asked to stay in the front office. We
4 never went back to my office. We never went back down the
5 hall. We were asked - I sat at the secretary's desk in the
6 front the, for the rest of the morning.

7 Q Okay, and you never recovered your wallet.

8 A No, I didn't.

9 MR. ANDREW: The Court's indulgence, Your Honor.

10 THE COURT: Yes, sir.

11 MR. ANDREW: No further questions for this witness,
12 Your Honor. Please answer any questions Mr. Fox has for
13 you.

14 THE COURT: All right, sir, Mr. Fox.

15 MR. FOX: Thank you, Your Honor.

16 THE COURT: For the Defense.

17 CROSS EXAMINATION

18 BY MR. FOX:

19 Q Mr. Moses, can you describe your wallet generally, the
20 color?

21 A Yeah, it was a leather Coach wallet.

22 Q Okay.

23 A I had just gotten it for Christmas from my wife and
24 children.

25 Q Okay, so, it wasn't all broken in and creased too much

1 yet. Was it bi-fold or a tri-fold?

2 A Uh-huh, bi-fold.

3 Q Bi-fold. So, it just folds in half.

4 A Uh-huh.

5 Q Okay, black, brown?

6 A Brown.

7 Q Okay, do you recall what else you had, what types of
8 things you had in it other than cash?

9 A Some credit cards, driver's license. There was a gift
10 certificate I had just received from my office, things like
11 that, hunting license.

12 Q Okay, you indicated the wallet itself was never
13 recovered?

14 A No.

15 Q Or returned, the police didn't indicate that they had
16 found it but needed to hold it for evidence for this trial;
17 did they?

18 A No.

19 Q Okay, and didn't find driver's license or any of your
20 credit card or license or any of that kind of things?

21 A No.

22 Q Could not tell, if I understand correctly, were able to
23 see that this fellow had a gun, shotgun.

24 A Uh-huh.

25 Q Had gloves on, both hands?

1 A Yes.

2 Q Okay, not sure about - was his head - you mentioned the
3 scarf. Was his head covered, the top of his head?

4 A I don't recall seeing hair.

5 Q Okay.

6 A So, I would say yes.

7 Q And all that you could see of skin was around the eyes;
8 correct?

9 A That's correct.

10 Q Okay, so, whatever he had on the head he must have had
11 pulled. Did it have any kind of bill or brim that you recall?

12 A No.

13 Q Okay, any description of the jacket or coat he had on?

14 A I just - my recollection of it was that it was just a
15 green or olive green type color and that's about all I can
16 tell you.

17 Q Okay, longer, short, cut at the waist, long coat?

18 A I would say to the waist. Everything he had on was
19 dark.

20 Q Okay, but it wasn't like a military style or anything of
21 that nature?

22 A No, not that I recall.

23 Q Did you get any chance to see what kind of shoes he was
24 wearing?

25 A Didn't look.

1 Q Okay, or you indicated dark clothing, dark pants,
2 whatever he would have had on the lower part of his body also
3 dark?

4 A Yes.

5 Q Okay, were you able to tell about the color of his
6 shoes, if you couldn't type of shoes, were they also dark or
7 didn't stand out as being a lighter color than the rest of
8 what he was wearing?

9 A I couldn't say for sure.

10 Q And if I understand you did not hear him leave?

11 A No.

12 Q Okay.

13 MR. FOX: One moment, Your Honor.

14 THE COURT: Yes, sir.

15 MR. FOX: Okay, thank you. I have no further
16 questions.

17 THE COURT: Okay, any redirect.

18 MR. ANDREW: That's all I have of this witness, Your
19 Honor.

20 THE COURT: All right, thank you. You may step down.

21 MR. ANDREW: Dustin Morris.

22 THE COURT: Hold on. I think this is probably a good
23 time to take a break.

24 MR. ANDREW: Okay.

25 THE COURT: Ladies and gentlemen, we will take a 15-

1 minutes recess and you'll come back with the testimony. As
2 again I've told you do not discuss this matter until I've
3 charged you, too. Thank you. You may take them to the jury
4 room.

5 There's a vehicle outside of the courtroom CWW285, a
6 Hyundai, the alarm is going off. That's not one of you all's;
7 is it?

8 JUROR: But before lunch it started to go off.

9 THE COURT: Excuse me?

10 JUROR: They cut it off since lunch, before lunch.

11 THE COURT: That's yours?

12 JUROR: No.

13 THE COURT: Okay, all right, thank you. Just wanted
14 to make sure it wasn't one of yours.

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

17 THE COURT: All right, thank you. Court will be in
18 recess for 15 minutes.

19 OFF THE RECORD

20 (On the record.)

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

23 MR. ANDREW: May we approach, Your Honor.

24 THE COURT: Certainly.

25 (Whereupon, a bench conference was held.)

1 OFF THE RECORD

2 (On the record.)

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

5 THE COURT: All right, bring the jury back.

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

7 THE COURT: Ladies and gentlemen of the jury, I'm
8 sorry we didn't get you right back here on time but we had to
9 take up a little issue before we bring you back and I'm sure
10 you all didn't mind the extra 10 minutes in your jury room
11 there. All right, are we ready to proceed, State?

12 MR. ANDREW: The State's ready, Your Honor.

13 THE COURT: All right, call your next witness.

14 MR. FOX: Yes, Your Honor.

15 MR. ANDREW: The State calls Dustin Morris.

16 Whereupon, Dustin Morris was called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Thank you. Please be seated and state
19 your full name for the record.

20 MR. MORRIS: My name is Dustin Morris.

21 DIRECT EXAMINATION

22 BY MR. ANDREW:

23 Q Sergeant Morris?

24 A Senior Investigator.

25 Q Senior Investigator Morris.

1 A The same, same rank, yes.

2 Q Tell the jury where you're employed.

3 A I'm sorry?

4 Q Tell the jury where you're employed.

5 A I'm employed with the Georgetown County Sheriff's Office.

6 Q And how long have you been employed there?

7 A Approximately four years.

8 Q Okay, and how long you been with law enforcement?

9 A Almost 14 years, previous to that I was with the
10 Georgetown City Police Department.

11 Q Okay, and did you - were you employed back in the
12 Sheriff's Office back on January 18th, 2008?

13 A Yes, sir.

14 Q Did you have a chance to work a case concerning an armed
15 robbery that occurred at Coastal Structures?

16 A Yes, I did.

17 Q Okay, I'm going to show you what's been marked as State's
18 Exhibit One. I want you to take a look at this and you can
19 step down if you need to. I just ask you to speak up so that
20 the court reporter can hear you. Could you stand on the other
21 side so you're facing her, please?

22 THE COURT: Yeah, get that microphone a little closer
23 to it so we don't lose anything on the record.

24 Q Do you recognize that scene? Take a minute to orient
25 yourself.

1 A Yes, I do.

2 Q Okay, do you recognize that as being Coastal Structures
3 up by Highmarket Street?

4 A Yes, sir, I do.

5 Q Okay, and is that the area where you worked on January
6 18th, 2008?

7 A Yes, sir.

8 Q Okay, and do you remember when you responded there?

9 A Yes.

10 Q About what time did you respond to that area?

11 A Approximately 6:15 AM.

12 Q Okay, and is there any particular reason why you remember
13 that?

14 A Well, it was our first day back on our four day cycle.

15 We were having shift briefing when the call came out.

16 Q Okay, and were you one of the first officers to respond?

17 A Yes, sir.

18 Q Okay, did you take control of the scene?

19 A Yes, I did.

20 Q Okay, and explain to the jury what you did by taking
21 control of the scene as far as protecting the integrity of the
22 scene.

23 A As the shift supervisor I instructed my subordinates to
24 do a canvas of the area to spread out where they could do a
25 perimeter, set up a perimeter. I responded to the scene with

1 Deputy Drayton. He obtained the information from the victims
2 in the case. He related the information to me. Once he did
3 that I notified my watch commander and the decision was made
4 to notify the bloodhound tracking team.

5 Q Okay, and how long was that done - how long were you
6 there before you all made that decision or you and your watch
7 commander?

8 A It had probably been 10 minutes at the most. I would've
9 notified him immediately of what I had.

10 Q Okay, and when you say your officers set up a perimeter,
11 were they confined to any specific areas?

12 A I instructed my officers to - I had officers east of the
13 crime scene on Highmarket Street, west of the crime scene back
14 here on Graves Station Road. It would have been two, at least
15 two units on that area as well.

16 Q Okay, so, there were units, if I understand your
17 testimony correctly there was units pretty much around the
18 scene, pretty much within 30 minutes or so once the crime was
19 reported?

20 A Yeah, the unique thing about that day the shift that we
21 were relieving were still out. So, we utilized a couple of
22 those units to assist in the - it was a pretty wide area. So,
23 we had them assist us with the perimeter and containing that
24 area. Just to explain a little bit about perimeter, it's -
25 you get a lot of officers, you know, in the area you box it

1 in. That way you can contain what's inside that and nobody
2 can get out and nobody can get in.

3 Q And is that especially important when it's a fresh crime
4 as this one was?

5 A Absolutely.

6 Q Okay, and do you know if your officers ever spotted
7 anybody that might be a suspect once they were stationed on
8 the perimeter?

9 A No, not to my knowledge.

10 Q Okay, and did you have an opportunity to view this area,
11 this wooded area that is along the side of the property?

12 A I did not.

13 Q Okay, but you didn't - well, you didn't observe it, okay,
14 and I'm sorry I may have asked you already but how long was it
15 before the bloodhound tracking team got there?

16 A I really, I don't recall how long it took. I know it was
17 within the hour.

18 Q Okay, okay.

19 A It was just a matter of logistics where people live and
20 stuff, you know, I'm trying to get them there.

21 Q Had you all developed a theory about where the suspect
22 may have exited at this point?

23 A Yes, based on what I was told by Deputy Drayton the
24 suspect would have ran in a, I assume this would be like a
25 south fashion from the rear of the building.

1 Q From the rear of the building, okay. Okay, please have a
2 seat, and I don't know if I've introduced this into evidence
3 but I'll ask it be introduced. I know I've published it at
4 one point.

5 THE COURT: You talking about the aerial photograph?

6 MR. ANDREW: Photo.

7 THE COURT: That was State's Exhibit Number one.

8 MR. ANDREW: Okay. I couldn't remember if I had put it
9 into evidence. Thank you, Your Honor.

10 THE COURT: You did.

11 BY MR. ANDREW:

12 Q And is that all the involvement you had with the case at
13 that point?

14 A Basically I stood by the north side of the business and
15 made sure that when officers arrived the bloodhound tracking
16 team, SWAT team command staff my involvement was to let them
17 know exactly what we had and make sure nobody outside of law
18 enforcement got in that scene.

19 Q Okay, and nobody outside of law enforcement was allowed
20 on that scene after that?

21 A No, sir.

22 Q Okay, please answer any questions that Mr. Fox may have
23 for you.

24 THE COURT: Mr. Fox for the Defense?

25 MR. FOX: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. FOX:

3 Q Investigator, referring back to State's Exhibit One? Can
4 you see sufficiently from there?

5 A No, I'd have to stand up.

6 Q Would you step back where you were before?

7 A Okay.

8 Q I just was unable to see. So, you indicated you put a
9 perimeter around. Where again were your officers roughly?

10 A Officers would have been east of the business, west of
11 the business on Highmarket Street and we would have officers
12 up, down on Graves Station Road which is also known as Amelia
13 Drive.

14 Q And Amelia Drive actually runs roughly parallel to
15 Highmarket and then maybe a quarter of a mile as you turn off
16 into this neighborhood.

17 A Yes, sir, it comes out to a stop sign up in this area and
18 that's Graves Station that runs into Highmarket Street.

19 Q And there are, in fact, a number of - a little
20 neighborhood back here?

21 A Yes, sir, sure is.

22 Q A couple of dozen, maybe there's a few homes back, more
23 than what you see on this map; is that correct?

24 A Yes, sir.

25 Q Any officers in the woods around?

1 A No, we sealed that off until the bloodhound tracking team
2 arrived not to disturb any evidence.

3 Q Okay, so, no officers went through there before the
4 bloodhounds?

5 A No, sir.

6 Q And I know the officer who had the hound he will be here
7 to testify but from your knowledge how many officers would go
8 with the dog; do you know?

9 A Two to three and then we'd have a couple of SWAT team
10 members trailing behind.

11 Q Okay, they kind of, kind of sort of fan out?

12 A I think they stay in a close proximity to each other.

13 Q Okay, so, they're responsible for going wherever it is
14 they go in looking for evidence along the way; is that right?

15 A Yes, sir.

16 Q Okay, at any time then do other officers go back behind
17 and search through those woods or in this neighborhood?

18 A If, if some sufficient evidence is located or relevant
19 evidence they would radio to the other officers such as
20 investigators to come in to secure that item of evidence.

21 Q Do you know if that was done? It would only be done if
22 they - if something was found; is that right?

23 A Yes, sir.

24 Q Okay, in other words they wouldn't go out sort of a
25 search team on their own.

1 A No.

2 Q Where did you - you say your involvement you were the
3 first on the scene and kind of set up the canvas and kind of
4 set up the perimeter, contacted the commander and decided to
5 bring in the dog, the bloodhound. That pretty much ended your
6 involvement?

7 A Yes, sir.

8 Q Okay, how long did you stay on the scene?

9 A I stayed till approximately 9:30 a.m. till the -
10 everything was done.

11 Q Okay, where were you during that time?

12 A I was here, up in this parking lot right here.

13 Q Okay, cars, officers, patrol cars all up in front?

14 A As a matter of a fact we had patrol cars there to block
15 anyone from getting out.

16 Q Anything behind that you know of?

17 A Not that I know of.

18 Q And the only information you had was from Deputy Drayton
19 was that the suspect came out the back of the building and
20 from there anybody's guess.

21 A Exactly, yes.

22 Q Okay, and so, there was at least, didn't you say it was
23 from the time you got there until the dog team got there about
24 an hour; is that right?

25 A Give or take. I don't have the ---

1 Q Okay, how long to get your officers in place around the
2 scene?

3 A While we were in route upon, you know, when we got on the
4 scene I would have be - coordinate that immediately.

5 Q So, you were there 15 minutes or so after the actual
6 robbery?

7 A Ten, 15 minutes.

8 Q Okay, and another few minutes, okay. What's on the other
9 side of Highmarket?

10 A This road is Nu-Shell. There's also a Green Town Road
11 over in that area.

12 Q Okay, residential stuff up along in here?

13 A Yes, sir.

14 Q And Highmarket, Georgetown back over your shoulder?

15 A Yes.

16 Q Okay, thank you. That's all I have.

17 THE COURT: Any redirect?

18 MR. ANDREW: Nothing, no redirect, Your Honor.

19 THE COURT: Okay, thank you. You may step down.

20 MR. ANDREW: And Your Honor, I'd just ask that this
21 witness be excused from his subpoena and get back to his
22 duties.

23 THE COURT: Any objection, Mr. Fox?

24 MR. FOX: No, Your Honor.

25 THE COURT: Thank you. This witness is excused.

1 Thank you.

2 MR. ANDREW: Your Honor, we'd call John Seale.

3 THE COURT: All right. Mr. Seale, come forward.

4 Whereupon, John Seale was called to the stand, duly sworn
5 by the clerk and testified as follows:

6 THE CLERK: Thank you. Please be seated, state your
7 name for the record, spelling your last name.

8 MR. SEALE: Deputy John Seale, S-E-A-L-E.

9 DIRECT EXAMINATION

10 BY MR. ANDREW:

11 Q Deputy Seale, where are you employed?

12 A Georgetown County - excuse me, Georgetown County
13 Sheriff's Office.

14 Q Okay, how long have you been - tell the jury how long
15 you've been employed with the Sheriff's Office.

16 A A little over four years.

17 Q Okay, and did you do any law enforcement prior to that
18 time?

19 A No, sir.

20 Q Okay, and specifically what is your title there at the
21 Sheriff's Office?

22 A I'm a regular patrol deputy but I'm also in charge of the
23 bloodhound tracking team.

24 Q Okay, and kind of explain if you would what the purpose
25 of a bloodhound tracking team is?

1 A The bloodhounds are used to assist surrounding counties
2 and our agency in locating missing subjects, lost children,
3 suspects or possible suspects that are - flee and to locate
4 evidence.

5 Q Okay, and does this require you to garner any special
6 training in order to do this?

7 A Yes, sir, I have attended a couple of classes and the
8 bloodhound that I use is also a - she's also been certified.

9 Q Okay, and specifically what are you trained to do at
10 these classes and where does this training take place?

11 A The first class I attended was at Aiken Bloodhound School
12 which is in Aiken, South Carolina. It's the only tracking
13 school that is honored by the South Carolina Criminal Justice
14 Academy. It's the only, only tracking class and bloodhound
15 class that they accept in their program and I've - excuse me,
16 I've also attended the national police dog working - North
17 American, excuse me, North American Police Dog, Working Police
18 Dog Association workshop in Charleston and that's also a
19 weeklong class and Flo, which is the bloodhound that I
20 primarily use, was certified through their program, which is
21 to get certified you have to track a hour and a half old trail
22 a mile and a half long and at the time she was only one of two
23 bloodhounds in the state that met that criteria.

24 Q And how long have you been working with the bloodhound,
25 Flo?

1 A A little over three years.

2 Q Did Flo have any - was she ever used for that purpose
3 prior to you handling her?

4 A Yes, she was.

5 Q Okay, do you know how long she was trained before you got
6 her?

7 A She's six years old and I believe through the training
8 records she was trained about two years prior. From the
9 trainer records she was started in 2003, 2004, and then there
10 was a break where the tracking team went dormant for a while
11 and then it started back up about three years ago.

12 Q Okay, and you've had Flo since then?

13 A Yes, sir.

14 Q Okay, and specifically why don't you explain to the jury
15 specifically what kind of exercises that they require you to
16 do at these classes when they're teaching you to be a dog
17 handler, a dog tracker?

18 A The class at Aiken started out as man tracking which is
19 where you - before you use your bloodhound you had to have
20 some kind of sign or something to go off of and they also
21 teach you to look for the signs when you're - when the dog is
22 trailing for you to look for such as footprints, broken
23 debris, different markings or signs that whoever you're
24 tracking may have left behind so you know that you're correct.
25 Also, you are taught tactical approaches in the woods or

1 building clearing. If a dog tracks through a building you
2 have to clear the building or if you come in contact with
3 somebody in the woods or in the open how to - the tactical
4 approach to take them down into custody. We go over reading
5 the dog, you know, because every dog is different. You have
6 to know - they stress that you need to know when your dog is
7 right and wrong, different training exercises. Perimeters is
8 a very important part they go over, and the other school I
9 attended, the National North American Police Working Dog
10 Association that is a workshop where all week long you're
11 working with specific instructors in your area. They have
12 drug, narcotics dogs, any kind of police canine, explosives,
13 tracking, searching and you - somebody is assigned to you, you
14 know, to work with you through that week and then the dog is
15 tested at the end to see if they pass and meet the criteria.

16 Q And are you being observed and tested during this process
17 as well?

18 A Yes, sir.

19 Q Okay, did they give you any kind of certificate of
20 completion or anything like that as for the class?

21 A Yes, sir, I have all those here if you'd like to see them
22 or if ---

23 Q Okay, well, just tell us what kind of, I mean, would it
24 help you to refresh your memory looking at them?

25 A Yes, if you don't mind.

1 Q Yeah, I think that's fine. I think that's acceptable.

2 MR. ANDREW: Do you have any objection to him looking
3 at those?

4 MR. FOX: No, no objection, Your Honor.

5 BY MR. ANDREW:

6 Q Go ahead. Thank you.

7 THE COURT: No objection, without objection.

8 A Okay, the first one is from, like I said, the Aiken
9 bloodhound tracking team. It just certifies that I completed
10 40 hours of training with the tracking and bloodhounds at
11 their school. Those dates were from March 20th, 2006, to March
12 24th, 2006.

13 Q Okay.

14 A And the other one is the North American Police and Work
15 Dog Association certifies that we have completed and passed
16 the test for trailing for a working dog. That's dated October
17 19th, 2007. There's other certificates of completion here from
18 the same class from Charleston City Police and there's another
19 one from the North American Police Work Dog Association says
20 that I have successfully completed the course for that week
21 which was through October 15th through October 19th, 2007.
22 That was in Charleston. Here is my - the test sheet for Flo
23 where she completed it and signed by the instructor where she
24 passed and the last one just certificate of my membership to
25 the association.

1 Q Okay, and not only that just do you keep Flo?

2 A She stays at the Sheriff's Office at the Sheriff Office's
3 kennels.

4 Q Okay, do you work with Flo, I mean, periodically?

5 A Yes, sir, we - well, it's hard to - we're very short on
6 the team. We only have three or four members, and like I said
7 it's tough to get it with every - all the other training and
8 activities going on it's hard to get a concrete date but to
9 train but she is trained and everything is up, is kept, all
10 the records are kept on file.

11 Q Okay.

12 MR. ANDREW: At this time, Your Honor, we'd like to
13 offer this witness as an expert as a dog handler in tracking.

14 THE COURT: Any objection?

15 MR. FOX: Well, I do - I'd like to ask some
16 questions first, Your Honor, if I may, if I may voir dire the
17 witness.

18 THE COURT: All right.

19 EXAMINATION RE: QUALIFICATIONS

20 BY MR. FOX:

21 Q Officer, did you undergo any training other than those
22 you've described, the certificates, the North American Working
23 Dog Association, the Aiken school? Have you had other
24 training yourself?

25 A No, sir, none other, I guess, that's certified training.

1 Like I say we train regular in the department and I've trained
2 some of the newer people that are on the team. I've trained
3 them and got them started, but as far as documented training,
4 well, not say documented, but certified training, those are
5 the two classes I've completed.

6 Q Other than the training exercises you described how many
7 tracks or cases would you say you've run with this dog, Flo?

8 A Probably, I have all of them here but 15 to 20 maybe,
9 just a roundabout number probably between 15 or 20.

10 Q And to be specific that's aside from any ongoing training
11 you do with Flo; correct?

12 A That's being called out to locate somebody that's missing
13 or locate a suspect or a possible evidence from someone that
14 has left the scene.

15 Q How many times have you been qualified as an expert in
16 dog handling, bloodhound specifically?

17 A None, never been qualified.

18 Q And we've been assuming Flo is a bloodhound?

19 A Yes, sir, I have her registration papers of her full
20 blooded if you need to see them.

21 Q Okay, of those 15 to 20 tracks that you've run with Flo
22 how many were successful?

23 A When you say successful, are you talking about
24 apprehended or cases solved or evidence found?

25 Q Any of those.

1 A We have apprehended three suspects and we've found
2 evidence in numerous of those cases that led to an arrest and
3 linked suspects back to the scene, and I don't think we've -
4 most of the time when we're called to locate missing people
5 they are, the majority of the time they are found before we
6 get on scene.

7 Q Now, if I understood with some of the training you
8 described that it wasn't just - well, I'm sure I'm not using
9 these terms correctly, but tracking, in other words I thought
10 you described drug training and different other types of scent
11 training identification; is that correct?

12 A What that, what that is that's the - this workshop I went
13 to, the North American Police Work Dog Association they - it's
14 a huge workshop. There's people from four or five different
15 states there and they bring their certified trainers down in
16 every field of canine from apprehension, trailing, tracking,
17 locating. They do searches, building searches, explosive,
18 narcotics, money, guns. It's any police dog that is a working
19 they certify, but when I was down there I was specifically
20 assigned to one for the trailing.

21 Q Okay.

22 A They classify tracking and trailing as two different - to
23 them tracking is much shorter like a 20 or 30 minute old track
24 and trailing to them is an hour or more, and like I said, to
25 be certified for the trailing the track has to age which means

1 sit for an hour and a half before you start the dog on it and
2 then the trail has to be at least a mile and a half long,
3 cross over asphalt and some type of water. It doesn't have to
4 be a body like a river, but some type of water, a ditch or a
5 deep puddle or something along those lines.

6 Q Would the skills of the training, if I understand
7 tracking is shorter. Trailing is longer. Is that a simple
8 way to put it?

9 A More - maybe not as to lengthwise, maybe more as the age
10 of the trail.

11 Q Okay, are there different skills or training required for
12 one or will those skills carry over from one to the other?

13 A The - like I said before the tracking is a much shorter,
14 not much shorter, well, a trail hasn't aged very long, say 30
15 to 40 minutes. They use that mostly for the police work dogs
16 like the Malinois and the German Shephards that they're,
17 obviously their nose and sense of smell is not near as good as
18 a bloodhound. So, therefore, they're unable to carry out a
19 track that is old and possibly as accurate as a bloodhound.

20 Q Okay, I guess what I'm getting at is if in this case the
21 bloodhound, Flo, if they can get the older scent they should
22 be able to be trained and be able to do ---

23 A Exactly.

24 Q --- the other.

25 A Yes, sir; yes, sir, and like I said we have training

1 records where we go from aged trails from 15 minutes to an
2 hour to an hour and a half, and you know, that's what we
3 practice with.

4 Q Now, did I - did - you do these trainings with, I'm
5 talking about these seminars, these classes you went to were
6 those with Flo or with other dogs?

7 A Yes, the first class, the one in Aiken, that was just
8 without the dog. We - when I was down there I used, got
9 experience with their bloodhounds and the workshop, the North
10 American Police Work Dog Association that was with Flo was
11 with me during that time.

12 Q And did I understand you that at some point Flo, she's
13 six years old, she trained for a while and then she didn't
14 track a while; is that right?

15 A Correct, there was a, there was a period between there
16 where the bloodhound team was, I guess they were inactive or
17 dormant. They didn't have anybody to show any real interest,
18 and shortly after I started working with the Sheriff's Office
19 they asked me if I would be interested in it and I told them I
20 would and that's how we, it got started back up.

21 Q Okay, and has Flo specifically been trained to follow a
22 trail by scent?

23 A Yes, sir.

24 Q You have these certificates, just a couple of more
25 questions, officer, you had these certificates for these

1 classes you've completed. Is there any kind of certification,
2 either the state or the national level for being a bloodhound
3 handler?

4 A I have, like I said, I'm - myself and Flo are certified
5 through the National Police Dog Association and I have a
6 certificate completed which is that class is certified through
7 the Criminal Justice Academy as to count as formal training
8 towards my law enforcement career and also like I said it's -
9 there are several other workshops or bloodhound tracking
10 schools that are offered throughout the state and the one in
11 Aiken is the only one recognized as a - from the South
12 Carolina Criminal Justice Academy.

13 Q Okay, and have you ever, last question, have you ever
14 testified in a South Carolina court before?

15 A Not for the bloodhounds I haven't, no, sir.

16 Q Okay.

17 MR. FOX: Thank you, Your Honor. That's all the
18 questions I have.

19 THE COURT: As to your objection to him being
20 qualified as an expert witness?

21 MR. FOX: I do have an objection, Your Honor.

22 THE COURT: Okay.

23 All right, ladies and gentlemen of the jury, I'm going to
24 ask that you all be dismissed at this time so we - not
25 dismissed. I'm going to ask that you go back to the jury room

1 so we can take up something outside of your presence. Thank
2 you. You may step down.

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

5 THE COURT: Thank you. Mr. Fox, what's the basis of
6 your objection?

7 MR. FOX: Your Honor, I'd object under Rule 702 that
8 Office Seale doesn't have the requisite knowledge, skill,
9 experience, training and education, has never been qualified
10 as an expert in the state courts of South Carolina, for this
11 issue, for this subject and we'd request that he not be
12 qualified. He can still testify as to what he did in this
13 case, but not give his opinion as an expert.

14 THE COURT: All right, Mr. Solicitor.

15 MR. ANDREW: Well, my understanding, Your Honor, in the
16 Nelson v. Taylor case is that to be competent to testify as an
17 expert a witness must have acquired by reason of study or
18 experience or both such knowledge and skill in a profession or
19 science that he is better qualified than the jury to form an
20 opinion on the particular subject of his testimony, and while
21 I do understand that how many times you've been qualified or
22 whether or not you've been qualified as an expert is something
23 to consider everybody has got to be qualified first at some
24 point, and I would suggest the training that the officer
25 testified that he received, specialized classes, the amount of

1 time that he has spent with this individual, I mean, this
2 animal, Flo being the bloodhound, that he has met the
3 threshold and that he is qualified in this field and he is in
4 a better position based on that training and experience to
5 give his opinion than the normal or the juror would be. Based
6 on those, Your Honor, we'd ask that he be qualified as an
7 expert in this field.

8 THE COURT: Anything further, Mr. Fox?

9 MR. FOX: No, Your Honor.

10 THE COURT: All right, his testimony was such that he,
11 he's been to virtually every school that you can go to, to
12 keep him, to be certified. He's worked with this dog in
13 excess of four years. He has testified that he has had
14 several positive leads on this dog. I mean, they've trained
15 together. They've passed the courses, and I guess at some
16 point in time everybody has their first time in court and
17 based upon all the evidence that he testified to as to his
18 qualifications and with his working with Flo I do find that he
19 is an expert and I will allow his expert testimony at this
20 time.

21 MR. FOX: Thank you, Your Honor.

22 MR. ANDREW: Thank you, Your Honor.

23 THE COURT: Thank you. Anything before we bring the
24 jury back in?

25 MR. FOX: No, Your Honor.

1 MR. ANDREW: No, Your Honor.

2 THE COURT: I'm ready, yeah.

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

5 THE COURT: All right, based upon what I heard I am
6 going to rule that the officer is an expert in dog tracking.
7 Now, ladies and gentlemen of the jury, normally a person
8 cannot give opinion testimony. However, once I have certified
9 him as an expert he can give an opinion testimony. You're to
10 place no more weight on his testimony than you would any other
11 witness, but he can give an opinion in this matter. All
12 right, next.

13 MR. ANDREW: Thank you, Your Honor. I'd call Officer
14 Seale back to the stand.

15 THE COURT: Come back up, Officer Seale. You're still
16 under oath, Officer Seale.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. ANDREW:

19 Q Officer Seale, I've know we've touched on it a little bit
20 but what type of dog is Flo?

21 A She's a bloodhound.

22 Q And based on the training you've been to and your
23 experience would it be fair to say that a bloodhound has an
24 acute power of scent?

25 A Yes, sir.

1 Q And you've had an opportunity to work with this dog in
2 other cases. You testified about that?

3 A Yes, sir.

4 Q And then she's proved to be reliable as far as the
5 tracking that you've used her for?

6 A Yes, sir.

7 Q Okay, well, let's talk specifically about when you were
8 called out on January 18th, 2008, at Coastal Structures.

9 A Do you mind if I get this, my report?

10 Q Sure. Will that help you refresh your memory about what
11 took place?

12 A Yes, sir.

13 Q Yes. You were working - you were called out there
14 specifically for - as a tracker in the bloodhound team?

15 A Yes, sir.

16 Q Okay, and about what time did you get out there?

17 A I arrived on scene somewhere around, shortly after 7
18 o'clock, I believe around 7 o'clock that morning on the 19th of
19 January, 2008. It was a ---

20 Q The 19th or 18th? Can you check your - do you have your
21 report there with you?

22 A It was on a Friday morning if I'm not mistaken.

23 Q Okay, and if you don't have the date, do you have the
24 date written down somewhere?

25 A Yeah, from my report says the 19th, but I could have,

1 could have made a mistake if it was ---

2 Q But there's no doubt that you came out there on the
3 morning that this incident took place?

4 A Yes, sir.

5 Q Okay, and you were briefed by the officers there ---

6 A Yes, sir.

7 Q --- about what had taken place?

8 A Yes, sir.

9 Q Okay, and based on your conversations with the officer
10 and the crime scene what did you do with Flo?

11 A After speaking with the supervisor on scene and they told
12 me that the scene was secure, that to the rear of the building
13 that has been taped off, nobody had been to that area since he
14 arrived but the two victims and the possible suspect and I was
15 asked if we could possibly use the bloodhound to link trying
16 to find the suspect in an armed robbery.

17 Q Okay, and where was it that - well, how about take a look
18 at Exhibit One for me and you can step down, just face the
19 court reporter so she can hear you and please speak up so the
20 jury can hear you. Stand on this side, Deputy Seale, and just
21 speak loud enough where the jury can hear you. Do you
22 recognize that scene?

23 A Yes, sir, this is Highmarket Street, this is 521.

24 Q Speak up a little bit, yeah. You have to speak a little
25 louder.

1 THE COURT: Thank you.

2 Q Okay, and just point out to the jury where you were
3 instructed to begin trying to locate the suspect.

4 A This is the incident, the location where the incident
5 took place, and let me know if you can't hear me, but back
6 here to the back there was a ramp, some steps back here where
7 the suspect possibly ran out of and I was asked to use the
8 bloodhound to try and scent the suspect from here and track
9 him to see if we could locate him.

10 Q Okay, and do you know if there had been any other traffic
11 on that scene at the time?

12 A From what I was told by the supervisor on scene nobody
13 had been back there and it was secure.

14 Q Okay, and it's my understanding that you were on scene
15 within 45 minutes to an hour after this took place?

16 A Yes, sir, I was actually coming to work on the day shift.
17 So I was already up getting ready for work to come in that
18 morning. So, there wasn't no delay from me getting ready. I
19 was already up and awake.

20 Q Okay, and based on your training with this dog and the
21 training you've received and Flo herself would you consider
22 that to be within the timeframe that your dog would accurately
23 pick up a scent?

24 A Yes, sir, absolutely.

25 Q Okay, and based on your training and Flo's training would

1 that lack of contamination be sufficient for her to pick up
2 the scent?

3 A Yeah, absolutely.

4 Q Okay.

5 MR. ANDREW: The Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. ANDREW: Okay, if you'll give us just one moment.

8 THE COURT: Certainly.

9 BY MR. ANDREW:

10 Q Okay, based on your training and experience, Deputy,
11 what would be something that can contaminate the scene as far
12 as time and traffic where you wouldn't feel comfortable that
13 Flo could give you an accurate reading?

14 A As far as contamination of time ---

15 THE COURT: They need you to speak up, please.

16 A Is there any way I can stand ---

17 THE COURT: Yeah.

18 Q Yeah, why don't you stand next to the microphone? Just
19 keep your face out toward the jury if you would.

20 THE COURT: Okay, thank you.

21 A As far as the time goes six or seven hours would - if it
22 was uncontaminated with nobody else going in the scene but as
23 far as other contamination, as far as people walking through
24 when you have four or five people walking around an area where
25 the suspect was last seen that could cause an effect but as

1 long as you have a - if - somewhere, they're seen here and
2 it's contaminated at this spot, but they're also seen 30 or 40
3 feet down from that spot, that contamination up here is not
4 going to bother or effect her down there, and if you can get
5 an exact footprint or article of clothing or car door once she
6 gets the, that first scent in her nose she'll stay with that
7 scent. She won't - through training we have tried to cross
8 other paths, have other suspects cross over and she always
9 stays on the first scent she gets on.

10 Q Okay, and what specifically did Flo do or that you did
11 both when you, when you, when you pointed her to the area
12 where you were instructed to begin your investigations?

13 A We went to the rear where the victims said the suspect
14 was seen coming or after he exited out the back door and I
15 gave her the command. Once we harness, once we get to the
16 area where we're going to start tracking or try and pick the
17 scent up we then put the harness on her. That's how she knows
18 that that's the scent that she's supposed to stay with. Once
19 she's harnessed then ---

20 Q And tell the jury where you did this and what her
21 response was, please.

22 A We did this right here, the back of, the back of the
23 ramp coming out, it would be, be right in that area. It's
24 hard to - in this area here, and when she, you know, we tell
25 her to find them or, you know, talk to her and get her excited

1 so she knows that it's time to track and ---

2 MR. FOX: Excuse me, Your Honor. I believe at this
3 point I need to make an objection and take up a matter outside
4 the jury's presence briefly.

5 THE COURT: Thank you. Thank you. Ladies and
6 gentlemen of the jury, you all can go back to the jury room.
7 Again, please do not discuss any of his testimony. Thank you.

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

10 THE COURT: All right, Mr. Fox.

11 MR. FOX: Thank you, Your Honor. I think we're at
12 that point in time we've discussed previously regarding
13 admissibility of dog tracking evidence. Of course, the
14 handler has been qualified as an expert. We're now about to
15 get into what was done exactly, what this dog did and what
16 evidence it may have found.

17 THE COURT: Yeah, there are six elements under that.

18 MR. FOX: There are, and I'm referring specifically
19 to the South Carolina Supreme Court's decision of April 27th,
20 in State v. Gary A. White, and Your Honor, and I would ask the
21 Court to make a determination, threshold that this is, in
22 fact, admissible evidence based on those criteria.

23 THE COURT: All right, it's rare that you get such a
24 recent case, just decided yesterday in the Supreme Court
25 decision.

1 I have read the case, and I've read it several times. As
2 the testimony came out I looked at the elements that knowing
3 you were going to make this objection. I think there's
4 sufficient evidence in the record. The earlier, as far as
5 number one, the evidence shows that the dog handler satisfied
6 the qualifications of an expert. That was a linchpin. I
7 found he was qualified. The evidence shows that the dog was
8 a breed characterized as acute power of scent. That, he
9 testified it was a bloodhound, that seems to go to that
10 factor. The dog has been trained to follow a trail by scent.
11 Based upon the testimony of Deputy Seale the dog is well
12 trained and is nationally certified. By experience the dog
13 was found to be reliable. There's testimony that the dog had
14 actually solved a couple of cases prior to this and, you know,
15 maybe you didn't have to go to court; and, you know, so the
16 dog, although it maybe didn't - the evidence she found was
17 sufficient that the - somebody was satisfied with it. So, the
18 fact that the dog had been - I don't know if the dog hadn't
19 been in question. I mean, his testimony was that he had not
20 testified in court but I don't know whether the dog had been
21 used in court, but there's certainly nothing to believe that
22 the dog is not, was not reliable. The dog was placed on the
23 trail right at the point where the prior testimony showed that
24 the Defendant possibly left the area. So, that would give
25 reasonable time and based on the testimony of the expert there

1 would - it appeared to be no contamination. Now, that's not
2 from this, Mr. Seale but from the prior testimony of the
3 officer who was in charge of the scene that came out there
4 approximately 10 to 15 minutes after the 911 call was made and
5 had the area cordoned off shortly thereafter. The testimony
6 up to this point seems to go to the ability of the and to the
7 evidence; and therefore, I would be inclined and I do order
8 that the tracking testimony of this dog will go into evidence.
9 Now, the jury will certainly be allowed to decide how much
10 weight they want to put on it, but I guess I'll have to give a
11 short charge on the, a dog being an expert in this as well.
12 So, anything further?

13 MR. FOX: No, Your Honor. That covers it.

14 THE COURT: Thank you.

15 MR. FOX: Thank you.

16 THE COURT: Bring the jury back in. I anticipate -
17 how many more - how much longer do you think this witness will
18 be? Hold on.

19 MR. ANDREW: Not much longer, Your Honor, probably on
20 my end maybe 10 minutes.

21 THE COURT: Okay, and then how long do you expect the
22 cross to be?

23 MR. FOX: I doubt much more than that, ten minutes
24 or so.

25 THE COURT: All right, well, then just for planning

1 purposes do you all - when the jury comes back at this time
2 after this witness you need another witness this afternoon?
3 It would be on this particular issue.

4 MR. ANDREW: No, Your Honor.

5 THE COURT: Then what I will do is I will leave this
6 with the jury and we will break after the witness.

7 MR. ANDREW: Okay.

8 THE COURT: Thank you. Bring the jury back in.

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

11 THE COURT: Let me see the attorneys up here real
12 quick on an issue.

13 (Whereupon, a bench conference was held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: Thank you, ladies and gentlemen. You had
16 another break. We've got to keep you on your toes.

17 All right, thank you. The objection is overruled.

18 MR. ANDREW: Thank you, Your Honor. We would call
19 Officer Seale back to the stand, Deputy Seale.

20 BY MR. ANDREW:

21 Q Deputy Seale, I believe when I last asked you a question
22 you were at the point where you had taken Flo to the back of
23 the building. Can you explain to the jury what you noticed
24 and what happened once you got Flo back there?

25 A Once she was in the area where the scent possibly could

1 be, like I said I gave her the command to start searching and
2 tracking and she immediately, I immediately noticed her
3 demeanor change. She went from kind of loafing around. You
4 have to see it to know what I'm talking about. You can
5 definitely tell she goes from like a playful mode to a serious
6 mode where she's - nose is on the ground, her tail is up
7 wagging, she's working back and forth, and you can see her,
8 she'll stay on the track and then she'll - she might get off a
9 few feet and then she'll circle back around, I mean, you can
10 tell when she gets off it, she'll pick her head up and then
11 she'll come back and then her nose will be on the ground,
12 right on the ground sniffing. She sniffs a lot harder is kind
13 of the only way I know how to put it, but she sometimes she
14 snorts and whines whenever she's on the trail to when she's
15 off the trail she doesn't do that, she just kind of loafs
16 around and looks back at you. It's definitely a demeanor
17 change whenever she's trailing something, and I immediately
18 noticed that and she began to track right up here and she went
19 back here first into this fence somewhere to this fenced in
20 area and tried to cross over this fence, but she - obviously
21 we were unable to do that. So, then I took her back around to
22 the outside of the fence. I had it marked with a landmark in
23 here. I don't remember exactly where it was but it's
24 somewhere inside the fence here.

25 Q And let me stop you just briefly, and based on your

1 experience she's got the trail this whole time?

2 A Yeah, she's definitely - whenever she came in here
3 sometimes it could be weather conditions, the wind can effect
4 it. She has a very, very strong nose and sense of smell, and
5 sometimes she will and during training a lot of times when I
6 train and somebody else is handling the dog and I'll sit back
7 and watch because I like to watch her trail where I've been to
8 see, so I can see how she acts and sometimes she'll be led
9 several hundred yards of me and she'll just cut straight to
10 me. I mean, that's how strong her sense of smell is. She's
11 winded where I was and is coming straight to me, and that,
12 whenever she's in here I think that it's possible she's off
13 but she's trying to get back. She can smell the trail over
14 here in the woods and is trying to get back to it and what it
15 was ---

16 Q I'm sorry. Let me interrupt you just briefly so the
17 jury's clear. There's a fence, a chain link fence that runs
18 here?

19 A Yes, sir, a fence around here.

20 Q Do you remember if there's any kind of opening there or
21 if it's ---

22 A No, from what I saw I didn't - I don't - I did not see
23 anywhere where we could have took the dog across this. That's
24 why we came back out the fence and came around.

25 Q Okay, and did she - was she able to pick the scent back

1 up on the other side?

2 A Yes, immediately as soon as we got to the area she
3 immediately, could tell she was back on the scent. She pulled
4 me. She's a big dog. She's well over a hundred pounds. So,
5 she can pull me around whenever she wants to. She immediately
6 snatched me back into the woods into a trail in here. You
7 can't see it from here, but it's - there's a trail somewhere
8 in here that beats, comes through the woods, comes out back
9 over here and crosses the railroad tracks and this actually
10 might be the beaten down trail there and we came through, came
11 through somewhere in here.

12 Q Can you describe for the jury, you know, I know they can
13 see the top of these trees, but kind of how thick it is
14 through there. Would it be easy for someone to walk through?

15 A Yeah, it's not terribly thick. It's not so thick you
16 can't walk through. I mean, it's - you can walk through here
17 with no problem and as we're walking through here a lot of
18 times when we're on a trail and there's some type of evidence
19 laying around she'll pick it up in her mouth and sometimes
20 she'll pick up cigarette packs that the suspects dropped, car
21 keys, shirts, you know, whatever evidence may be. She'll pick
22 it up in her mouth and kind of play with it, even when we're
23 trailing sometimes we'll drop stuff like ribbon or flag and
24 she'll actually pick it up in her mouth and drop it back down,
25 just play with it just for a second and she went to a black

1 bag which is somewhere in the woods and somewhere in here in
2 the woods, between this fence and the main trail here there
3 was a black bag she showed a lot of attention to and she put
4 her mouth on it and acted like she tried to pick it up and I
5 immediately told other members of the tracking team to check
6 the bag and see as it brought suspicion to my mind that she
7 would out of - there's trash all in these woods, coke cans,
8 bags, I mean, there's - this place is filled with litter and
9 trash, bottles, and there's some reason that she went to that
10 particular bag that morning and that's when I told one of the
11 other members of the tracking team because obviously I don't
12 need, I don't want to pull her off of a trail that she's on
13 and working, and that later turned out to be a sawed-off
14 shotgun.

15 Q And that was - let me stop you there because as far as
16 your involvement at this point you didn't obtain the bag or
17 look in the bag or anything?

18 A No, sir, I didn't.

19 Q You just ---

20 A I just identified it. I just identified it and notified
21 other members of the tracking team who then noticed what was
22 in the bag and then they secured it until the investigation,
23 investigation could get there.

24 Q Okay, let me show you something real quick and see if you
25 can - I'm going to show you what's been marked State's Exhibit

1 Two and without saying what it is just tell me if you
2 recognize that scene.

3 A Yes, sir.

4 Q And does it accurately depict what you saw on that day?

5 A Yes, sir.

6 Q Okay, also want to show you a closer view of what's been
7 marked State's Exhibit Three. Do you recognize that?

8 A Yes, sir.

9 Q Does that accurately and fairly depict what you saw that
10 day?

11 A Yes, sir.

12 Q And is that the condition you left it in for the other
13 members to collect?

14 A Yes, sir.

15 Q Okay.

16 MR. ANDREW: At this time I want to submit two and
17 three, State's Exhibit Two and Three into evidence, Your
18 Honor.

19 THE COURT: Any objection, Mr. Fox?

20 MR. FOX: No objection, Your Honor.

21 THE COURT: All right, State's Exhibit Two and Three

22 ---

23 MR. ANDREW: I'm sorry.

24 THE COURT: --- will be admitted into evidence without
25 exception, objection. You may publish them to the jury.

1 MR. ANDREW: Okay, all right, thank you, Your Honor.

2 Just take it and you can pass them, look at them and pass
3 them down one time, however you want to do it.

4 (State's Exhibits Two and Three [Photographs] admitted
5 into evidence and appropriately marked.)

6 BY MR. ANDREW:

7 Q But those, those photos that was the way that scene
8 looked the morning you found that bag?

9 A Yes, sir.

10 Q Okay, okay, so, you called somebody, you don't stay with
11 the bag long; do you?

12 A No, just long enough, when I noticed the dog showing
13 interest to it I then notified the other members of the
14 tracking team who were behind me that were there to provide
15 security for me, noticed them to - for them to stand by with
16 it and hold it for investigations.

17 Q And did you move on?

18 A Yeah, we continued, continued tracking.

19 Q Okay, and did Flo seem to have that trail when you
20 continued to track?

21 A Yes, absolutely.

22 Q And specifically her demeanor I guess from what you're
23 saying is she's all business and no play when she's got the
24 scent?

25 A Exactly.

1 Q Okay, and what did she, what did she track you to or
2 where did she track?

3 A She eventually came to a trail somewhere in here and like
4 I said I believe this is it because it and then once she hit
5 the trail she followed the trail straight on down across the
6 railroad tracks.

7 Q And I'm sorry to stop you but let's make sure the jury is
8 clear. Now, you said this bag was found somewhere.

9 A Somewhere, yeah, somewhere between, somewhere between the
10 fence line which is here and the trail.

11 Q Okay, now, from where you started tracking, you picked
12 back up the scent near this fence to this trail is it pretty
13 much a straight line from the fence to the trail?

14 A Yeah, it's just the same, the same path. It's not like
15 the - we found the bag here and then we went over here. It
16 was a straight, straight shot, no circles, no nothing, she's
17 dead on straight to the - this path that leads to this road
18 here, Amelia Drive.

19 Q Okay, and just take the jury follow where she led you,
20 what happened.

21 A Like I say once we came on the path she followed down
22 here across the railroad tracks and she crossed over here
23 through this front yard and come back here to this residence
24 here and here's, when she got here she come up here to the
25 front and then I noticed her attitude change like she was no

1 longer on the trail. We made two circles around the house to
2 try and pick the scent back up because whenever we came
3 through here she was without a doubt on a trail, the same
4 trail which she started here and the same trail which she
5 alerted on that bag in the woods, the same trail, she came
6 down here across the railroad tracks and it wasn't till she
7 got to back here in this yard and around the front porch area,
8 in other words she seemed to lose the trail. She had lost
9 interest, circled around here two times to try and get her to
10 pick back up on the scent, which she didn't, and once I
11 determined that there was - the person we were tracking was,
12 did not leave this area here on foot, then the contact was
13 made with the owner of this house.

14 Q Okay, and did you make contact with the owner?

15 A No, sir, I didn't.

16 Q Okay, but do you know how many people are in that house?

17 A There was three people in the house.

18 Q Do you know who those three people were?

19 A There was the - an older man. I can't remember his name.
20 Then there was his son and then his friend over there.

21 Q Okay, and just describe for the jury basically on and
22 maybe I can help a little bit here, let me let you take a look
23 at what's been previously marked State's Exhibit Five. Do you
24 recognize that photo?

25 A Yes, sir, that's the ---

1 Q Okay, and does it accurately depict the way that
2 residence looked the day that Flo tracked you to it?

3 A Yes, sir.

4 Q Okay, let me also show you what's been marked State's
5 Exhibit Six. Do you recognize that photo?

6 A Yes, sir, that's the house on the road that's between ---

7 Q And does that accurately and fairly depict the way that
8 place looked that morning?

9 A Yes, sir.

10 Q Okay, Your Honor, I'd ask that Five and Six be admitted.

11 THE COURT: Any objection, Mr. Fox?

12 MR. FOX: No objection, Your Honor.

13 THE COURT: Plaintiff's - State's Exhibit Five and Six
14 are admitted without objection.

15 (State's Exhibit Numbers Five and Six [Photographs]
16 admitted into evidence and appropriately marked.)

17 MR. ANDREW: Okay, and I'd like to publish it for the
18 jury, Your Honor.

19 THE COURT: You may publish it to the jury.

20 BY MR. ANDREW:

21 Q Well, before I do that let me ask you this, first what's
22 been marked State's Exhibit Six, what is that?

23 A That is some form of carport or an open garage.

24 Q And did Flo track through this area?

25 A Yes, sir.

1 Q Okay, and can you tell me where that is on that map?

2 A Should be right in here.

3 Q Okay, and where - the final destination that Flo took you
4 to where is it in relation to this?

5 A Right here.

6 Q Okay, and what's been marked State's Exhibit Five what is
7 that?

8 A That's the house where she ended the trail.

9 Q Okay, and can you see the door where she tracked you to
10 on this picture?

11 A Right in here.

12 Q Has a front porch on it?

13 A Yes, sir.

14 Q Okay, and that's the place she circled twice and found
15 ---

16 A Right, the - she circled the entire residence, which I,
17 the reason we circled is I was trying to pick the scent back
18 up and make sure that they did not - the subject she was
19 tracking didn't leave this area. Once she got into, in this
20 area here around the front porch she seemed to, you know, lose
21 the trail, get off the trail and that's when I attempted to
22 put, pick her up back on the trail, we call it, it's a term
23 they call cutting the perimeter where you take the dog and cut
24 her on the outside area where whoever you're trailing could
25 have possibly went to see if she can pick the scent back up

1 and which she didn't do.

2 Q Would it be fair to say on your experience and the
3 mannerisms that Flo exhibited that that trail ended in that
4 house?

5 A Yes, sir.

6 Q Okay.

7 MR. ANDREW: Now I'd like to publish, you've already
8 allowed it. I ask you to pass those around.

9 BY MR. ANDREW:

10 Q And Deputy Seale, please answer any questions that Mr.
11 Fox may have for you.

12 THE COURT: Mr. Fox.

13 MR. FOX: Thank you.

14 CROSS EXAMINATION

15 BY MR. FOX:

16 Q Deputy, would you expect if you follow a scent to a trail
17 or a residence and it's a - you know, you've got a strong
18 consistent scent or trail all along that you could take it
19 right to the door when a person, either the door which a
20 person entered that residence?

21 A She'll like when ---

22 Q I'm just talking in general. I could - you could - my
23 question is if you'd step down, you followed this scent, you
24 followed the trail and the scent from the business through the
25 woods, across the railroad tracks, through this carport;

1 correct?

2 A Yes.

3 Q And then where was it that you weren't sure you were on
4 the trail anymore?

5 A Once she, she, she followed all the way to in the area in
6 front of this porch.

7 Q Okay. Would you expect if a person had - what are
8 reasons you might lose it at that point? You've got this,
9 okay, why might you not have the scent anymore?

10 A Because this is a pretty a, a very - pretty hot trail,
11 what they call a hot trail. It's not very, very old. She ran
12 it very strong, showed me no and in no time did she ever like
13 she was off the trail. One time when she was here but she
14 obviously corrected herself. She was trying to tear down the
15 fence to get back over here to it, trying to go through and
16 obviously when we came back on the other side of the fence
17 and she got back on the trail she didn't lift her head one
18 time.

19 Q Right.

20 A Not one time did she lift her head except for alerting on
21 the black bag in the woods and she came across here with her
22 nose on the ground. Asphalt is very hard to track on. I
23 don't know if you all are familiar with it but asphalt is the
24 or any kind of hard surfaces is extremely tough for a dog to
25 trail, to track and trail on. She came across, even though

1 it's only a short piece, it's still the scent does not sit
2 very long on this pavement here. She came across here with no
3 trouble and never one time did she give me any indication that
4 she was off the trail crossing here. I didn't - the only - I
5 didn't get an indication until we were sitting here in
6 front of the front porch that she had lost the trail.
7 That's when I made the attempt to circle and pick it back
8 up.

9 Q And at no point when you went around two times

10 ---

11 A Yes, sir.

12 Q --- did she ever pick the trail back up?

13 A No, sir.

14 Q Because you had a hot trail all the way somewhere in
15 here.

16 A Well ---

17 Q To the front here; right, okay?

18 A In here, in here.

19 Q Okay, all the way up to the, literally all the way to the
20 door.

21 A Right.

22 Q Okay, but not around anywhere else, okay. Now, I thought
23 I heard you say what you knew was the person that led you to
24 believe ---

25 A Uh-huh.

1 Q --- that the person didn't leave this area on foot;
2 correct?

3 A Exactly.

4 Q What happens if they get in a car and leave? What would
5 happen to the trail?

6 A That's, that's possible. The trail would, the trail
7 would still end here.

8 Q Okay, so, if they got in, I don't mean to be absurd, if
9 someone dropped a helicopter down there and they hopped in the
10 helicopter and took off and you're not going to have a trail;
11 right?

12 A Obviously.

13 Q The same idea if someone gets in a vehicle, in a car, on
14 a motorcycle or anything else and leaves they're now off the
15 ground; correct?

16 A Right.

17 Q And not, probably not going to be able to find that
18 trail.

19 A Probably not. There's been - there are very few cases
20 that I've heard that happening that a dog could follow but
21 it's in my opinion it's not very likely.

22 Q Okay, best estimate, sounds like she was hot on the
23 trail, working the whole time, from the time you left the back
24 and you started pretty much right out back of the business;
25 correct?

1 A Yes.

2 Q From the time you went from behind this business, Coastal
3 Structures, to here how long?

4 A It says approximately 30 minutes.

5 Q Okay, but that was, if I understood you, both this time
6 particularly and in general the dog it's not like they follow,
7 they're not like I'm a train track, when we way follow like a
8 track on a scent ---

9 A Uh-huh.

10 Q --- they don't zip in a straight line. They go over
11 here a little bit. They come back to it a little bit.

12 A Right.

13 Q Would you say they might wander slightly off, you went
14 down here? Is it fair to say that when Flo was coming down
15 inside this fence that she was just running parallel to the
16 scent that was out here, I mean, you indicated she got very
17 close and wanted to get across that fence?

18 A Yes, it could, you know, that the wind shifted it or it
19 could have been that she got off the - she's the type that
20 I've noticed for - she is a lot more, I don't mean to say
21 accurate, but when I've seen, I've seen several other dogs
22 trained and they've kind of, they might be ten feet on a trail
23 this way, ten feet this way. She's the kind if she gets four
24 or five feet off and how I know this is because we foot,
25 through footprints and marks in the woods when we're training.

1 She is right on top of the track. She doesn't get 10 or 15
2 feet off. If she does she makes a circle and comes back and
3 makes sure she is ---

4 Q Okay.

5 A --- is dead on. So, it could have been that she was back
6 here and she just - when - a lot of times they get excited
7 they'll overrun a turn but they won't obviously go back and
8 try again. That could have been the case here. She got
9 excited and came in here and she was smelling the track over
10 this way but couldn't figure out how to get there.

11 Q Right.

12 A And that's, that's how it felt for a few minutes until
13 we were able to get her back.

14 Q And when she's on a scent and I know she's moving fast,
15 you say she can pull you, you're at most at a trot; correct?
16 I mean, you're either walking fast or hard and she's following
17 or ---

18 A Yeah, we try to walk because when you, when you get in a
19 big hurry and run you will overrun some things that you're -
20 you'll miss things that you wouldn't miss if you - you want to
21 walk at a steady pace and not hold her up but then you don't
22 want to go an all out sprint that leads you to overrun the
23 trail, possibly contaminate and it might miss evidence, might
24 miss a track or a footprint or a limb broke, something that
25 would lead you to - that'd help you on the trail.

1 Q So, this is - what I'm getting at, this is actually a
2 pretty short distance between this trailer and this business.
3 I mean, we're talking maybe, maybe 50 yards of woods maybe and
4 another, I mean, if you could go in a straight line from here
5 to here maybe a couple of football fields?

6 A Probably a couple of hundred yards.

7 Q Yeah, it's very straight. Okay, now, you indicated that
8 it's not uncommon, in fact, in this case you found a bag along
9 the way.

10 A Uh-huh.

11 Q For lack of a better word, part of the same scent, in
12 other words, she was on the one trail and she finds something
13 that she believes that's ---

14 A That's related to this.

15 Q Right. Would you expect to be able to find other and you
16 mentioned in other situations you found things like cigarette
17 packages or things like that.

18 A Yes, sir.

19 Q So, you might expect if there were items that your
20 tracking has touched and they discard them, whatever it might
21 be, that you may well find, assuming they are roughly along
22 that path that you might well hit on those and find those
23 also?

24 A Yes, sir.

25 Q Okay, could that be - is there anything you wouldn't

1 find? I mean, could you find a wallet?

2 A We have - I don't know if we've found a wallet before.
3 We have found cash from armed robberies before.

4 Q In other words as far as you know there's not a limit to
5 the type of material. In other words if something, again, a
6 dog hits the scent, generally speaking, and you're on - say
7 you're following me, you've got my scent, you and your dog
8 have my scent, then the things that I had touched the dog -
9 there's nothing he couldn't find? In other words no type of
10 things that they can't scent or find?

11 A I'll say I don't know anything that - from my experience
12 we've found money, guns, clothing, keys. That's pretty much
13 the stuff that we've found. I mean, I'm not going to say
14 there's anything that they can't because I don't know, but
15 that's through my experience those are we found guns, money,
16 clothes and car keys.

17 Q Again, roughly speaking, you're qualified as an expert,
18 how big, let's use - we can kind of see this line. The jurors
19 will have this in this jury room if they want, but you see
20 this line that is almost certainly the path that cuts through
21 here.

22 A Uh-huh.

23 Q How far out would you expect to possibly find them? If
24 they're not there you can't find them, but let's say the guy
25 took his coat off and threw it in the woods. What kind of

1 radius would you expect to have?

2 A She's, she's not going to - say if we're - go on a trail
3 and you throw something across the room there she's not going
4 to leave that trench. Basically she's going to find stuff
5 that's dropped along the trail which she's tracking. I mean,
6 she's not going to go - what they call what you're talking
7 about is an article search dog and those article search dogs
8 you can take because they search for articles and they can
9 take something that's the last scent that that person has
10 touched and you can throw over here and then you could let the
11 dog come out here and search for it. She is a - she's not an
12 article search dog. She just sometimes locates or shows
13 interest to stuff along the trail which is through my
14 experience has been, went back to what the - whoever we're
15 tracking has touched or handled.

16 Q All right, based on your observation, you went through
17 there with the dog, based on your observation of these woods,
18 these pictures, although you can move there it would be
19 difficult to throw things like this. I mean, there's lots of
20 low-hanging limbs and things of that nature.

21 A Yeah, I mean, I'm not saying you can't.

22 Q It's not cleared.

23 A It's, it's no problem walking through it, and I mean,
24 it's not like a briar thicket. I mean, you could possibly
25 throw something through, I mean, I don't know.

1 Q Just one or two others, one or two more questions,
2 Deputy. You brought Flo to the front of this trailer, lost
3 the scent, went around twice to see if you could pick it back
4 up, you didn't. Did you do anything else with Flo after that
5 or were you asked to do anything else?

6 A I just stayed and assisted with security around the
7 house. I stayed on scene and helped the investigations and
8 secured the outside premises of the house.

9 Q If she's not - thank you. That's all the questions I
10 have.

11 THE COURT: Thank you. Any redirect?

12 MR. ANDREW: Nothing on, nothing on redirect, Your
13 Honor.

14 THE COURT: All right, thank you. Deputy Seale, you
15 may be - any objection to this witness being excused?

16 MR. ANDREW: No, I would ask that he would be, yes,
17 sir.

18 THE COURT: Any objection from the Defense?

19 MR. FOX: No, Your Honor.

20 THE COURT: All right, thank you.

21 Well, ladies and gentlemen of the jury, I told you I'd
22 get you out of here at five or 5:30. Well, is it two minutes
23 to five and I don't think it would be productive for them to
24 call another witness at this time. So, I am going to excuse
25 you for the evening. Again, you are not to look at any

1 newspapers or television or anything like that. Now used to
2 they made the jury stay in a hotel. Now that became pretty
3 expensive. So now we trust that you will not do anything that
4 you're not supposed to. So, do not discuss this case. I'm
5 going to ask that you not look at any newspapers, news or
6 internet overnight and I'll see you at 9:30 in the morning and
7 we'll start the process. You may be here a little bit earlier
8 than that so we can start right on time.

9 Anything further from the State?

10 MR. ANDREW: Not from the State, Your Honor.

11 THE COURT: From the Defense?

12 MR. FOX: No, Your Honor.

13 THE COURT: Thank you. Thank you for your attention
14 this afternoon.

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

17 THE COURT: Do you anticipate any motions in the
18 morning before we resume the testimony?

19 MR. ANDREW: I don't think we - I don't have any in
20 the morning, Your Honor.

21 MR. FOX: I don't, Your Honor, don't anticipate
22 any.

23 THE COURT: All right.

24 MR. ANDREW: Looks like we can go straight into the
25 testimony and hopefully run pretty smooth.

1 THE COURT: Move on through.

2 MR. ANDREW: Yes, sir.

3 THE COURT: Okay, court is in recess until 9:30
4 tomorrow morning. Thank you.

5 MR. ANDREW: Thank you, Your Honor.

6 OFF THE RECORD

7 (On the record, April 29, 2009.)

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

10 THE COURT: Okay, all right, court will come to
11 order. Is the State ready to proceed for today?

12 MR. ANDREW: We're ready to proceed, Your Honor.

13 THE COURT: The Defense ready to proceed for today?

14 MR. FOX: We are, Your Honor.

15 THE COURT: Any motions before we bring the jury in?

16 MR. FOX: No, sir.

17 THE COURT: All right, bring the jury in, please.

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

20 THE COURT: Good morning, ladies and gentlemen of the
21 jury. Hope you had a pleasant night's rest and are ready for
22 another full day of testimony and hopefully - is it warm in
23 here to you all? If it's too warm or too cool if you can talk
24 to one of the bailiffs. This is a big room and so either way
25 it is you have to kind of do it a little ahead of time. So, if

1 everybody is full of coffee and ready to go, bright eyed and
2 bushy tailed, we'll continue with the testimony. The State?

3 MR. ANDREW: Thank you, Your Honor. The State calls
4 Chris Geno.

5 Whereupon, Christopher Geno was called to the stand, duly
6 sworn by the clerk and testified as follows.

7 THE CLERK: Thank you. Please be seated and state
8 your name for the record, spelling your last name.

9 MR. GENO: Corporal Christopher Geno, Georgetown
10 County Sheriff's Office, last name is spelled G-E-N-O.

11 DIRECT EXAMINATION

12 BY MR. ANDREW:

13 Q Corporal Geno, would you please explain to the jury how
14 long you've been in law enforcement?

15 A I've been employed with the Georgetown County Sheriff's
16 office for about seven years. Prior to that I was a military
17 policeman in the Marine Corps for four.

18 Q Okay, and what are some of your duties there at the
19 Sheriff's Office?

20 A I started at the Sheriff's Office I was a road deputy
21 for two years, and have been in the narcotics since then as
22 well as a K-9 officer and a SWAT operator.

23 Q Okay, and did you have an occasion back on January 18th,
24 2008, to work a crime scene at Coastal Structures?

25 A Yes, I did.

1 Q All right, and what do you remember as far as being
2 called out to that scene?

3 A I was awoken early in the morning and I got a SWAT page
4 to respond to Coastal Structures in reference to aiding the
5 bloodhound tracking team about an armed robbery. I responded
6 there. Myself and the bloodhound tracking team, the team
7 tracked behind the business and we on the way through the
8 woods the dog smelled a black plastic bag and one of the
9 bloodhound handlers asked us to check it. We looked in it and
10 found a shotgun. It was a short, like a sawed-off shotgun.
11 We looked.

12 Q All right, let me, let me stop you there a minute, and
13 what's, what's your purpose there? I mean, I know you don't
14 handle the dog. Are you just there for safety reasons or ---

15 A We are. A lot of times if there is a violent crime that
16 is committed the bloodhound team will call us out as security
17 for them so they can really focus on the dog and the track
18 while we provide security for them.

19 Q Okay, I want to show you what's been already into
20 evidence as State's Exhibit Two and Three. Do you recognize
21 those photos?

22 A Yes, that's in the woods that was along the track and
23 the black bag is what was located by the tracking team and we
24 checked and found a gun inside of it.

25 Q Okay, now, when you found that bag it was in the

1 condition that these two pictures show?

2 A Correct.

3 Q Okay, and that's before you did anything to the bag; is
4 that correct?

5 A Right, we had to look in the bag because we didn't know
6 what was in it. We were just told to check it and that's when
7 we located a shotgun.

8 Q Okay, all right, and without saying what this is just
9 want you to take a look at it. This is State's Exhibit Four
10 for ID purposes only right now, but do you recognize that
11 photo?

12 A Yes, I do.

13 Q And does that photo fairly and accurately depict what's
14 shown in this picture as it was the day you all come into
15 contact with it?

16 A Yes.

17 Q Okay.

18 MR. ANDREW: At this time, Your Honor, I would like to
19 place State's Exhibit Four into evidence.

20 THE COURT: Any objection, Mr. Fox?

21 MR. FOX: No objection, Your Honor.

22 THE COURT: State's Exhibit Number Seven?

23 MR. ANDREW: Four.

24 THE COURT: Number Four.

25 MR. ANDREW: Yes, sir.

1 THE COURT: Without objection.

2 (State's Exhibit Number Four [Photograph] admitted into
3 evidence and appropriately marked.)

4 THE COURT: Okay.

5 BY MR. ANDREW:

6 Q And describe, I'm sorry, describe what you did when you
7 located that, that bag in the woods.

8 A When we located it it was - we opened the bag or
9 unwrapped it and it revealed the gun and at that time we
10 notified the reporting officers who I believe got in touch
11 with one of the investigators to come and photograph it.

12 Q Okay, and what ---

13 A And we didn't handle it. We just left it there and
14 notified somebody and continued on the track.

15 Q Okay, somebody stayed there with it?

16 A Yes, sir.

17 Q Okay, all right.

18 MR. ANDREW: I'd like to publish it for the jury, Your
19 Honor.

20 THE COURT: All right, you may.

21 BY MR. ANDREW:

22 Q All right, so, after you found that and you reported
23 that to someone, the weapon, where did, where did the tracking
24 team take you at that point?

25 A We continued tracking through the woods and we crossed

1 over a road and eventually to a - it was a trailer.

2 Q Okay, let me show you what's already been entered into
3 evidence as State's Exhibit Five. Do you recognize that
4 photo?

5 A That's where we ended our track.

6 Q Okay, that's the trailer?

7 A Yes, yes.

8 Q Yeah, that's fine, yeah. What is that?

9 A It's a trailer.

10 Q Okay, and what did you do once you got to the location
11 where this trailer was?

12 A Once we got there contact was made inside and got
13 consent to go in the house. We went in the house and I went
14 into the living room and to the left, I think through the
15 kitchen. I went to a bedroom and I found a subject laying in
16 the bed on top of the covers who was clothed and ---

17 Q And now, now, just so it's clear for the jury when you
18 say the subject ---

19 A Mr. Greene.

20 Q --- is that subject in the courtroom today?

21 A Yes, he is.

22 Q Okay, and you've identified him as being?

23 A He's wearing the striped shirt.

24 Q The person sitting beside Mr. Fox?

25 A Yes, sir.

1 Q Okay, and what time in the morning is this or do you
2 remember?

3 A It had to have been - I woke up probably an hour earlier
4 than I normally do. So, it was, it was early just after
5 daylight probably 7:30, 7. I don't really recall exactly what
6 time. It was approximately that time.

7 Q Okay, all right, so, you say you went and there was a
8 bedroom on the left and the person you found there was Mr.
9 Greene. Describe best you can what you noticed about Mr.
10 Greene. I think you've touched upon it.

11 A He was in the bed on top of the bedding and he was
12 clothed. It was - which I thought was odd because it was cold
13 outside, and when it's cold I'm normally under the covers but
14 he was on top of the bedding and he was clothed. He was the
15 only one in the bedroom at the time.

16 Q Okay, and were you in charge of getting him out of the
17 bed and securing him in a different area or ---

18 A We did. We took him into the living room. He was not
19 handcuffed. We just took him into the living room and I
20 believe he was explained out there by somebody why we were
21 there.

22 Q Okay, and did you go back in the bedroom where he was
23 at?

24 A We did.

25 Q Thank you, all right. I want to show you what's State's

1 Exhibit Seven, Eight and Nine, and without saying what they
2 are at this point just tell me if they're - if you recognize
3 those photos first and just take your time, look through them.

4 A Yes.

5 Q And are those an accurate, fairly or are those accurate
6 of what you saw that morning?

7 A Yes.

8 Q And they fairly and accurately depict what you saw that
9 morning?

10 A Yes, they do.

11 Q Okay.

12 MR. ANDREW: Your Honor, I'd like to offer Seven, Eight
13 and Nine into evidence.

14 THE COURT: Please show them to Mr. Fox.

15 MR. FOX: Without objection, Your Honor.

16 THE COURT: All right, State's Exhibits Seven, Eight
17 and Nine are admitted without objection.

18 MR. ANDREW: All right.

19 (State's Exhibit Numbers Seven, Eight and Nine
20 [photographs] admitted into evidence and appropriately
21 marked.)

22 BY MR. ANDREW:

23 Q And we'll just start in order. Explain to the jury what
24 Exhibit Seven is.

25 A It is a box of Winchester shotgun shells.

1 Q And where were those located?

2 A I located it in the drawer that was right next to the
3 bed that Mr. Greene was found.

4 Q Okay, and that's actually you in that photo?

5 A That's me.

6 Q Okay, all right, now, then Number Eight, would you
7 explain to the jury what that photo is?

8 A That is actually the box of shells that I located in the
9 drawer prior to me opening them up for the picture.

10 Q Okay, all right, and then last but not least Number
11 Nine, just describe what it is.

12 A It's the same dresser. On top of the dresser I located
13 a roll of silver duct tape.

14 Q And why did that - why were - why was your attention
15 drawn to that?

16 A There was the same duct tape, the same type of duct tape
17 was on the end of the gun on the handle part.

18 Q Okay, all right.

19 MR. ANDREW: And then, Your Honor, I'd ask to publish
20 these to the jury.

21 THE COURT: All right.

22 BY MR. ANDREW:

23 Q And did you have any - did you collect any of that
24 evidence?

25 A No, I just located it and pointed it out to the

1 investigators so they could take photographs.

2 Q Okay, and did you have any further involvement with
3 interviewing the witnesses or the suspects, I'm sorry, or
4 anything further as far as securing the scene?

5 A No, I didn't.

6 Q Okay, and that concluded your part in the investigation?

7 A That was it.

8 Q Okay, briefly were there other people in that house?

9 A Yes, there were.

10 Q I believe you said you encountered someone when you
11 first came in?

12 A There - we went up on the porch and there was the older
13 gentleman that was actually I think it was the first person
14 that was spoken to. We didn't - when we went to the house we
15 didn't run in and kick the door in or we didn't make contact
16 with them and it was real low key.

17 Q Okay, and there was a third person; wasn't there a third
18 person there as well?

19 A Yes, there was.

20 Q Okay.

21 A I believe it was the older man's son.

22 Q Okay, but the person you found - the only person you
23 found in that bedroom when you went was Mr. John Jabbar
24 Greene?

25 A That's correct.

1 Q Okay, please answer any question Mr. Fox has.

2 A Yes, sir.

3 THE COURT: Mr. Fox.

4 MR. FOX: Thank you.

5 CROSS EXAMINATION

6 BY MR. FOX:

7 Q And the box of shotgun shells was in a dresser drawer?

8 A Yes.

9 Q Okay, and there was stuff all over, it was kind of a
10 messy room to begin with; was it not?

11 A Yes, it was.

12 Q Okay, and you find a duffel bag or any kind of bag with
13 clothes in it? Do you recall?

14 A I don't recall. I may have. It was very cluttered in
15 that room.

16 Q Okay, did Mr. Greene have shoes on?

17 A I don't remember if he had shoes on or not.

18 Q Okay. Did ---

19 A I think ---

20 Q Go ahead, finish.

21 A I don't remember.

22 Q Okay, did you - was there anything in particular you
23 were looking for when you went in? You found obviously Mr.
24 Greene, but I mean, were you looking for specific items when
25 you went in?

1 A Nothing specific. We got a, I believe it was a consent
2 to search and those are just some items that I found during
3 the search that kind of heightened my awareness about the
4 crime.

5 Q Okay, you were aware that it was a robbery; correct?

6 A That's correct.

7 Q And that a wallet and some money had been stolen?

8 A That's correct.

9 Q Okay, did you find a wallet?

10 A Don't know if I found a wallet. I don't recall finding
11 any money either.

12 Q Okay, and didn't find any credit cards not belonging to
13 the people in the house or identification that didn't belong
14 to the people in the house?

15 A I don't remember.

16 Q You would have made a - I mean, you would have noted
17 that in some form or fashion; wouldn't you, if you found Mr.
18 Moses's or Mr. Thomas's wallet certainly you would have
19 somehow informed somebody or made a note?

20 A I would, I would have I believe.

21 Q Silver duct tape?

22 A Yes, sir.

23 Q Very common household item; is it not?

24 A Yes, it is.

25 Q Okay, you have a roll in your house somewhere?

1 A I do somewhere.

2 Q Okay, but you did not collect the shotgun shells or the
3 duct tape or anything else; is that correct?

4 A I just pointed them out. I located them. I did not
5 collect any of that stuff.

6 Q Okay, and that's correct also with the shotgun; right,
7 you all looked but another officer took it?

8 A And let somebody else know, yes, sir.

9 Q Okay, thank you. That's all the questions I have.

10 THE COURT: Any redirect?

11 MR. ANDREW: None from the State, Your Honor.

12 THE COURT: Corporal Geno, thank you. Any objection
13 to Corporal Geno being dismissed?

14 MR. ANDREW: None from the State, no, sir.

15 MR. FOX: None, Your Honor.

16 THE COURT: You are excused.

17 A Thank you, Your Honor.

18 MR. ANDREW: The State is going to call Captain Bill
19 Pierce.

20 Whereupon, Bill Pierce was called to the stand, duly
21 sworn by the clerk and testified as follow:

22 THE CLERK: Please be seated and state your name for
23 the jury.

24 MR. PIERCE: Bill Pierce.

25 DIRECT EXAMINATION

1 BY MR. ANDREW:

2 Q Captain Pierce, would you, well, please tell the jury
3 how long you've been in law enforcement and where you're
4 currently employed?

5 A I've been in law enforcement since 1992 and I'm
6 currently employed with the Georgetown County Sheriff's
7 Office.

8 Q And what is your, what are your duties there at the
9 Sheriff's Office?

10 A Currently I'm the captain over patrol at the uniform
11 patrol division, supervise polygraph, forensic services.

12 Q Okay, and back on January 18th, 2008, did you have an
13 opportunity or were you involved with an investigation of an
14 armed robbery off of Highmarket at Coastal Structures?

15 A Yes, I was.

16 Q All right, and tell the jury what you remember about
17 getting called to that scene?

18 A Well, that particular morning I was the watch commander.
19 So, when the incident was called in I was contacted at my
20 house, was told what had happened. A request was made to have
21 our bloodhound team respond. I told them to go ahead and call
22 our blood team unit to respond to that location. I then got
23 ready and responded myself.

24 Q Okay, and once you got there on scene what did you do,
25 what did you do once you got on the scene?

1 A I basically just stood by and initially communicated
2 what was going on with the assistant sheriff so that he could
3 just keep him advised what was going on.

4 Q Okay, I want to show you what has been marked State's
5 Exhibit Four or it's into evidence as Four. Do you recognize
6 that?

7 A Yes, I do.

8 Q Okay, and tell the jury what that is.

9 A That is a photograph that I took of a shotgun that was
10 found in the woods a short distance behind the business that
11 had been robbed that morning.

12 Q Okay, and did you - are you the one that collected this
13 shotgun?

14 A Yes, I am.

15 Q Okay, and tell the jury, tell the jury what you do or
16 what the process is and more specifically what you did on this
17 occasion to secure that weapon and to make sure the integrity
18 is maintained?

19 A Well, the first thing I did when I was contacted and
20 asked to pick up that particular piece of evidence was to
21 photograph it, which was one of the pictures there. The next
22 thing that I did, especially with this item because it was a
23 gun, was I picked it up and made sure that it was safe to
24 handle. I opened the gun, the chamber of the gun to find out
25 if it was loaded. It was, in fact, loaded with a round of

1 ammunition. So, I made the gun safe. I rendered it safe and
2 then I took the gun out of the woods and just maintained it in
3 my custody until I could turn it over to the agent that would
4 be working the case.

5 Q Okay, and on this particular case - well, who do you
6 turn that in to? Is there an evidence custodian in the
7 Sheriff's Office?

8 A Yeah, many times I'll turn evidence over to the evidence
9 custodian. I believe in this particular case I met with
10 Investigator Noel Smith at the Sheriff's Office and handed it
11 directly to him, signed chain of custody directly over to him
12 rather than putting it into evidence and getting it back out
13 and then giving it to him.

14 Q Okay, now, on this particular type of evidence is there
15 anything you're looking for on this particular type of
16 evidence?

17 A Well, there could be many things that we're looking for.
18 You know, we want to know who the gun belongs to. If we run a
19 serial number and are unable to get a match we'll try to
20 process it for latent fingerprint evidence and/or DNA
21 evidence. In a lot of cases we'll want the gun test fired for
22 ballistic comparisons and things of that nature.

23 Q Were you involved with processing this weapon or were
24 you present?

25 A I was present when the weapon was processed in our lab,

1 yes, sir.

2 Q Okay, and who did that processing?

3 A Investigator Smith.

4 Q I want you to take a look at a couple of things without
5 saying what they are at this point. I want you to take a look
6 at that and tell me do you recognize from the markings on it
7 what that is?

8 A Yes, I do.

9 Q Okay, and I'd like for you to open it up and take a look
10 at the item inside without showing it to the jury.

11 A (Complies with request.)

12 Q Do you recognize that?

13 A I do.

14 Q Okay, and is that the item that was recovered from that
15 shotgun on that particular day?

16 A Yes, it is.

17 Q Okay.

18 MR. ANDREW: And this is State's Exhibit 12, Your
19 Honor. I'd offer it into evidence.

20 THE COURT: Any objection, Mr. Fox?

21 MR. FOX: One moment, please, Your Honor.
22 Without objection, Your Honor.

23 THE COURT: Without objection, State' Exhibit 12 is
24 admitted into evidence.

25 (State's Exhibit 12 [Shotgun Shell] admitted into

1 evidence and appropriately marked.)

2 BY MR. ANDREW:

3 Q All right, and I'd like you to take it out and show it to
4 the jury and tell them where that was located on that
5 particular occasion?

6 A This is the ammunition that I removed from the shotgun
7 that I recovered out of the woods that morning.

8 Q Okay, and that's - what kind of shotgun is that; do you
9 remember?

10 A This is, this is a 12-gauge shotgun.

11 Q And that was in the chamber?

12 A This was inside the chamber behind the hammer.

13 Q Okay, thank you. I'd also like for you to take a look
14 at State's Exhibit Ten. Do your best to hold it down until we
15 deal with it. Do you recognize that?

16 A I do.

17 Q Okay, and is that fairly and accurately and the actual
18 item that was collected on this date?

19 A This is the item I collected.

20 Q Okay.

21 MR. ANDREW: State's Exhibit Ten I'd like to offer into
22 evidence as well, Your Honor.

23 Q And is there a particular - I see it's packaged, it's a
24 plastic bag. Is there some markings on that bag that lets you
25 know, other than identifying it from sight, is there markings

1 on the bag to let you know that that is the same weapon that
2 was recovered?

3 A No, sir, not on the bag.

4 Q Okay, all right.

5 MR. ANDREW: Your Honor.

6 Q But you've looked, you can see the item in the bag?

7 A There are markings on the particular item itself that I
8 put on it that ---

9 Q Okay.

10 A --- that allow me to know that this is the item I
11 collected.

12 Q Okay, all right.

13 MR. ANDREW: Your Honor, we'd like to offer State's
14 Exhibit Ten into evidence.

15 MR. FOX: Without objection, Your Honor.

16 THE COURT: All right, State's Exhibit Number Ten is
17 admitted without objection.

18 (State's Exhibit Number Ten [Shotgun] admitted into
19 evidence and appropriately marked.)

20 BY MR. ANDREW:

21 Q And just, if you would, hold up for the jury at this
22 point and let them know, explain to them what that is exactly?

23 A This is a sawed-off 12-gauge shotgun. This is the
24 weapon depicted in the photograph that I collected out of the
25 woods that morning.

1 Q Okay, and it was - other than you and Investigator Smith
2 and who is Investigator Smith?

3 A Investigator Noel Smith he's seated at the prosecution
4 table. He's currently assigned to the uniform patrol
5 division.

6 Q And was he in charge of this crime scene?

7 A Not initially. He - this was his case. He wasn't on
8 scene initially. So, no, he was not in charge of the crime
9 scene.

10 Q But he is the chief investigating officer?

11 A He's the case agent.

12 Q The case agent.

13 A Yes, sir.

14 Q Okay, and therefore, other than being present when the
15 thing was processed and let's get into it a little bit about
16 that and I'll ask Investigator Smith as well, but processing
17 it, what does that mean? Explain to the jury what you process
18 or how it's done?

19 A That's the method used in the lab to try to recover any
20 evidence, the DNA, the latent print evidence that I mentioned
21 earlier.

22 Q Okay, and are those done - how exactly is that done as
23 far as are samples taken before it's entered into evidence?

24 A In this case it was samples were taken before it was
25 placed into evidence. The weapon was photographed in order to

1 try to extract any DNA. We look for areas on the weapon where
2 an individual would hold a weapon. For instance, the handle,
3 the trigger guard, the trigger are all good places to try to
4 extract DNA. So, in this case we swabbed those areas with
5 sterile swabs and sterile water, packaged those, placed those
6 into evidence. The - as far as trying to recover any latent
7 print evidence a couple of different techniques on this item
8 were probably used and I say probably because without looking
9 at my notes I'm not sure, but on a metal surface like this we
10 would have used black powder to try to lift any latent print
11 evidence and probably on the taped portion and the wood
12 portions we would have used magnetic powder.

13 Q Okay, and actually, is that, is that not present on it?

14 A I see residue on the taped area particularly of some sort
15 of powder, whether that could be magnetic or that could be
16 just standard black graphite.

17 Q Okay, all right, and did you collect any other evidence
18 related to this scene?

19 A I don't believe I collected any of the other items. I
20 took some - I'm sorry, there was a, I took some photographs
21 of some or a footwear impression that was found that was
22 pointed out to me that was of particular interest. I
23 photographed that item and cast that item with dental stone to
24 preserve it and photographed some other items inside a
25 residence that I was called to after I left the wooded area

1 where the gun was recovered.

2 Q Okay, and was there a piece of duct tape that was in
3 that bag with this?

4 A There was a piece of duct tape, a separate piece of duct
5 tape.

6 Q And that - would that have - that would have been
7 processed separately or I say processed. That would have been
8 handled separately?

9 A Yes, sir.

10 Q All right, I want to take a look at State's Exhibit 11.
11 Do you recognize that?

12 A Yes, I do.

13 Q All right, and the markings on that that you made that
14 would have - make you sure that that was the same item you
15 collected on that day?

16 A This, this item was in the lab and was being processed.
17 I don't believe that this is an item that I collected at the
18 scene. I was there when it was processed in the lab. I think
19 that this was collected by another officer.

20 Q Okay, all right, thank you. All right, well, let's get
21 to the footwear impression. Where was that located?

22 A That was located under a carport or a shed at a
23 neighbor's house that was located between where the potential
24 suspects were found, where the bloodhound team had tracked to
25 and the business location that was robbed.

1 Q Okay, let me -- let you take a look at State's Exhibit
2 Six. Do you recognize that?

3 A Yes, I do.

4 Q Okay, and what is that?

5 A This is a photograph of the carport where the footwear
6 impression was located.

7 A Okay, and where exactly in that photo was the or more or
8 less where was the footprint found?

9 A The footprint would have been located actually probably
10 underneath this Crown Vic that's parked there now, and I can
11 explain why the Crown Vic is parked there if you'd like.

12 Q Okay.

13 A This was a very cold morning if I recall. I poured this
14 cast and it took a lot longer to dry than expected because of
15 the weather conditions and the fact that it was covered and
16 there was no sun available. So, a lot of times we will park a
17 car over top of the evidence to try to allow the engine to dry
18 it faster, accelerate the process. So, that's one of our cars
19 that we moved over top of it.

20 Q Okay, so, that's probably actually when the impression's
21 being made or dried?

22 A Yes, sir, it's the impression is underneath that being,
23 it's poured. It is poured and it's curing.

24 Q Okay, and let me show you State's Exhibit Five. Do you
25 recognize that?

1 A Yes, I do.

2 Q And what is that?

3 A This is a photograph of the residence where the suspects
4 were found.

5 Q Okay, and just so the jury is clear, this, the photo
6 with the, the house with the, the brick house with the walk-
7 through carport, where is the trailer located in relation to
8 that house there?

9 A You can look straight through this carport. That's the
10 suspect's house on the other side of the carport. Actually,
11 this end of the mobile home is what you're looking at if you
12 look through that carport.

13 Q Well, actually, isn't there a shed behind this house?
14 But that's directly behind this house; is it not?

15 A Yeah, directly behind. I don't recall if there's a shed
16 behind that house or not.

17 Q Okay, but I understand what you're saying but regardless
18 this trailer is behind this house?

19 A Directly behind it, yes, sir.

20 Q Directly, okay. And explain to the jury this footwear
21 impression how that's, how that's collected and what you're
22 looking for.

23 A Any time we find a footwear impression that we think
24 might have come from a perpetrator of a crime we want to
25 collect it, we want to photograph it and collect it for any

1 potential individual identifying characteristics that that
2 impression might yield. Many times somebody wears a pair of
3 shoes they wear them differently. The shoe soles wear
4 differently. They get different nicks or scratches or cut
5 marks in the soles and all those characteristics can be used
6 to exclude that person's shoe from anybody else's shoe. If
7 Nike makes a million pairs of shoes and we can identify enough
8 individual characteristics from one pair of shoes then we can
9 say that that shoe belongs to this person. So, that's the
10 reason we want to try to collect a shoe and when I was called
11 and told that there was a footwear impression that might've
12 been made by a suspect that's the reason that we want to
13 collect it. So, I went around, photographed the impression
14 because the next process, the process of pouring the
15 impression will destroy that impression. So, we get one
16 chance to preserve it and once the shoe wear, the footwear
17 impression is photographed we next use a mixture of dental
18 stone and water. That's a material that dentists often use to
19 cast denture impressions and pour it into the footwear
20 impression, let it harden and then we collect it and send it
21 to experts for further examination against a known shoe if we,
22 if we find one.

23 Q Okay, and at the time that that footprint impression was
24 taken did you know who lived in this house where the
25 impression was taken?

1 A No, sir.

2 Q Okay, did you know anything other than that's an
3 impression that was on the trail of the bloodhound team?

4 A That's the only thing I knew.

5 Q Okay, and you don't actually handle making those
6 comparisons?

7 A No, sir.

8 Q And making that analysis as far as what type of
9 impression or what shoe?

10 A No, sir.

11 Q Who, who would handle that?

12 A Generally we send our impressions to the State Law
13 Enforcement Division for comparison.

14 Q Okay.

15 MR. ANDREW: The Court's indulgence please, Your Honor?

16 THE COURT: Yes, sir.

17 MR. ANDREW: Captain Pierce, please answer any
18 questions Mr. Fox has for you.

19 THE COURT: Mr. Fox.

20 MR. FOX: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. FOX:

23 Q Captain, you personally was the person that photographed
24 this footprint?

25 A Yes, sir.

1 Q Okay, and that it was under that carport. Weren't there
2 a lot of other prints though? I mean, this is - I assume
3 there is an entrance, a doorway into the house from the
4 carport; is that correct?

5 A I would assume. I don't recall but I'm sure that there
6 probably was.

7 Q And there were, in fact, numerous other shoeprints in
8 the same area under that carport?

9 A I remember seeing several other impressions.

10 Q Okay, but only one that you could or did photograph and
11 get an impression for?

12 A That's correct.

13 Q Okay, and then it would have been - would you have been
14 responsible yourself for getting that impression, for
15 collecting it, for taking it up once it did set?

16 A No, sir, in this, in this case that was - that task was
17 turned over to Investigator George Smith.

18 Q Okay, and you didn't have anything further to do with
19 speaking to the people in the trailer?

20 A No, sir.

21 Q And didn't collect any items from inside the trailer?

22 A No, I didn't.

23 Q Okay, and tell us again how it was that you collected
24 the gun in the woods?

25 A The first thing that I did was photograph the gun as it

1 was found in the woods. The next thing I did was render it
2 safe, which was to take the ammunition out of the weapon, then
3 carrying it out of the woods and kept possession of it until I
4 could turn it over to Investigator Smith at the Sheriff's
5 Office.

6 Q Would you have been the one, the officer to receive any
7 reports back from SLED with regard to that shoe impression,
8 that comparison?

9 A No, no, I would not have been.

10 Q Okay, and the same thing with any results that were done
11 with the fingerprints and the samples that were taken from the
12 shotgun, any reports would have gone to another officer; is
13 that correct?

14 A That's correct.

15 Q Okay, thank you.

16 THE COURT: Any redirect?

17 MR. ANDREW: No redirect, Your Honor.

18 THE COURT: All right, thank you. You may step down.

19 MR. ANDREW: Yeah, we ask that this officer be excused
20 from his subpoena, Your Honor.

21 THE COURT: Any objection, Mr. Fox?

22 MR. FOX: None, Your Honor. No, Your Honor.

23 THE COURT: All right, Officer Pierce is excused.

24 Thank you.

25 MR. ANDREW: We'd call Investigator Noel Smith.

1 Whereupon, Noel Smith was called to the stand, duly sworn
2 by the clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated. State your
4 name for the record.

5 MR. SMITH: Noel Smith.

6 DIRECT EXAMINATION

7 BY MR. ANDREW:

8 Q Investigator Smith, would you also please explain to the
9 jury how long you've been working with law-enforcement?

10 A For 13 years in law enforcement. I started with Florence
11 County Sheriff's Office and came to Georgetown County in 2000.

12 Q Okay, and back on January 18th, 2008, and maybe
13 currently as well, what was your position back then?

14 A Investigator.

15 Q Okay, the same as you are today?

16 A I'm a sergeant on patrol now.

17 Q Okay, and the - as the investigator, back on January
18 18th, 2008, did you have an occasion or were you involved with
19 the investigation involved with the armed robbery at Coastal
20 Structures?

21 A Yes, sir.

22 Q Okay, and what was your involvement - when were you
23 called to the scene?

24 A I received a telephone call probably an hour after the
25 incident had taken place. I had to drive from Murrells Inlet

1 in order to get to that particular place of business.

2 Q Okay, and once you got there what's your
3 responsibilities as far as the crime scene and what your
4 involvement is?

5 A There's an officer, primary officer who's always on
6 scene so when an investigator comes out to speak with victims,
7 speak with witnesses, they'll always give us the information
8 that we need before we go in and have a talk with the victims
9 of the crime. I was briefed.

10 Q Okay, and you spoke with other officers about the
11 investigation?

12 A Yes, sir.

13 Q Okay, and once you got there what did you do after you
14 briefed with the officers?

15 A I went into the place of business and met with both
16 victims, Mr. Thomas and Mr. Moses.

17 Q Okay, and after talking with them where did that lead
18 you?

19 A The first thing I wanted to do was make sure that they
20 were able to speak with me about the crime because both of
21 them at that particular time was still rattled. Here again, I
22 talked with them, made sure that we had written statements
23 from both of them, and of course the other employees that
24 showed up a little bit later they had no idea of a description
25 or what had taken place because those two victims were the

1 only two that was there.

2 Q And is that part of your initial process in trying to
3 develop a suspect in the case?

4 A Yes, sir.

5 Q Okay, and based on your conversations with them where
6 did your next step take you?

7 A I went back outside of the exterior and did a walk
8 around of the premises of the building, came back in and did a
9 walk through of the interior of the business just to see the
10 location that the individual came in and the location that the
11 individual exited from.

12 Q Okay, and did you find anything out there at that time?

13 A Just to the right of the building under some brush there
14 were or there was a strip of duct tape at which time we
15 photographed that and collected it for evidence.

16 Q Okay, and you were the one that collected that piece of
17 evidence?

18 A Yes, sir.

19 Q Okay, and when you say you collected it what do you do
20 with the evidence in order to preserve its integrity?

21 A You make sure you have on your latex gloves of course.
22 You want to photograph it as is and once you do that you can
23 collect the evidence, put it in an envelope and you transfer
24 it to the or transport it to the Sheriff's Office to be
25 processed in our lab.

1 Q Okay, I want you to take a look at what's been marked
2 State's Exhibit 11. Do you - first of all, do you recognize
3 what that is?

4 A Yes, sir.

5 Q Okay, and is that an accurate depiction of what you
6 located on that day?

7 A Yes, sir.

8 Q Okay, and are there certain markings on that piece of
9 evidence that lets you know that that is the evidence and that
10 is the piece that you collected on that day?

11 A No markings that I placed on here.

12 Q Okay, but there are - are there markings on it that help
13 you identify what it is?

14 A Yes, sir; yes, sir.

15 Q And based on that and looking at the piece of evidence
16 is that the item you collected that day?

17 A Yes, sir.

18 MR. ANDREW: I'd like to ask that State's Exhibit 11
19 be introduced into evidence.

20 THE COURT: Please show it to Mr. Fox.

21 MR. FOX: Without objection, Your Honor.

22 THE COURT: State's Exhibit Number 11 is admitted
23 without objection.

24 (State's Exhibit Number 11 [Duct Tape] admitted into
25 evidence and appropriately marked.)

1 BY MR. ANDREW:

2 Q Okay, and just explain to the jury, you can hold it up
3 for them, what is that and where was that found?

4 A This is a piece of a strip of duct tape and this was
5 found just right, on the right side of the business near some
6 brush.

7 Q Okay, you say right side. That's if you're looking out
8 the back of the business?

9 A Looking at the front of the business.

10 Q The front of the business?

11 A Yes.

12 Q Okay, all right, thank you. All right, one you took
13 that into evidence what did you do, what was your next step in
14 the investigation to develop a suspect?

15 A The information that we had at that particular time, the
16 tracking team or the dog team had already secured a residence
17 where the dogs led them to. It was at that time that I went
18 around to Amelia Drive, I believe it was, and got out at the
19 residence to speak with three individuals that they had
20 already spoken with and mirandized.

21 Q Okay, let me show you and I think you've been present in
22 the courtroom but let me show you what's State's Exhibit One,
23 and just ask you, you recognize this scene; don't you?

24 A Yes, sir.

25 Q Okay, and these are the early morning hours. About what

1 time is it that you get to the residence where the dog
2 tracking team is?

3 A Might've been around 8:30.

4 Q Okay, did it mean anything to you that these two
5 locations are so close in proximity?

6 A It did because of the tracking team and the information
7 that we had, the information that I received at that
8 particular time that there was a weapon that was found just
9 behind the building in a plastic bag and that the dog team
10 tracked a scent to this particular residence on Amelia.

11 Q Okay, and once you got to Amelia do you remember who you
12 came into contact with at that point?

13 A I spoke with one of the deputies who was outside. I
14 believe it was Deputy Seale. He explained to me that there
15 were three individuals in the house that I might wanted to
16 speak with.

17 Q Okay, and did you make contact with these three
18 individuals?

19 A Yes, sir.

20 Q Okay, and do you remember their names?

21 A Franklin, Sr., his son, Franklin, Jr., and a gentleman,
22 John Jabbar Greene.

23 Q Okay, and did you mirandize him as well?

24 A No, sir, they were already mirandized before I ---

25 Q Okay, well, describe without going into specifically

1 what was said, what was, what was their demeanor of the three
2 individuals and let's start with Franklin, Sr.

3 Q Mr. Sr. was caught off guard so to speak. You could
4 pretty much pick up from him that he really honestly didn't
5 know what was going on, the information that I was giving him
6 he assured me that he had no knowledge of what was going on or
7 even why we were there.

8 Q Okay, and how about Franklin, Jr.? What was your
9 impression or what was his demeanor like at that time?

10 A He was nervous and his answers were evasive.

11 Q Okay, and John Jabbar Greene?

12 A He was very evasive.

13 Q And did you mention that a weapon had been located at
14 that point?

15 A I did not.

16 Q Okay, all right, and at that point who were your
17 suspects at that point?

18 A We didn't really have any but Deputy Geno explained to
19 me, who was still on scene, that some shotgun shells had been
20 found and also some duct tape from the residence had been
21 found.

22 Q But based on the crime scene and the evidence you had
23 did you feel comfortable that the suspect was at that house at
24 some point?

25 A Yes, sir.

1 Q Okay, and based on your interaction with these three
2 individuals would it be fair to say Franklin, Jr., and Jabbar
3 Greene were the lead suspects?

4 A Yes, sir.

5 Q Okay, and where do you turn to now when you're looking at
6 the evidence that was collected in order to link these two to
7 the crime or link at least one of them?

8 A Yes, sir, after I left the residence I got with
9 Investigator George Smith and also Captain, who's now Captain
10 Bill Pierce, they explained to me exactly what they had
11 collected and after - if I wasn't going to speak with the
12 individuals at Amelia Drive any longer we needed to go over to
13 the Sheriff's Office to process the items that were found.

14 Q Okay, let me ask you to - well, what items were you able
15 to process at the police station?

16 A The shotgun shell that was found in the weapon itself
17 and also the sawed-off shotgun was processed.

18 Q Okay, and explain to the jury, I know that Captain
19 Pierce went into a little bit of it, but explain to the jury
20 what do you do to the shotgun shell and what do you do to the
21 weapon and specifically not only what you're doing but what
22 you're looking for?

23 A The first thing I did was took the shotgun shell and
24 began to process it and that process had to do with taking
25 sterile swabs with sterile water and you're just swabbing the

1 places on the shell that an individual may touch.

2 Q Okay, and what is the purpose, what do you intend to do
3 with that?

4 A This is going to be for DNA purposes. If someone has
5 handled that weapon hopefully when we send it off to the South
6 Carolina Law Enforcement Division we could get a match of an
7 individual's DNA that is on file.

8 Q Okay, all right, and tell the jury how the weapon is
9 processed as well and specifically if you powder for prints or
10 anything like that.

11 A The metal portions of the weapon, the barrel, the
12 trigger guard, we use magnetic powder. This was for or tried
13 to obtain latent prints. Also, the duct tape at the rear of
14 the gun was used using magnetic powder and we tried to do this
15 for latent prints also. The wood portion affixed to the
16 barrel under the gun we used the method of sterile swabs,
17 sterile water to process for DNA.

18 Q Okay, did you have any luck with the prints?

19 A No, sir.

20 Q Okay, and has it been your experience or is it typically
21 duct tape is that something sometimes hard to get prints off
22 of?

23 A It is.

24 Q And why is that? Is it the surface?

25 A It's the surface of the material that duct tape is made

1 of. Most of the time we get a lot of smudges on duct tape
2 because people normally when they handle it they're stretching
3 it; and so, their thumbs normally just glide across the tape
4 itself; and so, you get a lot of smudges on duct tape.

5 Q Okay, when you took the swabs from the weapon and the
6 shotgun shell what did you do with them after you collected
7 them?

8 A After you collect items that have been swabbed you're
9 going to place them in a sleeve. You want to make sure that
10 no contaminants get on the head of the q-tip itself. You seal
11 the bag and or seal the envelope knowing that those items that
12 you've collected are going to be sent to the South Carolina
13 Law Enforcement Division for processing.

14 Q Who are they turned over to or who keeps those until
15 they're sent to SLED?

16 A The evidence custodian would do that.

17 Q Okay, I want you to take a look at State's Exhibit 14,
18 without saying what that is, do you recognize that item and
19 more specifically the three items that is inside that bag?

20 A Yes, sir.

21 Q Okay, and are there markings on that bag that lets you
22 know what those items are and where they were and when they
23 were there?

24 A Yes, sir.

25 Q Okay, and were those items turned over to evidence? Were

1 they turned over?

2 A Yes, sir.

3 Q Okay, and when did you take them out and take them to
4 SLED or send them to SLED?

5 A The evidence custodian is responsible for taking all
6 evidence that's going to be transported to SLED. It would
7 have been the responsibility of the evidence custodian to make
8 sure that the items that we collected or the trace evidence
9 that we collected would be taken to SLED.

10 Q Okay, do you have to fill out a request or something
11 like that?

12 A Yes, sir.

13 Q Okay, and did you do that with the samples that were
14 taken from the gun and the shotgun shell?

15 A Yes, sir.

16 Q Okay, and just hold on to that for a minute. All right,
17 and did you have a chance to review any other evidence that
18 was collected from the crime scene and the subsequent trail?

19 A For a brief moment it was the shoe impression that was
20 cast by Captain Pierce. They had that item also in the lab.

21 Q All right, and again, that would be something that SLED
22 would analyze. You're not qualified to analyze a foot
23 impression?

24 A Right, SLED would analyze that.

25 Q Now, as I'm sure you're aware there's been some mention

1 of some swabs taken from the three individuals at that house.

2 A Yes, sir.

3 Q Okay, now, I know that was not collected by you; is that
4 correct?

5 A No, sir.

6 Q Okay, but as the chief investigating officer would you
7 be the one that request that be sent to SLED as well?

8 A Absolutely.

9 Q Okay, I want you to look at 15, 16 and 17, State's
10 Exhibit, and just tell me if you recognize those items without
11 saying what they are?

12 A Yes, sir.

13 Q Okay, and were those items sent to SLED for analysis?

14 A Yes, sir.

15 Q Okay, and was that part of this investigation?

16 A Yes, sir.

17 Q And what's the purpose of sending the samples and the
18 samples you collected, the samples from the individual and the
19 samples you collected from the weapon? What was the purpose
20 of that?

21 A If we get swabs from the individual then SLED would be
22 able to say if it was a DNA match to the evidence that was
23 collected by what we swabbed in the lab after it's been sent
24 off.

25 Q So, basically, they need something to compare it to?

1 A Yes, sir.

2 Q Okay, now, as far as investigative work once you're
3 done, one you've talked to the people on the scene and checked
4 the evidence at the scene was that the end of your
5 investigation at that point?

6 A No, sir.

7 Q Okay, and what did you do further?

8 A You have to get back in touch with the individuals at
9 Amelia Drive. You want them to come in then speak with you in
10 reference to this particular case. You want to make sure that
11 you speak again with the victims to see if they remember
12 anything that they may have been too shaken up to tell you
13 about before. So, basically, the investigative job is just to
14 make sure you do all follow-ups with the individuals involved
15 in this particular case.

16 Q Okay, and upon doing that were you able to develop a
17 more narrow search, suspect?

18 A Yes, sir.

19 Q Okay, and who did that point to?

20 A John Jabbar Greene.

21 Q Okay, and once you got the - without, without telling
22 the jury what the results were, but once you got the results
23 back from SLED what did you decide to do at that point?

24 A I wanted to speak with a judge. We wanted to make sure
25 that if we had an individual that is a known suspect in this

1 particular case then I set out to make sure I signed
2 affidavits, warrants to locate that individual and serve those
3 warrants on that particular individual.

4 Q Okay, and is that when you obtained the warrants for the
5 arrest of John Jabbar Greene?

6 A Yes, sir.

7 Q Okay, and that was based on your investigation and then
8 the results back from SLED?

9 A Yes, sir.

10 Q So, he was arrested some date later than this initial
11 visit?

12 A Yes, sir.

13 Q Okay, when you arrested him you give Miranda warnings?

14 A Yes, sir.

15 Q Okay, and do you have a copy of whatever you read to him
16 or anything like that or ---

17 A I'm sorry. I couldn't hear you.

18 Q I'm sorry. Do you have a copy of the Miranda warnings
19 or anything you relate to him or read to him?

20 A Yes, sir.

21 Q Okay, and also you have a booking report maybe or
22 something? Do you have some other things that you do, the
23 paperwork that would help you refresh your memory about what
24 took place?

25 A It should be in that original case folder.

1 MR. FOX: I think there's a matter we need to take
2 up outside the jury's presence at this time.

3 THE COURT: All right, thank you. Ladies and
4 gentlemen of the jury, you're going to get an early break this
5 morning, some of you will get you a cup of coffee. Again, as
6 I've told you before and I know you've been doing it, please
7 don't discuss this as you've been instructed. Thank you.

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

10 THE COURT: All right, Mr. Fox.

11 MR. FOX: Your Honor, I believe the Solicitor was
12 about to ask about statements the Defendant made and we need
13 to have a hearing, a determination that these were ---

14 THE COURT: It would be a Jackson versus Denno.

15 MR. FOX: Jackson v. Denno hearing, exactly, Your
16 Honor.

17 THE COURT: All right, all right, Mr. Solicitor, are
18 you ready to proceed on that?

19 MR. ANDREW: I am, Your Honor.

20 THE COURT: Thank you. You may proceed.

21 EXAMINATION

22 BY MR. ANDREW:

23 Q Investigator Smith, do you remember making the arrest on
24 John Jabbar Greene?

25 A Yes, sir.

1 Q And where was that arrest made?

2 A At the probation and parole office here in Georgetown.

3 Q Okay, and when you came into contact with Mr. Greene
4 what kind of condition was he in? Was he intoxicated?

5 A No, sir.

6 Q Okay, did he give you any reason to believe that he
7 couldn't understand what was happening to him?

8 A No, sir.

9 Q Okay, did you inform him on what he was being charged
10 with?

11 A Yes, sir.

12 Q Okay, did you read him his Miranda rights?

13 A Yes, sir.

14 Q Okay. I'm just going to mark this as State's Exhibit
15 23. Just have you take a look at that and tell me do you
16 recognize what that is?

17 A It's a Miranda warning form.

18 Q Is that the Miranda warning form that you read to Mr.
19 Greene the day he was arrested?

20 A Yes, sir.

21 Q Okay, and when you read him that did he indicate that he
22 understood his rights?

23 A He did.

24 Q Okay, and did he wish to speak to you at that time?

25 A No, sir.

1 Q Okay, what specifically did he say at that time?

2 A Nothing.

3 Q Did not respond to you at all?

4 A Just did not want to talk to me.

5 Q Okay, how about when you - well, what did you do next?

6 Did you transport him to the jail?

7 A Transported him to the Georgetown County Detention
8 Center from the Sheriff's Office.

9 Q Okay, and do you remember if Mr. Greene said anything to
10 you during that time?

11 A He said that he did not want to talk to me at first but
12 I was cool with him so he would, he would talk with me.

13 Q Did you ask him any questions?

14 A No, sir.

15 Q Okay, without asking questions what did he say to you on
16 the way to the courthouse or to the jail? Do you remember?

17 A That the shotgun was handled by just about everybody in
18 the house. The reason why the shotgun was in the house was
19 because the house had been robbed before. He went on to say
20 that he had taken the rap for an individual in the past and
21 that he wasn't going to do it again.

22 Q Okay, and this was made without you asking him any
23 questions?

24 A Right, yes, sir.

25 Q His statement?

1 A Uh-huh.

2 Q Okay, you didn't put any undue influence or coerce him
3 or anything like that; did you?

4 A No, sir.

5 Q Okay, please answer any questions Mr. Fox may have.

6 THE COURT: Mr. Fox.

7 MR. FOX: Thank you, Your Honor.

8 EXAMINATION

9 BY MR. FOX:

10 Q And this conversation took place after Mr. Greene was
11 arrested?

12 A Yes.

13 Q He was in your patrol car?

14 A Yes.

15 Q He was handcuffed?

16 A Yes.

17 Q Okay, so, obviously in detention, not - in custody, not
18 free to leave.

19 A Yes.

20 Q Okay, did you memorialize that conversation in any way
21 afterwards?

22 A I couldn't hear you, sir.

23 Q Did you memorialize, write down that conversation in any
24 form afterwards?

25 A No, sir; no, sir.

1 Q Okay.

2 MR. FOX: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. ANDREW: Just briefly.

5 REEXAMINATION

6 BY MR. ANDREW:

7 Q Now, I know you said that you didn't memorialize it but
8 did you file or did you prepare a supplemental to your
9 original incident report?

10 A Yes, sir.

11 Q And do you mention that in there?

12 A Yes, sir.

13 MR. ANDREW: All right, nothing further, Your Honor.

14 MR. FOX: Thank you, Your Honor. That's all.

15 THE COURT: Thank you. Do you have a motion, Mr.

16 Fox?

17 MR. FOX: Well, Your Honor, I would object to any
18 statements being made after being mirandized and declining to
19 comment while he was in custody. I will go - well, I'll let
20 you rule and then I have a request based on your ruling, Your
21 Honor.

22 THE COURT: All right, it certainly appears he was
23 mirandized as would be proper. The confession or not
24 confession, just his statement was certainly voluntarily. He,
25 the deputy testified that he had not said anything more to him

1 and quite frankly Mr. Greene exercised his right to remain
2 silent until he decided he wanted to talk. So, that would be
3 certainly be voluntarily and I will allow that into evidence.
4 Now, your next motion?

5 MR. FOX: Your Honor, based on that ruling I would
6 request that when the jury is back and the investigator is
7 testifying that he not make - he made mention in this hearing
8 that he went and met with Mr. Greene at the probation and
9 parole office. I don't want the jury to hear that, the
10 implication being, of course, he was there because he has a
11 prior conviction, and Mr. Greene's statement that he had taken
12 the rap before and wasn't going to do it again for the same
13 reason. He can still get all the other information about the
14 shotgun and so on. I don't think that would be prejudicial to
15 the State but it would be very prejudicial to Mr. Greene.

16 THE COURT: Do you have any objection to that?

17 MR. ANDREW: No objection to that, Your Honor.

18 THE COURT: All right, okay, the testimony would not
19 refer to anything that he was in the probation and parole
20 office or that he had taken the rap for somebody else in the
21 past.

22 MR. FOX: Thank you, Your Honor.

23 THE COURT: All right, why don't we all take a 10
24 minute break and we'll resume the testimony at 11 o'clock.

25 MR. ANDREW: Thank you, Your Honor.

1 THE COURT: Thank you. All right, you're still on the
2 stand. You can't speak to anybody about this case. You can go
3 to the restroom and everything like that, but please don't
4 talk.

5 A Okay, all right.

6 THE COURT: Thank you, sir.

7 A Okay, all right.

8 OFF THE RECORD

9 (On the record.)

10 (The following takes place in the presence the
11 jury.)

12 THE COURT: All right, thank you. We really weren't
13 that long we just decided we'd go ahead and take a break, too.
14 You ready to proceed?

15 MR. ANDREW: Yes, sir, Your Honor.

16 We would recall Investigator Noel Smith.

17 THE COURT: All right, Investigator Smith, come back
18 up, please. You're still under oath; okay?

19 A Yes, sir.

20 DIRECT EXAMINATION (CONTINUED)

21 BY MR. ANDREW:

22 Q Investigator Smith, I believe we were at the point where
23 you had decided to make an arrest on John Jabbar Greene?

24 A Yes, sir.

25 Q Based on your investigation and the SLED reports. Were

1 you able to locate Mr. Greene?

2 A Yes, sir.

3 Q Okay, do you remember when you made that arrest?

4 A Yes, sir.

5 Q When was that?

6 A The date is what you want?

7 Q Yeah, you remember the date?

8 A Not without looking, not looking at my notes I don't.

9 Q Well, did you - when you arrested him did you give him
10 Miranda warnings?

11 A Yes, sir.

12 Q Okay, would you look at what's been marked State's
13 Exhibit 23? Do you recognize that?

14 A Yes, sir.

15 Q Okay, and is that what you read to Mr. Greene on that
16 day?

17 A Yes, sir.

18 Q Okay.

19 MR. ANDREW: We'd ask that this be moved into evidence.
20 This is 23. This is the Miranda warning.

21 THE COURT: Any objection?

22 MR. FOX: Without objection, Your Honor.

23 THE COURT: This would be?

24 MR. ANDREW: Exhibit 23, Your Honor.

25 THE COURT: 23 is admitted without objection.

1 (State's Exhibit 23 [Miranda Warning Form] admitted into
2 evidence and appropriately marked.)

3 BY MR. ANDREW:

4 Q Okay, and by looking at that is there a case number
5 reference on that Miranda warning?

6 A Yes, sir.

7 Q And does that help you identify that that's the case
8 involving John Jabbar Greene?

9 A Yes, sir.

10 Q Okay, and when was that arrest made?

11 A April 15th, 2008 at 3:30 p.m.

12 Q Okay, when you made the arrest - well, first of all,
13 you were able to locate Mr. Greene here in Georgetown County;
14 is that correct?

15 A Yes, sir.

16 Q Okay, and when you read him the Miranda warnings you
17 read him what's on that sheet of paper; is that correct?

18 A Yes, sir.

19 Q Okay, and did he indicate or did you feel like he
20 understood the rights that you were reading him?

21 A He did.

22 Q Okay, and he wasn't under the influence of alcohol at
23 the time as you could tell?

24 A No, sir.

25 Q He didn't have any questions that would lead you to

1 believe or didn't act in any way that would lead you to
2 believe he didn't understand what he was doing?

3 A No, sir.

4 Q And you felt comfortable that he did understand his
5 rights?

6 A Yes, sir.

7 Q Okay, and when you first arrested him did he make a
8 decision to talk to you or did he say anything to you?

9 A He did not want to speak with me.

10 Q Okay, but now you spent some more time with him because
11 you had to transport him in order to book him; is that
12 correct?

13 A Yes, sir.

14 Q Okay, and when you were on the way for booking, although
15 he didn't answer any questions, did he make any comments about
16 the case?

17 A Yes, sir.

18 Q Okay, and specifically what were his comments?

19 A He said that I was cool with him, that I treated him
20 like somebody, words to that effect, and that the gun belongs
21 to the household on Amelia Drive and that the gun was kept in
22 the house because that particular residence had been robbed
23 before and that had - the weapon itself had been handled by
24 several individuals in the household.

25 Q And was it your impression or did he give you any

1 indication that those other individuals were Franklin, Jr., or
2 Franklin Lincoln, Sr., and Franklin Lincoln, Jr.?

3 A Yes, sir.

4 Q And those are the other two individuals that were in the
5 house the morning that you all located the or the morning this
6 incident took place?

7 A Yes, sir.

8 Q Okay, and actually that's a - that house belongs to Mr.
9 Sr. I believe or they live there; is that correct?

10 A Yes, sir.

11 Q Answer any questions that Mr. Fox has for you.

12 THE COURT: Mr. Fox.

13 MR. FOX: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. FOX:

16 Q Now, Investigator Smith, you went the morning of the
17 robbery to that trailer; correct?

18 A Yes, sir.

19 Q And that's the first time you spoke to Franklin Lincoln,
20 Sr., Franklin Lincoln, Jr., and John Greene; correct?

21 A Yes, sir.

22 Q Okay, if I understood, pretty much the term Sr. didn't
23 really seem to know what was going on, I mean, he was asleep
24 and ---

25 A Yes, sir.

1 Q Okay, but you described Franklin Lincoln, Jr., as being
2 very nervous; correct?

3 A Yes, sir.

4 Q And in fact, then, three or four days later you spoke
5 with Mr. Lincoln, Jr., a second time; is that correct?

6 A Yes, sir.

7 Q And you brought him down to your office?

8 A The Sheriff's Office, yes, sir.

9 Q Okay, and once again how well - I mean, how would you
10 describe his demeanor at that meeting?

11 A Evasive. It wasn't so much nervous but really just kind
12 of danced around the questions that I asked with his answers
13 that he was giving.

14 Q And at some point he terminated that interview?

15 A Yes, sir.

16 Q Okay, now, how would you - did you describe it, I just
17 simply didn't hear, Mr. Greene, again, I'm back to the morning
18 of the robbery when you're at the trailer with everybody, how
19 would you describe Mr. Greene at that time?

20 A Evasive, didn't really know anything. "I don't know
21 what you're talking about," along those lines.

22 Q Okay, well, Franklin Lincoln, Sr., also said he didn't
23 know anything; correct?

24 A Yes, sir.

25 Q And he was not evasive?

1 A No, sir.

2 Q Okay, Franklin, Jr., was evasive, and in fact, you noted
3 that in your - you do a report afterwards, an investigative
4 report, an incident report?

5 A Yes, sir.

6 Q And do you recall whether you noted that with regards to
7 the demeanor of Franklin Lincoln, Jr.?

8 A I believe I did, yes, sir.

9 Q Okay, but you did not make any kind of notation as far
10 as the demeanor, nervousness, evasiveness, etcetera, about
11 John Jabbar Greene?

12 A I would have to look back at the report.

13 Q Would it help to look at that to refresh your memory?

14 A Sure, yes, sir.

15 MR. FOX: Just one moment, Your Honor. I want to
16 make sure I get the right one.

17 THE COURT: Yes, sir.

18 (Defense Exhibit Number One [Report - Noel Smith] marked
19 for identification.)

20 BY MR. FOX:

21 Q Now, Investigator, I'm going to show you what's been
22 marked as Defense Exhibit for identification One. Just take a
23 glance at that and tell me if you recognize what that is.

24 A This is my supplemental report in reference to this
25 case.

1 Q Okay, now, and we don't want you to read everything. If
2 you could look you see some scratching, some notations
3 somebody else has made about three or four paragraphs down.
4 Okay, what does that describe? Generally speaking, what are
5 you doing in your investigation at that point?

6 A Stating that I went to 264 Amelia Drive.

7 Q Okay, and this would have been your initial - this would
8 have been the morning of the robbery; correct?

9 A Yes, sir.

10 Q Okay, now, look at that and see if it refreshes your
11 memory as to Mr. Greene's demeanor or attitude on that morning
12 when you talked to him.

13 A No, sir.

14 Q It does not refresh?

15 A Well, what I'm saying is it doesn't say anything about
16 him being nervous.

17 Q Okay.

18 A That was your question.

19 Q That was my question, thank you.

20 A All right.

21 Q Thank you.

22 Do you recall the condition of the shotgun, I'm talking
23 about the shotgun now. You testified that you processed for
24 fingerprints, took swabs, etcetera, to be sent to SLED for
25 testing. Do you recall how that shotgun came, the condition

1 it came to you?

2 A The item was collected by Captain Pierce and it was
3 transported to the Georgetown Sheriff's Office by Captain
4 Pierce.

5 Q Okay, was it in anything?

6 A I'm sorry?

7 Q Was it in anything?

8 A A plastic bag, I believe it was.

9 Q It was like a green trash bag?

10 A I want to say it was a black garbage bag like if I'm not
11 mistaken.

12 Q Okay, I'm going to show you State's Exhibit Three, did
13 the bag that Detective Pierce brought the shotgun in look
14 similar to that bag?

15 A I believe so.

16 Q Okay, it was like a leaf bag or a garbage bag?

17 A Yes, sir.

18 Q Did you collect any items from the residence at Amelia
19 Drive from the trailer?

20 A No, sir.

21 Q Okay, are you familiar that there were some items taken
22 out of that trailer?

23 A Yes, sir.

24 Q Okay, there were, I think, shoes?

25 A Yes, sir.

1 Q Okay, no shoes taken from the Defendant; correct?

2 A Not that I'm aware of, sir.

3 Q Okay, and you took the shoes and I say you I'm talking
4 in general the investigation, the police officers, the shoes
5 would have been taken because they had a footprint and an
6 impression.

7 A Yes.

8 Q And the idea would be to compare the shoes that are in
9 the house to that impression; correct?

10 A Yes, sir.

11 Q Okay, but no one took Mr. Greene's shoes?

12 A Not that I'm aware of, sir.

13 Q Okay, and there's that little piece of duct tape that
14 the Solicitor showed you before, State's 11.

15 A Yes, sir.

16 Q Okay, were you in charge of sending items to SLED for
17 testing?

18 A Yes, sir.

19 Q Okay, and you send a form, lists the evidence and make
20 the request that they test for DNA or fingerprints or
21 shoeprint comparisons, etcetera?

22 A Yes.

23 Q Was that piece of duct tape also one of the items sent?

24 A No, sir, this was processed in-house.

25 Q So, that was never sent?

1 A No, sir.

2 Q How about any duct tape from off the shotgun?

3 A I would have to look back at the request form to see
4 exactly what was sent.

5 (Defendant's Exhibit Number Two [SLED Request Form]
6 marked for identification.)

7 BY MR. FOX:

8 Q Let me show you what's been marked Defendant's Exhibit
9 for identification Two and tell me if you can recognize what
10 that is.

11 MR. ANDREW: Could I take a look at it?.

12 MR. FOX: Absolutely. I'm going to show it to the
13 Solicitor.

14 MR. ANDREW: No objection, Your Honor.

15 THE COURT: All right.

16 MR. ANDREW: I've seen it. Thank you, Your Honor.

17 BY MR. FOX:

18 Q All right, Investigator - see if you can recognize that.

19 A Yes, sir.

20 Q Okay, and what is that?

21 A This is a SLED request form to have evidence analyzed by
22 South Carolina Law Enforcement Division.

23 Q Okay, and basically it lists an item in evidence and
24 what analysis is requested; correct?

25 A Yes, sir.

1 Q Okay, and what's the second item listed?

2 A Duct tape, a torn portion of gray duct tape.

3 Q Do you know where that - what torn portion that refers
4 to?

5 A Might have been from the back of the gun itself.

6 Q And what was the, what was the goal of testing that? It
7 refers to - well, read what the analysis requested was?

8 A Latent prints, trace evidence.

9 Q What would trace evidence have been?

10 A Whether or not that duct tape could've been torn from
11 the same roll.

12 Q Because from the house you had a roll of duct tape
13 located inside the trailer; correct?

14 A I believe so, yes, sir.

15 Q Okay, and on the second page, could you read what it
16 says under comments? Do you see about midway through?

17 A Right here you mean?

18 Q Yes, sir.

19 A Okay, please send gray duct tape from shotgun and
20 container, duct tape trace for fracture.

21 Q And that's the same thing of the fracture again to see
22 if one piece of duct tape perhaps came from the roll that you
23 had?

24 A Yes, sir; yes, sir.

25 Q Okay, thank you.

1 To go back to when you arrived at the scene when you were
2 first called out to the robbery location, you indicated you
3 walked around the premises. Did you go all the way around the
4 building?

5 A Yes, sir.

6 Q Okay, was that before or after the bloodhounds had
7 arrived?

8 A I'm sorry, sir, I couldn't hear you.

9 Q Was that before or after the bloodhounds team had
10 arrived?

11 A That was after.

12 Q Thank you. That's all the questions I have.

13 THE COURT: Any redirect.

14 MR. ANDREW: None, Your Honor.

15 THE COURT: Okay, thank you. You may step down.

16 MR. ANDREW: Franklin Lincoln, Jr.

17 Whereupon, Franklin Lincoln, Jr., was called to the
18 stand, duly sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Please be seated and state
20 your name for the record.

21 MR. LINCOLN: I'm Franklin Lincoln.

22 DIRECT EXAMINATION

23 BY MR. ANDREW:

24 Q Are you junior or senior?

25 A Junior.

- 1 Q Mr. Lincoln, where do you live?
- 2 A In Graves Station.
- 3 Q And do you know the address there at Graves Station?
- 4 A 264 Amelia Drive.
- 5 Q Okay, and how long have you been living there?
- 6 A Since around like 2002.
- 7 Q Okay, who lives there with you?
- 8 A Me and my pops.
- 9 Q Okay, and that's Franklin Lincoln, Sr.?
- 10 A Yes, sir.
- 11 Q And were you living back there January 18th, 2008 when
- 12 this robbery occurred at Coastal Structures?
- 13 A Yes.
- 14 Q And were you there in the morning when the police came?
- 15 A Yeah, I was sleeping.
- 16 Q Okay, all right, and about what time did you get in that
- 17 night?
- 18 A Around like ten o'clock.
- 19 Q Okay, and when - did you - what time did you go to bed?
- 20 A I would say around probably like 11 or 12 something.
- 21 Q And did you sleep until the police came the next
- 22 morning?
- 23 A Yes.
- 24 Q Okay, and you didn't get up, go to the bathroom,
- 25 anything like that during the night?

1 A No.

2 Q Okay, describe for the jury if you would what, what -
3 well, let me show you a picture maybe that'll help. I'll show
4 you what's marked State's Exhibit Five. Do you recognize
5 that?

6 A Yeah.

7 Q What is that?

8 A That's my house.

9 Q Okay, and just describe for the jury if you would when
10 you walk in what do you see and where there's bathrooms,
11 bedrooms in the house?

12 A The bathroom, the bathroom is like right here.

13 Q Okay.

14 A Yes.

15 Q Where is the door? Is there - how many doors are there
16 going in the house?

17 A Just the front door.

18 Q Okay.

19 A That's the back door to the back.

20 Q Okay, and when you walk in this front door what do you
21 see?

22 A The living room.

23 Q Okay.

24 A The kitchen.

25 Q All right, and what's on this end of the house?

1 A That's my grandmother's little room and that's my ---

2 THE COURT: You're going to need to speak into the
3 microphone so everybody can hear you. Your testimony is
4 important.

5 A This, this is my grandmother's room right here and this
6 is the bathroom and this is my room right here.

7 Q Okay, all right.

8 A Yeah.

9 Q Now, on - back in January 18th, 2008, was there somebody
10 else staying at the house with you?

11 A Probably like just my cousin.

12 Q Who is that?

13 A Jabbar.

14 Q What's his full name?

15 A John Jabbar Greene.

16 Q And is that him sitting at the table over there in that
17 striped shirt?

18 A Yes.

19 Q Okay, and about how long had he been staying with you
20 and your father?

21 A Sometimes like, it'd be like a couple of days, sometime
22 a couple of days, like two days or something like that.

23 Q But how many months prior to this incident had he been
24 staying there? How long had he been staying there off and on
25 for two or three days?

- 1 A Like I don't - me I don't even know, but ---
- 2 Q A month, two months, just approximately.
- 3 A Probably like a month.
- 4 Q Okay.
- 5 A Yeah.
- 6 Q About a month, okay.
- 7 A Yeah.
- 8 Q And when he stays there was there - you said there's two
- 9 bedrooms. Where did your father sleep most of the time?
- 10 A My father sleep in the living room, yeah.
- 11 Q Okay, and where was - what was the room you slept in?
- 12 A I slept in my daddy's room was ---
- 13 Q Okay.
- 14 A It was way back there on that side right there, yeah.
- 15 Q And where was Mr. Greene's room?
- 16 A He was, he was sleeping in my room, yeah.
- 17 Q Okay, and is that typically where he stayed when he
- 18 stayed there?
- 19 A Yeah, he would sleep in my room.
- 20 Q Okay, and on this particular morning when the police
- 21 came in which room were you in?
- 22 A My dad's room.
- 23 Q Okay, and I'm sorry, which side of the house is that on?
- 24 A On that side right there.
- 25 Q Okay.

- 1 A By the porches and stuff like that.
- 2 Q All right, and where was Mr. John Jabbar Greene?
- 3 A In this room right here.
- 4 Q Okay, do you recognize what's been marked State's
- 5 Exhibit Nine?
- 6 A Yeah, that's my room right there.
- 7 Q Okay, and do you recognize State's Exhibit Eight? Do
- 8 you recognize that dresser? Is that your dresser?
- 9 A Yeah, that's my, yeah, that's my dresser.
- 10 Q Okay, and that, but that's not the room you were in the
- 11 morning the police came in?
- 12 A No.
- 13 Q That's the room that John Jabbar Greene was in?
- 14 A Yes.
- 15 Q Okay, all right, and do you notice in State's Exhibit
- 16 Eight it's a picture of some shotgun shells?
- 17 A Yeah.
- 18 Q Are those your shells?
- 19 A I ain't know nothing about no shells, you know what I
- 20 mean?
- 21 Q Okay, all right, and how about, how about - let me show
- 22 you what's been marked State's Exhibit Ten. Do you recognize
- 23 that?
- 24 A No.
- 25 Q Have you ever seen that before?

1 A No.

2 Q Okay, did you all, did you all have any weapons in your
3 house?

4 A No, not any weapons.

5 Q No weapons?

6 A No weapons.

7 Q Not even for protection against burglaries or something
8 like that?

9 A Huh-uh, no, besides a bat or something.

10 Q A bat?

11 A Yeah, something like that.

12 Q Okay, had you all had problems with people breaking in
13 or anything?

14 A No, not, huh-uh.

15 Q Okay, let me refer you back to State's Exhibit 6. Do
16 you recognize that place?

17 A That's my uncle's house.

18 Q Okay.

19 A Yeah.

20 Q All right, and this is in kind of the front yard of your
21 place; is that correct or you and your father's place?

22 A Yeah.

23 Q Okay, had you been with Mr. Greene that night before the
24 police come in that next morning?

25 A When I, when I came from work, yeah, I went to, I went

1 to my room before I came in.

2 Q When was the last time you saw Mr. Greene?

3 A When I went in my room and then I went and went to sleep
4 afterwards.

5 Q Okay, and he was in the house at that time?

6 A Yes.

7 Q Okay. Answer any questions Mr. Fox has for you.

8 THE COURT: Mr. Fox, for the Defense.

9 CROSS EXAMINATION

10 BY MR. FOX:

11 Q Why would Mr. Greene come and stay with you and your
12 dad?

13 A Sometimes he just come either if he had to go to work or
14 something like that or just come spend some time with me and
15 stuff like that, yeah.

16 Q Do you know where he was working?

17 A He was working at the ship dock.

18 Q Here in Georgetown?

19 A Yeah.

20 Q Doing what, do you know?

21 A Being like loading stuff on the boats and stuff like
22 that, yeah.

23 Q Okay, so, he wasn't just like a maintenance man or a
24 janitor around there. He would load and unload the boats.

25 A Yeah, yeah.

1 Q Okay, do you know if he still had that job in January of
2 '08?

3 A Yes.

4 Q Okay, and when he came he would stay in what was
5 typically your bedroom; correct?

6 A Yeah, yeah.

7 Q Okay, so, the dresser in there is your dresser?

8 A Yes.

9 Q Okay, and things in the closet?

10 A Yeah.

11 Q Your clothes, your belongings?

12 A Yeah.

13 Q Okay, and he would just bring what, duffle bag or a
14 suitcase with clothes for a few days?

15 A Yeah, probably his work clothes or something like that,
16 yeah.

17 Q Okay, you didn't move out permanently out of that room?

18 A No, huh-uh, I didn't move out permanently, no.

19 Q You basically just slept in the other room when he came?

20 A Yeah.

21 Q Okay.

22 A Yeah.

23 Q And the front door of that trailer you say goes
24 straight into the living room; is that right?

25 A Yeah, the living room.

- 1 Q Okay, and that's where your father would sleep?
- 2 A Yeah, on a couch here.
- 3 Q Okay, so, if you come in the front door ---
- 4 A Yeah ---
- 5 Q --- there's the living room and the couch.
- 6 A Yeah, that's the living room, yes.
- 7 Q Okay, and you're familiar, you've lived there since
- 8 2002. So, you're familiar with the area around Graves, it's
- 9 called Graves Station?
- 10 A Yes.
- 11 Q Okay, let me ask you if you'll come down real quick.
- 12 I'm going to ask you to look at this.
- 13 Okay, can you recognize what this picture is showing?
- 14 A Yes.
- 15 Q Okay, and you can locate your trailer on there?
- 16 A Probably, I'd say probably right there, somewhere - no,
- 17 it's right here.
- 18 Q Okay, so, in fact, it says 264 Amelia.
- 19 A Yeah.
- 20 Q And then this would be your uncle's house up here?
- 21 A Yeah.
- 22 Q Okay, and can you locate the footpath that cut - that
- 23 people use to cut through the woods? Can you see the area
- 24 where that would be?
- 25 A It should be around here somewhere.

1 Q Okay, in fact, you can see a line going from above those
2 woods; can't you?

3 A Yes.

4 Q Okay, how long do you think it would take you from your
5 experience - have you ever used that path to cut through the
6 woods, go down to Highmarket Street?

7 A Yeah, plenty of times, yeah.

8 Q Okay, so, you started at your trailer and walked but
9 just at a steady pace, how long would you say it would take
10 you to get up to Highmarket just at a regular pace?

11 A Like six, probably like six minutes or something like
12 that.

13 Q Okay, five, six minutes?

14 A Yeah.

15 Q Okay, not that long and if you were moving - you could
16 do it much quicker if you needed to move fast?

17 A Yeah.

18 Q Okay, because really in a straight line it's probably
19 not but a couple of football fields; is it?

20 A Yeah.

21 Q If you could remove all the trees, stand here and look?

22 A Yeah, it'd be like a football field.

23 Q You could easily see a person, you know, again, without
24 the buildings and the trees you easily stand on Highmarket and
25 see someone at your house; couldn't you?

- 1 A You mean if I stand at Highmarket?
- 2 Q Yes.
- 3 A No, you can't, you can't see.
- 4 Q I'm saying if all this was gone, say it was all flat and
5 closer?
- 6 A Yes, yes, yes, yes.
- 7 Q Okay, it's that close.
- 8 A Yeah.
- 9 Q I got you. Okay, okay, you can sit down.
- 10 Now, they took some things out of, out of your house
11 that, when the police showed up; correct?
- 12 A Yes.
- 13 Q They took some items of clothing, some shoes?
- 14 A Yes, some shoes, my shoes, my dad's shoes.
- 15 Q Okay, you and your dad's shoes; right?
- 16 A Yeah.
- 17 Q Not Mr. Greene's shoes?
- 18 A Not as I know of.
- 19 Q Okay, did they take any hats or gloves or anything?
- 20 A I don't even know if they take any hats, but I know they
21 took my shoes and stuff like that.
- 22 Q Did they find a wallet, ask you about a wallet? Let me
23 ask you that. Did they come to you and say, "Hey, whose
24 wallet is this?"
- 25 A No.

1 Q Did they find any cash, ask you about, "Hey, who's got a
2 couple hundred dollars here in cash? Whose is this?"

3 A No.

4 Q Okay, find any credit cards or IDs with - that didn't
5 have you all's name on it?

6 A No.

7 Q How long has your father lived in that trailer?

8 A I think since around like probably '95, something like
9 '95 or something like that.

10 Q '95?

11 A Yeah.

12 Q And you moved in in 2002?

13 A Yeah, I - yeah.

14 Q Thank you.

15 THE COURT: Any redirect?

16 MR. ANDREW: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. ANDREW:

19 Q How was your cousin getting back and forth? Where was
20 he working at the time?

21 A At the ship dock.

22 Q And where is, where is that in Georgetown? About how
23 far is it from your house? It is downtown pretty much or
24 where is it? Tell the jury where it's at, where his workplace
25 is.

1 A My house, my house, I mean, it take a long to get there.

2 Q Okay.

3 A Yeah, yeah.

4 Q How was Mr. Greene getting back and forth to work? Do
5 you know?

6 A Probably with his mother or his brother, yeah.

7 Q Okay, but Mr. Greene didn't own a vehicle himself; did
8 he?

9 A No.

10 Q And when the police came in and searched your house did
11 they tear up the floor, the walls or anything like that?

12 A Yeah, it looked like a tornado hit it.

13 Q Okay, and it looked a little bit like that before they
14 got there; didn't it?

15 A No, no.

16 Q All right.

17 MR. ANDREW: No further questions, Your Honor.

18 THE COURT: All right, thank you. You may step down.

19 MR. FOX: Your Honor, might I just one quick follow
20 up with that?

21 THE COURT: Oh, excuse me. Certainly.

22 RECROSS EXAMINATION

23 BY MR. FOX:

24 Q Did they search every room in the house?

25 A They just searched my room.

1 Q They didn't, they didn't go into the living room or into
2 the other bedrooms?

3 A No, they searched my room.

4 Q Just your room.

5 A Just my room.

6 Q Okay.

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

8 MR. ANDREW: Investigator George Smith.

9 Your Honor, I ask that this witness be excused from his
10 subpoena.

11 THE COURT: Any objection?

12 MR. FOX: No, Your Honor.

13 THE COURT: All right, Mr. Lincoln may be, Lincoln,
14 Jr., may be excused for the balance of this trial.

15 Whereupon, George Smith was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Please be seated and state your name for
18 the record.

19 MR. SMITH: George Smith.

20 DIRECT EXAMINATION

21 BY MR. ANDREW:

22 Q Mr. Smith, what is your title and position with the
23 Georgetown Sheriff's Office?

24 A I am the lieutenant of criminal investigations and
25 narcotics.

1 Q Okay, and how long have you been employed or been
2 involved with being a law enforcement officer?

3 A I began in 1990 with the Sheriff's Office and I've been
4 an investigator approximately 16 years.

5 Q Okay, and as part of that, as part of your employment
6 have you received any special training or education that helps
7 you perform your duties?

8 A Yes, sir, I've had over 900 hours of advanced training
9 in crime scene and investigative expertise. I've testified in
10 General Sessions Court in South Carolina as an expert witness
11 in crime scene processing. I'm an accredited instructor with
12 the South Carolina Criminal Justice Academy. I've also taught
13 crime scene to the South Carolina Chiefs of Police as well as
14 the South Carolina Chapter of the International Association
15 For Forensic Nurses. I've processed over 2000 crime scenes.

16 Q Okay, and did you have an occasion to work an
17 investigation involving an armed robbery that occurred at
18 Coastal Structures back on January 18th, 2008?

19 A Yes, I did.

20 Q Okay, and explain to the jury how you became involved in
21 that case, who contacted you and what you did as a result?

22 A I was contacted by Captain Bill Pierce who's with the
23 Sheriff's Office. I was at my residence and asked if I would
24 respond to that location, that there had been an armed
25 robbery. While I was on the way there I found out that the -

1 our bloodhound tracking team had been called and requested to
2 respond. One member of that team was actually following
3 behind me as I was going through Pawleys Island. We arrived
4 at the same time.

5 When I arrived I met with other officers there. They
6 advised me of what information they knew. I went in and spoke
7 with the two victims and began my processing of the initial
8 crime scene, which was the business.

9 Q Okay, and were you able to do that?

10 A Yes, sir.

11 Q And based on that what did you do next?

12 A Our bloodhound tracking team had tracked through a trail
13 next to the business and had located an item there and it
14 trailed from there to a mobile home trailer that was adjacent
15 to the wooded area.

16 Q Okay.

17 A And I went to that location.

18 Q Okay, but you - you didn't handle any of the processing
19 of those items at that time; did you?

20 A No, sir.

21 Q Or the collection of those items I should say?

22 A No, sir.

23 Q Okay, but you did, you did take a look at that and where
24 did your investigation lead to next?

25 A Inside this mobile home trailer and I had spoke with

1 several of the occupants that were in there.

2 Q And just let me ask you real quickly, from the time you
3 arrived on the scene how long was it approximately before you
4 located the suspects in the trailer?

5 A I'd say approximately anywhere from 20 minutes to 25.

6 Q Okay, and based on your experience you all developed
7 suspects that were in that trailer; is that correct?

8 A Yes, sir.

9 Q okay, and did you proceed to collect some items from
10 that location at that time?

11 A Yes, sir.

12 Q Okay, well, let me ask you first, did you collect items
13 first or did you - when you talked to the suspects did you try
14 to get any samples from them at that time or did you collect
15 items first or do you remember?

16 A Yeah, I dealt with speaking with them first and then
17 collecting the items.

18 Q Okay, and based on the weapon that was found were you
19 looking for something specific from those suspects?

20 A Yes, sir.

21 Q Okay, and specifically what were you looking for?

22 A We were looking for 00 butt 12-gauge shotgun shells.

23 Q Okay, all right, and I'd like you to take a look at what
24 has been marked as State's Exhibit 18. I want you to take a
25 look at that first and just tell me does those markings on

1 that bag look familiar?

2 A Yes, sir.

3 Q And that help you identify what is in that bag?

4 A Yes, sir.

5 Q And does that refer to an item that was collected by you
6 on the - at the crime scene on the date of this incident?

7 A It does.

8 Q And I want you to open it up and take a look inside and
9 just tell me that what's inside if it is what the item that
10 you did, in fact, collect and the items indicated on the bag?

11 A On this evidence tape on the back of it it has my
12 signature and the date that I sealed it.

13 Q Okay.

14 A And this is tamper proof evidence tape.

15 Q And just do it without showing it to the jury right now.

16 A Okay. Yes, sir.

17 Q Okay, and does it have any identifying marks to help you
18 identify that that is, in fact, the item you recovered?

19 A It has my initials on the box.

20 MR. ANDREW: Your Honor, at this time, Your Honor, if I
21 may, thank you, I'd like to offer State's Exhibit 18 into
22 evidence.

23 THE COURT: Any objection, Mr. Fox, once you've had an
24 opportunity to look at it?

25 MR. FOX: No objection, Your Honor.

1 THE COURT: All right, State's Exhibit Number 18
2 is admitted into evidence without objection.

3 (State's Exhibit Number 18 [Box of Shells] admitted into
4 evidence and appropriately marked.)

5 BY MR. ANDREW:

6 Q All right, and if you would, you can hold it up now.
7 It's into evidence and just explain to the jury exactly what
8 that is and the contents of that box?

9 A It's a Winchester super X box of 12-gauge two and three-
10 quarter inches 00 buck shotgun shells.

11 Q Okay.

12 A It has my initials on the top of it to identify this as
13 the box that I collected and inside of it are four live
14 shotgun shells.

15 Q The same as indicated on the outside of the box?

16 A The same as indicated on the outside of the box each with
17 my initial on it.

18 Q Okay, thank you.

19 All right, and where was that item located?

20 A It was located in the rear bedroom of the trailer house.

21 Q Okay, and Officer, when you were developing a suspect
22 you talked to the victim you stated I believe; is that
23 correct?

24 A Yes.

25 Q Based on your conversation with the victim you had an

1 idea of the clothing that the suspect was wearing; is that
2 correct?

3 A Yes, sir, and had some idea but while I was there I
4 asked Investigator Noel Smith to try and get us a better
5 description or a more precise one.

6 Q Okay, all right, so, when you went into that house you
7 were trying to find items or what were you trying to find as
8 far as how it relates to the clothing the suspect was wearing?

9 A We were trying to find dark gloves. We were trying to
10 find a hat or mask of a knit type, dark in color, and a dark
11 coat.

12 Q Okay, well, let me, let me ask you, I'm going to ask you
13 to take a look at State's 19, 20 and 21 and just tell me by
14 looking at the outside of the box and the contents inside if
15 you're able to identify those three items.

16 A Yes, sir.

17 Q Okay.

18 MR. ANDREW: At this time we'd like to offer and I may
19 have to - State's 19, 20 and 21 into evidence.

20 MR. FOX: Without objection, Your Honor.

21 THE COURT: State's Exhibits 19, 20 and 21 are
22 admitted into evidence without objection.

23 (State's Exhibit Number 19 [Gloves]; State's Exhibit
24 Number 20 [Nylon Cap]; and State's Exhibit Number 21 [Gray
25 Wood Cap] admitted into evidence and appropriately marked.)

1 BY MR. ANDREW:

2 Q And if you would describe what's in the - what item 19
3 is and you can show it to the jury, please, if you want to?

4 A One, one pair of dark gloves found in the rear bedroom.

5 Q Okay, all right, and what drew your attention to those,
6 Investigator Smith?

7 A The description that was given by the victims.

8 Q Okay.

9 A That the person that robbed him was wearing dark in
10 color gloves.

11 Q All right, and please, if you can, identify 20.

12 A A black nylon type cap. Both of these were found in the
13 rear bedroom of the residence.

14 Q Okay, and 21 as well.

15 A This is a gray cap that was found in the rear bedroom of
16 the residence.

17 Q Okay, and there was some other items you took from the
18 house ---

19 A Yes, sir.

20 Q --- is that correct?

21 A And basically the items you took were based on the
22 investigating you had been - done up to that far; is that
23 correct?

24 A Yes, sir.

25 Q Okay, now, you also when - you said when you spoke to

1 these suspects that you spoke - did you speak to them about
2 giving consent to some samples regarding what's known as
3 buccal swabs?

4 A Yes, sir.

5 Q And ---

6 MR. FOX: Your Honor, at this point I just want to
7 renew the objection to the introduction of what's going to be
8 the DNA samples and reports. I think I need to make that
9 objection beginning here. I know it's not being introduced at
10 this point.

11 THE COURT: All right, are you - you're not attempting
12 to put them in at this point?

13 MR. ANDREW: Not, not yet, yes, sir, Your Honor.

14 MR. FOX: Well, I'll wait then, Your Honor. Thank
15 you.

16 THE COURT: Okay, all right, wait till the proper -
17 thank you.

18 MR. FOX: Yes, sir.

19 MR. ANDREW: Okay.

20 BY MR. ANDREW:

21 Q And let's talk specifically about Mr. John Jabbar
22 Greene. Do you remember talking to Mr. Greene?

23 A Yes, sir.

24 Q Okay, I'll show you what had been marked Exhibit A in a
25 previous hearing but we're going to mark it as State's Exhibit

1 24. Just tell me if you recognize it first without telling
2 me, anybody what it is?

3 A Yes, sir.

4 Q Okay, and that's actually your signature on that page;
5 is that correct?

6 A Yes, sir.

7 Q And actually signed by Mr. John Jabbar Greene?

8 A Yes, sir.

9 Q Now, when you spoke to Mr. Greene did you explain to him
10 the purpose - well, first of all, did you explain to him what
11 your investigation was?

12 A Yes, sir.

13 Q And did you explain to him what you were asking him for?

14 A I did.

15 Q Okay, and as part of explaining to him that were you
16 seeking his consent?

17 A I was.

18 Q Okay, did he appear to be intoxicated at the time?

19 A No, sir.

20 Q All right, did he appear not to be able to understand
21 what you were asking him?

22 A No, sir, he appeared coherent.

23 Q Okay, and he was responsive to your questions?

24 A He was.

25 Q And you, in fact, read him what's on that sheet of

1 paper; is that correct and advised him of ---

2 A As well as some other rights I read him in addition to
3 these.

4 Q Okay, what other rights did you read him additionally?

5 A His Miranda warnings.

6 Q Okay, and I know most of the jury's probably going to
7 know what the Miranda warnings are but just briefly what are
8 the Miranda warnings?

9 A Well, I have it - the card that I always read to anyone
10 I'm questioning in regards. Would you like me to just read
11 from the card or ---

12 Q Well, I think it's okay just to explain in general ---

13 A Okay, it's just, it's notifying somebody that might be
14 in a custodial situation of what their Miranda Rights are
15 based from a Supreme Court case and it gives them the right to
16 remain silent, right to have an attorney present and the right
17 not to be forced to give a statement or be under any duress.

18 Q Okay, and was there anything about his behavior that
19 gave you pause to think he was under duress?

20 A No, sir, he was very calm.

21 Q Okay, and you didn't place any undue influence or coerce
22 him to give consent; did you?

23 A No, sir.

24 Q And you read those Miranda warnings did he appear to
25 understand or indicate that he understood?

1 A Yes, sir.

2 Q Okay, and besides the Miranda warnings what also - what
3 else did you inform him of as far as the specific sample you
4 were wanting to take and the process and everything?

5 A I explained to him that there was an item that we had
6 located that we believed was linked to the armed robbery and
7 if he had anything to do with the armed robbery, had handled
8 this item that his DNA should be on it and I asked him if he
9 would consent to allowing me to get what was or take what's
10 called a buccal swap which is buccal cells on the inside
11 lining of your mouth and I explained to him what I would do is
12 take two Q-tips and he'd open his mouth and I would rub the
13 inside of his mouth and that would be it and ---

14 Q Did he ever pause or indicate that he had any problem
15 with you doing that?

16 A No, sir.

17 Q And did he actually give you consent to do that?

18 A Yes, sir, because he would have to open his mouth and I
19 can't force somebody's mouth open.

20 MR. ANDREW: And at this time we'd like to introduce
21 State's Exhibit - well, before I do that ---

22 BY MR. ANDREW:

23 Q Let me ask you, there were two other people in that house
24 and did you go through the same process with them?

25 A Yes, sir.

1 Q Okay, and you read them the same rights?

2 A Yes, sir.

3 Q You went through the same process with them?

4 A I did.

5 Q Would you look at 25 and 26. Do you recognize that?

6 A I do.

7 Q And that's signed by you?

8 A It is.

9 Q And 26 is signed by Franklin, Sr., 25 by Franklin, Jr.,
10 I believe; is that right?

11 A It is.

12 Q Okay, so, they also gave consent to the same thing?

13 A Yes, sir.

14 Q And you also took the swabs from them?

15 A Yes, sir.

16 Q And what do you do to insure that ---

17 MR. ANDREW: Well, at this time I'd like to introduce
18 24, 25 and 26.

19 MR. FOX: Without objection.

20 THE COURT: State's Exhibits 24, 25 and 26 are
21 admitted into evidence without objection.

22 (State's Exhibit Number 24, 25 and 26 [Voluntary
23 Consents] admitted into evidence and appropriately.)

24 Q Okay, and what do you do and specifically what did you
25 do with Mr. John Jabbar Greene's sample and Franklin Lincoln,

1 Sr., and Jr., to insure that they are - that the integrity of
2 those samples has been maintained?

3 A I used sterile swabs that we use for these type of
4 samples that was secured in my trunk in my crime scene kit and
5 two swabs in each package, opened those. I swabbed the inside
6 of one person's mouth. I took those, placed them in the
7 cardboard sleeve that are meant for them to be housed, allowed
8 them to dry for a short period. Then I packaged them,
9 initialed them and turned them into evidence at our Sheriff's
10 Office.

11 Q Okay, and at that point are they packaged in such a way
12 that nobody else should open them?

13 A Yes, sir, they're packaged with tamperproof evidence
14 tape so if it's opened it will show that the seals has been
15 broken.

16 Q Okay, and then it shouldn't be broken until it gets to
17 SLED; is that correct?

18 A That is correct.

19 Q So, that they - they're the ones that actually do the
20 analysis?

21 A That's correct, and they'll open the package from an
22 opposite location so you can see my seal still not broken.

23 Q Okay, I want you to take a look at what's been marked
24 State's 15, 16 and 17. First tell me, do you recognize those
25 items?

1 A Yes, I do.

2 Q Okay, and what are those items?

3 A These are the buccal swab or DNA samples that I took
4 from the three persons that were at that residence.

5 Q Okay, and based on that packaging can you tell who has
6 handled that item and where that item has been?

7 A Yes, sir.

8 Q Okay, and once you turn it over to evidence who took
9 charge of it at that point?

10 A At that point it would have been the evidence custodian
11 as far as handling the package. That would've been the only
12 person handling it until it was received at SLED for further
13 testing.

14 Q Okay, okay, and it's after you turn it over to the
15 evidence custodian you don't have any further involvement with
16 the handling of the swabs; do you?

17 A No, sir.

18 Q Okay, all right, thank you.

19 A You're welcome.

20 MR. ANDREW: The Court's indulgence one moment.

21 THE COURT: Certainly.

22 MR. ANDREW: Please answer any questions Mr. Fox has
23 for you.

24 THE COURT: Thank you. Mr. Fox?

25 A Yes, sir.

1 MR. FOX: Thank you.

2 CROSS EXAMINATION

3 BY MR. FOX:

4 Q Investigator Smith, did you take part in searching the
5 bedroom at the trailer?

6 A No, sir.

7 Q Okay, were you present when it was being searched?

8 A Yes, sir.

9 Q Okay, do you know if any others rooms in the house was
10 searched?

11 A Yes, sir, I believe the entire trailer was searched,
12 yes, sir.

13 Q Okay, looking for evidence of anything connected with
14 this robbery; correct?

15 A Yes, sir.

16 Q Okay, and recovered, you've testified also recovered at
17 the house were a hat, a pair of gloves, some kind of knit cap
18 or some black cap, hat, shotgun shells, the box of shells;
19 correct? Those things were all taken from the, from the
20 residence?

21 A Yes, sir.

22 Q Okay, and you had the opportunity - did you have the
23 opportunity to speak to the victims, Mr. Moses and Mr. Thomas?

24 A Yes, sir.

25 Q Okay, so, you were there, you say you processed the

1 business, Coastal Structures, followed, if I understand you
2 followed the bloodhound team; is that correct, behind them?

3 A No, sir.

4 Q Okay, but you came, based on where they led you ended up
5 at the, at the trailer where Mr. Greene and the Lincolns were?

6 A Yes, sir.

7 Q Okay, and you'd been apprised, I'm guessing, of
8 everything that had been found, a shotgun had been found,
9 there was a shoeprint in a nearby house?

10 A Yes, sir.

11 Q Okay, so, you basically by the time you were asking for
12 swabs, DNA swabs, these gentlemen and I'm guessing at that
13 point you had, the shotgun shells and the clothing items had
14 been found in the trailer?

15 A Yes, sir.

16 Q Okay, so, now, you've got the swabs. Was Mr. Greene
17 arrested on that day?

18 A No, sir.

19 Q Okay, was anybody arrested on that day?

20 A No, sir.

21 Q Do you know where exactly the shells were found?

22 A They were in a rear bedroom that the Defendant was
23 located in.

24 Q Well, where in the bedroom?

25 A I believe it, I believe it was on a - I believe it was

1 on a dresser or a night stand or something beside the bed.

2 Q But you weren't there when that was found; correct?

3 A I wasn't there when it was found but I was in there.

4 Basically what had - the other officers were searching the
5 location. When they would find something they would leave it
6 where it was. I would come in and then I would take it and
7 package it and that was to keep any other persons out of the
8 chain.

9 Q Thank you. That's all the questions I have.

10 THE COURT: Thank you. Any redirect?

11 MR. ANDREW: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. ANDREW:

14 Q When you all searched the house you didn't tear up any
15 floorboards or go in the wall or anything like that; did you?

16 A No, sir.

17 Q Check in any vents or anything like that?

18 A No, sir. As a matter of a fact the owner, Mr. Greene,
19 Sr., was on the front porch and it was kind of cold and I
20 asked him if he wanted to go inside so it wouldn't be so cold
21 but he said he was fine.

22 Q And Lincoln, Sr., is that right?

23 A Lincoln Sr., I'm sorry, yes.

24 Q All right.

25 MR. ANDREW: No further questions, Your Honor.

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

2 A Thank you.

3 MR. ANDREW: Your Honor, I would ask this witness be
4 excused from his subpoena.

5 THE COURT: Any objection?

6 MR. FOX: No, Your Honor.

7 THE COURT: All right, you may be excused. Thank
8 you. Let me see the attorneys over here for just one second.
9 (Whereupon, a bench conference was held in the presence
10 but out of the hearing of the jury.)

11 THE COURT: Please call your next witness.

12 MR. ANDREW: Joyce Whalen.

13 Whereupon, Joyce Whalen was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated and state your name and
16 spell your last name for the Court.

17 MS. WHELAN: My name is Joyce Whalen, W-H-A-L-E-N.

18 DIRECT EXAMINATION

19 BY MR. ANDREW:

20 Q Ms. Whalen, where are you currently employed?

21 A I am currently employed at St. Francis Animal Center.

22 Q Okay, and was there a period of time when you were
23 employed with the Georgetown Sheriff's Office?

24 A Yes, it was.

25 Q Okay, and what was your role and position with the

1 Sheriff's Office?

2 A I was the evidence custodian.

3 Q Okay, and as the evidence custodian explain to the jury
4 kind of what you, what your duties were as the custodian.

5 A As evidence custodian I was mainly over all the evidence
6 that come into the Sheriff's Office. Anytime an officer went
7 to a crime scene or a crime, anything that they collected as
8 evidence for that case they brought back to the office and
9 they packaged the evidence or whatever it may be and dropped
10 it into a box that was locked and at the time myself and two
11 other people were the only ones who had keys to those boxes or
12 those locations, and I would unlock the box, get the evidence
13 out, take it to my office, log it and store it in the evidence
14 room.

15 Q Okay, and were you in charge of sending it to SLED as
16 well?

17 A I would.

18 Q Let me have you take a look at what's already been
19 marked as State's Exhibit 15, 16 and 17. Just take a minute
20 to look at those and without saying what they are just tell me
21 if you recognize the items with the packaging on the items?

22 A I do.

23 Q Okay, and do those items have markings, are they your
24 markings on them?

25 A They are my markings on them.

1 Q Okay, and that's part of what helps you identify it?

2 A Yes, sir.

3 Q Okay, and what specifically is item 15 or what ---

4 A Item 15 is an envelope in a clear plastic package. It is
5 two buccal swabs from the cheek of John Greene.

6 Q Okay.

7 A And it's initialed with my initials where I took the
8 evidence, logged it in, took it to SLED.

9 Q Okay, and let's - and the same thing, what is 16?

10 A 16 is two buccal swabs, DNA from the cheek of Franklin
11 Lincoln, Jr.

12 Q Okay, and the same 17, yeah.

13 A 17 is two buccal swabs from the cheek of Franklin
14 Lincoln, Sr.

15 Q Okay, and by the markings on the bags you can tell when
16 these items were dropped and when you took them in your
17 possession?

18 A That is correct.

19 Q Okay, and by the packaging and your initials and dates
20 and all that are you able to ascertain that these items were
21 sealed?

22 A Yes, sir.

23 Q And that nobody broke that seal until it got to SLED?

24 A That is correct.

25 Q Or nobody broke it while it was in your custody?

1 A Yes, sir.

2 Q Okay, and you did send these items to SLED for
3 investigation ---

4 A Yes, sir.

5 Q --- for analysis?

6 A I took them, yes, sir.

7 Q Okay, and the other item I have here had been marked
8 State's Exhibit 14, just do the same thing. Do you recognize
9 that packaging?

10 A Yes, sir, I do.

11 Q Okay, and the items in that packaging can you tell when
12 they came into your custody?

13 A Yes, sir, I can.

14 Q Okay, if - can you tell by the markings on it that you
15 were the person that handled that packaging?

16 A Yes, sir, I was.

17 Q And can you tell by those markings on the package as
18 well that they weren't tampered with while they were in your
19 possession?

20 A Yes, sir.

21 Q And were you the one that took them to SLED?

22 A I was.

23 Q And when you take them to SLED they are - the integrity
24 of it was maintained by the package; is that correct?

25 A Yes, it was.

1 Q Okay, thank you. Okay, please answer any questions Mr.
2 Fox may have.

3 THE COURT: Thank you. Mr. Fox.

4 MR. FOX: No questions for this witness, Your
5 Honor.

6 THE COURT: All right, thank you. You may step down.

7 MR. ANDREW: I ask that she be excused from her
8 subpoena as well, Your Honor.

9 THE COURT: Any objection?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, ma'am, you're excused. Thank
12 you.

13 A Thank you.

14 THE COURT: Any other witnesses this morning, Mr.
15 Andrew?

16 MR. ANDREW: I think now would be a good time for a
17 break, Your Honor. The next witness is probably going to be
18 fairly lengthy.

19 THE COURT: All right, thank you. Ladies and
20 gentlemen of the jury, we will now break for lunch. You will
21 have lunch on your own today and just be cautious because, you
22 know, these attorneys and everybody they like to eat downtown.
23 So, if you see them in a restaurant they won't be able to
24 speak to you but they're not being rude, and again, as always,
25 do not discuss this matter until you're instructed to. Thank

1 you. Court will be in recess until two p.m. Thank you. Have
2 a nice long lunch.

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

5 THE COURT: Anything from the State?

6 MR. ANDREW: Nothing from the State, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right, we'll be in recess until two
10 p.m. Thank you.

11 OFF THE RECORD

12 (On the record.)

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

15 THE COURT: Everybody ready to proceed?

16 MR. ANDREW: The State's ready, Your Honor.

17 THE COURT: All right, Defense?

18 MR. FOX: The Defense is ready.

19 THE COURT: All right, bring the jury back in.

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

22 THE COURT: Well, I know some of you had a good
23 lunch because I saw you at the Rice Paddy and we'll take
24 breaks a little more quickly this afternoon if we need to in
25 case you ate too much at the Rice Paddy.

1 All right, is everybody ready to proceed?

2 MR. ANDREW: The State is ready, Your Honor.

3 THE COURT: All right, call your next witness.

4 MR. ANDREW: Thank you. The State calls Kimberly
5 McGill.

6 Kimberly McGill was called to the stand, duly sworn by
7 the clerk and testified as follows:

8 THE CLERK: Thank you, please be seated, state your
9 name for the record, spelling of the last name.

10 MS. MCGILL: Kimberly McGill, M-C-G-I-L-L.

11 DIRECT EXAMINATION

12 BY MR. ANDREW:

13 Q Ms. McGill, where are you currently employed?

14 A At South Carolina Law Enforcement Division formerly
15 referred to as SLED.

16 Q Thank you, and how long have you been employed with
17 SLED?

18 A Approximately a little over three years.

19 Q Okay, and what is your duties or your job over at
20 SLED?

21 A I am a forensic scientist in the DNA department. My
22 duties are to analyze evidence that have been involved in
23 criminal cases for biological, fluids such as blood, seminal
24 fluids and sweat for example.

25 Q Okay, and do you develop DNA profiles from the evidence

1 you collect or that's sent to you?

2 A Yes.

3 Q And is that evidence used to compare DNA profiles?

4 A Yes, we compare. The DNA profile is generated from
5 for example, an item of evidence is compared to a known
6 standard.

7 Q Okay, and when you mean a standard that's like a sample
8 taken from a known individual?

9 A Yes.

10 Q Okay, and do you prepare a report based on your
11 findings?

12 A Yes.

13 Q Okay, have you been called to testify in court
14 before?

15 A Yes, I have.

16 Q Okay, do you know how many times you've been called to
17 testify?

18 A Yes.

19 Q How many times have you been called?

20 A Once.

21 Q Okay, were you qualified as an expert at that
22 time?

23 A Yes.

24 Q Okay, and if you would just tell, give the jury your
25 educational background that qualifies you in this position.

1 A Okay, I have a bachelor of science degree from Clark
2 Atlanta University in Atlanta, Georgia, in biology. I also
3 have a Master of Science Degree from Georgia State, excuse me,
4 University concentrating in molecular genetics and
5 biochemistry. At SLED I received, excuse me, training from
6 court-qualified analysts in the area of DNA and serology. I
7 am also required to keep abreast of the current forensics
8 literature on DNA through reading journals. I have to attend
9 a yearly conference and also several trainings and anything
10 that may be involved with DNA to help stay abreast of what's
11 going on. I've also been trained by the FBI as a DNA
12 auditor.

13 Q Okay.

14 MR. ANDREW: Your Honor, at this time we'd like to
15 offer Ms. McGill as an expert in serology and DNA
16 analysis.

17 THE COURT: Any objection, Mr. Fox?

18 MR. FOX: No, Your Honor.

19 THE COURT: All right, without objection, without
20 objection the - Ms. McGill is certified as an expert as
21 proposed. Thank you.

22 Q All right, and let's explain to the jury and to myself
23 exactly what forensic serology means?

24 A Okay, forensic serology is the actual identification of
25 body fluids. For example, I mentioned blood earlier. The

1 serology portion is actually being able to identify the bodily
2 fluids that may or may not be present in the evidence
3 sample.

4 Q Okay, and, and then also what is forensic DNA
5 analysis?

6 A Okay, I will start off by saying just a little
7 background of what DNA is. DNA stands for deoxyribonucleic
8 acid. You can think of it as a blueprint, like you have a
9 blueprint for a house. You can think of you have DNA, as DNA
10 being a blueprint for our bodies. It kind of tells us who you
11 are. Most of us have the same DNA and there's a small
12 percentage of our DNA that's different. If you take a look
13 around the courtroom you'll see that we have two eyes, a nose
14 and two ears. This is the type of DNA, for example, that
15 would be different. In forensic science pertaining to DNA we
16 look at that small portion of DNA that makes us different.
17 When we receive this small portion of DNA we test different
18 areas of that DNA. We specifically test 15 areas and we look
19 at these 15 areas and we develop what's known as a DNA profile
20 and this DNA profile is what we look at to exclude or include
21 an individual from the item.

22 Q Okay, and would any two people have the same DNA?

23 A Yes, the only people that would have the same DNA is
24 identical twins. Everyone else's DNA is different.

25 Q Okay, did you have an opportunity to review some

1 evidence regarding case L081576?

2 A Yes.

3 Q Let me show you what has been previously marked as
4 State's Exhibit 15, 16 and 17 and let me have you take a look
5 at that and tell me do you recognize that item or do you
6 recognize marks on that item that tell you what that item is?
7 Well, first, let's tell the jury this. What happens when you
8 receive evidence from an investigative agency?

9 A Okay, evidence is received in our unit. We have a unit
10 at SLED called the evidence log in area and that area receives
11 the evidence from the agencies. Once this evidence is
12 submitted to the log-in area the log-in area is responsible
13 for placing this evidence in an access only bin where our
14 evidence technician in our DNA department is responsible for
15 taking this evidence and placing it in each analyst's, the
16 assigned analyst bin. This bin is a lock secured area where
17 only I can access it and I am to retrieve the evidence from
18 these bins.

19 Q And the purpose of that is to maintain the integrity of
20 the evidence; is that correct?

21 A Yes.

22 Q And to make sure that you analyze it in the same
23 condition that you get it in; is that correct?

24 A Yes.

25 Q Okay, and in this particular case, like I say, well,

1 let's tell them how do you identify evidence? What markings
2 do you put on it in order for you to identify it?

3 A Okay, each item of evidence is notated by a laboratory
4 number. All of our cases that are submitted for SLED begins
5 with an "L". So, it's identified with the laboratory number,
6 the item number. It's also with the analyst's initials and
7 date.

8 Q Okay, and did you assign the evidence you received from
9 Georgetown County - well, first of all, I'm sorry. Let me
10 back up. You've had an opportunity to review these 15, 16 and
11 17 by the State?

12 A Let me see.

13 Q Do you recognize those items?

14 A Yes.

15 Q And how are you able to recognize those items?

16 A I'm able to recognize these items because I have my name
17 and initials and they are sealed and my name and initials are
18 on the sealed portion of the heat-sealed pouches.

19 Q Okay, and let me also introduce or let you take a look
20 at what's been marked State's Exhibit 14 and ask you do you
21 recognize that as well?

22 A Yes.

23 Q Okay, and for the same reason you recognize the other
24 ones; is that correct?

25 A Yes, this heat-sealed pouch also contains my name, my

1 initials, excuse me, and the date across the heat-sealed
2 pouches and also on the items of evidence.

3 Q Okay, and before you seal the evidence back up what
4 were you asked to do - well, first of all, what are those
5 items?

6 A I'm going to refer to my report in answering
7 this.

8 Q Would that help refresh your memory?

9 A Yes, just so I can be accurate. I received - item
10 number three is our item number and they're buccal swabs from
11 John Jabbar Greene.

12 Q And that's - just so we're clear on the record, item 3
13 is actually State's Exhibit 15; is that correct?

14 A Yes, State's Exhibit 17, which is our item number four,
15 are buccal swabs from Franklin Lincoln, Sr. State's Exhibit
16 Number 16 is our item number five and this is buccal swabs
17 from Franklin Lincoln, Jr. State's Exhibit Number 14 is our
18 lab numbers 6, 7 and 8. They're packaged together. Their
19 number six is swab from shotgun shell found in shotgun, number
20 seven swab from shotgun trigger guard and number eight swabs
21 from shotgun wood bore stock.

22 Q Okay, and explain to the jury once you get the -
23 based on the request you got from Georgetown County what
24 did you do with this evidence once you got it in your
25 possession?

1 A Okay, items - State's Exhibit items number 15, 16 and 17
2 are all buccal swabs from individuals and these items of
3 evidence are what we call standards. They're known standards
4 to come from known individuals. Item number 6, 7, 8, which is
5 State's Exhibit Number 14 are evidence items. These items
6 were submitted for DNA analysis to see if any DNA is on these
7 items to compare the known with the unknown evidence
8 samples.

9 Q And would you be able to tell if these were compromised
10 in any way, the buccal swabs?

11 A Yes.

12 Q Okay, were they compromised in any way?

13 A No, these buccal swabs were not found to be
14 compromised.

15 Q And explain to the jury briefly what buccal swabs are if
16 you would.

17 A Okay, buccal swabs are a type of standard that's used,
18 like I said, to be able to develop a DNA profile. You obtain
19 these swabs from the inside of your cheek, and once again,
20 when I say a standard it's a known standard, meaning I know
21 that it came from this individual; and therefore, what we're
22 doing is trying to or when buccal swabs are collected you're
23 removing the skin cells from the inside of your mouth, your
24 cheek area to place on the swab and that's what buccal swabs
25 are.

1 Q Okay, so, after you analyzed the buccal swabs how did
2 you relate that or test it and compare it to the other items
3 you collected?

4 A Each of the standards and the evidence they were all ran
5 separately during, separated by space and time. The standards
6 were ran and analyzed and a DNA profile was developed from
7 each one of the standard items. The evidence was then
8 analyzed to see if there was a presence of DNA on any of the
9 swabs submitted and then taken for DNA analysis, which means
10 to see if a DNA profile could be developed from these swabs
11 that were submitted.

12 Q Okay, and were you able to do that with the items that's
13 State's Exhibit 14?

14 A Yes.

15 Q Okay, and what was your results on that?

16 A Okay, I'm going to read strictly straight from my
17 report.

18 Q Well, let's - is that the original?

19 A It's a copy of the original.

20 Q Do you have the original over there?

21 A No, we sent off - well, this is ---

22 Q Okay, hold on.

23 A Okay.

24 Q Well, tell the jury what you found from your
25 tests.

1 A Okay, within a reasonable degree of scientific certainty
2 the DNA profile developed from item number eight, which is
3 swabs from shotgun, wood bore stock matches the DNA profile
4 developed from John Jabbar Greene. The partial DNA profile
5 developed from item number seven was not found to be suitable
6 for CODIS entry.

7 Q And explain to the jury if you would what not suitable
8 for CODIS entry means?

9 A Okay, item number seven, which is swab from shotgun
10 trigger guard, when the DNA profile is being developed it led
11 us to a partial profile. In the beginning I stated that we
12 test 15 areas of the DNA to see if we can obtain all 15 for a
13 full DNA profile. With this particular item all of the 15
14 locations did not, allele number or profile was not able to be
15 developed from each one of those 15 locations. Therefore, we
16 consider it a partial DNA profile.

17 Q Okay, and you only find conclusions of the medical -
18 with a degree of medical certainty if all 15 are, that are
19 able to be analyzed; is that correct?

20 A Yes, within a reasonable degree of scientific certainty
21 we would say when there is a full profile that the item would
22 match and we can also use also matches. It depends on the
23 number of DNA locations that were present out of the 15. With
24 this particular item number there was a lower number and at
25 SLED we go by a threshold and if it's below a certain

1 threshold then this is considered a partial DNA profile.

2 Q Okay, and how about ---

3 MR. FOX: Excuse me, Your Honor.

4 THE COURT: Yes, sir.

5 MR. FOX: Briefly, I meant to jump in from the very
6 beginning. Now, that we're into the results of DNA testing I
7 would like to renew my objection. I realize the report itself
8 is not in but we are in, part of my previous objection was any
9 testimony about results from these swabs and I just simply
10 would like to let the record reflect I'm renewing my objection
11 at this point.

12 THE COURT: Okay, objection noted.

13 MR. FOX: Thank you, Your Honor.

14 THE COURT: Overruled.

15 BY MR. ANDREW:

16 Q And the third item.

17 A No human DNA was obtained from item number six, which
18 was a swab from shotgun shell found in the shotgun and what
19 this means is when we're going through our DNA process one of
20 the initial steps is to see if DNA is present and to see how
21 much DNA is there in order for us to take it to the next steps
22 of developing a DNA profile. Item number six did not have any
23 - excuse me, there was no DNA, human DNA obtained for item
24 number six to continue on to the other steps to develop a DNA
25 profile.

1 Q Okay, but that doesn't mean you rule out a person; does
2 it? It just means you don't have sufficient, a sufficient
3 sample; is that correct?

4 A Yes, that means that DNA was not present on item number
5 six.

6 Q Okay, and as far as the match between the item that you
7 were able to draw a conclusion on, based on your training and
8 the scientific evidence what is the chances that it's not Mr.
9 John Jabbar Greene?

10 A Okay, the probability of randomly selecting an unrelated
11 individual having a DNA profile matching this item is
12 approximately 1 in 57 trillion, and the item is item number
13 eight and it's referring to matching to John Jabbar Greene.

14 Q You said 57 trillion; is that correct?

15 A Yes.

16 Q Okay, let me mark - can I have your results, please?

17 A Yes, sir.

18 Q Mark that as an exhibit. Let me show you what has been
19 marked as Exhibit 27 and that - is that the item you were just
20 reading off of?

21 A Yes.

22 Q And that's the results from your DNA tests?

23 A Yes, it is.

24 Q And does that document, does it accurately reflect what
25 your findings are?

1 A Yes, it does.

2 Q Okay, let me hold it just one moment.

3 MR. ANDREW: I'm going to ask that 27 be introduced
4 into evidence, Your Honor.

5 MR. FOX: Subject to previous objection, Your
6 Honor.

7 THE COURT: Right, all right, State's Exhibit Number
8 27 is admitted into evidence.

9 (State's Exhibit Number 27 [DNA Results] admitted into
10 evidence and appropriately marked.)

11 MR. ANDREW: And I'd like to submit this or publish it
12 for the jury, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. ANDREW:

15 Q Well, let me ask you one thing. What does this back
16 table here with all these numbers on it, can you, can you
17 briefly explain that to the jury?

18 A Yes, as I indicated earlier, DNA is a genetic makeup of
19 - tells us who we are, makes us up of who we are. You receive
20 half of your DNA from your mother and you receive half of your
21 DNA from your father. In forensic testing we test for 15
22 locations on the DNA to see if we can develop what we talked
23 about earlier, a DNA profile. This table indicates the
24 contribution at each of the 15 locations that you could have
25 received from your mother and from your father to give you

1 your specific DNA profile at the specific location, one of the
2 15 locations. This table notates all of the items that were
3 submitted for analysis and the DNA profile that was obtained
4 from each one of these items.

5 Q Okay, all right, thank you, and you don't have anything
6 to do with the collection of evidence or anything else other
7 than the scientific analysis; is that correct?

8 A That is correct.

9 MR. ANDREW: The Court's indulgence, Your Honor.

10 THE COURT: Yes, sir.

11 MR. ANDREW: Please answer any questions that Mr. Fox
12 may have for you.

13 A Yes.

14 THE COURT: Mr. Fox.

15 MR. FOX: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. FOX:

18 Q Ms. McGill, is there any way once you have a sample from
19 an item, in this case the gun, the shotgun, and you determine
20 in fact there is DNA that you can develop and compare to a
21 submitted sample is there any way to age or to determine the
22 age of the sample?

23 A No, it is not.

24 Q Okay, so, in other words, once a person leaves a DNA,
25 I'm going to say trace. I know that's not the term of art,

1 but if I leave a trace of DNA somewhere it's just it's there;
2 is that correct?

3 A Yes, that's correct.

4 Q Okay, now, you've indicated one of the items that was
5 submitted for your testing in that report was a shotgun shell;
6 correct?

7 A That is correct.

8 Q Okay, and you could not find traces of DNA on that item;
9 correct?

10 A That is correct.

11 Q So, generally speaking, any person, a person doesn't
12 always leave an identifiable DNA trace or sample with each
13 item they touch. In other words every time I touch an object
14 I'm not necessarily going to leave something in an amount
15 anyway that you would be able to come back and develop a DNA
16 strand from; is that correct?

17 A That is correct.

18 Q Okay, so, for instance with the shotgun that's at issue
19 the fact that you found and your test results say that it's
20 John Jabbar Greene that doesn't exclude at some point in time
21 that other individuals may have handled that weapon?

22 A That just tells me that that particular item of that
23 shotgun, that area that was tested, the DNA that came off of
24 that item matched the DNA profile of Mr. John Jabbar Greene.

25 Q Okay, and if a person wears gloves they're not going to

1 leave a trace behind; would they?

2 A That's most of the time less likely.

3 Q Okay, can you develop, if I understood correctly your
4 expertise and training is in forensic serology. Would that
5 include, what you define as bodily fluids, basically blood
6 being an example, would that include or can - do you know if
7 you can develop DNA from hair samples, hair fibers?

8 A Yes.

9 Q Okay, so, if you for instance leave, put on a hat and in
10 taking, putting on, taking off the hat you might lose some of
11 your, particularly if you're me, and perhaps there may be a
12 hair left behind that could be tested; is that correct?

13 A That is correct.

14 Q Okay, would you expect or could you find hair or skin
15 inside a pair of gloves?

16 A It's possible, yes.

17 Q Okay, were - are the things in this report by - it's
18 right - number in State's 27, which was your report, your DNA
19 analysis, were these the only items that you were asked to
20 test by the Georgetown County Sheriff's Office?

21 A Yes.

22 Q Okay, and those again were shotgun shells, shotgun
23 trigger guard and the fore-stock or the stock of the shotgun;
24 correct?

25 A That is correct.

1 Q No hat?

2 A No, sir.

3 Q No gloves?

4 A No, sir.

5 Q And with regard - Mr. Andrew asked you about the shotgun
6 shell, that you - and you, I believe, said you could not get
7 any sample from the shotgun shell; correct?

8 A That is correct.

9 Q Okay, so, you can't exclude anybody in the whole wide
10 world in that regard because you've got no sample to even
11 begin to compare; is that right?

12 A That's correct.

13 Q Okay. Thank you. That's all I have.

14 A Thank you.

15 THE COURT: Any redirect?

16 MR. ANDREW: Nothing from the State, Your Honor.

17 THE COURT: Thank you.

18 MR. ANDREW: I'd ask this witness be excused from her
19 subpoena.

20 THE COURT: Any objection, Mr. Fox?

21 MR. FOX: No, Your Honor.

22 THE COURT: Thank you. You are excused from the
23 subpoena. Thank you.

24 A Thank you.

25 MR. ANDREW: That is the State's case, Your Honor.

1 THE COURT: All right, thank you. Ladies and
2 gentlemen, we need to take a little break at this time. As I
3 said, I'm going to keep you awake this afternoon. I'm going
4 to keep you running back and forth. I'm going to dismiss you
5 to your jury room at this time. Thank you, bring you back
6 shortly.

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

9 THE COURT: All right, that is the close of the
10 State's case. Do we have any motions at this time?

11 MR. FOX: Yes, Your Honor. At this time I'd move
12 for a directed verdict as to each indictment. The State I
13 would submit has not proved its case beyond a reasonable
14 doubt. They have shown, they've connected Mr. Greene to a
15 weapon but no way to determine when it was that he came in
16 contact with that weapon. There's not been identification.
17 The victims were unable to identify other than a black male
18 they believe based on voice, pigment around the eyes but were
19 unable to identify even height, weight description. The
20 clothing that was described is actually inconsistent with the
21 clothing that's in evidence. I thought they were, both
22 gentlemen were specific it was a black hat, a black toboggan,
23 knit hat like a winter hat, we've got a gray hat, a pea
24 colored, a green colored coat, we have no coat, although we've
25 had testimony about shoes, no shoe comparison or anything of

1 that nature. So, I would submit the State has not carried its
2 burden of proof as to any count and ask the Court to direct a
3 verdict on each and every count.

4 THE COURT: Thank you. Mr. Andrew.

5 MR. ANDREW: Well, I believe that first Mr. Fox is
6 incorrect, that I think there's statements or testimony given
7 by the victims that suggested there was a gray cap, but beyond
8 that I think there's been sufficient testimony that a crime
9 obviously did occur and that the identification of that person
10 that committed the crime was Mr. John Jabbar Greene. We have,
11 do have, and again, given the weight most favorable to us or
12 all to us at this point they did describe a black male. Mr.
13 John Jabbar Greene is a black male. There was a weapon
14 located within, within an hour of this crime being committed
15 and that weapon did have DNA on it that matches Mr. John
16 Jabbar Greene according to our expert. Furthermore, within an
17 hour or maybe a little bit longer after this crime occurred
18 Mr. John Jabbar Greene was found within 500 yards or less of
19 where this incident took place, and at that time is when he
20 gave his sample that we were able to compare with the DNA
21 analysis and also there was a shotgun shell that was found
22 that matched or shotgun shells found at his home that were
23 similar or identical or similar to the shotgun shell that was
24 found in the gun. I think given all this it's certainly fair
25 to have a jury give weight to that testimony and evidence and

1 make a decision whether or not Mr. John Jabbar Greene is
2 guilty or not.

3 THE COURT: All right, any reply argument?

4 MR. FOX: No, Your Honor.

5 THE COURT: All right, a directed verdict motion must
6 be viewed in the light most favorable to the nonmoving party.
7 I find that there is sufficient evidence in the record to at
8 least let the jury make a decision on that. So, I am going to
9 deny your motion for directed verdict. Thank you.

10 MR. FOX: Thank you, Your Honor. At this time, Your
11 Honor, we had previously discussed with regards to Mr. Greene
12 testifying and I had discussed and I need to have a few
13 moments to speak with him about his final wish now that we're
14 at the point in the case where he may testify. He has several
15 convictions that would be subject, potentially subject to
16 impeachment were he to take the stand. I have offered to
17 stipulate to the fact that he has felony convictions because
18 those convictions are assault with intent to kill. I believe
19 at the same time of that conviction was two counts of pointing
20 and presenting a firearm and there is an older I believe
21 assaulting a police officer or resisting arrest while
22 assaulting a police officer; and so, my argument would be to
23 do that is to get into the specifics, particularly with the
24 ones involving pointing and presenting a weapon and assault
25 with intent to kill is that although those are not robberies

Motions

1 they're very similar in nature, there being a weapon, a
2 violent crime to what Mr. Greene is on trial for today and
3 that the prejudicial value to Mr. Greene outweighs any
4 probative value of allowing the specifics of those charges to
5 be used. In other words, the whole idea is to avoid the jury
6 basing its verdict in this case on the fact that he might have
7 done something similar before and there's a and courts have
8 tried to avoid that very much. It would be no pressure -
9 prejudice to the State to do that I believe because they could
10 still get - impeach him with the fact that he is a convict,
11 that he has multiple and I believe there are at least three,
12 if not four different convictions that would be impeachable.
13 They would still be able to bring that out that this is
14 someone who has been convicted before. They can argue that in
15 terms of credibility. They can impeach it with him when he
16 testifies and they can use that to argue to the jury, but that
17 way we can remove any question that the jury's verdict,
18 whatever it is, is based on the evidence in front of them in
19 this case, not on prior conduct of the Defendant.

20 THE COURT: Mr. Andrew.

21 MR. ANDREW: Well, the only thing I would suggest at
22 this time or my opinion about it would be that first of all I
23 think Your Honor needs to inform the Defendant of his right
24 not to have to testify and obviously you'll point out to the
25 jury that he doesn't have to and then make a decision whether

1 he is going to testify based on that and then deal with
2 whether or not we're going to get into a prior crime unless
3 he's already telling us - well, I still think he needs to be
4 advised either way and then he tells us if he is going to
5 testify.

6 MR. FOX: Well, clearly he does either way, but I
7 think how it is handled in terms of impeachment may impact,
8 certainly would impact what I would tell him. The decision,
9 of course, is his. It's his absolute right to testify or not,
10 but I think knowing what's going to be impeached, you know,
11 how he's going to be impeached. Clearly he's going to be
12 impeached. It's a matter of how if he testifies; and so, I
13 think that may impact his decision. I would ask that we at
14 least have that ruling before he makes a final determination
15 of whether or not to testify.

16 MR. ANDREW: Well, my argument on it as far as the
17 prior convictions, Your Honor, none of them are the same exact
18 crimes that he's been charged with today. Therefore, I don't
19 think that the prejudicial value outweighs the probative value
20 in order to not allow us to get into the crimes that were
21 specifically committed. Obviously this - the Defendant does
22 have a right not to testify, but once he does put himself on
23 the stand I think we do - it's only fair to the State that we
24 have an opportunity to question him and that we use prior
25 convictions for impeachment purposes and I think without going

1 - with just the title of the offenses it is my opinion that
2 they are not closely enough related to this type of crime that
3 it's going to be more prejudicial than probative. I mean, the
4 State specifically - assault and battery of a high and
5 aggravated nature in '95, there was no physical force used in
6 this particular case. Assault and battery on a police
7 officer, again, there was no force used in this case. So, I
8 don't think those are prejudicial. Pointing and presenting a
9 firearm, there was a firearm in this matter but it takes it a
10 step further as far as our charges are concerned and that the
11 robbery took place. Now, there was an assault with intent to
12 kill, that does not necessarily in and of itself indicate that
13 there was a weapon involved. Therefore, I do not think that's
14 too prejudicial, and based on that - the only ones I would
15 hesitate at all is the firearm charge.

16 THE COURT: That's the pointing and presenting a
17 firearm?

18 MR. ANDREW: Yes, sir, but again, well, again, I
19 think, like I say he doesn't have to testify. He puts himself
20 in that position. I think we ought to be able to use those
21 prior convictions and pointing and presenting a firearm in and
22 of itself doesn't mean that the person used a weapon as far as
23 the way a weapon was indicated in this case. Pointing and
24 presenting can just mean having a weapon on you. Therefore, I
25 would suggest that that's not too prejudicial and that the

1 State ought to be able to use that in its case or to impeach.

2 MR. FOX: I think it's very, although it's certainly
3 a different charge it's very similar to the facts that the
4 victims testified to yesterday in terms of shotgun being
5 pointed at them, pointed in fact to the point of pointing back
6 and forth.

7 THE COURT: All right, give me the charges again real
8 quick.

9 MR. ANDREW: The previous convictions, Your Honor?

10 THE COURT: Right.

11 MR. ANDREW: He has an assault and battery of a high
12 and aggravated nature from 1995, assault and battery on a
13 police officer in 1997, along with a malicious injury to
14 county property. The pointing and presenting, there's two
15 counts from 2003, also in 2003 there's an assault with intent
16 to kill.

17 THE COURT: And that was in 2003?

18 MR. ANDREW: Yes, sir, that's the conviction dates,
19 yes, sir.

20 THE COURT: Okay. Let me take a few minutes to do a
21 quick research and I'll come back out and give you my ruling
22 on that and then if he's going to testify I will question him
23 concerning it.

24 MR. ANDREW: Thank you, Your Honor.

25 MR. FOX: Thank you very much, Your Honor.

1 THE COURT: Thank you. Court will be at ease.

2 OFF THE RECORD.

3 (On the record.)

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

6 THE COURT: A couple of questions before I rule on
7 this. The initial ABHAN that was in 1995; is that, is that
8 his conviction date?

9 MR. ANDREW: That's correct, Your Honor.

10 THE COURT: Okay, did he do any time for that?

11 MR. ANDREW: He got an active YOA sentence, Your
12 Honor.

13 THE COURT: Okay, so, when was he released from jail
14 on that?

15 MR. ANDREW: I do not know, Your Honor.

16 THE COURT: Do you have any evidence it was after
17 1999?

18 MR. ANDREW: From when he was released from custody,
19 Your Honor?

20 THE COURT: Right.

21 MR. ANDREW: No, sir.

22 THE COURT: The assault and battery on a police
23 officer that he was convicted of in 1997 did he do any time on
24 that?

25 MR. ANDREW: Yes, sir, but he got a time-served

1 sentence. That was in '97 when he got - when his court date
2 was.

3 THE COURT: Okay, so, that - but the pointing and
4 presenting, the two counts, were in 2003 and the AWIK was in
5 2003 as well?

6 MR. ANDREW: Yes, sir, it looks like, it looks like all
7 those were handled on the same court date. Now, I don't know
8 if they were the same incident date but it looks like he pled
9 all of them at the same time.

10 THE COURT: Okay, all right, thank you.

11 All right, under Rule 609 it certainly would allow for it
12 to be put in especially under 609(B). Evidence of a
13 conviction under the rule is not admissible if the period of
14 more than ten years has elapsed from the date of the
15 conviction or release of a witness from confinement imposed
16 for that conviction. So, there's no question that the 1995
17 ABHAN and the assault and battery on a police officer in 1997
18 would probably not be admissible. Now, the malicious injury
19 to county property, I mean, what was the time period of that?

20 MR. ANDREW: That was - looks like he pled on the same
21 date for the assault on a police officer and looks like he got
22 the time-served sentence on that as well.

23 THE COURT: So, that would be a 1997 or 1995. That
24 would be more than 10 years. That would certainly not be -
25 you could not use that ---

1 MR. ANDREW: Yes, sir, Your Honor.

2 THE COURT: --- to ---

3 MR. ANDREW: Yes, sir.

4 THE COURT: --- impeach him by evidence of a prior
5 conviction. This is a situation that involves - he's denying
6 that he did that and I find that it makes it very probative;
7 and therefore, I will deny the motion of the Defense. If you
8 want a few moments to confer with your client, Mr. Fox, but
9 the convictions for pointing and presenting a firearm in 2003
10 and the assault with intent to kill in 2003 can be used to
11 impeach his with the prior criminal actions. All right, do
12 you want to take a few minutes? Take as long as you need.

13 MR. FOX: Yes, Your Honor, would like to.

14 MR. ANDREW: May we, may we approach, Your Honor?

15 THE COURT: You may.

16 (Whereupon, a bench conference was held.)

17 MR. ANDREW: Your Honor ---

18 THE COURT: Yes, sir.

19 MR. ANDREW: --- if I may, after considering
20 everything I'll consent to the pointing and presenting just
21 being felonies.

22 THE COURT: Okay.

23 MR. ANDREW: Two felonies from 2003. So, the only one
24 I would suggest that the Court consider is the assault with
25 intent to kill. I will still suggest that that one is not

1 closely enough related to this crime to create a prejudice
2 that outweighs the probative value.

3 THE COURT: And Mr. Fox, I mean, assault would not
4 necessarily be with a weapon or a gun. It could be with
5 something else. So, therefore ---

6 MR. FOX: Well, let me say that I think that's - my
7 argument stays the same. I'm a little concerned about
8 splitting it, but that's certainly better, the ones I was
9 certainly most concerned about was the pointing and
10 presenting. So, I'll let Mr. Greene know that if he chooses
11 to that there would only be a reference to two felony
12 convictions in 2003 and assuming that the Court's ruling is
13 the same the assault with intent to kill. So, I'll see if
14 that changes his opinion.

15 THE COURT: All right, then, based upon that
16 concession, the pointing and presenting firearm charge from
17 2003 will not be referred to specifically. That will just be
18 referred as felonies. On the charge of assault with intent to
19 kill in 2003 and having reviewed the Colf case I, I have
20 weighed the probative value versus the prejudicial value of
21 the - against the Defendant in this and based upon the charges
22 in this and with AWIK, assault with intent to kill, not
23 necessarily being a weapon, which seems to be the crux point
24 here of the, of the gun where I do see where the pointing and
25 presenting might tend to link him more and be more prejudicial

1 than probative. The charge of assault with intent to kill
2 could be with some other weapon other than a gun; and
3 therefore, the probative value outweighs the prejudicial, and
4 again all presentment of prior convictions is prejudicial but
5 I find that the probative outweighs the prejudicial. On the
6 pointing and presenting the firearm by the consent of the
7 Solicitor and that will merely be referred to as felonies and
8 that was by your consent; was it not?

9 MR. ANDREW: Yes, sir, Your Honor.

10 THE COURT: All right, now, you want to take a few
11 minutes to talk to your client?

12 MR. FOX: Your Honor, I believe - we've been
13 discussing while Your Honor was researching that and I believe
14 Mr. Greene is prepared to be questioned by the Court as to his
15 testifying.

16 THE COURT: All right, all right, Mr. Greene, would
17 you please stand and raise your right hand?

18 (Defendant: sworn by the Court.)

19 THE COURT: All right, Mr. Greene, at this time I'm
20 going to explain to you certain of your rights. If you do
21 not understand anything I say please let me know. If you want
22 me to explain anything in more detail please let me know as
23 well. You understand what I'm telling you now?

24 MR. GREENE: Yes, sir.

25 THE COURT: We have now reached the stage in this

1 trial where you may present your defense. You have the right
2 to claim the protections given to you by the Fifth Amendment
3 of the Constitution of the United States. This amendment
4 states in part, "No person shall be compelled in any criminal
5 case to be a witness against himself." This means that you
6 cannot be required to testify in this case. You have the
7 right to testify on your own behalf. No one can make you
8 testify. This is a personal right that no one can waive this
9 right except for you. So, therefore, your attorney can't
10 waive it for you. If you decide to testify you'll be subject
11 to the same rules that govern other witnesses and you may be
12 examined and cross-examined on any relevant issue in this
13 case. In addition if you have any convictions which we have -
14 you have just heard us talking about involving dishonesty or
15 false statements or any crimes punishable by the imprisonment
16 of more than one year and this Court determines that the
17 probative value of admitting the evidence outweighs its
18 prejudicial effect the Solicitor will be able to introduce
19 your record to attack your credibility. If you decide to
20 testify the decision on your part must be freely, voluntarily
21 and intelligently made with knowledge of the protections given
22 to you by the Fifth Amendment and the consequences of your
23 decision to testify. If you decide not to testify I will
24 instruct the jurors that they cannot give the fact that you
25 did not testify any consideration whatsoever and that there

1 will be absolutely no prejudice to you because you did not
2 testify. It is left entirely up to you whether or not you
3 want to testify. You may talk to your attorney, any family
4 members or any friends or anyone else, but the final decision
5 would be left entirely up to you. Do you understand what I
6 have explained to you?

7 MR. GREENE: Yes, sir.

8 THE COURT: Do you have any questions about what I
9 have explained to you?

10 MR. GREENE: No, sir.

11 THE COURT: Okay, have you discussed with your lawyer
12 whether or not you should testify?

13 MR. GREENE: Yes, sir.

14 THE COURT: Do you wish to talk to him anymore at
15 this time?

16 MR. GREENE: No, sir.

17 THE COURT: Do you wish to testify?

18 MR. GREENE: No, sir.

19 THE COURT: Okay, all right, thank you. All right,
20 anything further? Do you all need to take a break? You all
21 ready? I'm going to - what I'm going to do now is I'm going
22 to bring the jury - well, you - now that he's not going to
23 testify do you want to renew your motion or do you need to
24 renew your motions?

25 MR. FOX: I don't believe I need to renew the

1 motion, Your Honor.

2 MR. ANDREW: I didn't know if he had any other
3 witnesses.

4 MR. FOX: Yeah.

5 MR. ANDREW: I didn't know if he was specifically
6 putting up any case or not or ---

7 MR. FOX: And I - just to make a record I don't
8 anticipate, in part to make a record for the future I had Mr.
9 Greene was one potential witness who has indicated he does not
10 wish to testify. I had also potentially looked at Franklin
11 Lincoln, Sr., and Jr. Mr. Franklin Lincoln, Jr., did, in
12 fact, testify, had the opportunity to ask him some questions I
13 would have asked if he had been my witness. I spoke several
14 times before today and again today during the lunch break to
15 Franklin Lincoln, Sr., and after speaking with him decided
16 that I would not call him as a witness. So, I do not
17 anticipate, unless I learn some new information overnight, I
18 don't anticipate calling any witnesses, Your Honor.

19 THE COURT: And Mr. Solicitor, you understand that
20 would give him the right to have final argument? I don't
21 think he put anything into evidence.

22 MR. ANDREW: That's correct. That's my understanding,
23 too, Your Honor, yes, sir.

24 THE COURT: Okay, all right, well, then what I'm
25 going to do is I'm going to bring the jury back in. I'm going

1 to dismiss them for the day and then we will argue and charge
2 at 9:30 tomorrow morning. Does that suit everybody?

3 MR. FOX: Yes, sir.

4 MR. ANDREW: Yes, sir.

5 THE COURT: All right, thank you. Please bring the
6 jury back in.

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

9 THE COURT: Thank you. Just one moment.

10 All right, ladies and gentlemen of the jury, we're going
11 to have a short day today; okay? That is all that we will
12 have for you this afternoon. As you go home tonight, as
13 always, please do not discuss this with anyone else. Do not
14 discuss it with - among yourselves and please be back here at
15 9:30 tomorrow morning where we will finish this case. All
16 right, thank you. I - we won't call your employers and let
17 them know you got out early.

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

20 THE COURT: Do you all have any potential jury
21 instructions that you have? We've got a draft set here if
22 you want to look at them.

23 MR. ANDREW: That'd be awesome, yes, sir.

24 THE COURT: And then and I intend to send this back
25 to the jury room if possible. Is there any objection to that?

1 I think Judge Culbertson does that or do you want me just to
2 argue and not send them back there with them?

3 MR. ANDREW: I, I would prefer just to argue and not
4 send it back, Your Honor.

5 THE COURT: Okay.

6 MR. ANDREW: If you're giving me a choice.

7 MR. FOX: I agree, Your Honor, if that's - that
8 would be my choice for the record.

9 THE COURT: It may give them a little too much law ---

10 MR. FOX: Sometimes.

11 THE COURT: --- determining on that?

12 MR. ANDREW: Yeah, I don't know what they do already,
13 giving them more ---

14 MR. FOX: Right.

15 THE COURT: Okay, okay, well, then I will just charge
16 them and they'll just take what I say and take it from there.

17 MR. ANDREW: And if I have any I'll bring the written
18 requests to charge in the morning.

19 MR. FOX: Right.

20 MR. ANDREW: If that'd, that'd be sufficient, Your
21 Honor.

22 THE COURT: Okay, well, we're going to give you copies
23 of what we propose so far.

24 MR. ANDREW: That'd be great.

25 MR. FOX: Okay.

1 THE COURT: That way you'll have time to do it.

2 MR. ANDREW: Okay.

3 MR. FOX: Great.

4 THE COURT: Gives me time as well.

5 MR. ANDREW: Yes, sir.

6 THE COURT: Great, thank you.

7 MR. ANDREW: Thank you, Your Honor.

8 MR. FOX: Thank you.

9 THE COURT: Court's adjourned for the afternoon till
10 9:30 tomorrow morning.

11 OFF THE RECORD

12 (On the record, Thursday, April 30, 2009.)

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

15 THE COURT: Mr. Fox, is there any change in your
16 client's decision?

17 MR. FOX: I'm sorry, Your Honor, I couldn't quite
18 ---

19 THE COURT: Has there been any change in your
20 client's decision?

21 MR. FOX: No, Your Honor. I will confer that one
22 last time but I don't believe there has.

23 THE COURT: Okay. Let me see the attorneys up here
24 real quick.

25 (Bench conference was held.)

1 OFF THE RECORD

2 (On the record.)

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

5 THE COURT: Do the charges appear to be sufficient?

6 MR. ANDREW: I have one issue with the charges, Your
7 Honor.

8 THE COURT: Okay, what would that be?

9 MR. ANDREW: I would like to request that Your Honor
10 take out that first sentence of a reasonable doubt and any
11 reference to a reasonable doubt is the kind of doubt that
12 would cause a reasonable person to hesitate to act. I've got
13 the Brightman v. State of South Carolina case and some
14 language from the Victor v. Nebraska where it talks about,
15 well, you go further in here and later define reasonable doubt
16 as firmly convinced of the Defendant's guilt. I'm of the
17 impression that that's the more accurate or the more up-to-
18 date language that the Courts have adopted as being indicative
19 of what reasonable doubt is and I'll pass those up. So, we'd
20 - I'd just ask that that - like I say it's Brightman v.
21 State. I've given defense counsel a copy and it references in
22 there that the states - South Carolina State Supreme Court has
23 adopted the Victor v. Nebraska, which or the consenting
24 opinion of Ginsberg in that case, Your Honor, or I should say
25 Justice Ginsburg in that case where she goes into the firmly

1 convinced language, and I think it's kind of confusing for the
2 jury if we give them ---

3 THE COURT: Well, I mean, there is no affirmative
4 defense in this case; is there?

5 MR. ANDREW: I'm sorry, Your Honor, affirmative
6 defense?

7 MR. FOX: Affirmative defense, no.

8 THE COURT: I mean ---

9 MR. ANDREW: No, sir, if I said that, I meant, it just
10 - I meant firmly convinced.

11 THE COURT: All right, Mr. Fox. Say what?

12 MR. ANDREW: I don't know, I don't know what I said,
13 but I was just talking about the definition of the reasonable
14 doubt.

15 THE COURT: Oh, okay.

16 MR. ANDREW: And what I was talking about, too, I
17 think it's confusing if we give them two separate definitions
18 and I think the - you know, I think the more accurate or up-
19 to-date one is the firmly convinced.

20 THE COURT: Mr. Fox, any objection?

21 MR. FOX: I do. I like the, I like that language,
22 Your Honor. It's certainly language that has been used in
23 this courtroom and I'm sure others throughout the state in the
24 last ten years. I'm not familiar with the Brightman. So, I'm
25 trying to quickly read through and see exactly what the charge

1 was.

2 THE COURT: Does it have specifically what the charge
3 was in there?

4 MR. FOX: I don't see - I see about resolving
5 questions ---

6 MR. ANDREW: Well ---

7 MR. FOX: --- in favor of the, you know, if there's,
8 if there's a question in the jury's mind, that they must
9 resolve doubts in favor of the Defendant. I don't see the
10 specific language about hesitate to act in King. That's, King
11 is the case that they say we don't need to - we're going to
12 overrule King and endorse the Victor v. Nebraska.

13 MR. ANDREW: Well, I've just ---

14 THE COURT: How about if we were just to say the
15 hesitate because the act ---

16 MR. FOX: I'm sorry, right, the hesitate to act.
17 That's correct. I don't see that that's ---

18 THE COURT: I mean, if we were to just say to
19 hesitate.

20 MR. ANDREW: Well, I just think that it's confusing for
21 the jury and my position is that the Victor V. Nebraska, I
22 mean, even if the State v. Brightman, and Mr. Fox, I'll point
23 you to the last paragraph of that.

24 MR. FOX: Okay.

25 MR. ANDREW: Now, the charge in that was different as

1 far as the charge in that case, the criminal charge, but the
2 language in there says that our court has endorsed the
3 definition of reasonable doubt as set forth in Justice
4 Ginsburg's, concurring opinion in Victor v. Nebraska and it
5 even ---

6 THE COURT: Well, I tell you, I tell you what I'm
7 going to do on this. I'm still new at this and this is what
8 they gave us as new judges. This is what has gone through
9 Court Administration. So, this was their suggested language.
10 I'm just going to use that, Mr. Andrew.

11 MR. ANDREW: Thank you, Your Honor.

12 THE COURT: I think we'll be all right. Hold on one
13 second.

14 Mr. Fox, you have any other objections to the ---

15 MR. FOX: I do not, Your Honor.

16 THE COURT: All right, my clerk is looking up
17 something real quick that may resolve this, too.

18 There's an alternative one that they have here.

19 I'm going to leave it as it is.

20 MR. ANDREW: Thank you, Your Honor.

21 THE COURT: I think it would still be fair to the
22 State and to the Defense.

23 All right, would you bring the jury in, please, ma'am?

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

1 THE COURT: Good morning, everyone.

2 At the conclusion of yesterday the Defense had an
3 opportunity to meet with the Defendant, the Defense counsel
4 did, and they have decided that they would not put up any
5 testimony in this case, and I instruct you and emphasize the
6 fact that the Defendant did not testify or produce any
7 evidence in this case is not a factor to be considered by you
8 in any way in your deliberation and in your consideration on
9 the question of guilt or innocence of the Defendant. It must
10 not be considered by you in any manner whatsoever. The
11 Defendant has the constitutional right to remain silent and
12 the assertion of his right must not be considered by you in
13 your deliberations. I repeat, under your oath you are to draw
14 no conclusions whatsoever from the fact that the Defendant in
15 this case did not testify. The fact that the Defendant did
16 not testify should not even be discussed in the jury room.
17 The burden of proof as I have stated to you is on the State.
18 The Defendant is not required in any way to prove his
19 innocence. The burden of proof remains on the State to prove
20 guilt beyond a reasonable doubt.

21 Now that there will be no testimony from the Defendant,
22 we are at the point in the trial where the attorneys will give
23 you their closing arguments. After that I will charge you on
24 the law in this matter.

25 Are the attorneys ready for their closing arguments?

1 MR. ANDREW: The State's ready, Your Honor.

2 MR. FOX: The Defense is ready, Your Honor.

3 THE COURT: All right, thank you. The State.

4 MR. ANDREW: Thank you, Your Honor.

5 You know, we all have our roles to play and you're about
6 to get your opportunity to deliberate this case, look over
7 everything and make a determination and obviously my role as
8 an officer of the State is to try to present that evidence to
9 you through the testimony and the evidence collected from the
10 crime to convince you that Mr. John Jabbar Greene committed
11 these crimes beyond a reasonable doubt, and Mr. Fox,
12 obviously, is defending his client and his role is, you know,
13 to poke holes in that theory or whatever theory I present to
14 you to suggest or to convince you that we didn't prove it or
15 not - maybe I shouldn't say that. There's no burden on him
16 but obviously that I did not meet my burden beyond a
17 reasonable doubt. I will say this, however, even though Mr.
18 Fox and I are on separate sides of this thing we can agree on
19 a couple of things, you know, and the first thing being that
20 attorneys do like to talk you to death and we both would try
21 to avoid that, but I encourage you, you know, whatever I
22 present on the stand and the time I took to do it and I know I
23 was deliberate on a lot of things, but I understand that you
24 don't know anything about this case. Many of you have never
25 been involved in this process and many of you may know armed

1 robbery, have an idea what it is, burglary, an idea what it
2 is, kidnapping, an idea what it is, but you've probably never
3 read the law and certainly are not familiar with each element,
4 but hopefully we will explain that to you and the Judge is
5 going to charge you the law at the end of the case and explain
6 what each element is and I touched on that when I first spoke
7 to you in my opening argument. So, if I did talk you to death
8 a little bit or had my witnesses drag on a little, it's only
9 because, you know, I want to insure that we have had a fair
10 trial and that you've had a fair opportunity to have a look at
11 the witnesses that we've presented, that you've been familiar
12 with their qualifications, their involvement with the case,
13 what they do to insure that that evidence integrity, and the
14 integrity of it is preserved and their expertise or their
15 training and knowledge of what they collected and how they
16 processed that. So, hopefully, I know it was a little
17 lengthy, but hopefully, you know, it was enlightening and
18 hopefully it helps you come to the conclusion that Mr. John
19 Jabbar Greene committed these offenses.

20 The other thing we can agree on is that there were crimes
21 committed. I think Mr. Fox told you in opening that that
22 probably wouldn't be hard for you to resolve and you heard the
23 two victims that seemed or I suggest to you were credible
24 witnesses. They even indicated they didn't know Mr. Greene
25 and really couldn't identify Mr. Greene as far as on sight, by

1 looking at the individual that came into the Coastal
2 Structures that morning on January 18th, 2008, but that there
3 was a crime committed or it was someone came in with a weapon,
4 entered that building without consent with a weapon, which is
5 the burglary second, took it even further, used that weapon to
6 confine these people. You heard the testimony from them that
7 they certainly didn't feel like they could get up and move
8 around and walk out if they wanted to, that that person was
9 not only using that weapon, was standing over them with a gun
10 and even their lives were threatened, and the fact that they
11 were confined even if it was just a confinement to that floor
12 I suggest to you that's kidnapping, and the Judge will explain
13 the law to you and I think if you apply the facts to the
14 elements you won't have any problem resolving that that's a
15 kidnapping offense, even though it's not, like I said, what
16 you typically think of like you see in the movies and
17 everything when they wrap you up in a trunk and take you off
18 somewhere, but if you confine somebody and restrict their
19 movement like that and the Judge will explain to you that
20 that's kidnapping as well and then obviously the armed robbery
21 which is probably self-explanatory enough to you but basically
22 that they used a weapon, a person used a weapon, took
23 property, in this case it was money and a wallet, and run off
24 with that property or took that property from those people and
25 with the use of the weapon and the force that was

1 accomplished. So, I think we can all agree that that took
2 place and even Mr. Fox suggested that in his opening.

3 Now, the question becomes how do we identify the person?
4 Okay, and the Judge is going to talk to you about two
5 particular types of evidence, you know, direct evidence and
6 circumstantial evidence, and the difference being and he'll
7 explain it to you. Obviously if I say something different go
8 with the Judge, but basically the direct evidence is like
9 testimony, eyewitness testimony like you heard from the
10 victims or testimony from the officer. They tell you what
11 they saw, where they found it and that's the direct testimony,
12 and then obviously you have to go through the same process.
13 You see these people. You see their demeanor. You see
14 whether or not there's been any suggestion of a motive for
15 them to lie, things like that. So, you give whatever weight
16 you want to to that evidence, but that's the direct evidence.

17 Then the circumstantial evidence is when you infer
18 things, okay, from the evidence that you do have, the direct
19 evidence or the testimony, you know, such as in this case with
20 the DNA being found on the gun and it matching Mr. Greene's
21 DNA, where the items were located in relation to where the
22 offense occurred, where Mr. Greene's house occurred, you can
23 infer some things and that's what, that's what we talk about
24 with being a reasonable juror, you know, and you're going to
25 hear some thoughts about beyond a reasonable doubt and

1 certainly you should, that's, that's, that is my burden to
2 prove the case beyond a reasonable doubt, but I'll stress to
3 you it requires you to act reasonable, okay, and you're going
4 to hear some language that the Judge is going to try to define
5 reasonable doubt for you as our courts have done and there's
6 been a couple of different definitions. I'm not sure if it's
7 - not a moving target and it might be specific to each one of
8 you but the definitions that our courts have looked at is what
9 causes a reasonable person to hesitate to act or what leaves
10 you firmly convinced is beyond a reasonable doubt is firmly
11 convinced, and what I - like I say, what I want to stress to
12 you is to be reasonable during that time; okay?

13 Now, you're going to meet some people that they know two
14 plus two is four, but they're always going to hesitate to act.
15 You know, I know some people they take tests and they know the
16 answer but for whatever reason they're nervous or scared or
17 whatever they're going to hesitate to act, but I'd suggest to
18 you that be reasonable and when you evaluate the evidence if
19 it points to Mr. Greene and you're firmly convinced that it's
20 Mr. Greene that you're - it's your duty when those elements
21 are met and it's been shown that it's been Mr. Greene that was
22 involved in this crime or committed this crime then it's your
23 duty to come back with a guilty verdict, and then like I say,
24 you're not passing judgment on Mr. Greene. We're not, we're
25 not judging his character here today. We're just judging

1 whether or not he did these offenses. We're not asking for
2 any excuses or justifications for what he did. There hasn't
3 been any presented. We're just suggesting that, you know, we
4 have a society, we have laws. The law has been broken.
5 Someone has to be held accountable.

6 Now, I'm going to show you what you all have been looking
7 at a good while and I'll try to be as brief as I can. There
8 was a pretty good bit of evidence that was collected and it
9 can be inferred from the evidence that you've heard and the
10 first thing I want to talk to you about, you know, is where
11 this crime took place as far as the evidence you've heard and
12 that you heard that from direct testimony from the victims
13 that this crime took place here. You also heard some direct
14 testimony that the Defendant, John Jabbar Greene, was found
15 here. Okay, and you also heard direct testimony from his
16 cousin that Mr. Greene was there that morning and that
17 actually Mr. Greene had been staying there off and on, I
18 think, I think he said for a couple of months or something but
19 he was actually staying in that bedroom where some of these
20 other items were found, but the first thing I want to talk to
21 you about, you know, I told you when I gave my opening
22 statement and I told you that, you know, some of the good
23 things about Georgetown County or some of the difference than
24 what you see on TV we don't, we don't have very sophisticated
25 criminals typically here in Georgetown County, and a lot of

1 the crimes are crimes of convenience, you know, which makes
2 sense. I mean, most people in Georgetown County there is not
3 a million-dollar armored car riding through Georgetown every
4 day or anything like that. So, we don't have night goggle
5 visions or a team of criminals that have plotted out
6 something. Usually what we have, like I said, is
7 unsophisticated criminals committing crimes of convenience and
8 that's what I want to point out to you.

9 You also heard direct testimony from the Defendant's
10 cousin that he didn't have a vehicle, okay. Well, that limits
11 - when you're, when you're in this process and you're trying
12 to pick a place and I'll suggest to you this crime was planned
13 and I'll get into that with some of the evidence found, but
14 when you're here and you don't have a car you're kind of
15 limited to where you can commit crimes and have a way to get
16 back to where you are at home, and I would suggest that, you
17 know, it makes sense to me to look at it logically that, you
18 know, the way this thing is laid out makes sense for somebody
19 that if they're planning to do the very kind of crime that was
20 committed on January 18, 2008, you have access. You have
21 actually a beaten-down path. The only time you have to cut
22 through woods is from this area into the lot where this
23 took place, and that's what I'm talking about the planning
24 period. When Mr. Greene was planning this thing, these are
25 the kind of things that I would suggest to you that he took

1 into consideration and it makes, I think you can infer that
2 from the location of this place. The other thing is if you've
3 got someone staying here they're going to be familiar with
4 some of these patterns that's going on in this business and
5 you heard testimony from both victims, Mr. Harby Moses and Mr.
6 Walt Thomas, and they talked about that this place, it's
7 usually just the two of them at that time in the morning.
8 This crime took place six, six or so, you know, I don't know
9 about an exact time, six, 6:15, but they told you that pretty
10 much Monday through Friday they are the first ones there
11 around 5, five to 5:20 and then they start having crews coming
12 in but they did make a good point and they told you that they
13 usually have several crews coming in Monday through Thursday,
14 okay, but on Fridays, it usually wasn't anybody. So, there's
15 a pattern there that's gone on with this business, and I
16 suggest to you that somebody that lives here could - would be
17 familiar with that pattern.

18 They also testified that on Fridays it's just them but
19 you heard Mr. Harby Moses say that typically he was inside and
20 typically for over 10 years Mr. Walt Thomas would come out
21 here, he'd be kind of back-and-forth between the building
22 coming out here to the warehouse. So, I would suggest to you
23 anybody that was familiar with this area that would be
24 something they would notice and that might be something they
25 would consider when planning this offense because obviously

1 even if you're not - if you're unsophisticated that doesn't
2 mean you're totally dumb when it comes how to commit a crime
3 because obviously you don't want witnesses and you want it to
4 be fast and easy and you don't want to leave any trace, okay,
5 and I think that's - any time you're anticipating a crime or
6 planning a crime that that's what you've got in mind and I
7 suggest that's what Mr. Greene did. Good for us that we had a
8 few things that he probably wasn't even aware of and wasn't
9 even thinking about. So, I suggest you've got a location
10 that's close enough. You've got a time in the morning when
11 there's not many people out and you've got a pattern here that
12 he knows that there's only going to be two people here and
13 that this person outside is going to be by himself a lot and
14 maybe one person inside.

15 Now, what I'm talking about very unsophisticated it
16 doesn't make sense probably to most of us and you don't have
17 to make sense of it, but you know, this isn't the kind of
18 business that's going to have a ton of money, you know, you're
19 not going to get a ton of money out of it. All you're going
20 to get is what Mr. Greene got, which was the money off the two
21 individuals, but regardless, it was, I think, like I said, a
22 crime of convenience, easy in, easy to handle, you've got an
23 older man outside, an older man inside, he's in control of
24 that situation, especially with a 12-gauge shotgun.

25 The other thing you're going to do if you're planning

1 this thing is you're going to pick your instruments of crime.
2 Okay, and you know, I know we collected some items at the
3 house or I say we, the officers did, and it may or may not
4 match the clothing. I don't know if it was the clothing that
5 was worn that day, but I think you can agree with me that from
6 what these victims testified about the clothing used was not
7 any high-tech. It was clothing that was - would be around
8 most people's homes or anybody that, you know, would throw
9 together, whatever they could to try to cover themselves up,
10 and so, like I say, a crime of convenience. All that's there
11 available. The other thing that I would suggest shows you
12 that this crime was planned and that Mr. Greene was the one
13 is, you know, with some of the evidence that was collected on
14 the scene. You know, you heard the victims testify to a
15 weapon. Well, let's go back for a minute. The clothing, you
16 heard them testify that it was, like I say, no burglar outfit.
17 It was just whatever clothing you could have around the house
18 to try to cover yourself up. The other thing is the weapon
19 involved. They both testified that they noticed it was a
20 shotgun but they also noticed the duct tape on the handle and
21 I would suggest to you that that's done to cover up any
22 potential fingerprints, just as the gloves were, that were
23 used on this thing, and this would be something that would
24 have to be done ahead of time. The other thing that I would
25 suggest to you that this was planned out like this is the way

1 the gun was found. I mean, this thing and you've seen the
2 pictures of it, you know, in the woods in a plastic bag. Now,
3 that tells me and I think it's safe for you to infer that this
4 bag was brought for that very purpose was to conceal this
5 weapon. Okay, so, that, that was thought out ahead of time,
6 and you know, I don't know if he left it there ahead of time
7 or he just dropped it off on his way back. I don't know but
8 that shows me and I think it should show you that this was
9 thought out, this was ahead of time, that the bag was either
10 brought or laid there and, and that, that coincides with the
11 testimony you heard from his cousin, Mr. Franklin Lincoln,
12 Jr., that was in the house. They said they'd never seen a
13 weapon. Okay, they had never seen this weapon or any other
14 weapon in that house. Okay, so, that tells me that's, that's
15 why Mr. Greene had to drop it off here because he couldn't
16 take it back here because that weapon wouldn't be in that
17 house or it couldn't be in that house because nobody had seen
18 it and that that further shows me that Mr. Greene was the one
19 that dropped it off before he got back here. So, I think you
20 can infer from all that - and plus, the shotgun shells. They
21 had to be purchased ahead of time. I think it's important for
22 you to note that although there was not a weapon in the house
23 there were shotgun shells found in the room where Mr. Greene
24 was and these shells, you'll have a chance to look at them and
25 I may bring them out here in a minute but you'll have all this

1 evidence in your back room, but I think you'll be able to tell
2 it's a fairly new box of shells and I think you'll see that
3 there's only one shell missing, you know, it isn't your
4 typical when you see buckshot and if any of you all know about
5 hunting, the buckshot, well, I'll let you infer whatever you
6 can from that, but I would suggest to you that, like I said,
7 with an unsophisticated criminal and crimes of convenience,
8 when those things were purchased, they were purchased because
9 buckshot come in a box of five or six. If you want to buy,
10 mostly if you want to buy like a bird shot or something it's
11 a box of 20, probably just costs more. So, I'm, I'm going to
12 assume that was probably some of the motivation behind the
13 smaller box.

14 All right, the other thing I want to talk to you about is
15 obviously the evidence that was collected and the reliability
16 of that evidence and the processing of it. Basically what you
17 have, you know, the two victims obviously they told they were
18 frightened and they described the best they could and
19 obviously one of them described the gun really well but they
20 were able to tell that it was a black male, and I think that's
21 reasonable for you to assume that they could do that because
22 it doesn't take much and they described how it was, and
23 apparently there was a space here that was left, that was not
24 covered. So, I suggest to you that their testimony is
25 reliable in at least identifying the person as a black male

1 and that's all they suggested anyway. They didn't suggest
2 anything else, but they did tell you they could see that
3 portion, both of them, and that through the voice and the
4 stature of the person they could tell it was a man. Now, the
5 other good thing we have in this case which is strong in this
6 case is the quick response time the police had. Okay, but
7 most, I think most of them reported that they were on the
8 scene within 15 to 30 minutes. Okay, and that does a lot of
9 good things for us because one thing Mr. Greene probably
10 doesn't realize is we do have a tracking team and you heard
11 from that bloodhound tracking handler, Deputy Seale, and well,
12 first of all, you heard from Sergeant Morris or Investigator
13 Morris now. I think he was a sergeant at the time, but they
14 secured the scene and they knew when that bloodhound tracking
15 team, they knew if they secured this area back here that they
16 would have a better chance of that bloodhound picking up the
17 scent and coming back and sure enough the bloodhound unit was
18 there I think within the hour, which is, I suggest to you,
19 close enough in time that the scent would be fresh, and you've
20 heard, you heard testimony from Deputy Seale saying that that
21 was well within Flo's, who's the bloodhound's timeframe to
22 pick up a scent. I think he just told you that he even picked
23 up scents within six hours or so, but it makes sense and it
24 fits this crime of convenience because the bloodhound picks up
25 the trail and you heard Deputy Seale say that he went down

1 here. Now, he said he went inside the fence but, you know, he
2 told you that it is not an exact science as far as where that
3 trail is but as soon as he brought him back on the other side
4 of the fence just on that other side and he said pretty much a
5 straight across trail which would make sense for somebody
6 leaving to cut through the big part and hit this path that you
7 can see on the aerial photo and that's where they found the
8 weapon, okay. So, the weapon was found, I think within the
9 hour or more or less within the hour after this crime was
10 committed and being the unsophisticated criminal I believe
11 that Mr. Greene felt like with the duct tape and in that trash
12 bag, one, they might not find it in these woods, and two, even
13 if he did with his gloves, the duct tape and all on the
14 shotgun that we wouldn't be able to process it, and you heard
15 the officers testified to what they did to protect the
16 integrity of that gun. They collected it, packaged it and
17 you'll see it back in the jury room and took the samples off
18 of it so that they later if they did get a suspect they would
19 be able to compare it. Another thing I would point to you is,
20 you know, with a sawed-off shotgun there ain't much purpose in
21 that other than to commit crimes with, you know, maybe house
22 protection I guess but it's not a hunting weapon or anything
23 like that. So, it's an instrument of a crime, instrument of a
24 crime and that goes back to what I was talking about in the
25 planning stages. The other thing I think is important that,

1 you know, these officers talked about that they went pretty
2 much a straight path to this house, I mean, you heard Deputy
3 Seale say that he crossed even over this hard surface which he
4 indicated is usually a surface that doesn't hold the scent as
5 long but that the dog did not hesitate to come across and
6 actually went through this, it's actually an uncle of
7 Franklin, Sr., who lived here as testified to by Franklin,
8 Jr., went through there and then circled the house twice and
9 stopped, okay, and then, you know, go in the house and what do
10 they find? And I think it's important to note this, too, is
11 Mr. Greene is in that bedroom. Well, there's three people in
12 the house, Franklin, Jr., Franklin, Sr., Franklin Lincoln,
13 Jr., Franklin Lincoln, Sr., and you heard testimony from the
14 officers and Mr. Greene's cousin, Franklin Lincoln, Jr., that
15 he was the one in that bedroom where these items were found
16 and, you know, you've got pictures of that bedroom. I'm not
17 going to say anymore. Just point out - it's kind of messy but
18 you get the idea, and going in that house and going in that
19 bedroom, you know, what do they find, and I think it's
20 obviously linked to this crime what they found. They found
21 some clothing. You'll be able to look at that, but I think
22 even more importantly, you know, I'm sure we - most, most of
23 us have some duct tape in our house and that alone would not
24 mean that we commit the crime, but given all these
25 circumstances I think it's fair for you as circumstantial

1 evidence to infer that this does matter, that this duct tape
2 does matter in that it was found, you know, 10 feet from where
3 Mr. John Jabbar Greene was found which is less than 500 yards
4 from the crime scene within an hour and a half of the crime
5 being committed. The other thing that's important, like I
6 said, the shotgun shells that were found. You heard testimony
7 from Mr. Lincoln, Jr., that there were no guns in the house,
8 and yet, we have shotgun shells found in the drawer beside the
9 bed where Mr. Greene was found. The other thing I think is
10 important, too, was what the officers told you is Mr. Greene
11 is fully clothed lying on top of the covers when all this was
12 found, and you heard several officers testified that the - it
13 was cold that morning and you can even see from the picture
14 photos of Mr. - Deputy Geno. He was - had gloves on and was
15 pretty well-dressed and I think he even told you he remembered
16 it being cold that morning and then, well, let me, let me just
17 stop there for a minute because, you know, there's been some
18 suggestion by the questions asked by Mr. Fox about the shoe
19 impression that we took here, okay. There was a shoe
20 impression taken. You didn't hear any evidence other than
21 that but I'll suggest to you, you know, you've got a foot
22 impression under an uncle's garage. Well, the best case
23 scenario and then this was not presented into evidence. I'm
24 not suggesting you take this as evidence, but the best case
25 scenario it comes back to the Defendant and I've got a

1 footprint of a Defendant 50 feet behind the house where he
2 stays, you know.

3 MR. FOX: Objection, Your Honor. He's arguing facts
4 that are not in evidence.

5 THE COURT: Sustained.

6 MR. ANDREW: Okay, okay, but all right, well, anyway,
7 so, then when they talked to the three people at the house,
8 which I suggest to you is pretty reliable given the time frame
9 and the actions of the handler and the dog, they take samples
10 from them and they consented to the samples and you heard the
11 officers go through. They explained even what they were doing
12 with the samples as far as trying to compare it to other
13 evidence. Now, being unsophisticated criminals what they
14 didn't realize, you know, if you give that sample and there is
15 DNA on that gun you're going to have somebody that's going to
16 be able to test it and show that and there's no denying that
17 the SLED agent was able to look at all three of those
18 standards and eliminate two of them and then come back with
19 John Jabbar Greene on the, on the, on the weapon and, you
20 know, one in, you heard, you heard her say that the likelihood
21 it was not Mr. Greene's DNA on that gun is one in 57 trillion,
22 okay, one in 57 trillion. So, you know, I think that's very,
23 very good evidence that this was Mr. Greene along with all
24 these other things, you know, any, any of these things in and
25 by themselves, duct tape in your house, shotgun shells in your

1 house doesn't mean you're guilty of a crime, but when you link
2 it all together into the near proximity, the location and the
3 near proximity of time that all of this was recovered it
4 should be, I think you should be firmly convinced that this
5 was Mr. John Jabbar Greene and if that weren't enough you
6 heard testimony from the officer that when he arrested Mr.
7 Greene and told him what he was being charged with and why and
8 then that DNA is there, that he made the statement and I know
9 you haven't heard from him today but he did speak at least
10 through Mr. Smith, Investigator Smith's statements and at that
11 point when he felt cornered and I suggest to you that he did
12 have a motivation at that point to try to come up with some
13 reason why his DNA was on that gun, he told the officer that
14 he admitted that he handled the gun. He admitted that he had
15 that gun in his possession. You know, he tried to go on
16 further to explain that everybody in that house had had it and
17 the reason they had it was because of a burglary that had
18 occurred there but then when you heard from his cousin who
19 lived in that house longer than Mr. Greene has he told you
20 right, right bluntly and frankly that they didn't have a gun
21 in the house, he had never seen a gun in that house and he
22 also told you they didn't have any problems with burglaries.
23 So, I suggest to you the credibility of Mr. Greene's
24 statements doesn't hold water here, that they've just handled
25 the gun at some point before. He's admitted he's had that

1 weapon. That was the weapon that was used in the crime. I
2 don't think you have any doubt believing that and you heard
3 from scientific forensic analysis that one in 57 trillion that
4 it's not Mr. Greene, and again, you'll have - and then like I
5 say these are kind of pieces of a puzzle. You'll have a
6 chance to have all this, photos, the aerial photo, all these
7 exhibits that we put into evidence. You know, you'll get a
8 chance to look at the weapon, you know, compare it to what the
9 victims testified about. You'll get a chance to look at this
10 clothing, you know the - you heard the victims testify about
11 some kind of gray or dark hat on the head. I mean, I don't -
12 I'm not telling you that is exactly the one he used. I don't
13 know. That's for you to determine but I will say that these,
14 these things were found in that same bedroom where the
15 Defendant was and I suggest they could have been used to
16 conceal or try to conceal someone's identity and, and the
17 other thing and I don't think you need, you don't need a DNA
18 expert, scientist but you may need somebody that can get into
19 a bag but you don't need an expert or a scientist to take a
20 look at the weapon, the shell that was found in that gun and
21 compare it not only to the box and the number that is supposed
22 to be in this box but you'll have a chance to compare it, and
23 you know, this was the box that was found within by, you know,
24 within arms reach of Mr. Greene the morning of this crime and
25 this is the shell that was found in the weapon within an hour

1 after this crime. So, like I said, I think if you do that and
2 if you're fair to both the Defendant and the State and you
3 evaluate the credibility and reliability of this evidence
4 you'll be firmly convinced that Mr. John Jabbar Greene was the
5 one that committed these crimes and you may have some
6 hesitation to act just because you, you know, like I said it's
7 a - you don't want to be in a position where you feel like
8 you're passing judgment on somebody. I understand that. So,
9 you may have some hesitation, but the law is a reasonable
10 person to hesitate to act. Okay, and if you look at this
11 fairly, logically, use your common, like I told you before, I
12 want you to use your common sense because you're going to have
13 to piece some of this together and that's why the Judge is
14 going to give you instructions on circumstantial evidence and
15 direct evidence because you have to link those things together
16 like a chain but once you all do that and you'll all have a
17 chance to talk about it, discuss it with one another and walk
18 through it. I want you to walk through it. I want, like I
19 say, I want you to presume him innocent, but I want you to
20 walk through the evidence and I want you to link all this
21 together and I don't have to eliminate every doubt. You know,
22 if you're waiting on me to prove a helicopter didn't come down
23 here and take somebody away, well, we're wasting all of our
24 time, but that's not what I have to prove. I just have to
25 prove that John Jabbar Greene committed these crimes beyond a

1 reasonable doubt, and like I said, you'll have a chance and I
2 just want you to be fair to both sides and evaluate the
3 reliability and credibility of testimony and evidence and do,
4 do your duty, which is what a reasonable person would do and
5 if you do that I'm firmly convinced that you'll come back with
6 a guilty verdict for John Jabbar Greene and like I said you'll
7 have all this stuff in the room with you and you'll be able to
8 take your time, lay it out and everything.

9 Thank you.

10 THE COURT: Mr. Fox.

11 MR. FOX: May it please the Court, Your Honor.

12 Ladies and gentlemen, I want to quickly thank you once
13 again for your service this week. No one - we can't tell you
14 that too often. We couldn't do this without all of you. It's
15 been a long week. We're almost to the end. I'm going to do
16 my best not to belabor things and draw it out but as Mr.
17 Andrew said there's, there's a lot to talk about. The Judge
18 is going to define in just a few minutes reasonable doubt. It
19 is a doubt which would cause a reasonable person to hesitate
20 to act. It is the highest burden of proof we have in our
21 court system, all right. You're in what's called the circuit
22 court in the State of South Carolina. The circuit courts, the
23 state-level court is divided into two parts, general sessions
24 or criminal court, which is where we are now, and common pleas
25 or civil courts. Common pleas is if you've got a contract

1 dispute or, you know, a lawsuit over money or something like
2 that. In civil court the burden of proof is a preponderance
3 of the evidence, in other words to win you just simply need to
4 tilt the scales in your favor, okay. There's no magic amount.
5 You just have to have the scales in your favor in civil court.
6 In criminal court, again, it's beyond a reasonable doubt, the
7 highest standard of proof that there is. It's not beyond all
8 doubt. As I told you at the beginning that would be
9 impossible for the State to ever prove. None of us were
10 there. We don't know with a hundred percent certainty but I
11 urge you again to keep in mind it is the highest standard of
12 proof in our legal system.

13 I want to talk again a little bit about generalities,
14 circumstantial verses direct evidence. This is pretty much a
15 circumstantial case. Circumstantial evidence is every bit as
16 good as direct evidence, but it is no better. It is for you
17 as the finders of fact to determine each particular piece of
18 evidence, what weight to give it and the simple fact that
19 something is presented into evidence and brought into court
20 does not mean that you are required to accept the value or the
21 weight that the State assigns to it, okay. The Judge, again,
22 I think will give you description of circumstantial evidence.
23 I like examples. I read one time if you're walking down a
24 country road and you see a turtle sitting on top of a fence
25 post you can be pretty sure it had some help. Okay, that's

1 circumstantial evidence. Even if you didn't see the turtle
2 get up there, right, you can be pretty darn sure he didn't get
3 there by himself.

4 All right, this has been described as a crime of
5 convenience and I suppose it is. If Mr. Greene is the
6 perpetrator he is certainly close. You've heard lots of
7 testimony that in a direct line this is no more than a couple
8 of football fields. It certainly does not take long to get
9 from this business back into this area. You've also heard
10 testimony, though, that these aren't the only homes, this is
11 cut off, Highmarket Street runs up at the top with Georgetown
12 down to this side going out to Andrews this way. There are
13 homes over here and there are homes back this way, that, in
14 fact, Highmarket and Amelia Drive, although they don't
15 intersect, just a short distance off where this picture is.
16 There's a turnoff into this area that's called Graves Station
17 and that to get from here along this path, it's very visible,
18 that Mr. Moses and Mr. Thomas testified many people walk back
19 and forth there all the time. There's debris and trash all
20 through there. That it's a shortcut to get back into this
21 neighborhood. It would not take you but a couple of moments
22 at a walk, a couple of minutes at a walk, and if you're in a
23 hurry you could probably do it in a minute or less and to get
24 back and then once you're back here not difficult at all to
25 get off somewhere else. The testimony is from everybody

1 pretty well acknowledged that it was about 15 minutes before
2 the police arrived, give or take a few minutes either way,
3 more than enough time certainly as the State wants you to
4 believe for Mr. Greene to get back here but also for someone
5 to come back here and get other areas. I'll talk more about
6 that in a minute.

7 The Solicitor wants you to believe that these are - this
8 is an unsophisticated criminal committing a crime of
9 convenience, but he also wants you to think that this man did
10 a good deal of planning. If it's a crime of convenience well
11 there's many other people could have conveniently got to that
12 location. The State is not required to prove motive and I'll
13 say that again. The State does not have to prove to you why
14 a crime was committed. One thing I learned people do things,
15 stupid things all the time for stupid or no reason at all. I
16 think in this case it is something to think about because
17 clearly whoever committed this crime, leaving the gun so close
18 to the crime scene, wherever they were going, whether it was
19 Mr. Greene back here or they went somewhere else, not the
20 brightest move in the world, going in even if there weren't a
21 lot of people around, going right in early in the day when
22 certainly I guarantee you there are people going back and
23 forth to work out here, not knowing for sure when people would
24 show up, this was probably a fairly desperate person I would
25 guess and thank goodness it didn't turn out any worse. What's

1 the general motive for a robbery, any robbery? Money. I
2 mean, that's clearly what this person was after. He didn't go
3 in and steal the computer. He didn't take anything else.
4 There's no evidence that he went and used these, I mean, he
5 wanted the cash, right, whoever did this wanted the cash, cash
6 either because he didn't have any money or because, again,
7 very typically drug users, you don't have in this case any
8 indication that Mr. Greene, and again, I understand the State
9 does not have to prove these things, but his cousin said Mr.
10 Greene had a good job at the time this was happening in
11 January of '08. He worked, when ships came in, he worked on
12 the docks here in Georgetown loading and unloading ships.
13 That wasn't always. I don't think they have one every day but
14 the fact that's the reason why he would come and stay on
15 Amelia Drive with his uncle and his cousin. When he had work
16 he would come down from his home in Pawleys Island, stay in
17 this house as long as he had work unloading and loading ships.
18 I don't know what they pay, but I guarantee you it's more than
19 minimum wage. That's hard work, no indication he would have
20 any need. It makes no sense. You might think, "Well, maybe
21 he's got a bad drug habit or something."

22 When the police arrived and they speak to Mr. Greene that
23 morning, but again by all accounts, it's within maybe 30
24 minutes of when the robbery occurred, 30 minutes to an hour,
25 but maybe it's in 30 minutes. He's there. He's in bed. He

1 fully understands. He's sober, coherent, etcetera. So,
2 certainly he wasn't under the influence at the time the
3 robbery was committed, if in fact, it was Mr. Greene, and no
4 evidence although Mr. Franklin Lincoln, Jr., the cousin, says
5 no the police didn't search anywhere but what was really his
6 bedroom, every police officer that was there said, "Yeah, we
7 searched the house. I mean, we were looking for evidence of
8 crime. There was a very serious crime committed. We're
9 looking for evidence." I guarantee you if they had found
10 pipes, marijuana, crack, anything, scales, anything that
11 indicated drug use that's an illegal activity in and of
12 itself, not to say they would have taken it to prove motive
13 but that's an illegal activity in and of itself, happens all
14 the time. The police go to a house for one reason, finds
15 drugs, evidence, you know, evidence of drug use or another
16 crime and separately charge that. They didn't find anything
17 like that, no indication at all that Mr. Greene has a drug
18 problem that would lead him to commit this rather brazen
19 crime.

20 Again, crime of opportunity, certainly if you're close
21 by, makes it easy to get there if you don't have a car, which
22 again applies to any number of people in a similar radius to
23 this little trailer. It also limits though if you're on foot
24 and this is a theory, Mr. Greene is on foot, he's nearby,
25 doesn't take him long to get away, it limits your ability to

1 get rid of the evidence of the crime, also. Now, the gun is
2 there. They find the gun. They find some things in the house
3 but what they don't find and there's really a very limited
4 chance to get rid of it, they don't find the wallet that was
5 taken. They don't find any of the items in the wallet, credit
6 cards, ID, anything else. They don't find any cash either in
7 the trailer or anywhere in between. Deputy Seale, the
8 bloodhound officer, says, "Yeah, we frequently, I mean, you
9 don't always but you very frequently find when you're trailing
10 a scent you frequently find even cigarette butts, cigarette
11 packages, things that have been on the person that you're
12 trailing. You very often find these things, not
13 automatically," but there's a limit, the person clearly came
14 out and into these woods, don't know exactly where. There's
15 fence here. So, sometime before the fence and you can see it
16 very clearly, they get on this trail and come out. This isn't
17 very wide. They're able to find the shotgun. You can see
18 from the pictures it's fairly, the view is fairly open. There
19 is some underbrush, debris and so on, but you know, it's
20 visible. Now, wouldn't be impossible for something to be in
21 here but they never found anything and they didn't find it
22 when they got back to the trailer, no wallet, no money,
23 nothing of that nature.

24 I try to be very careful when I'm listening to testimony
25 and making my own notes to talk to you. I try to get it as

1 accurate as I can, and I know Mr. Andrew does also. I don't
2 think either one of us is going to deliberately say something
3 that's not correct, but the testimony that I very clearly from
4 the witnesses about the hat that was found was that it was a
5 black toboggan hat. That is not a black toboggan hat. Both
6 witnesses said the man had a scarf. They didn't say he had
7 cloth or something else around the face. They said, they both
8 said, they were specific about scarf. You've got what that
9 black and you'll see it. It's kind of like a skullcap kind of
10 thing. You'll see.

11 Mr. Moses I believe was very clear. The second fellow,
12 Mr. Thomas, he was more nervous. He said, "I really didn't get
13 a good description. The guy had on dark, had on a scarf and
14 dark clothing. I could tell I believe he was a black
15 gentlemen from the, around his eyes," but he admitted he was
16 frightened and didn't really get a good look or description,
17 but the first fellow, Mr. Moses, said very clearly, "The
18 fellow, the robber had on a dark in color pea coat," and at
19 first I wasn't sure if he meant like those big heavy, you
20 know, Marine, Navy coats, you know, overcoats, but he said,
21 "No, green colored pea coat." No coat found either, no coat
22 in the trailer, no coat along the trail. So, some things were
23 there, some things are not.

24 There is no evidence at all other than the fact that he
25 lived close by that Mr. Greene is familiar with the hours of

1 operation or the habits of the work crews on certain days of
2 the week. That is pure speculation. That is pure guesswork.
3 The idea it is a crime of convenience in part because
4 everybody knows that no one gets there on Friday and there's
5 no people around at certain hours, I'd ask you to completely
6 disregard and not even consider that one thing, however you
7 evaluate this evidence or whatever determination you make, one
8 thing you're not to do is guess it could be this, it could be
9 that, no.

10 Duct tape, yes, there was a roll of duct tape. They
11 specifically tried, the police specifically tried to tie the
12 piece of duct tape that you have in evidence to the roll that
13 was found in the bedroom. They requested. That was sent to
14 SLED. They requested, I think they called it trace or
15 fracture analysis. I can't remember exactly. Certainly if
16 you had had any results indicating a piece of duct tape that
17 was found which was not found on the gun just found in the
18 area, there's no way of knowing, I mean, that's - you have a
19 piece of duct tape I'm not sure what it's worth. Certainly if
20 you had any kind of match they would present that.

21 The shoe impression, the same thing. There's a shoe.
22 There's an impression. It's nearby. "We had to park the car
23 over it so we could get the cast," and that's the last you
24 heard of that. So, you know that there's nothing that matches
25 Mr. Greene. They took a shoe impression but you don't have

1 the cast here. Everybody involved from Lincoln, Jr., to the
2 police admitted the only shoes they took and at the time
3 they're back here. Understand at the time the police are back
4 here they have found this, I don't think they've got the cast
5 but they've found this print because they've railed through
6 and the police have followed the bloodhounds and they've come
7 through this carport. So, they've seen. So, at the time
8 they're in the trailer talking to the Lincolns and to Mr.
9 Greene, they have an idea of what shoeprint they're looking
10 for but the only shoes they think are relevant and need
11 looking at and examining and taking with them are the shoes
12 that belong to Franklin Lincoln, Sr., and Franklin Lincoln,
13 Jr., not to Mr. Greene. It turns out they can't say that was
14 the Lincolns' either, but they didn't even think it was worth
15 taking Mr. Greene's shoes.

16 Duct tape, I bet out of 14 of you probably 14 of you have
17 a roll of duct tape in your home and without any connection to
18 the gun or the crime I don't know that there's any value in
19 that. This happened a short time. They had, even though the
20 victims could not identify visually the person that robbed
21 them, they had a clothing description. They had suspects and
22 I say suspects because at the time they went in this trailer
23 they weren't sure, the police weren't sure which of the three
24 it might be. I think they pretty well satisfied themselves
25 Mr. Lincoln, Sr., didn't have anything to do with it quickly,

1 but suspects within 30 minutes or an hour. The victims are
2 still back at Coastal Structures. It would have been very
3 easy to ask and they do this all the time for a voice
4 identification. The victims are very clear, these are the
5 things that were said and the type of things said. It would
6 have been very easy to have Mr. Greene or one of the others
7 say the same words. We do that all the time. It's really no
8 different than asking a person visually to identify someone.
9 That was not done. They were not asked to identify the
10 clothing that Mr. Greene had on, even after the fact. Once
11 his clothing was - that you have in evidence, the hat and the
12 gloves and the skull cap, the victims were never asked, "Does
13 that look like the hat the fellow had on?" You notice they
14 didn't do that during the trial. "Is that the hat? Does that
15 look like the hat", nothing like that.

16 Let's talk about the bloodhound real quick. Deputy Seale
17 was quite an impressive witness. He clearly knows his stuff.
18 He's clearly not very comfortable being in front of people but
19 I thought that made him very believable but he tracked back
20 through here and once or twice they went this way or that way
21 but that's, I mean, it's not like a railroad track that you
22 just stay on, and he was very open about that and he says he
23 comes back to this trailer around the front and now he's lost
24 the scent, and they go around a couple of times to make sure
25 and they don't pick it up and then the last thing he said

1 which I thought was interesting was and again he said that,
2 you know, in following any scent there is, I guess, a zone
3 maybe to think about, if the scent is right down the middle
4 that the dog might trail a few feet this way or a few feet
5 that way. It's not that they go a hundred feet out or
6 anything, but it's not pinpoint, but all he says is, "I was
7 satisfied that the person that left the scent did not leave
8 the area on foot." A person taking a couple of minutes to get
9 to here or, you know, within a few feet, it's 15 minutes
10 before the police come, and he said, "If you happen to get in
11 a vehicle or a car you're not going to have a scent and to be
12 gone and maybe back up to Highmarket Street and gone well
13 before the police even know that a crime has been committed,"
14 and he doesn't track a scent into the back door. That's
15 interesting because you listen carefully you've got pictures
16 that show this a little better but where this car is is the
17 front door, there's a little porch there. That's where
18 Lincoln, Sr., sleeps. That's the entrance to the trailer, no
19 scent here at the back. The bedroom where Mr. Greene is I'm
20 not sure if it's down near the end or before that but it's on
21 this picture was the upper end of the house. Well, the dog
22 tells you and if it's Mr. Greene or whoever if someone went
23 from here into the trailer he didn't come in the back door
24 because there was no scent back here, came in the front door
25 right through where, and that would be both ways if it's Mr.

Closing Argument by Defense

1 Greene, in and out right through and this isn't a big trailer,
2 you can tell from the pictures. It's a little single-wide
3 probably not 50 feet long right through where Mr. Lincoln,
4 Sr., is and Mr. Lincoln, Sr., from the testimony he saw
5 anybody up and about moving. I think that would be very
6 difficult to pull off without being noticed. Keep in mind and
7 never forget, this is not John Greene's house and this is not
8 John Greene's bedroom. When he comes to stay for a few days
9 when he works, he stays in what Lincoln, Jr., admitted
10 Franklin Lincoln, Jr., was his bedroom, his stuff, the stuff
11 in the drawers, said Mr. Greene brings a duffel bag with the
12 stuff he needs for a couple of days, all of the things in
13 there Mr. Lincoln, Jr.'s.

14 Now, I've got to talk about the gun and the DNA. Have no
15 doubt about the science of DNA that, in fact, every person has
16 a unique cellular structure that you can leave traces, it's in
17 your hair, it's in your blood, it's in your skin, that you
18 can leave traces of this thing and Kimberly McGill from SLED
19 clearly knows her stuff, but a couple of things that she would
20 also tell you and admit and I want you to keep in mind there
21 is no way once you have a DNA sample you cannot age it, you
22 cannot determine when it was left there. It is very
23 important. I also think it's important that they never sent,
24 they could have, they find all this stuff, they want you to
25 believe that's evidence of the crime, the hat, the gloves, the

1 skull cap, which they want you to believe is a scarf, and she
2 said, "Yeah, very possibly, you don't know until you check,"
3 that there might be hair in there that you could test and
4 compare to DNA sample that they got from Mr. Greene. That was
5 never done. The police never submitted that, never asked that.
6 Certainly if that had been done and you had a match you would
7 have it. It would have been presented to you. So, they want
8 you to believe that these things are, in fact, tools of the
9 crime, but they didn't take the trouble to see if, in fact.
10 Now, it's very possible they'd sent it and there wouldn't be
11 anything to test. It does happen. For instance, the shotgun
12 shells, they were unable to get any material. That does
13 happen, but you can't age it, number one. You can't determine
14 when that DNA trace was left on the gun but no question that
15 it was, in fact, Mr. Greene's.

16 Now, I heard several times and you'll see you've got the
17 - Ms. McGill's report, her analysis and you'll see in there
18 the odds that Mr. Greene, that this is somebody other than Mr.
19 Greene, one in 57 trillion, and Mr. Andrew emphasized that to
20 you several times. That is a nonsense number and I'll tell
21 you it is not and do not think that that is a probability of
22 guilt. It's a very different thing. I don't want you for a
23 second to think the odds that Mr. Greene is not guilty are 57
24 trillion to one. That is not what that number says. Even if
25 you accept that number, and I don't, I don't, I don't have any

1 dispute with the underlying science of DNA, but that number is
2 purported to a probability; right? A probability that someone
3 other than Mr. Greene left that DNA is 57 trillion to one.
4 Any probability has to be possible. If I roll a dice the
5 chances of rolling a one, one die, a six-sided die, the
6 chances are one in six that any particular number comes up.
7 They can't be one in ten because it's not possible to have 10
8 different outcomes. There's only six outcomes. You can't have
9 an odds of one in 57 trillion when you're referring to human
10 beings when there are only four or 5 billion on the whole face
11 of the earth. It is a nonsense number. I don't know where it
12 comes from. I don't deny or doubt the underlying science but
13 that number is just nonsense completely. Now, what does it
14 have to do with this case? I'm going to go back to Mark Twain,
15 that number. Now, Mark Twain was an old man. There was elderly
16 lady that lived in his town and she came to see him one day
17 and said, "Mr. Twain, Mr. Twain, I've had horrible news. The
18 doctor tells me I don't have long to live, and I'm just so
19 distraught and I know that you've lived to a ripe old age and
20 could you please is there anything you can tell me that might
21 help me," and he says, "Oh, absolutely. You must give up
22 smoking and drinking and swearing and eating foods that are
23 bad for you," and she said, "I can't, I can't do that. I can't
24 quit smoking." He said, "But of course you can. It's the
25 easiest thing in the world. I've done it dozens of times,"

1 and she says, "No, no, no, you don't understand. I can't give
2 up smoking and drinking and swearing because I've never done
3 any of those things," and he said, "Well, I can't help you.
4 You're a sinking ship without any ballast to throw overboard,"
5 and you're saying to yourself, what in the world does that
6 story have to do with the DNA and 57 trillion to one, and the
7 answer is absolutely nothing and that's the same that 57
8 trillion to one has to do with guilt or innocence in this
9 case. It has nothing to do with guilt or innocence in this
10 case.

11 Now, the last thing I want to say, the Judge, again,
12 you've heard the definition, reasonable person hesitates to
13 act. That doesn't mean, I agree with Mr. Andrew, that doesn't
14 mean that you go back in there and there's 12 of you, and
15 you're going to hear differently. Some of you are going to
16 remember some things and some others and that's why we have 12
17 of you. 12 heads are better than one. It's inevitable that
18 at different times during different testimony that some of you
19 were paying better attention or some of you were thinking
20 about other things, whatever. The fact that you deliberate is
21 not hesitating to act. That's absolutely true. You should
22 deliberate. We expect you to deliberate. What it means is
23 that final step, hesitate to convict. Why should you hesitate
24 to act? Well, I hope I've laid out many reasons and I'll say
25 this, although your verdict must be unanimous, whether it is

1 guilty or not guilty, and there has to be, and the Judge will
2 tell you a separate determination on each different
3 indictment. Although your verdict must be unanimous, your
4 reasons do not have to be unanimous. Some of you may have a
5 doubt as to one particular issue that leads you to vote not
6 guilty, others of you may be satisfied on that particular
7 charge but have doubts about another issue. So, don't
8 misunderstand that. Your doubts do not have to be unanimous,
9 but why should you hesitate to act? Well, I've given you what
10 I hope are some very valid reasons, but there's one other.
11 Before we ever got here there were many people who hesitated
12 to act to even arrest Mr. Greene, and that was the police. On
13 the morning of January 18th, last year, we have heard about,
14 well, how many police officers were there quickly doing
15 exactly what they should have done responding quickly,
16 responding smartly, getting the bloodhound team, gathering
17 what evidence they believed would solve this crime. You had
18 George Smith. Remember he's the guy who has done something
19 like 900 crime scenes. They didn't ask to qualify him as an
20 expert but I mean he's got a lot of experience. He's there.
21 He knows everything. At the point where they come to this
22 trailer on that morning by the time they leave they have all
23 the evidence they're going to have in this case other than the
24 DNA results. They have everything else. They have the clothing
25 they think is part of it. They have shoes, shoe impressions.

1 They followed the scent. They've got the gun. They have
2 everything they're going to have other than the DNA test
3 results and they did not arrest John Greene at that time, and
4 I commend them for not, you know, jumping the gun, but they
5 had hesitation. Mr. Greene through Officer Smith said, "Yes,
6 I handled that gun before and as," and of course, yes, at the
7 point you're in handcuffs in the back of a police car, you
8 have a motivation to lie, of course you do. Everybody would.
9 It doesn't mean he is lying. That's for you all to determine.

10 Investigator Smith, so what, so what about that? He
11 says, Mr. Greene rather says, "I touch this gun. Other people
12 in the house touched the gun. They're worried about a
13 robbery." Nobody else said that. Lincoln, Jr., said, "Oh,
14 no, no, no, no." Now, Lincoln, Jr., has reasons of his own.
15 Every witness, I don't think we have to worry about the police
16 lying to you. I don't think - I mean, I know they didn't lie
17 to you. They said what they knew, but they weren't - Mr.
18 Franklin Lincoln, Jr., who was in the house, who was nearby,
19 whose shoes they took, who was described by the police
20 officer, by Noel Smith as being nervous and evasive, both on
21 the morning they come to question him and then two or three
22 days later when they ask him to come back to the police
23 station. He is, again, these are Noel Smith's words, not
24 mine, nervous and evasive. He wanted to say that John Greene
25 was nervous that morning, but when I showed him his own report

1 to refresh his memory that was not included in there. I would
2 think if it was important enough to note with regard to
3 Franklin Lincoln, Jr., it would have been important enough to
4 note with regard to John Greene, but it wasn't in there. So,
5 you got Mr. Greene who has every opportunity or rather Mr.
6 Lincoln, Jr., has every opportunity, convenience, etcetera,
7 it's his room, has same access to all the same things that Mr.
8 Greene does, that's an illegal shotgun. You probably know
9 that. A sawed-off shotgun, you know, that's - it's too short.
10 That's basically, you might use it for self defense, but
11 that's a killing machine. You don't go hunting with that gun;
12 right? You might shoot things in the backyard, and Mr.
13 Franklin, I would submit to you that Mr. - that the cousin,
14 Franklin Lincoln, Jr., knows that that's an illegal gun and
15 doesn't want that anywhere near him, knows because there is a
16 world of police all around him telling him there's been an
17 armed robbery even if he doesn't know exactly what that means
18 in terms of how much jail time he can get. He knows that's
19 very, very bad, and at the least he knows there's potentially
20 an illegal weapon in his house. Does he have a reason to get,
21 put that gun away from him? Of course he does. Of course he
22 does and you can evaluate and the Judge will tell you you are
23 the sole judges of the credibility of each witness. You can
24 believe everything a witness tells you. You can reject
25 everything a witness tells you or you can believe some and not

1 the other, but one thing we can verify, forget the gun, that
2 we can verify that Franklin Lincoln, Jr., either lied to you
3 or was dead wrong about it, he said when the police came in,
4 "Oh, they only searched my room." Admitted, again, admitted
5 the stuff in there was his, generally, and that the bedroom
6 was his, but he said, "Oh, no, they didn't search anywhere
7 else." Every officer that I asked, "Oh, yeah, we searched,"
8 and of course, they did. You know that. They searched the
9 whole house to see if there was any other evidence. Now, what
10 they found was in the one room, but that's something either
11 the cousin lied to you about or was wrong about; and so, I
12 think you can then question whether he was telling you the
13 truth about that shotgun.

14 I think when you add all these things up, I mean,
15 circumstances go a couple of ways. The fact that
16 circumstances lead one way don't mean that you have to find
17 guilt, the fact that they point towards guilt. Now, and we
18 wouldn't be here. I don't think they've got a vendetta
19 against Mr. Greene. If they didn't point to Mr. Greene we
20 would not be here in this courtroom this week, but the fact
21 that they point another way also, there's another explanation
22 I believe would, should cause and I hope cause you to hesitate
23 to act and return verdicts of not guilty.

24 THE COURT: Thank you, Mr. Fox.

25 Ladies and gentlemen of the jury, first of all I'd like

1 to thank you for your attentiveness during this trial and your
2 promptness. This Court has never had to wait on one of you
3 straggling in and you've all been ready every time that I told
4 you to be ready and I appreciate that.

5 All the testimony and other evidence to be presented to
6 you in this case has now been presented. Now is the time of
7 the trial when I will charge you with the law as it is to be
8 applied to this case.

9 The indictments charge the Defendant with two counts of
10 armed robbery under indictments 458 and 459; two charges of
11 kidnapping under 456, 457; and one charge of burglary under
12 indictment 460. I'll remind you that the fact that the
13 Defendant was arrested, charged and indicted in this case is
14 not evidence in this case and cannot be considered by you as
15 evidence of guilt in this case as well, nor does it create any
16 presumption or inference of guilt. This document is simply
17 the formal written instrument which contain the charges made
18 against the Defendant that brought this case to Court.

19 The Defendant has pled not guilty to the indictments and
20 that plea puts the burden on the State to prove the Defendant
21 guilty. A person charged with committing a criminal offense
22 in South Carolina is never required to prove himself innocent.
23 I charge you that it is an important rule of law that the
24 Defendant in a criminal trial no matter what the seriousness
25 of the charge may be will always be presumed to be innocent of

1 the crime for which the indictment was issued unless the guilt
2 has been proven by evidence satisfying you of that guilt
3 beyond a reasonable doubt. This presumption of innocence does
4 not end when you begin your deliberations, but it accompanies
5 the Defendant throughout this trial until you reach a verdict
6 of guilt based upon the evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant
10 which remain with the Defendant until it has been stripped
11 from the Defendant by the evidence satisfying you of his guilt
12 again beyond a reasonable doubt.

13 The presumption of innocence is not a mere legal theory.
14 It is not just a legal phrase. It is a substantial right to
15 which every Defendant is entitled unless you, the jury, are
16 satisfied from the evidence of the Defendant's guilt beyond a
17 reasonable doubt.

18 What is reasonable doubt in the law? A reasonable doubt
19 is the kind of doubt that would cause a reasonable person to
20 hesitate to act. The State has the burden of proving the
21 Defendant's guilt beyond a reasonable doubt. Some of you may
22 have served as jurors in a civil case when you were told that
23 it is only necessary to prove the fact is more likely than not
24 that it is true, such as by the greater weight or
25 preponderance of the evidence. In criminal cases, however,

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1 the State must prove a more powerful burden than that. It
2 must be beyond a reasonable doubt. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt. There are very few things in this world
5 that we know about with absolute certainty, and in a criminal
6 case the law does not require proof that overcomes every
7 possible doubt. If based on, if based on your consideration
8 of the evidence you are firmly convinced of the Defendant's
9 guilt, guilty of the crimes charged you must find the
10 Defendant guilty. If on the other hand you think there is a
11 real possibility that the Defendant is not guilty you must
12 give the Defendant the benefit of the doubt and find him not
13 guilty.

14 I remind you that during this trial you and I have
15 certain duties to perform. As the trial judge it is my
16 responsibility to preside over the trial of this case and I
17 also have the duty to rule on the admissibility of evidence
18 offered during the trial. You are to consider only the
19 competent evidence before you. If there is any testimony
20 ordered stricken from the record in this case during this
21 trial you must disregard that testimony in its entirety. You
22 are to consider only the testimony which has been presented
23 from this witness stand, any exhibits which have been made a
24 part of the record and any stipulations of counsel.

25 I have the additional duty to charge you the law

1 applicable to this case as the presiding judge. I am the sole
2 judge of the law as I have told you. It is your duty as
3 jurors to accept and apply the law as I now state it to you.
4 If you already have any idea of what you think it should be
5 then you need to put that out of your mind because this is
6 what the law is. Again, you must abandon those ideas because
7 you are sworn to accept the law and apply the law to the facts
8 as I state it to you.

9 In every case tried in this court before a jury the jury
10 becomes the sole and exclusive judge of the facts in this
11 case. As a trial judge I cannot infer, make comments or make
12 any statements to the trial jury about the facts in this case.
13 Since you the jury are the sole judge of the facts you are not
14 to infer from what I have said during the progress of this
15 trial in ruling upon any admissibility or any objections of
16 evidence or otherwise or anything that would give you a reason
17 to think that I understand the facts of this matter. I'm
18 leaving that solely up to you. If you think I have any
19 opinion I don't. The law does not allow me to have an opinion
20 about any facts in this case. It is a matter solely for you
21 the jury to determine as jurors the weight, the value, the
22 truth of the evidence presented during this trial.

23 There are two types of evidence which are generally
24 presented during a trial, direct evidence and circumstantial
25 evidence. Direct evidence is the evidence, is the testimony

1 of a person who claims to have actual knowledge of a fact,
2 such as an eyewitness. It is evidence which immediately
3 establishes the main fact to be proved. Circumstantial
4 evidence is proof of a chain of facts which immediately
5 establishes collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on inference and
7 not on personal knowledge or observation. The law makes
8 absolutely no distinction between the weight or value to be
9 given to either direct or circumstantial evidence, nor is a
10 greater degree of certainty required of circumstantial
11 evidence.

12 The rules of evidence do not normally allow a witness to
13 - do not permit a witness to testify to opinions or
14 conclusions. An exception to this rule exists for witnesses
15 we call expert witnesses. A witness who by education and
16 experience has become an expert in some art, science,
17 profession or calling may state an opinion as to relevant or
18 material matter in which the witness claims to be an expert
19 and may also state the reasons for the opinion. You should
20 consider an expert opinion received in evidence in this case
21 like any other evidence, give it the weight that you think it
22 deserves. If you decide that the opinion of an expert witness
23 is not based on sufficient education and experience or if you
24 conclude that the reasons given in support of the opinion are
25 not sound or that the opinion is outweighed by some other

1 evidence you may disregard that opinion entirely.

2 An expert witness's testimony is only - to be given no
3 greater weight than that of any other witness simply because
4 the witness is an expert. Further, you are not required to
5 accept the expert's opinion even though it is not
6 contradicted.

7 Evidence, other than direct evidence you should weigh all
8 the evidence in this case. After weighing all the evidence
9 and you are not convinced of the guilt of the Defendant beyond
10 a reasonable doubt you must find the Defendant not guilty.

11 Necessarily you must determine the credibility of
12 witnesses who have testified in this case. Credibility simply
13 means believability. It becomes your duty as jurors to
14 analyze, to analyze and to evaluate the evidence and determine
15 which evidence convinces you of its truth. In determining
16 believability of the witnesses who have testified in this case
17 you may believe one witness over several witnesses or several
18 witnesses over the one witness. You may believe a part of the
19 testimony of the witness and reject the remaining part of the
20 testimony of that same witness. You may believe the testimony
21 of a witness in its entirety or reject the testimony of a
22 witness in its entirety. You may consider whether any witness
23 has exhibited to you any interest, bias, prejudice or other
24 motive in this case. You may also consider the appearance and
25 manner of a witness while on the witness stand. As I stated

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1 to you earlier and I will state it again, I instruct you and
2 emphasize the fact that the Defendant did not testify is not a
3 factor to be considered by you in any way in your deliberation
4 and in your consideration of the question of guilt or
5 innocence of the Defendant. It must not be considered by you
6 in any manner. The Defendant has a constitutional right to
7 remain silent and the assertion of that right must not be
8 considered in your deliberations. I repeat you are under
9 oath. You are not to draw any conclusion whatsoever from the
10 fact that the Defendant in this case did not testify or
11 present evidence. The fact that the Defendant did not testify
12 should not even be discussed in the jury room. The burden of
13 proof, as I have stated to you, is on the State. The
14 Defendant is simply not required to prove his innocence.
15 Again, the burden remains on the State.

16 The indictment in this case alleges several different
17 offenses against the Defendant. As I stated the indictment
18 number one is kidnapping with Mr. Harby Moses. Indictment
19 number two is kidnapping with Mr. Walter Thomas; armed robbery
20 against Mr. Harby Moses, armed robbery involving Mr. Walter
21 Thomas and burglary in the second degree. Each indictment
22 charges a separate and distinct offense. You must decide each
23 indictment separately on the evidence and the law applicable
24 to it uninfluenced by your decision as to any of the other
25 indictments that you decide on. The Defendant may be

1 convicted or acquitted on any or all of the offenses charged.
2 You will be asked to write a separate verdict of guilty or not
3 guilty for each indictment.

4 Armed robbery as defined under Code Section 16-11-330 and
5 in this case the Defendant is charged with armed robbery, in
6 order to prove this offense the State must first prove beyond
7 a reasonable doubt that the Defendant took personal property
8 from the person or persons present or that of another person.
9 Property is in the presence of a person if it is within the
10 person's reach, inspection, observation or control so that the
11 person could, if not overcome with violence or prevented by
12 fear, keep possession of the property. The State must also
13 prove beyond a reasonable doubt that the Defendant carried the
14 property away intending to permanently deprive the owner of
15 the property and to keep the property for the Defendant's own
16 use. The slightest removal of the property by the Defendant
17 is sufficient to show a taking and carrying away of the
18 property. The taking and carrying away of the property must
19 have been done with violence or by putting the owner of the
20 property in fear of violence. Finally the State must prove
21 beyond a reasonable doubt the Defendant was armed with a
22 deadly weapon during the robbery. A deadly weapon is any
23 article, instrument or substance which is likely to cause
24 death or great bodily harm. Whether an instrument has been
25 used as a deadly weapon depends on the facts and circumstances

1 of each case. The following are examples of instruments which
2 may be used as a deadly weapon: a pistol, a shotgun, a rifle,
3 a dirk, a dagger, a knife, a slingshot, metal knuckles, razor,
4 gasoline, a fire bomb or Molotov cocktail. A gun may be a
5 deadly weapon even if it is not operating.

6 To prove second degree burglary the State must also prove
7 beyond a reasonable doubt the Defendant entered the building
8 without consent with the intent to commit a crime in the
9 building. A building is any structure, vehicle, watercraft or
10 aircraft where any person lodges or lives or where people
11 assemble for the purpose of business, government, education,
12 religion, entertainment, public transportation or public use
13 or where goods are stored. Finally, the State must prove
14 beyond a reasonable doubt that when entering, while in the
15 dwelling or fleeing the Defendant or an accomplice was armed
16 with a deadly weapon or explosive, again, or when entering the
17 dwelling or fleeing the Defendant or accomplice displayed what
18 was appeared to be a knife, a pistol, a revolver, a rifle or
19 shotgun, machine gun or other firearm.

20 The Defendant is charged in this case also with
21 kidnapping under Code Section 16-3-910. The State must prove
22 beyond a reasonable doubt that the Defendant knowingly and
23 unlawfully seized, confined, decoyed, kidnapped, abducted or
24 carried away another person without the authority of law. To
25 do a thing unlawfully is to do it willfully against the law.

1 Knowingly means with knowledge, conscious or not, but not
2 accidentally. Seize means to take hold of suddenly or
3 forcefully. Confine means to limit, constrict or enclose
4 within bounds of imprisonment or shut or keep in. Inveigle
5 means to lure, entice or lead astray by false representations,
6 promises or other deceitful means. Decoy means to lure by as
7 if by a decoy or something to entice a person into a trap.
8 Kidnap is to remove a person against his will by unlawful
9 force or by fraud and abduct means to carry off secretly or by
10 force for an illegal purpose. Carry away means to remove.
11 The State does not have to prove that the Defendant did all of
12 these things. Instead if you find beyond a reasonable doubt
13 that the Defendant did any of these things you may find the
14 Defendant guilty of kidnapping. Something done without
15 authority of law is something which the law does not sanction,
16 permit, allow or condone. Kidnapping does not have to be for
17 any personal or monetary gain or for any illegal purpose, or
18 just for any illegal purpose but may be for any reason
19 whatsoever.

20 There are two possible verdicts which you may find on
21 each charge. I have provided you with a verdict form that
22 shows and this will go with you into the jury room when you
23 begin your deliberations. There is no significance whatsoever
24 in the order in which I state the possible verdicts. It is
25 simply that one must be stated first. Ladies and gentlemen,

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1 your verdict must be a unanimous one. All 12 of you,
2 therefore, must agree on the verdict. Your decision must not
3 be based on sympathy, passion, prejudice, emotion or any other
4 consideration not in evidence in this case. Mr. Foreperson,
5 when the jury agrees on the verdict you will write the verdict
6 on - you may check it and then you will sign it on the back
7 sheet with your name as the foreperson. You will then knock
8 on the jury room door and inform the bailiff that you have
9 reached a verdict. At that time we will receive you back into
10 the courtroom to hear and publish your verdict.

11 Now, I'm going to ask that you go to the jury room, but
12 don't get too comfortable because I need to take up some
13 things with the attorneys and then you will be instructed to
14 begin your deliberations at that time. Thank you very much.
15 Thank you. If you will take them to the jury room.

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

18 THE COURT: Any objection from the State concerning
19 the jury charge?

20 MR. ANDREW: None from the State, Your Honor.

21 THE COURT: Any objection from the Defense concerning
22 the jury charge?

23 MR. FOX: None, Your Honor.

24 THE COURT: All right, if you could take the verdict
25 form and the evidence.

1 (Exhibits reviewed and approved by counsel for the State
2 and counsel for the Defense.)

3 THE COURT: Yes, everything can go in the jury room.

4 (Deliberations begin at 11:17 a.m. and alternates
5 discharged by Court.)

6 OFF THE RECORD

7 (On the record, question from jury at 11:50 a.m.,
8 answered at 11:55 a.m., Court's Exhibit Number Two.)

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

11 THE COURT: Mr. Fox and Mr. Andrew, I'll just do it
12 over here, and we'll mark this as Court's Exhibit Number One
13 [sic]. The jury has come back with a question, "In which room
14 of the house were the gloves, hat and the scarf found?"

15 (Whereupon, a bench conference was held.)

16 THE COURT: Answer, this is a question of fact. The
17 testimony has been presented. You should discuss and resolve
18 among yourselves.

19 MR. ANDREW: That's fine.

20 MR. FOX: No objection to that.

21 (Court's Exhibit Number Two [Question from Jury]
22 appropriately marked.)

23 OFF THE RECORD

24 (On the record.)

25 (Verdict reached at 12:08 p.m.)

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

3 THE COURT: Mr. Foreman, have you had an opportunity
4 to deliberate this case and reach a verdict?

5 FOREPERSON: Yes, sir, we did.

6 THE COURT: All right, would you please give it to the
7 bailiff?

8 (Complies with request.)

9 THE COURT: All right, please publish it.

10 THE CLERK: State of South Carolina versus John Jabbar
11 Greene as to the indictment 2008-GS-22-0456, kidnapping
12 involving Harby Moses, we, the jury, unanimously find the
13 Defendant guilty; as to the indictment 2008-GS-22-0457,
14 kidnapping involving Walter Thomas, we, the jury, unanimously
15 find the Defendant guilty; as to the indictment 2008-GS-22-
16 0458, armed robbery involving Harby Moses, we, the jury,
17 unanimously find the Defendant guilty; as to the indictment
18 2008-GS-22-0459, armed robbery involving Walter Thomas, we,
19 the jury, unanimously find the Defendant guilty; as to the
20 indictment 2008-GS-22-0460, burglary in the second degree we,
21 the jury, unanimously find the Defendant guilty.

22 Mr. Foreman, ladies and gentlemen of the jury, was this
23 your verdict and is it still your verdict? Please raise your
24 right hand.

25 (All jurors raise right hand.)

1 THE COURT: Thank you. Either party want to poll the
2 jury?

3 MR. ANDREW: Nothing from the State, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. FOX: No, Your Honor.

6 THE COURT: Anything from the State or the Defense
7 before I release this jury?

8 MR. ANDREW: No, sir, Your Honor.

9 MR. FOX: No, Your Honor.

10 THE COURT: All right, thank you.

11 Ladies and gentlemen of the jury, the service in this
12 trial for you has now ended. You have a right to either
13 refuse to discuss the verdict you have rendered or to discuss
14 it as you want. If you choose to discuss the verdict you're
15 free to stop your discussions at any time. If the person who
16 wants to discuss it with you wants to persist after you don't
17 want to discuss it anymore, you know, and harasses you, please
18 let this Court know concerning that and we can address that.

19 I'd like to thank you for your deliberations and your
20 promptness. I can't comment on your verdict, but I thank you
21 for taking the time and I thank you for the service to this
22 community. This has taken three days out of your life but the
23 service that you have given is great to this community and I
24 thank you. Thank you. Have a great day and the County is
25 going to send you a big fat check that you're going to be

1 spending over the weekend. All right, thank you.

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

4 THE COURT: Any motions at this time?

5 MR. FOX: Yes, Your Honor, at this time I would make
6 a motion for a new trial based first ask the Court in its
7 position as a 13th juror to overturn the verdict as being
8 against the clear weight of the evidence. This would be with
9 regard to each and every count. Also, and in the alternative
10 renew the - well, not renew the motion but based on I believe
11 the Court's error in denying our motion as to DNA reports and
12 testimony suppressed and I believe that was clear error and
13 ask for a new trial on that ground, also, Your Honor.

14 THE COURT: Thank you. Mr. Andrew?

15 MR. ANDREW: Your Honor, the same arguments, Your
16 Honor. I think the jury had sufficient facts in front of them
17 as far as testimony and evidence presented to find the
18 Defendant guilty, excuse me, on each count. They've shown,
19 they've deliberated and they've come back with a unanimous
20 verdict. We'd ask the verdict to stand. As for the
21 suppression or the asking for the new trial based on the
22 suppression being in error we'd make the same arguments we
23 made before, stand by those.

24 THE COURT: All right, thank you.

25 The Court respectfully denies your motions, Mr. Fox. I

1 think the jury has heard the evidence, they have deliberated
2 and they have come up, they've balanced what they needed to
3 and they've come to a ruling. Whether I agree with it or not
4 is irrelevant. They have made that and I will abide by their
5 ruling. So, your motion is denied.

6 MR. FOX: Thank you, Your Honor.

7 THE COURT: Any other motions?

8 MR. FOX: No, sir.

9 THE COURT: All right, as far as sentencing goes I'm
10 going to give the victims an opportunity to be here if they
11 would like to be. So, therefore, sentencing will be tomorrow
12 morning at 9:30 where I will take an evening to take this
13 under advisement and I will rule on my sentence tomorrow
14 morning.

15 MR. ANDREW: Thank you, Your Honor.

16 MR. FOX: Thank you, Your Honor.

17 THE COURT: In this case we will reconvene tomorrow
18 morning at 9:30.

19 MR. ANDREW: Thank you, Your Honor.

20 THE COURT: Thank you.

21 OFF THE RECORD

22 (On the record, May 1, 2009.)

23 THE COURT: Is the State ready to proceed?

24 MR. ANDREW: We're ready to proceed, Your Honor.

25 THE COURT: Is the Defense ready to proceed?

1 MR. FOX: Yes, Your Honor.

2 THE COURT: All right, we're here this morning for the
3 sentencing of John Jabbar Greene. Would the State like to
4 have any testimony or statements from the victims?

5 MR. ANDREW: Your Honor, I've spoken with the victims
6 or I say I have, I've spoken with them before but my victim
7 advocate has spoken with them this morning and they don't wish
8 to address the Court. I think I can speak on their behalf.

9 THE COURT: Okay.

10 MR. ANDREW: You obviously, Your Honor, were present
11 and heard the facts of this case and heard the jury come back
12 with a verdict of guilty, thereby finding Mr. Greene guilty of
13 using a weapon to commit an armed robbery, burglary and a
14 kidnapping. Obviously these are very serious offenses. You
15 heard the testimony from the victims. I think both of them
16 safe to say were certainly in fear for their life. One of
17 them even stated at one point he felt like that was the last
18 time he'd see his family. Obviously when there's a weapon
19 involved, you know, of this nature we take these offenses very
20 seriously. Therefore, asking for some substantial time in
21 this case.

22 We touched upon his prior record, Your Honor, but just so
23 we're clear.

24 THE COURT: Please review it one more time for me.

25 MR. ANDREW: Yes, sir.

1 The Defendant was found guilty of assault and battery
2 high and aggravated nature back in '95, looks like he got an
3 active YOA during that time. Then in '96 assault and battery
4 on a police officer and malicious injury to county property
5 and then the ones that - in 2003 two counts of pointing and
6 presenting, accompanied with an assault with intent to kill,
7 and then obviously we have the charges here today, but I think
8 it's obvious from the facts of this case and the Defendant's
9 prior record that he is an individual that is not afraid to
10 use a weapon in the commission of a crime and it's, you know,
11 if he's allowed to be on the streets I think it's just a
12 matter of time before he gets killed or somebody, somebody
13 gets killed or hurt pretty seriously. We do feel this is a
14 dangerous individual and he needs to be put away and we'd ask
15 Your Honor to sentence accordingly.

16 THE COURT: All right, thank you.

17 Mr. Fox.

18 MR. FOX: Thank you, Your Honor.

19 Your Honor, Mr. Greene is 32 years old, almost 33,
20 native, born and raised, never lived anywhere other than
21 Georgetown County, currently lives in the Pawleys Island area
22 with his mother. He has a seven year old child. You know,
23 Your Honor, the facts of the case speak for themselves and his
24 past speaks for itself. Sometimes it's hard to reconcile the
25 individual I meet and discuss with some of the things they've

1 done in the past because he certainly doesn't present himself
2 to me with that kind of demeanor and attitude and it's tricky.
3 I've talked to Mr. Greene about his right to address the Court
4 today. He's from the time I met him right on through trial
5 has maintained his innocence in this; and so, I've told him,
6 of course, this is not the day. He'll have another day. He's
7 got a right to address issues another day. So, it's kind of
8 tricky. He, of course, would like to speak to Your Honor but
9 he's in a position of maintaining innocence but of course
10 being found guilty and we're not quarreling with the jury's
11 verdict. I know he got a fair trial. We took all week and I
12 think one thing we can absolutely say is he got a fair hearing
13 with the jury. He's been in jail since his arrest, Your
14 Honor, and would ask credit for that, don't have the exact
15 date. It's been right at about a year. I think he was
16 arrested about in April of last year. I don't have the exact
17 day but the detention center would have those records, but he
18 has been in jail already right at a year and we would ask the
19 Court for credit for that pre-sentencing detention, Your
20 Honor.

21 THE COURT: My understanding he is also on probation.
22 Do you want to address the probation revocation?

23 MR. FOX: Your Honor, I don't have any details about
24 that. Obviously this is a violation. I don't know what his
25 status was at the time he was arrested, whether he was - I

1 will say this, Your Honor, I didn't mention it. This came out
2 a little bit in the trial, after he served his active sentence
3 for the '03 charges, he was gone for a number of years. He
4 came out in 2007 and he was working a good bit. He came out
5 and he was trying for a while to do the right thing. He was
6 living with his mother. He was working down at the shipyard
7 when they had work. In fact he was going taking a bus down to
8 Charleston sometimes to go to the port down there and work.
9 So, he was trying to do the right thing for a while.

10 Obviously that didn't continue. I don't know what his status
11 was other than these new charges in terms of his probation.

12 PROBATION OFFICER: Your Honor, if I may.

13 THE COURT: Yes, ma'am.

14 PROBATION OFFICER: Of course, the conviction, new
15 conviction is a violation. Prior to his arrest, there were
16 issues as far as a steady residence. He was going from
17 relative to relative to friend.

18 THE COURT: I think that came out in the testimony.

19 PROBATION OFFICER: Right, and there was also an issue of
20 employment. He was never able to maintain gainful employment;
21 and therefore, he was unable to pay the monies that he owed.

22 THE COURT: All right.

23 Anything further?

24 MR. FOX: Your Honor, the only thing I would say I
25 don't know that the - I know just in terms of employment he

1 did - I was presented with pay stubs over the summer and into
2 about the end, not quite the end of '07. Now, I don't know
3 how regular or whether it was satisfying his requirements on
4 probation, but he was working, not every single day because
5 that wasn't the nature of the work, but he was working
6 continually if you get my drift. In other words, when he had
7 an opportunity, now, I don't know if he was satisfying Ms.
8 Altman's requirements, probation's requirements or whether he
9 was providing verification of that but I've seen that he was,
10 in fact, this isn't just him telling me, his cousin telling
11 me. I have, in fact, seen some pay stubs showing that he was
12 working at the shipyards here some of that time. Again, I
13 don't know if it was continuous enough to satisfy probation
14 requirements.

15 THE COURT: Anything further from the State?

16 MR. ANDREW: Nothing further from the State.

17 THE COURT: Anything further from the Defendant?

18 MR. FOX: No, Your Honor.

19 THE COURT: All right, Mr. Greene, please stand.

20 (Complies with request.)

21 THE COURT: John Jabbar Greene, you have been tried by
22 a jury of your peers; after them having heard the evidence
23 against you, your peers deliberated the evidence presented in
24 this courtroom and they unanimously found you guilty of all
25 the charges for which you have been publicly indicted.

1 As to indictment 2008-GS-22-456, charging you with
2 kidnapping, and throughout this case I see no remorse, I see
3 no mitigation. My concern is that his crimes have been
4 escalating. He started off small and the final one, the only
5 reason it probably ended up not being a murder situation was
6 because the victims did exactly what he said to do. He was
7 there with a loaded shotgun pointing it at them. Therefore,
8 on the kidnapping charge you are to be committed to the State
9 Department and that would be kidnapping under 5 - 456, you are
10 to be committed to the State Department of Corrections for a
11 period of 30 years.

12 As to indictment 2008-GS-22-457, charging you with
13 kidnapping, John Jabbar Greene, you are to be committed to the
14 State Department of Corrections for a period of 30 years. As
15 to indictment 2008-GS-22-458, charging you with armed robbery,
16 John Jabbar Greene, you are to be committed to the State
17 Department of Corrections for a period of 30 years. As to
18 indictment 2008-GS-22-459, charging you with armed robbery,
19 you are to be committed to the State Department of Corrections
20 for a period of 30 years. As to indictment 2008-GS-22-460,
21 charging you with burglary in the second degree, John Jabbar
22 Greene, you are committed to the State Department of
23 Corrections for a period of 15 years. All of these crimes
24 were committed concurrently on January 18th of 2008.
25 Therefore, the sentences shall be served concurrently and the

1 Defendant has been incarcerated for a substantial period of
2 time for which he will be given credit for his pretrial
3 incarceration. That is the sentence of this Court.

4 PROBATION OFFICER: Your Honor, as far as the probation
5 revocation, terminate and then ---

6 THE COURT: Just terminate. This is going to
7 supersede that.

8 PROBATION OFFICER: Exactly.

9 THE COURT: All right, thank you.

10 PROBATION OFFICER: Thank you.

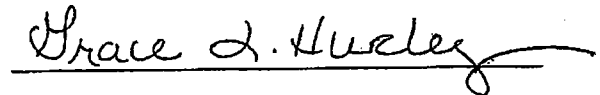
11 MR. ANDREW: Thank you, Your Honor.

12 (Adjourned.)
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus John Jabbar Greene, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on April 27 through May 1, 2009.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

October 24, 2009.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown

John Jabbar Greene #219696

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012 CP2200164

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Georgetown SC, General Sessions
#401 Oakland St, Georgetown SC 29140
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-22-0456, Kidnapping; 2008-GS-22-0457 Kidnapping.
 - (b) 2008-GS-22-0458, Armed Robbery; 2008-GS-22-0459, Armed Robbery.
 - (c) 2008-GS-22-0460, Burglary Second degree.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 1st 2009; 30 years
 - (b) N/A.

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A(b) after a plea of not guilty ✓(c) after a plea of nolo contendere N/A7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals.ii. N/Aiii. N/A

(b) the result in each such Court to which you appealed:

i. Appeal Affirmed Conviction.ii. N/Aiii. N/A

(c) the date of each such result:

i. November 15, 2011ii. N/Aiii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. unpublished opinion No. 2011-40-507ii. N/Aiii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A(b) N/A(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) [scribble] : See Reverse Side :
- (b) [scribble] ↓
- (c) [scribble]

- (a) any petition in a State Court under South Carolina Law? South Carolina Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. 

ii. 

iii. 

iv. 

- (b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.



- (c) the disposition thereof;

i. 

ii. 

iii. 

A.)

11.) Trial Counsel refuse to recuse trial Judge because trial Judge stated that he knew one of the victim's for years. Appellate Counsel never try to Appeal the trial Court's Denial of directed verdict.

B.) The gun never made it to S.L.E.D. as the source of the samples; (defective chain of custody)
The Trial Judge knew one of the victim's for years.

C.) The intrusions into my body with out probable Cause; Miranda violation, officer testified that he continued to question me when I invoked fifth Amendment right to remain quiet. under the fifth amendment the defendant is protected from self incrimination. At the time the buccal swabs was taken from me the state didn't have probable cause to believe that I or the two other individual in the home who were also swabbed, had committed a crime. The defendant was asked to submit his d.n.a to the Georgetown Sheriff's Dep. before the fact or proof of d.n.a being extracted from this gun. The defendant submitted d.n.a could have been used in altering evidence to look like the d.n.a came off of this gun when in fact this gun never accompanied the swabs to Sled as the source of the samples. In my motion to Discovery it is stated that all items processed in house will be sent to the South Carolina law enforcement Division or (S.L.E.D) for further examination. further it is ~~not~~ stated that on 2/20/08 items collected at the scene were sent to Sled for testing. This gun never made it to S.L.E.D (defective chain of custody)

iv.

N/A

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

(yes) The South Carolina Court of Appeals; fourth and fifth Amendment Violation

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. The trial Judge erred in refusing to suppress D.N.A results when the buccal swabs were obtained through a purported "Voluntary Consent to Search" form generated by the Georgetown County Sheriff's Dep. that failed to comply with the safeguards against unreasonable searches and seizures.
- ii. The trial Judge erred in refusing to suppress a statement made as a result of an impermissible interrogation made after I exercised my right to remain silent.

(b) the proceedings in which each ground was raised:

i. South Carolina Court of Appeals.

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Trial Counsel; Appellate Counsel.
- (b) Conflict of interest (Judicial Bias). Defective Chain of Custody.
- (c) Appellate Court only looks to see if the trial Judge made errors of law.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Kathrine H. Huggins (Appellate defender) Division of Appellate defense
 - 1330 bdy St, Suite 401 Columbia, SC, 29201-3832.
 - Eric Fox (trial defender) Conway S/C (Don't know Address)
- (b) the proceedings at which each such attorney represented you:
- Court of Appeals.
 - Trial Court.
 - N/A

19. State clearly the relief you seek in filing this application:
~~1.) Vacate the Judgment of the trial Court. 2.) Grant Applicant retrial on all issues.~~
~~3.) Reclassify and/or Resentence the Applicant's conviction. 4.) And further relief as this Court may deem to be just and proper.~~
20. Are you now under sentence from any other court that you have not challenged?

yes

STATE OF SOUTH CAROLINA

County of Georgetown2012 CP22 00164
VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Greene

SWORN to and subscribed before me this 2ND
day of February, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
GEORGETOWN COUNTY, S.C.
2012 FEB 21 PM 3:47
ALMA Y. WHITE
CLERK OF COURT

2012CP2200164

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jonny Greene
Applicant

SWORN or affirmed to and subscribed before me this
2ND day of February, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
GEORGETOWN COUNTY, S.C.
2012 FEB 21 PM 3:47
ALMA Y. WHITE
CLERK OF COURT

12/13/12, 2012

2012CP2260164

The Honorable Alma White
Clerk, Georgetown County Courthouse
#401 Cleland St, 1st Fl Room #115
Georgetown S.C. 29440

RE: Filing of PCR application

Dear MS. White,

Please find enclosed the application for post-conviction relief for filing in your office. After clock-date stamp filing, please return a copy to me or a letter acknowledging receipt of service for applicant's records.

Sincerely,

Isi John J. Greene #219696

Lieber Correctional Inst.

P.O. Box 205

Ridgerville, SC 29472

1.20800
Alma Y. White
Georgetown County Clerk of Court



00362
P. O. Box 479 • 401 Cleland St.
Georgetown, SC 29442

February 23, 2011

CERTIFIED MAIL RETURN RECEIPT

Office of the Attorney General

Attn: T. Andrew Johnson

P.O. Box 11549

PCR Division

Columbia, S.C. 29211

RE: John Jabbar Greene #219696

Case Number: 2008-GS-22-00456

2008-GS-22-00457

2008-GS-22-00458

2008-GS-22-00459

2008-GS-22-00460

Dear Andrew Johnson:

Enclosed please find a filed copy Application for Post-Conviction Relief and General Sessions's documents. Should you have any questions, please do not hesitate to contact our office.

Georgetown County Clerk of Courts Office

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

John Jabbar Greene,
 S.C.D.C. No. 219696,

Case No.: 2015-CP-22-00949

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed October 20, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Georgetown County Clerk of Court's orders of commitment. The Georgetown County Grand Jury indicted the Applicant at the May 2008 term for two counts of kidnapping (2008-GS-22-0456; -0457), two counts of armed robbery (2008-GS-22-0458; -0459), and second-degree burglary (2008-GS-22-0460). J. Eric Fox, Esquire represented the Applicant.

The Applicant proceeded to a jury trial, and was convicted as indicted. On May 1, 2009 the Honorable W. Jeffery Young sentenced the Applicant to thirty (30) years' imprisonment for kidnapping, thirty (30) years' imprisonment for armed robbery, and fifteen (15) years' imprisonment for second-degree burglary, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathryn Hudgins, Esquire with the Office of Appellant Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence by order dated November 15, 2011. State v.

John Jabbar Greene, No. 2011-UP-507 (S.C. Ct. App., filed November 15, 2011).

Attached herewith and incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his initial application for post-conviction relief, filed February 21, 2012 (case no.: 2012-CP-22-164), the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. "Prior post-conviction relief counsel failed to file an appeal from Judge Hayes order."
2. Ineffective assistance of appellate counsel.
 - a. "Appellate counsel never try to appell [sic] the trial courts denial of directed verdict."
3. Conflict of Interest/Judicial Bias
 - a. "Trial counsel refuse to recuse trial judge because trial judge stated that he knew one of the victims [sic] for year's."
4. Defective Chain of Custody
 - a. "The gun never made it to (S.L.e.d.) as the source of the samples."
5. Fourth and Fifth Amendment Violation
 - a. "The intrusions into my body without probale [sic] cause; Miranda violation, officer testified that he continued to question me when I invoked fifth amendment right to remain quiet."

An evidentiary hearing was convened on October 27, 2014 before the Honorable John C. Hayes, at which Applicant was represented by Robert Mason, Esquire. Relief was denied and the matter was dismissed by an order dated November 16, 2014 and filed December 5, 2014. This matter was not appealed.

III.

In his current application for post-conviction relief, the Applicant alleges he is being held

in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
 - a. "Prior post-conviction relief counsel failed to file an appeal from Judge Hayes order."

All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV.

The Applicant's prior PCR attorney died on December 24, 2014 after a history of kidney disease. The final order in Applicant's PCR action was filed on December 5, 2014. Unfortunately, the proximity of these dates and counsel's failing health prevented him from filing a notice of appeal on behalf of Applicant. For this reason, the State consents to allowing Applicant to petition for appellate review of his prior PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State does not believe that Applicant voluntarily waived his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief claim.

V.

WHEREFORE, having made its Return, the Respondent consents to Applicant's request to petition for appellate review of case number 2012-CP-22-164 pursuant to Austin.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By:

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

_____, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2015-CP-22-949

JOHN JABBAR GREENE, #219696)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

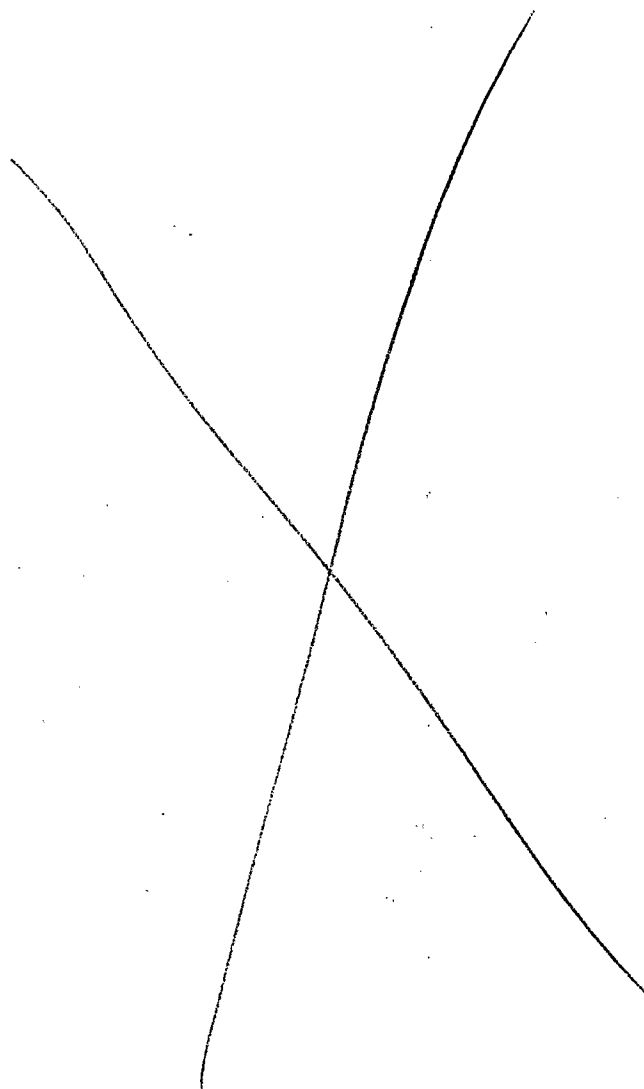
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven W. Fowler, Esquire
 1019 Highway 17 South #222
 North Myrtle Beach, SC 29582

DATED this 17TH day February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

18430



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF GEORGETOWN)

C.A. No.: 2012-CP-22-164

John Jabbar Greene, #219696)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER

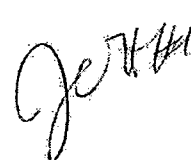
This is a Post-Conviction Relief Proceeding

FILED
GEORGETOWN COUNTY, S.C.
2014 DEC -5 PM 3:53
ALMA Y. WHITE
CLERK OF COURT

Applicant filed his application for Post-Conviction Relief (PCR) on February 21, 2012. The case was heard by the undersigned on the 27th day of October 2014. The State of South Carolina was represented by Josh Thomas, Esquire, and the Applicant was represented by Eric Fox, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the May 2008 term of the Georgetown County Grand Jury for two counts of kidnapping (2008-GS-22-456 and 457) and two counts of armed robbery (2008-GS-22-458 and 459) and burglary second (2008-GS-22-460).

On May 1, 2009, Applicant pled guilty as indicted. The Honorable W. Jeffrey Young sentenced Applicant to thirty years imprisonment on each of the armed robbery charges, to thirty years imprisonment on each kidnapping charge, and fifteen years imprisonment on the burglary second charge, with all charges to run concurrently. Applicant filed timely notice of intent to appeal, and his conviction and sentence were affirmed by order dated November 15, 2011 in unpublished opinion No. 2011-UP-507.



In his application for post-conviction relief, the Applicant alleges that his is being held in custody unlawfully for the following reasons:

1. "ineffective assistance of trial counsel; Appellate counsel;"
2. "conflict of interest; judicial bias; defective chain of custody;"
3. "fourth amendment violation; fifth amendment violation."

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler*, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C.115, 386 S.E.2d 624 (1989).

The reviewing court applies a two pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, citing *Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.E. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson*

v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

The Applicant contends his appointed appellate attorney was ineffective for failing to raise as an appellate issue counsel's failure to request that Judge Young recuse himself from Applicant's trial. This allegation is without merit.

Appellate counsel appointed to represent an indigent defendant in his appeal from a criminal conviction does not have a constitutional duty to raise every non-frivolous issue requested by the defendant. *Jones v. Barnes*, 463 U.S. 745 (1983). Indeed, an indigent defendant has no constitutional right to compel appointed counsel to press non-frivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points. *Id.* Appellant counsel's representation will not be deemed ineffective if he makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. *Griffin v. Aiken*, 775 F.2d 1226 (4th Cir. 1985). Furthermore, under the two prong test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), an Applicant must show not only that counsel's performance was deficient, but that this deficiency prejudiced his defense. Therefore, the Applicant's appellate counsel's performance was not deficient and the Appellant was not prejudiced by his appellate counsel's performance.

The Applicant contends that the trial counsel failed to make objections as to the introduction of evidence regarding Applicant's statements and the taking of buccal swab. This court finds that objections were timely made by trial counsel and ruled on by the trial judge (TR p. 39 L 21 through p. 40 L 3). Also, the appellate court heard and affirmed the trial court's rulings regarding these objections.

The Applicant contends that the Applicant's statements should have been suppressed from trial because he invoked his Fifth Amendment rights. However, in the Court of Appeals unpublished opinion, No. 2011-UP-507, the appellate court affirmed the trial court's ruling allowing the State to introduce these statements. Thus, there is no merit to this claim since the appellate court has already ruled on this issue. Similarly, the Applicant contends that the DNA evidence should be suppressed because he did not consent to the search, therefore the search constitutes a violation of the Applicant's Fourth Amendment rights. Again, in the unpublished opinion, No. 2011-UP-507, the appellate courts affirmed the trial court's ruling. Additionally, there is no evidence of the consent form the Applicant signed because the file has been lost. The court can only review that which is produced.

The Applicant contends that the shotgun used in the crime should have been sent from the Georgetown Police Department to South Carolina Law Enforcement Division (SLED). There is nothing requiring local law enforcement to send any evidence to SLED for testing. Additionally, Applicant acknowledges having handled the shotgun prior to the robbery at issue. Therefore, this contention is without merit.

While not alleging it as ineffective assistance of counsel, Applicant expresses fault on law enforcement for taking buccal swabs for DNA testing when the State had Applicant's DNA from prior run-ins with the law. This is not an issue cognizable under an Applicant's post-conviction relief application.

The Applicant contends that the trial judge, the Honorable William Jeffrey Young, had an interest in the outcome of the case because Judge Young knew one of the victims in this case. However, the trial judge properly disclosed that he had no professional connection with one of the victims, Mr. Moses; but rather, Judge Young explains that he had known Mr. Moses for

many years. (TR p. 40-41 LL 14-5). Additionally, Mr. Andrew, trial attorney for the State, asked Judge Young if he could be "fair and impartial." (TR p. 41 LL 8-9). Judge Young answered that he could be fair and impartial. (TR p. 41 LL 10). Neither counsel objected to Judge Young's familiarity with Mr. Moses. Trial counsel could have asked the judge to recuse himself and for a continuance but I find failure to do so under these facts does not constitute ineffective assistance of counsel under the *Strickland* test. Trial counsel acted reasonably under professional norms as to the recusal of Judge Young issue.

Applicant's issue about a lack of evidence regarding the perpetrator's height is on its face without merit.

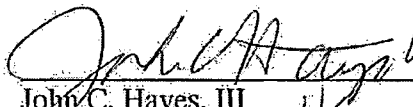
Applicant's post-conviction relief counsel, through cross examination explored additional issues not raised with particularity in Applicant's application for post-conviction relief. None of these issues have any merit. They are, no motion for a change of venue based on Applicant's criminal past, no attack on the consent warrant, no attack on the presence of shotgun shells, no attack on the State's failure to link a footprint to Applicant, no recovery of the stolen goods or gloves, no request for a *Jackson v. Denno* hearing,¹ and no attack on the reliability of dog tracking evidence.

¹ *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

The Court finds that trial counsel's representation of Applicant was effective. Additionally, the court finds an absence for any grounds of relief which the Applicant seeks. Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

November 16th, 2014
Conway, South Carolina

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF GEORGETOWN) NO: 2012-CP-22-164

PCR HEARING

B E F O R E: The Honorable John C. Hayes
October 27, 2014

JOHN JABBAR GREENE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

COPY

APPEARANCES:

Robert Mason, Esq.
For the Petitioner.

Joshua Thomas, Esq.
For the Respondent.

Court Reporter:
Natalie Dahl, RPR

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I-N-D-E-X

WITNESS

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E-X-H-I-B-I-T-S

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

CALL OF THE CASE

P-R-O-C-E-E-D-I-N-G-S

1
2 MR. THOMAS: John Jabbar Greene, G-R-E-E-N-E,
3 versus South Carolina, Georgetown case
4 2012-CP-22-0164. He was indicted in May of 2008 for
5 two counts of kidnapping, two counts of armed robbery
6 and one count of burglary second, represented on those
7 charges by Eric Fox. He went to trial on April 28
8 through May 1, 2009, convicted as indicted. He was
9 sentenced by the Honorable Young to 30 years for
10 kidnapping, 30 years for the armed robbery and 15
11 years for the burglary second. Kathryn Hudgins with
12 the Office of Appellant Defense perfected his appeal,
13 Court of Appeals affirmed the conviction in
14 unpublished opinion 2011-UP-507. Remittitur was filed
15 on December of 2011. In February 2012, he filed this
16 PCR alleging ineffective assistance of counsel. He is
17 represented by Robert Mason. State is ready to
18 proceed.

19 THE COURT: Mr. Mason, are you ready to go
20 forward?

21 MR. MASON: Yes, sir.

22 THE COURT: Do you have any statements, or just
23 call Mr. Greene?

24 MR. MASON: Just go ahead and call him.

25 THE COURT: Come on up and take the stand, Mr.

JOHN GREENE - DIRECT EXAMINATION

1 Greene.

2 (JOHN J. GREENE, having been duly sworn,
3 testified as follows:)

4 THE COURT: You can remain seated, if you wish,
5 Mr. Mason.

6 DIRECT-EXAMINATION

7 BY MR. MASON:

8 Q You were represented in this case by Public
9 Defender Mr. Fox, correct?

10 A Yes, sir.

11 Q Before the case, how many times did you meet with
12 Mr. Fox?

13 A In trial, that's it.

14 Q Just the day of the trial?

15 A Trial.

16 Q So you didn't have any other contact with him
17 before that?

18 A I called him a few times, but he ain't -- ain't
19 been nothing done, really, for me.

20 Q Okay. Did he go over any of the evidence that
21 was going to be presented against you before the trial
22 when you all talked about it?

23 A I forgot about that. Yeah. He came to see me
24 like a week -- the same week the trial was supposed to
25 have been, yeah. He went over a few things. He had

JOHN GREENE - DIRECT EXAMINATION

1 brought a computer, laptop computer, and went over some
2 things, like the footprint and stuff like that.

3 Q Did he have any information that -- did you have
4 any information that you wanted to impart to Mr. Fox at
5 this time with regards to the trial?

6 A Like reference to? Like what?

7 Q Anything that would tend to show that you didn't
8 commit this crime.

9 A The clothes and evidence against me, it was never
10 linked to me by forensic or like comparison, like
11 asking the -- like him asking the victim was these the
12 clothes right here or not, it was never linked to me in
13 any kind of way.

14 Q I noticed that it goes into -- I mean, a decent
15 bit of detail here on Page 68 and 69, it says that the
16 assailant was wearing a dark color toboggan. There was
17 a dark gray scarf, the face was obscured. He had
18 gloves on, and the coat was something like a pea coat,
19 I guess, kind of a green in color. There are a few
20 things with regard -- that seem a little off to me.

21 MR. MASON: Could I get Mr. Greene to stand up?

22 THE COURT: Yes.

23 Q (MR. MASON) How tall are you?

24 A 6'4".

25 Q That's pretty tall. There is nothing in here

JOHN GREENE - DIRECT EXAMINATION

1 about height, and it would seem that that is one of the
2 most defining characteristics of Mr. Greene, is that
3 he's much taller than I think everyone in this room
4 right now. That is a glaring error. It was never
5 fleshed out --

6 THE COURT: You can sit back down.

7 Q (MR. MASON) Other than the description of the
8 clothes, it would seem more obvious to describe
9 height, because that's more readily an identifiable
10 characteristic, especially with someone who is 6'4".

11 Did you explain to Mr. Fox how your DNA would
12 have been on that shotgun?

13 A Yes, sir, I did.

14 Q Because I know that you told the police that it
15 was something that had been handled by people in the
16 household?

17 A Yes, sir.

18 Q Is there anything you would like to add dealing
19 with the ineffective assistance of counsel, anything
20 that happened or didn't happen that prejudiced your
21 case?

22 A Why I bring up these cloths is because these
23 clothes was asked by the jury -- at the end of the
24 trial, there was a question about these clothes, and
25 these clothes prejudiced my whole case.

JOHN GREENE - DIRECT EXAMINATION

1 Q The clothes were never recovered from your
2 household, were they?

3 A No. That was never -- the whole trial it was
4 never -- never at my resident (sic). It came out in
5 the trial that Frank Junior saying that all of these
6 clothes came out of his drawer, his closet, his
7 belongings. It is right in there (indicates), Frank
8 Junior, 216.

9 Q 216?

10 A Yeah.

11 Q How large is the house you were staying?

12 A It's a single wide, three bedroom, little small
13 -- small three bedroom house, trailer.

14 Q And so -- am I to understand that senior was in
15 the front?

16 A He was laying on the couch.

17 Q Where the front door was?

18 A Yes, sir, front of the house.

19 Q If someone came through any of the doors, you
20 would be able to hear them?

21 A Yes, sir. I mean, it's right there.

22 Q Okay. What he's saying here is that is where the
23 shotgun shells were found?

24 A Yes, sir.

25 Q So it is simply not about the clothes, it is just

JOHN GREENE - DIRECT EXAMINATION

1 about that is where the shotgun shells were?

2 A Yes, sir. His room, his dresser, his belongings,
3 it's in there (indicates).

4 Q Were you satisfied with the representation you
5 got from Mr. Fox?

6 A At some point, until I got incarcerated in SCDC
7 and started doing my own research, you know, starting
8 to do the law library, there is a lot of things he
9 could have objected to.

10 Q Okay.

11 A A lot of things.

12 Q What are some of the things you wish he would
13 have objected to during the trial phase?

14 A Number one, this judge had an interest in the
15 outcome of the trial. He said that he didn't want --
16 he said, All right. When I was reviewing, I saw one of
17 the victims earlier, Mr. Herby Moses (phonetic), he's
18 originally from Sumter. I just wanted to disclose this
19 to you. I thought he might have just been a witness in
20 the case. When I was reading the indictment, I see he
21 was a victim. Me and Mr. Moses, we go back a long
22 ways, but we -- I mean, he was a number of years
23 younger than I was. We went to the same school. Mr.
24 Moses, he lived down here for probably 30 years, not in
25 Sumter, but when I saw he was one of the victims, I

JOHN GREENE - DIRECT EXAMINATION

1 just wanted to disclose this to both of you all.

2 Again, we have no professional connections other than
3 the fact that I know him for a long time, that will be
4 the only thing.

5 Mr. Fox, do you have any objections?

6 No, Your Honor.

7 The Court: Anything from the State?

8 No, sir. Do you think that you could be fair and
9 impartial?

10 His impartiality was questioned, so he's supposed
11 to step down from my case, but he didn't.

12 Q Later on when -- you appealed?

13 A Yes, sir.

14 Q In your appeal, was it brought up that the judge
15 had a prior relationship with one of the victims, or do
16 you know?

17 A In my appeal?

18 Q Yeah.

19 A Oh, you are talking about appellant court?

20 Q Yes.

21 A No, the appellant court did not argue this case.
22 They never argued this. No, she didn't argue this.

23 MR. MASON: That is about it. Mr. Thomas will
24 have some questions for you now.

25 CROSS-EXAMINATION

JOHN GREENE - CROSS-EXAMINATION

1 BY MR. THOMAS:

2 Q Just briefly, Mr. Greene. You said you had one
3 opportunity to meet with Mr. Fox and go over some
4 footprint evidence?

5 A Yes, sir.

6 Q That was the only time you met with him?

7 A Before the trial, like the same week the trial
8 was supposed to have been.

9 Q So did you go -- you didn't get a chance to go
10 over any of the other discovery?

11 A I mean, really that was all that was on the DVD
12 was like footprints and the front of the yard, and I
13 was supposed to have been to the back of the room, but
14 the dog came to the front of the trailer.

15 Q So in this case they basically tracked a -- used
16 a blood hound to track you back to this trailer you
17 were living in?

18 A It tracked somebody to this house, to a driveway
19 where a car could have been.

20 Q You are absolutely right. I mean, they tracked
21 somebody from the scene to that house?

22 A Yes, sir. Yes, sir.

23 Q You talked about all of that with Mr. Fox?

24 A Yes, sir.

25 Q So, basically, safe to say your defense was that

JOHN GREENE - CROSS-EXAMINATION

1 it was actually this Mr. Lincoln Junior that committed
2 the crime?

3 A I mean, I can't say that. I don't know. They
4 came to the house, got all of us out, took Senior on
5 the porch that was laying on the couch. Frank Junior
6 was in his daddy's room. I was in Frank Junior's room.
7 So they took me and Frank Junior and put us on the
8 couch where his daddy was at and asking us a bunch of
9 questions. They asked us to produce ID, so we produced
10 our IDs, gave them IDs. They went to the car and got
11 on a computer. I got a record. Nobody else got a
12 record. So when they came back in, they was right on
13 me off the top, right off.

14 Q And you said when they got there, they pulled you
15 out of Frank Junior's room?

16 A Yes, sir.

17 Q Did you tell Mr. -- what did you tell Mr. Fox to
18 do as far as work on a defense for you?

19 A Well, I can't even remember. It be done like
20 seven years. I told him one thing, that the shotgun at
21 this trailer, it never left the trailer. It is not my
22 shotgun. We all played with the shotgun with no
23 bullets in it, you know.

24 Q And that was basically the same statement you
25 gave to the police when you were arrested?

JOHN GREENE - REDIRECT EXAMINATION

1 A Yes, sir.

2 MR. THOMAS: Thank you. That is all I have.

3 THE COURT: Redirect?

4 MR. MASON: Just a quick one.

5 REDIRECT-EXAMINATION

6 BY MR. MASON:

7 Q Going back to the dog trail. It was tracked not
8 up to the house, not to the door, but to the front of
9 the house and it lost the trail?

10 A It tracked right to where we park at, where cars
11 park at.

12 Q And even the tracking person who was in charge of
13 the dog said that a person didn't leave from this spot
14 on foot, which, I mean, kind of seems --

15 A Somebody could have gotten in a car or bicycle.

16 Q Or a bike or something, because if you are inside
17 asleep, that would be an easy thing to just to leave
18 there.

19 Do people leave their bikes laying around
20 occasionally or anything?

21 A I mean -- I mean, no. I mean, I don't real --
22 no, not as far as I know.

23 Q Okay. I remember in one of the letters you sent
24 to me before this trial you stated that where the
25 footprint was found is Frank Junior's uncle's --

JOHN GREENE - REDIRECT EXAMINATION

1 A Uncle's house.

2 Q And you had -- I can't remember if it was you or
3 when I talked with Frank Junior that it was around like
4 7 o'clock or something that they heard a car start up?

5 A And left.

6 Q Yes. Okay. But I haven't been able to
7 corroborate that with him because, like you said, it
8 happened so long ago, who is going to remember?

9 A Yes, sir.

10 Q Exactly.

11 MR. MASON: That's about it, unless you have
12 anything else to add?

13 A I have a couple more stuff. In my Rule 5, it
14 said that everything processed in-house by Georgetown
15 Sheriff's Department will also be sent to SLED for
16 testing.

17 Q Yes.

18 A This gun never -- this gun never went to SLED for
19 testing, and I got it in my Rule 5. Everything
20 processed in-house Georgetown Sheriff's Department,
21 will be sent to SLED for further testing. This gun
22 never went through no testing. Georgetown County is
23 the only one that say that my DNA came off of this gun.

24 Q Anything else?

25 A Yeah. I never got this. I was already on -- my

JOHN GREENE - REDIRECT EXAMINATION

1 DNA was already taken, all right. I explained that to
2 the police officer before they took my DNA. They took
3 my DNA with a form that was typically for searching a
4 car or house or something like that, right. I mean,
5 why would they want my DNA before the fact that they
6 even test this gun? You understand what I'm saying?
7 Why not just have me as a suspect? Then, if they got
8 DNA evidence off this gun, then come and get my DNA.
9 Why would they get my DNA before they even checked this
10 gun? I never got that. I never got that. Doing all
11 of my research -- and I did my research, yeah, I did a
12 lot of research -- when they took my DNA, I wasn't even
13 a suspect. I wasn't even a suspect when they took my
14 DNA. Yep. Yeah. This form -- this form -- this form
15 was a consent to search premises and properties. It
16 was a premises and property form. It says here South
17 Carolina 1992 orders that allows government to procure
18 evidence from a person's body, consent to search, under
19 the Fourth Amendment, therefore, this order must comply
20 with the guidelines. This -- this -- this form was
21 just a form that typically what Georgetown used just
22 for searching a house or searching a car. If you want
23 to take DNA from a person or blood sample from
24 somebody, this form is not the right form to even get
25 my DNA from me.

ERIC FOX - DIRECT EXAMINATION

1 MR. MASON: That's all from me with Mr. Greene.

2 THE COURT: Anything further from the State?

3 MR. THOMAS: Nothing.

4 THE COURT: You can step down and have a seat
5 with your counsel. Thank you. Any further witnesses?

6 MR. MASON: I was going to get Mr. Fox.

7 THE COURT: Mr. Fox, please come up and be sworn.

8 (ERIC FOX, having been duly sworn, testified
9 as follows:)

10 THE CLERK: State your name and spell your last.

11 THE WITNESS: Eric Fox, F-O-X.

12 DIRECT-EXAMINATION

13 BY MR. MASON:

14 Q Mr. Fox, you met with my client, Mr. Greene here,
15 the week of the trial, correct?

16 A I definitely did meet him the week of the trial,
17 and my recollection is that I met him at least two
18 other occasions, once to go -- in the detention
19 center -- over discovery. Discovery typically comes --
20 often comes into my office in stages, so in one stage
21 we had basically warrants and incident reports and so
22 forth. I know another time I came down with a
23 computer -- they put photographs and things on a disk.
24 There wasn't a whole lot, but we reviewed that new
25 material he hadn't seen before. Both times we

ERIC FOX - DIRECT EXAMINATION

1 discussed, in length, what the evidence would be, as
2 well as any possible defenses he had, and then again --
3 I don't recall what day we started the trial, but
4 shortly before the trial started, we met again.

5 Q Do you feel like you did an adequate job in
6 preserving the record for appeal? I mean, do you think
7 that that is something that is one of those things that
8 you have to do as a trial attorney?

9 A I don't always -- I don't know that that is a
10 specific duty. I don't try cases with one eye towards
11 appeal; on the other hand, I'm aware if any issue isn't
12 preserved that that is forfeited in terms of appeal.
13 So I'm aware of that, but there may be reasons at
14 trial, either because I don't recognize the issue or I
15 don't feel, frankly, it is an important one or a
16 winning one on appeal. There may be a number of
17 reasons that I may not raise. So if you have anything
18 specific -- I think I did an adequate job in this case,
19 but the record will reflect what I did or did not
20 object to.

21 Q So with regards to the judge's friendship, what
22 was your reasoning for not objecting to that? I mean,
23 just at least to get it on record that possibly it
24 could be something that could be appealed?

25 A I think --

ERIC FOX - DIRECT EXAMINATION

1 Q I realize if the judge has his mind made up that
2 he's going to try the case, he is, but.

3 A Judge Young didn't present it that way. He
4 didn't suggest that he would not entertain any motion
5 to recuse himself. The way I interpreted his
6 relationship with one of the victims was that they had
7 been neighbors. He indicated there was no personal
8 relationship. He knew of him. They were from Sumter,
9 I believe. Like many people in the same town, he knew
10 who he was and probably spoke to him, but did not make
11 it seem to me that there was any kind of personal
12 connection.

13 Looking back, however, I think it would have been
14 wiser to go ahead and make the motion, preserve that
15 record, and Judge Young may well have recused himself.
16 He didn't suggest that he wouldn't entertain a motion
17 in any way, that it was a done deal and he was going
18 to do it regardless, he didn't give me any hint of
19 that.

20 Q All right. Did you consider anything pretrial
21 wise with regard to, say, a change of venue because of
22 his prior convictions, maybe there was some knowledge
23 by other people in that town and they may already have
24 formed an opinion of Mr. Greene from his prior
25 convictions.

ERIC FOX - DIRECT EXAMINATION

1 A I did not. There was always -- I'm sure in this
2 case there is always an inquiry of a jury pool, if
3 anyone know Mr. Greene specifically, know anything
4 about this case. I think Judge Young's questions would
5 have covered certainly any juror knowledge of this
6 case, but also of the different witnesses, including
7 Mr. Greene, the Defendant. So that never occurred to
8 me as a motion to make.

9 Q When they got to the consent form to search, I
10 know you addressed it beforehand in a motion, but I was
11 wondering if you considered objecting at that point to
12 see if -- at least for the record on appeal -- of that
13 type of thing?

14 A The appellant courts made clear that that needs
15 to be done when the evidence is introduced. So making
16 a motion in limine or pretrial motion by itself has
17 been held not to be enough. So looking back --

18 Q You made a motion beforehand, but you didn't
19 object to it --

20 A I didn't renew the objection, and many times the
21 appellant courts said that is not preserving, so I
22 should have at the time it was introduced.

23 THE COURT: What page is that? Just tell me what
24 -- what did you say he should have objected to?

25 MR. MASON: The consent to search.

ERIC FOX - DIRECT EXAMINATION

1 THE COURT: Oh, okay.

2 MR. MASON: 237.

3 MR. THOMAS: Yes.

4 MR. MASON: Okay.

5 THE COURT: I see it.

6 Q (MR. MASON) Another thing that wasn't ever brought
7 up in the trial that just stood out for me while I was
8 going through the file was the arrest warrant.
9 Looking over it, what was presented as facts were just
10 a summary of the charges, and there weren't actually
11 facts presented with it. I just don't feel that that
12 could ever possibly rise to probable cause, and just
13 wondering if you even considered that when you were
14 looking over it, or if that's just not something....

15 A I didn't in this case. In this case you had a
16 situation where the warrant would have been issued
17 after. In other words, there was an investigation, and
18 good or bad, he was determined to be the perpetrator of
19 this armed robbery, correct or not. The decision was
20 made to arrest, and a warrant was prepared from that
21 instead of being an investigation that leads up to a
22 warrant, and then a person's arrest.

23 I don't disagree with you that it was
24 conclusionary, but at the point that -- and, of
25 course, I'm not present when a warrant is issued and

ERIC FOX - DIRECT EXAMINATION

1 is presented to a magistrate and passed on. In my
2 experience, if I make an objection, somehow get that
3 addressed, they can go back and reissue the warrant,
4 in other words. That does not end the investigation
5 or prosecution the same way as quashing an indictment.
6 They are free, typically, to reindict. So it wasn't
7 anything that I dwelled on, for sure.

8 Q Going back -- back on to Page -- looking at
9 Mr. Thomas' testimony on Page 68 and 69 when he's
10 describing the perpetrator. I mean, again, there is
11 nothing about height, and I was just wondering -- I
12 don't see anything when I was looking through the
13 police reports either, and it strikes me as something
14 that could have been brought up just to cast some doubt
15 on his identification leading to Mr. Greene?

16 A I don't, honestly, recall what was asked in
17 cross-examination. I'll say it for the Court's
18 benefit, and, Mr. Mason, you know this, in 2008 I was a
19 contract public defender. We got cases through Clerk
20 of Court's Office. By the time this case came to trial
21 in 2009, the circuit-wide system came into being, so
22 when this case was finished, that file was returned to
23 the public defender's office in Georgetown, and we have
24 not located it. We have been unable to locate that
25 file. So in preparing for this, I was unable to go

ERIC FOX - DIRECT EXAMINATION

1 back and review notes, and things of that nature.

2 I think this was scheduled several months ago,
3 and continued for different reasons, and we have
4 continued, because now all the files in the
5 15th Circuit are kept by Horry County. We've gone,
6 again, and had staff personally go out to the storage
7 facilities, and it is just gone. So I honestly don't
8 recall if I had any particular reason with regard to
9 this specific question if I had a particular strategy,
10 I don't recall.

11 Q In the identification of the description, you
12 focused mainly on the gun and the gloves, and things of
13 that nature. I mean, basically, what he told you, I
14 mean, you focused on that.

15 Basically, the exact same thing from Mr. Moses,
16 just a little more in depth about the gun.

17 A Well, it may have been, and I can't say for sure
18 this is what it was, but if they didn't say anything
19 about height, and I then asked that question, I
20 certainly invite the response, oh, yeah, now it comes
21 to me that he was a rather tall gentleman. So one
22 reason not to ask may well have been that you don't ask
23 a question if you are not sure what the answer will be.

24 Q It's not mentioned in here, after they found the
25 shotgun shells, did they take pictures of them? I

ERIC FOX - DIRECT EXAMINATION

1 never got any of that stuff, so I don't know. There is
2 nothing about what kind they were or if they actually
3 matched what was in the gun that was used, so I don't
4 know if that's....

5 A My memory is they did not. It could have been
6 compatible with that shotgun, but it did not match. I
7 don't think the shotgun shells were particularly
8 important, simply because there could be an armed
9 robbery with or without shells. I've had the
10 finger-in-the-pocket scenario. There doesn't even have
11 to be an actual weapon. So, to me, that was not a
12 critical point at all, but my recollection is that they
13 were not the same as in the gun.

14 Q Also, about the gun, it doesn't seem that -- it
15 seems like you could have gone more in depth of how his
16 DNA could have gotten transferred to the gun and the
17 fact that the assailant was wearing gloves, so it's
18 kind of a shady area where -- how can that DNA be on
19 it, but he's already admitted to handling it before,
20 and that is how his got on it?

21 A You know, I don't have any specific recollection
22 as to why I did or didn't, but the record will reflect
23 what I asked or didn't ask.

24 Q How did you advise him on the issue of him
25 testifying?

ERIC FOX - DIRECT EXAMINATION

1 A Sometimes -- in my opinion, I say you should or
2 should not, and sometimes I don't come to that
3 conclusion. I certainly always point out if you
4 testify you are subject to cross-examination. If you
5 have a record that qualifies for impeachment, they can
6 impeach you. If you have given prior statements, they
7 can show any inconsistencies that may be there. I
8 don't recall whether I gave Mr. Greene advice one way
9 or the other. I always tell clients that there are two
10 decisions that are 100 percent; one, whether they go to
11 trial, and the second is during trial whether they
12 testify or not. I don't recall any specific advice to
13 Mr. Greene.

14 Q Back to the other decision about going to trial.
15 I know you don't have the file, but do you remember
16 offhand if there were any plea negotiations or any
17 offers made?

18 A I know there were. I don't recall what it was.
19 My recollection, though, was for a substantial period
20 of incarceration. I think they wanted armed robbery.
21 I don't recall. It was a very big difference. Armed
22 robbery carries a minimum of ten years, you must serve
23 85 percent. Strong armed robbery does not carry that
24 no-parole connotation, so you could have a ten-year
25 sentence, but serve much less time. My recollection is

ERIC FOX - DIRECT EXAMINATION

1 that he was never given an offer other than to plead to
2 the armed robbery, and probably dismiss some of the
3 others. I don't have the file and can't remember the
4 exact offer.

5 Q I realize during your cross-examination of the
6 dog hound handler, I think it was Seals or something?

7 A I think that's right.

8 Q That you went into the fact that it could have
9 been -- could have had a car or something been there
10 waiting. I was wondering why -- maybe you didn't flesh
11 that out more during cross or during your closing just
12 to kind of hammer home -- since that is one of the last
13 things they hear about, another theory how this could
14 have happened. I remember you told me that you felt
15 like his testimony was probably the most important, had
16 the biggest impact on the jury?

17 A That is true. I felt that in the courtroom, in
18 terms of watching jurors' reaction and the
19 presentation, I felt that that testimony was the
20 strongest and most forceful.

21 Now, quick background. I had, of course, talked
22 to Mr. Greene. I had been out to this trailer and out
23 to the scene, and what you had is the business was
24 located on what I call Andrews Highway, Highway 501,
25 leading out of Georgetown going towards Andrews.

ERIC FOX - DIRECT EXAMINATION

1 Around the back of that, the direction the robber
2 went, you came to a thin strip of woods, then a
3 railroad track and a neighborhood and a road that
4 paralleled 501. You could see -- not quite a
5 straight line, but you could see pretty directly --
6 without those woods -- from the incident location to
7 the trailer. It was probably -- I doubt it was over
8 500 yards. So I went to that location. I went
9 through -- because the gun, if I recall, was located
10 in the woods.

11 Q It was the gun.

12 A One thing I wanted to see is what the condition
13 of the ground was. It was very open. There were not
14 big trees, but not a lot of underbrush. There was a
15 path where people clearly cut through to get out to
16 501, otherwise, you have walk the equivalent of a
17 couple blocks down and back, but you could cut back
18 50-yards and be where you wanted to be. You came out
19 on those railroad tracks, and then a house or two down
20 was a house that was kind of in front where this
21 trailer was.

22 I say all of that because when you actually went
23 past -- and we talked about the footprint near the
24 carport of that house in front -- when you got back to
25 that trailer, there wasn't -- there was certainly open

ERIC FOX - DIRECT EXAMINATION

1 ground, but it wasn't a lot. In other words, I felt
2 like the likelihood that someone, from my own
3 investigation, had gotten in the car and had driven
4 off was small, partly because of what the officer
5 testified to. I did speak, when I went out that day,
6 I spoke to someone who said they were a resident in
7 the front. He was familiar with this incident and
8 familiar with Mr. Greene, at least as a neighbor. He
9 was not one of the two in the house, so he wasn't a
10 suspect at all. We specifically talked about that,
11 and it may have been the same gentleman you referred
12 to awhile ago. He did not recall hearing any cars on
13 that morning, because that was -- it would be -- you
14 could not get back to that trailer -- that was the
15 easiest way possible you could have driven through a
16 field or something, but directly down was the
17 driveway, passed that house. Anyone coming or going,
18 that is how you would go whether by foot or car.

19 Q Is this the person who had the footprint in the
20 carport?

21 A Yes. He said he was a resident or familiar with
22 that location. I don't remember his name. When I
23 drove up and was looking around, he happened to be
24 there. I asked on a chance, maybe he knows something.
25 Maybe he knows some of these people and he happened to

ERIC FOX - DIRECT EXAMINATION

1 -- he said he was any way -- one of the people that
2 lived in that home.

3 Now, I don't recall that he gave me any other
4 names. I know I didn't talk to anyone else that maybe
5 heard the car. I don't know if it is the same
6 gentleman you spoke to. I didn't have any information
7 that I was going to bring to the jury. That was part
8 of the reason I didn't go further, I didn't have
9 anything to follow up with.

10 Q Going back to that footprint. I remember that
11 they showed the footprint, and I saw a very blurry --
12 and that it matched a boot print from Frank Junior. I
13 don't know if the sizes would match up so that Mr.
14 Greene would be able to wear the same one for the print
15 to be there or not. It's just -- after meeting the two
16 of them, I wouldn't think so.

17 A I don't recall -- I remember -- I can see the
18 image of the footprint. I don't recall what I was
19 thinking at trial other than he would have been back
20 and forth. If it was Mr. Greene, they could have said
21 for sure. The argument I made to the jury is this is
22 like a thru-way, this is how they get back and forth to
23 this trail. There was no way to indicate when that
24 print was put there.

25 Q It seemed like they said there was a footprint

ERIC FOX - DIRECT EXAMINATION

1 there and they didn't really link it, it was just kind
2 of left hanging out there that there is this footprint.

3 A Right. I wouldn't disagree.

4 Q When the DNA expert was testifying, I don't
5 believe you asked any questions about how his DNA could
6 have been on there, the gloves and everything of that
7 nature, other possible ways that DNA could have gotten
8 on the gun or anything like that. Did you consider any
9 of that?

10 A I don't recall. Obviously, I didn't. Again, the
11 transcript shows what I did or didn't ask. I don't
12 recall my thinking behind that.

13 Q I know you touched on it briefly in speaking with
14 some of the investigating officers about the fact that
15 they never found clothes matching the description or
16 any proceeds from this, and the fact that it was such a
17 short time period from when the robbery took place to
18 when Mr. Greene was found in the trailer, and that he
19 was obviously wearing different clothes at that point
20 from what was described; is there a reason for that? I
21 mean, it just seems like that could have been just
22 another way of differentiating him from a person
23 described by the two witnesses.

24 A If I understood, my recollection is that I did
25 ask about those things. I said a while ago, it was a

ERIC FOX - CROSS-EXAMINATION

1 short distance. There wasn't a whole lot of places to
2 hide that stuff. You know, you went through the woods.
3 It wasn't -- the woods might have been as wide as this
4 courtroom, so maybe 50 feet wide and a little bit
5 longer, but you could see pretty much everything on the
6 ground, at least at daylight, and this was daylight
7 when they would have been looking. It wouldn't have
8 taken a whole lot of effort. There wasn't a lot of
9 leaves or things. They didn't find anything. Then you
10 came out to open ground, there was nothing there, no
11 dumpsters, trashcans, nothing. The trailer wasn't big.
12 They never found that stuff. I asked what I asked,
13 pointed it out.

14 MR. MASON: That is about all I have. Thank you
15 for coming in.

16 THE COURT: Let's take a short break.

17 (A recess was taken.)

18 THE COURT: Mr. Thomas.

19 CROSS-EXAMINATION

20 BY MR. THOMAS:

21 Q Could you give us your brief overview of your
22 experience as a criminal lawyer?

23 A I was admitted to the Bar in 1990, from '90 to
24 '94 I practiced with a small firm down here in Myrtle
25 Beach doing a little bit of everything, including

ERIC FOX - CROSS-EXAMINATION

1 criminal work. In 1994, I got a contract with
2 Georgetown County to be one of their public defenders.
3 From '94 to 2012 I had that contract and did --
4 although I still had a private practice, I probably did
5 99 percent criminal work, very small amount of other
6 things. And from June of 2012 until now I've been with
7 the Public Defenders Office in Conway.

8 Q When you were appointed to this case, did you
9 file the standard Rule 5 Brady motions?

10 A Yes.

11 Q Did that come in all at once, or piecemeal?

12 A My recollection is that -- at least that disk I
13 showed Mr. Greene at the jail, that came in later.
14 There may have been other things, but I don't recall at
15 trial there being anything I felt I didn't have.

16 Q And did you get a chance to go over all of this
17 with him?

18 A I did.

19 Q Could you just -- how many times did you meet
20 with him, do you remember?

21 A I remember three. I don't believe there were any
22 more than -- I believe it was those three times.

23 Q And if you could, I guess, kind of walk us
24 through the State's evidence or what their theory of
25 the case was, how they basically came to Mr. Greene as

ERIC FOX - CROSS-EXAMINATION

1 a suspect?

2 A Well, primarily location. They had the two
3 gentlemen that were robbed, they came in early in the
4 morning, I recall like 6 o'clock, to open up the
5 office, and the person that robbed them, I want to say,
6 got them at the back door coming in, but it was very
7 brief. They are on the phone to the police almost
8 immediately, and the police were there very quick, I
9 mean within minutes. They had -- in addition, they had
10 that dog tracker and his dog there not very long after.
11 I think he just happened to be -- I can't remember the
12 circumstances, but he happened to be nearby or live
13 nearby, and he was there, I would say, within 15, 20
14 minutes. It was very quick.

15 So police were on the scene, the victims were
16 able to say whoever robbed us, he went that way
17 through the woods. There was one clear path through
18 the woods, they followed that, they could see where
19 the path came out. At that point, the person could go
20 anywhere once you're out of the woods, but they had a
21 tracking dog that took them from the business through
22 the woods, across the tracks, past the houses and to
23 that trailer without deviating and -- he didn't go up
24 to the door, but he came pretty darn close, and then
25 they walked him all around. They did a 360 around the

ERIC FOX - CROSS-EXAMINATION

1 trailer to see if the trailer went off any other way,
2 and it didn't. So he came darn close to the door. It
3 wasn't right up to it, but that dog went within a few
4 feet.

5 Q When they went into the trailer, there were three
6 people inside?

7 A Three people. Mr. Greene was asleep. I can't
8 recall if -- when you open the door, there was a couch
9 there and I can't -- I think everybody was, because it
10 was very early in the morning, but three people inside
11 the trailer.

12 Q And there was, I guess, Mr. Franklin Senior
13 sleeping on the couch, right? Junior was in
14 Mr. Franklin Senior's bedroom?

15 A Right.

16 Q And Mr. Greene was in Franklin Junior's?

17 A Right. And, of course, in going through the
18 woods, they located the shotgun a few feet off. It
19 looked like it was thrown from the path, probably ten,
20 15 feet off the path, but readily visible.

21 Q And they found clothing in the bedroom Mr. Greene
22 was sleeping? They found clothing that matched the
23 description of the assailant's?

24 A Some. I honestly don't recall. It wasn't that
25 it was, here, these things absolutely match. There

ERIC FOX - CROSS-EXAMINATION

1 were similar clothes, I believe.

2 Q What was your defense theory going into this?

3 What did you discuss?

4 A Well, he consistently denied that he had done
5 that. We investigated any alibi. I mean, he didn't
6 have one, really. You know, I'm asleep. In terms of
7 when he came back in or anything, there wasn't anyone
8 that could say -- if I recall, the statements that the
9 other two occupants gave was that he came in sometime
10 during the night, like way, way before the early
11 morning hours. There was no indication that he went
12 back out. Again, everyone is sleeping. The theory
13 pretty much was to try to poke holes in whatever the
14 State had. It was a little tough. They had DNA on the
15 shotgun, and although they didn't corner him in the
16 tree, so to speak, with a dog, they came pretty close.

17 Q Did you ever have any discussion about the
18 possibility of Franklin Junior being a suspect?

19 A I'm sure we did.

20 Q But Mr. Green's DNA was found on the shotgun?

21 A It was.

22 Q You made a motion pretrial to challenge his --
23 basically -- let's back up. He consented to giving
24 them a DNA?

25 A Yeah, before I was involved. They came -- like

ERIC FOX - CROSS-EXAMINATION

1 he said -- right in and asked to test everybody
2 immediately.

3 Q And you objected to that on just, again,
4 Fourth Amendment grounds and put up a pretty good trial
5 motion, right?

6 A I did object.

7 Q I know we looked at the transcript, but do you
8 recall making an objection to the actual DNA report
9 coming in?

10 A I don't.

11 Q Let me just real quick -- do you have a copy of
12 the transcript?

13 MR. THOMAS: Can I approach, Your Honor?

14 THE COURT: You may.

15 Q (MR. THOMAS) I'll direct you to Page 259 of the
16 transcript, starting on Line 5. Read that quietly to
17 yourself.

18 A (Witness examines document.) Okay. I recall. I
19 did, in fact, object. I renewed my objection to any --
20 the objection was any testimony about the result from
21 those swabs. So at the time, without reading back and
22 forth several pages, I believe that is when they sought
23 to introduce the report from SLED.

24 Q That is one of the issues on appeal for this
25 case, do you recall that?

00409

ERIC FOX - CROSS-EXAMINATION

1 A I don't. I didn't have anything to do with the
2 appeal, so I'm not sure.

3 MR. THOMAS: May I approach?

4 THE COURT: You may.

5 Q (MR. THOMAS) I've handed you a copy of the opinion
6 from the Court of Appeals. Looking at that, do you
7 remember what the issue on appeal, the first issue
8 was?

9 A First one was whether the trial court erred in
10 refusing to suppress DNA evidence?

11 Q So they didn't say that wasn't preserved? Looks
12 like you did a good job preserving that for appeal?

13 A Let me look real quick. Yes, it looks like they
14 did rule on that issue. They didn't say it was waived
15 or anything else.

16 Q You also raised a pretrial motion to the
17 bloodhound tracking evidence, reliability of the
18 bloodhound?

19 A There was a case that came out -- might have been
20 the day before -- literally that week, I think, but a
21 case directly on point that went through the analysis
22 the trial court should go through. We raised that
23 issue and Judge Young went through that, and it came
24 down, literally, a day or two before.

25 Q You also had a Denno hearing on his statement he

ERIC FOX - CROSS-EXAMINATION

1 gave to the police; do you recall that?

2 A Yes.

3 Q Regarding Judge Young, was there any indication
4 to you that he was going to be impartial or unfair in
5 any way, shape or form?

6 A None.

7 Q You feel like you had adequate voir dire for the
8 jury?

9 A Yes.

10 Q And you did get a chance to cross-examine
11 Franklin Junior pretty thoroughly, from what you call?

12 A Yes.

13 Q I know you said you went out and actually kind of
14 looked at the site and walked around. You talked to
15 some witnesses. Is there anything else that Mr. Greene
16 asked you to do that you didn't get around to? Any
17 investigation he asked you to do that you didn't do?

18 A None that I recall.

19 Q You feel like you were prepared for this trial?

20 A I do. The only thing, looking back, I would have
21 -- you always think of things you could have done
22 differently, but I know more about DNA and how it is
23 left and how important it is and contamination. I felt
24 competent at that time, but just the passage of years I
25 know there are things I might explore now that I didn't

ERIC FOX -REDIRECT EXAMINATION

1 at the time.

2 Q I mean, he gave a statement basically admitting
3 he had handled the gun?

4 A He did. He did.

5 MR. THOMAS: Thank you, that is all I have.

6 THE COURT: Mr. Mason.

7 REDIRECT-EXAMINATION

8 BY MR. MASON:

9 Q You said that they found similar items to what
10 had been described here -- Page 234-ish -- talking
11 about they found a nylon cap and some work gloves,
12 specifically -- the witness specifically said that he
13 wasn't wearing work gloves, but some sort of dark dress
14 clothes. Those seem real far apart.

15 A They do.

16 Q In the spectrum of gloves, that is.

17 A I don't recall exactly what was found. I
18 remember, though, kind of like with the shotgun shells,
19 I didn't feel like anything found in the house was
20 particularly damaging. It was -- from my point of
21 view, the thing that were most difficult was the DNA on
22 the weapon, the bloodhound tracking and Mr. Greene's
23 statement admitting having touched the weapon, not
24 necessarily have done the robbery. So there -- it was
25 hard. We were kind of in a box in terms of arguing

ERIC FOX -REDIRECT EXAMINATION

1 problems with the DNA because he said I did in fact --
2 my DNA should be there. I don't recall what the
3 clothes were that were found, but to me it was not a
4 big point to worry about, compared to other things.

5 MR. MASON: That is about it.

6 THE COURT: Recross?

7 MR. THOMAS: Nothing.

8 THE COURT: Mr. Fox, you can step down. I
9 appreciate your time. Anything else from the
10 Applicant?

11 MR. MASON: I want to kind of summarize.

12 THE COURT: All right.

13 MR. MASON: Basically what it comes down to is
14 they had a dog trail that led to the front yard of a
15 trailer. There was DNA on a weapon that he admitted
16 to using, and there wasn't much else that tied Mr.
17 Greene to this crime, it doesn't seem like. I mean,
18 duct tape, I think everyone has duct tape. It's just
19 -- I don't believe that it adds up to be beyond a
20 reasonable doubt, and I think that if given a chance
21 for a new trial, we might come to a better result, a
22 more just result. So that's about it.

23 THE COURT: Thank you. Mr. Thomas.

24 MR. THOMAS: Just as far as the quality of the
25 evidence, I mean, it is a circumstantial evidence

ERIC FOX -REDIRECT EXAMINATION

1 case. Mr. Fox testified that he made the appropriate
2 objections and to keep out things he thought was most
3 damaging, and at the end of the day it is one of those
4 that -- it was a jury question and the jury came down.
5 Mr. Fox, if there is anything that may be alleged that
6 he did wrong, I think he's articulated strategic
7 reasons and no prejudice because it wouldn't have
8 changed the result.

9 THE COURT: I'll take it under advisement, thank
10 you both. I believe that does it for the day.

11 (Whereupon, the proceedings concluded.)
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CERTIFICATE OF REPORTER

State of South Carolina)
County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the matter of the captioned case,
relative to appeal, in the Court of General Sessions
for Horry County, South Carolina, on the 27th day of
October, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

November 4, 2015

Natalie Dahl, RPR
Court Reporter

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

County of Georgetown
STATE vs.John Jabar GreenAKA: [REDACTED]SID#: 00979301

IN THE COURT OF GENERAL SESSIONS

INDICTMENT# 658
03 -GS- 22-08-111
Probation C/W#s: W-22-08-111Name of Original Offense: Pointing & Presenting
Original AWW#: A248851
Date of Original Offense: 10-12-02
Conviction S.C. Code #: 16-23-0410
Conviction CDR Code #: 0111212
Original Sentence: 5 yrs. provided upon the service of 9 mts. but was suspended w/ probation for 3 yrs. CC
ORDER

The above named defendant has been charged with violating the conditions of probation/ordered on 08/04/03 in the Court of General Sessions of Georgetown County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 10-23-08 as set forth in the attached warrant(s) or citation(s) dated 06-11-08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

2, 5, 6, 7, 9, 10, 11 Special Conditions

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☒ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

- ① Terminate probation as offender received a considerable amount of jail time today on new convictions;
- ② Jail time satisfies any remaining monetary obligations;

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.☒ The defendant has previously served 9 months/years on this sentence.
(split sentence time and/or prior partial revocation time)③ CC w/ 03-GS-22-657.☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.This 15th day of May, 2009
Georgetown, SCPresiding Judge W. H. Young

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, at _____ SC
Day Month Year City

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

County of
STATEGeorgetown
vs.

John Jabar Green

AKA:

Race:

B

Sex:

M

DOB:

SID#: 00979301

IN THE COURT OF GENERAL SESSIONS

03 -GS- 22 - 657
Probation CWR#: W-22-02-1111

Name of Original Offense: Pointing; Presenting

Original AWW#: H248852

Date of Original Offense: 10-12-02

Conviction S.C. Code #: 16-23-0410

Conviction CDR Code #: 011, 2, 2

Original Sentence: 5 yrs. provided upon the
Service of 9 mths. Probation suspended
w/ Probation for 3 yrs. cc

The above named defendant has been charged with violating the conditions of probation ordered on 08/04/02 in the Court of General Sessions of Georgetown County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 01-23-08, as set forth in the attached warrant(s) or citation(s) dated 06-11-08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

2, 5, 6, 1, 4, 10, & Special Conditions

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☒ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

- ① Terminate probation as offender received a considerable amount of jail time today on new convictions.
- ② Jail time satisfies any remaining monetary obligations;

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

③ CC w/ 03-GS-22-658.

☒ The defendant has previously served 9 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 1st day of May 2009

Georgetown, SC

Presiding Judge [Signature] Young
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this _____ day of _____, at _____ SC

ARREST WARRANT

J-550052

GCSO

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me the affiant Noel Smith

being duly sworn deposes and says that defendant John Jabbar Greene

did within this county and state on or about 01/18/2008

violate the criminal laws of the

THE STATE

against

John Jabbar Greene

Add

Pho

Sex

DL

Executing Agency: Georgetown County Sheriff

Prosecuting Officer: Noel Smith - 0048

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P. O. Drawer 421270

129 Screven Street, Room 221

Georgetown, SC 29442

ORIGINAL

ORIGINAL

ALBERT WHITE
CLERK OF COURTI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT JANUARY 18, 2008 AT THE COASTAL CONSTRUCTION COMPANY, IN THE GRAVES STATION
SECTION OF GEORGETOWN COUNTY, THE DEFENDANT JOHN JABAR GREENE, DID UNLAWFULLY, SEIZE,
CONFINED, KIDNAP, ABDUCT THE VICTIM, HARBY MOSES, WHILE ROBBING HIM AT GUN POINT, WITH A SAWED
OFF SHOTGUN, A DEADLY WEAPON. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH
CAROLINA AND A VIOLATION OF SOUTH CAROLINA CODE OF LAW 16-03-0910.
CASE#01081413/ INV. N. SMITH

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Affiant's Address 430 N. Fraser Street

Georgetown, SC 29440-

Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/18/2008 defendant John Jabbar Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

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

on 1/17/2008

(L.S.)

Isaac Lester Pyatt (Magistrate)

Judge Code: 5899

Judge's Address Post Office Box 807

Georgetown, SC 29442

Judge's Telephone (843)545-3381

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

SCANNED

00417

BAIL set by

WITNESSES

Judge Watters
on 4-16-08
Type and Amount: 20,000.00 c/s
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

00418

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

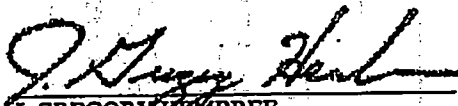
At a Court of General Sessions, convened on May 21, 2008, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That John Jabbar Greene did in Georgetown County on or about January 18, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Harby Moses, without authority of law, in violation of Section 16-03-0910, S. C. 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.


J. GREGORY CHIMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff

REST WARRANT NUMBER

J550052

CDR: 0095 §16-03-0910

DOI: January 18, 2008

ACTION OF GRAND JURY

TRUE BILL

William Kennedy
Foreperson of Grand Jury

Date:

21 May 08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008GS220456 *X*

The State of South Carolina

County of Georgetown

James Felts

08G00229

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

THE STATE

vs.

JOHN JABBAR GREENE

B/ M

ATTORNEY: Fox, Jonathan Eric

Indictment for

KIDNAPPING

J. Gregory Hembree, Solicitor

00420

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.John Jabbar Greene

AKA: _____

Race: B Sex: M Age: 32

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS220456A/W#: J550052Date of Offense: 1/18/2008S.C. Code § : 16-03-0910CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS TO: Kidnapping 0-30 YEARSin 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 ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Andrew, T. Will15947
SC Bar#John Jabbar Greene
DefendantJ. E. Ego
Attorney for Defendant15123
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ 25.00

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$3.90 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Grace Herley

PRESIDING JUDGE

Judge Code: 1156Sentence Date: 5/1/09

SCCA/217 TOS/20091

SCANNED

ARREST WARRANT

J-550053 ✓

GCSO

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

S.C. Attorney General
April 21, 2003
SCCA 516

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

THE STATE
against

John Jabbar Greene

Address

Phone

Sex

DL S

DOB

Prosecuting Agency: Georgetown County Sheriff

Prosecuting Officer: Noel Smith - 0048

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant
onJohn Jabbar Greene
4-15-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Drawer 421270
129 Screven Street, Room 221
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Signature of Affiant

Affiant's Address 430 N. Fraser Street

Georgetown, SC 29440-

Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/18/2008 defendant John Jabbar Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

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

Sworn to and subscribed before me

on 04/01/2008

Signature of Issuing Judge
Isaac Lester Pyatt (Magistrate)

Judge Code: 5899

Judge's Address Post Office Box 807

Georgetown, SC 29442

Judge's Telephone (843)545-3381

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

SCANNED
DENIED

00422

CLERK OF COURT

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS.

00423

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

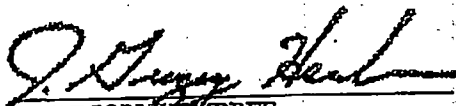
At a Court of General Sessions, convened on May 21, 2008, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That John Jabbar Greene did in Georgetown County on or about January 18, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Walter Thomas, without authority of law, in violation of Section 16-03-0910, S. C. 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.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff

DOCKET NO. 2008GS220457 xl

The State of South Carolina

County of Georgetown

James Felts

08G00229

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

REST WARRANT NUMBER

J550053

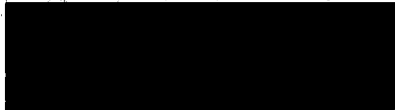
CDR: 0095 §16-03-0910

DOI: January 18, 2008

THE STATE

vs.

JOHN JABBAR GREENE



B/M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, Jonathan Eric

Indictment for

KIDNAPPING

J. Gregory Hembree, Solicitor

William Kennedy
eperson of Grand Jury

Date: *21 May 08*

VERDICT

Foreperson of Petit Jury

Date:

00425

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.
John Jabbar Greene

AKA: _____
Race: B Sex: M Age: 32

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS220457
A/W#: J550053
Date of Offense: 1/18/2008
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

DL#: _____ SID#: _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Kidnapping 0-30 YEARS

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 ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Andrew T. Will 15947 John Jabbar Greene O. S. Rao 15123
Andrew, T. Will 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: \$ _____
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.90
§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 133.90

_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 10.00 beginning on after noon
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____
Judge Code: 21561
Sentence Date: 5/11/09

Clerk of Court/Deputy Clerk _____
Court Reporter: Courtesy Hendry

SCANNED
SCCA/2/17/03/20091

ARREST WARRANT

J-550054

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Georgetown

THE STATE
against

01081413

John Jabbar Greene

Securing Agency: Georgetown County Sheriff
 Prosecuting Officer: Noel Smith - 0048
 Offense: Robbery / Armed Robbery, robbery while armed
 or allegedly armed with a deadly weapon
 Offense Code: 0139
 Code/Ordinance Sec: 16-11-0330(A)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant John Jabbar Greene
 on 4-15-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 P. O. Drawer 421270
 129 Screven Street, Room 221
 Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me, the affiant, Noel Smith,
 being duly sworn, deposes and says that defendant John Jabbar Greene
 did within this County last state on or about 01/18/2008
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Georgetown
 in the following particulars: WHITE
 DESCRIPTION OF OFFENSE: ROBBERY / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

THAT ON OR ABOUT JANUARY 18, 2008 AT THE COASTAL CONSTRUCTION COMPANY, IN THE GRAVES STATION
 SECTION OF GEORGETOWN COUNTY. THE DEFENDANT JOHN JABAR GREENE, DID ROB, THE VICTIM, HARBY
 MOSES OF \$45.00 DOLLARS OF U.S. CURRENCY, WHILE BEING ARMED WITH A SAWED OFF SHOTGUN, A DEADLY
 WEAPON. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND A
 VIOLATION OF SOUTH CAROLINA CODE OF LAW 16-11-0330.

CASE#01081413/ INV. N. SMITH

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Affiant's Address 430 N. Fraser Street
 Georgetown, SC 29440-
 Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/18/2008 defendant John Jabbar Greene

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

on 04/07/2008

(L.S.)

Signature of Issuing Judge
 Isaac Lester Pyatt (Magistrate)
 Judge Code: 5899

Judge's Address Post Office Box 807
 Georgetown, SC 29442
 Judge's Telephone (843)545-3381

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

SCANNED

00427

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

AFFIDAVIT

ORIGINAL

WARRANT

FILED

2008 APR 16 AM 11:28

BAIL set by

WITNESSES

Judge Walters
4-16-58
Type and Amount: 20,000.00cks
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

75600

00428

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

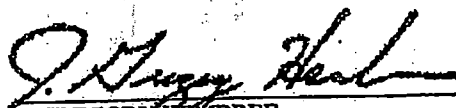
At a Court of General Sessions, convened on May 21, 2008, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That John Jabbar Greene did in Georgetown County on or about January 18, 2008, while armed with a deadly weapon, to wit: a sawed-off shotgun, take and carry away personal property of Harby Moses, to wit: \$45.00 US Currency from or in the immediate presence of Harby Moses with intent to deprive Harby Moses of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff

DOCKET NO. 2008GS220458 XZ

The State of South Carolina

County of Georgetown

James Felts

08G00229

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

REST WARRANT NUMBER

J560054

CDR: 0139 §16-11-0330(A)

DOI: January 18, 2008

THE STATE

vs.

JOHN IABBAR GREENE

ACTION OF GRAND JURY

TRUE BILL

B/ M

ATTORNEY: Fox, Jonathan Eric

Indictment for

ARMED ROBBERY

J. Gregory Hembree, Solicitor

William Kennedy
eperson of Grand Jury

Date: *21 May 08*

VERDICT

Foreperson of Petit Jury

Date:

00430

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.John Jabbar Greene

AKA: _____

Race: B Sex: M Age: 32

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS220458A/W#: J550054Date of Offense: 1/18/2008S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

DL#: _____ SID#: _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery 10 (mandatory min) - 30 YEARSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Andrew, T. Will15947 SC Bar#John Jabbar Greene DefendantSC Bar# Attorney for Defendant15123 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ 25.00

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.70§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90Clerk of Court/Deputy ClerkCourt Reporter: Constance

PRESIDING JUDGE

Judge Code: 21561Sentence Date: 5/1/08☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

SCSA/21-103/2009

ARREST WARRANT

J-550055

GCSO

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Georgetown

THE STATE
against

John Jabbar Greene

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me the affiant Noel Smith

John Jabbar Greene

did within this county and state on or about 01/18/2008

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Georgetown

In the following particulars:

ALMA Y. WHITE
CLERK OF COURT

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

THAT ON OR ABOUT JANUARY 18, 2008 AT THE COASTAL CONSTRUCTION COMPANY, IN THE GRAVES STATION SECTION OF GEORGETOWN COUNTY. THE DEFENDANT JOHN JABAR GREENE, DID ROB THE VICTIM, WALTER THOMAS OF \$200.00 DOLLARS OF U.S. CURRENCY, WHILE BEING ARMED WITH A SAWED OFF SHOTGUN, A DEADLY WEAPON. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND A VIOLATION OF SOUTH CAROLINA CODE OF LAW 16-11-0330. CASE#01081413/ INV. N. SMITH

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Affiant's Address 430 N. Fraser Street

Georgetown, SC 29440-

Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/18/2008 defendant John Jabbar Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Georgetown

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

Sworn to and subscribed before me on 04/07/2008

(L.S.)

Signature of Issuing Judge

Isaac Lester Pyatt (Magistrate)

Judge Code: 5899

Judge's Address Post Office Box 807

Georgetown, SC 29442

Judge's Telephone (843)545-3381

Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 515

SCANNED

00432

BAIL set by

Judge Walters

on 4-16-08

Type and Amount: 20,000.00 c/s

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

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Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

0800

05 11

WARRANT

00433

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 21, 2008, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That John Jabbar Greene did in Georgetown County on or about January 18, 2008, while armed with a deadly weapon, to wit: a sawed-off shotgun, take and carry away personal property of Walter Thomas, to wit: \$200.00 US Currency from or in the immediate presence of Walter Thomas with intent to deprive Walter Thomas of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. 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.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff

DOCKET NO. 2008GS220459 ^{X1}

**The State of South Carolina
County of Georgetown**

James Felts

08G00229

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

REST WARRANT NUMBER

J550055

CDR: 0139 §16-11-0330(A)

DOI: January 18, 2008

THE STATE

vs.

JOHN JABBAR GREENE



B/M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, Jonathan Eric

Indictment for

ARMED ROBBERY

J. Gregory Hembree, Solicitor

William Kennedy
eperson of Grand Jury

Date:

20 May 08

VERDICT

Foreperson of Petit Jury

Date:

00435

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.John Jabbar Greene

AKA: _____

Race: B Sex: M Age: 32INDICTMENT/CASE#: 2008GS220459A/W#: J550055Date of Offense: 1/18/2008S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery 10 (mandatory min) - 30 YEARSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

T. Will
Andrew, T. Will15947
SC Bar#John Jabbar Greene
DefendantJ. S. For
Attorney for Defendant15123
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 10.00 beginning no office release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21561Sentence Date: 5/1/09SCANNED
SCCA/217 (03/2009)

ARREST WARRANT

J-550056

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Georgetown

THE STATE

against

John Jabbar Greene

Prosecuting Officer: Noel Smith - 0048

Offense: Burglary / Burglary (Violent) (After 06/20/85) -
Second degree

Offense Code: 0086

Code/Ordinance Sec: 16-11-0312(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant John Jabbar Greene
on 4-15-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Drawer 421270
129 Screven Street, Room 221
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me the affiant Noel Smith

being duly sworn deposes and says that defendant John Jabbar Greene

did within this county and state on or about 01/18/2008

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Georgetown

In the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

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

THAT ON OR ABOUT JANUARY 18, 2008 AROUND 6:00A.M. AT THE COASTAL CONSTRUCTION COMPANY, IN THE
GRAVES STATION SECTION OF GEORGETOWN COUNTY. THE DEFENDANT JOHN JABAR GREENE, DID, WITHOUT
CONSENT ENTER THE SAID BUILDING WHILE ARMED WITH A SAWED OFF SHOTGUN AND DISPLAYED THE
WEAPON WHILE THREATEN TWO VICTIMS, WITH THE INTENT TO COMMIT A CRIME THEREIN. THIS BEING
AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND A VIOLATION OF SOUTH
CAROLINA CODE OF LAW 16-11-0312.
CASE#01081413/ INV. N. SMITH

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Affiant's Address 430 N. Fraser Street

Georgetown, SC 29440-

Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/18/2008 defendant John Jabbar Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Georgetown

) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

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

Sworn to and subscribed before me

on 04/17/2008

Signature of Issuing Judge

Isaac Lester Pyatt (Magistrate)

Judge Code: 5899

(L.S.)

Judge's Address Post Office Box 807

Georgetown, SC 29442

Judge's Telephone (843)545-3381

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.G. Attorney General
April 21, 2003
SCCA 518

00487

BAIL set by
Judge Walters
on 4-16-58
Type and Amount 20,000.00 CPS
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

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Name: _____
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Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

00438

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

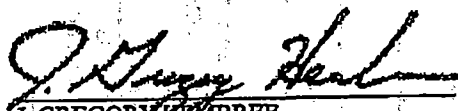
At a Court of General Sessions, convened on May 21, 2008, the Grand Jurors of Georgetown County present upon their oath:

BURGLARY, SECOND DEGREE
(VIOLENT)

CDR: 0086 16-11-0312(B)

That John Jabbar Greene did in Georgetown County on or about January 18, 2008, enter without consent and with the intent to commit a crime therein, a building of Coastal Construction located at 4293 Highmarket Street, Georgetown, SC and the defendant, John Jabbar Greene, did enter the building while armed with a deadly weapon, in violation of Section 16-11-0312(B), S. C. 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.


J. GREGORY CHEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff

DOCKET NO. 2008GS220460 *X*

The State of South Carolina

County of Georgetown

James Felts

08G00229

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

REST WARRANT NUMBER

J550056

CDR: 0086 §16-11-0312(B)

DOI: January 18, 2008

THE STATE

vs.

JOHN JABBAR GREENE



B/ M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, Jonathan Eric

Indictment for

BURGLARY 2ND

J. Gregory Hembree, Solicitor

William Kennedy
Foreperson of Grand Jury

Date: *21 May 08*

VERDICT

Foreperson of Petit Jury

Date:

00440

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.

John Jabbar Greene

AKA: _____

Race: B Sex: M Age: 32

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS220460

A/W#: J550056

Date of Offense: 1/18/2008

S.C. Code § : 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary, 2nd Degree, Violent 0-15 years

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Andrew T. Will 15947 John Jabbar Greene O. S. Bero 15123
SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____
*Fine: \$ _____
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.90
§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 33.90

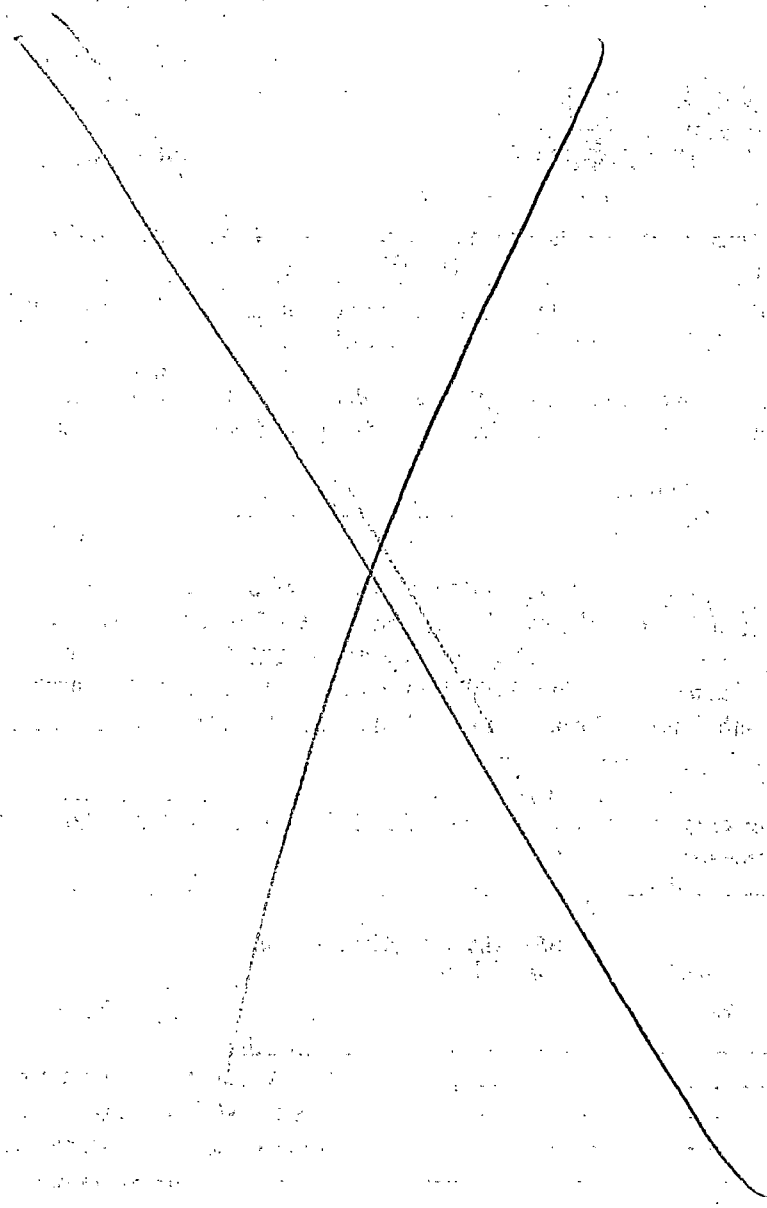
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 10.00 beginning after release
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____
Judge Code: 21561
Sentence Date: 5/1/09

Clerk of Court/Deputy Clerk _____
Court Reporter: Constance Healy

SCSAS 10/2008
SCANNED



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-22-00949

John Jabbar Greene,
S.C.D.C. No. 219696,

Applicant,

v.

State of South Carolina,

Respondent.

**CONSENT ORDER GRANTING
AN APPEAL PURSUANT TO
AUSTIN V. STATE¹**

FILED
2017 MAR 28 AM 8:37
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 20, 2015. Respondent made its Return on February 17, 2016.

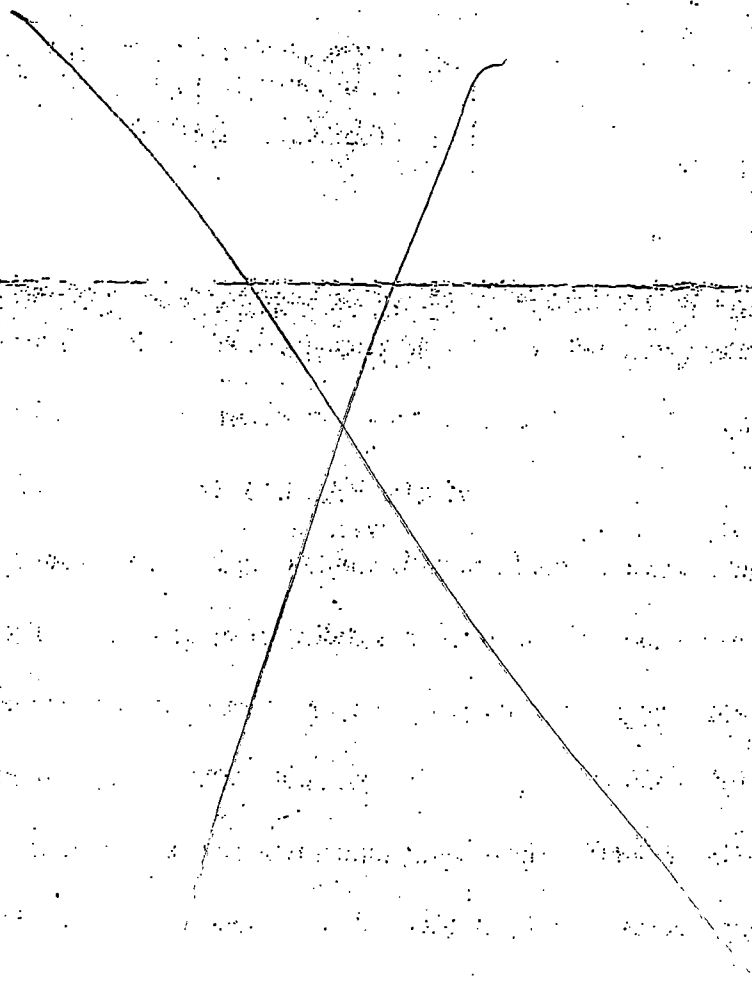
PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Georgetown County Clerk of Court's orders of commitment. The Georgetown County Grand Jury indicted Applicant at the May 2008 term for two counts of kidnapping (2008-GS-22-0456; -0457), two counts of armed robbery (2008-GS-22-0458; -0459), and second-degree burglary (2008-GS-22-0460). J. Eric Fox, Esquire, represented Applicant.

Applicant proceeded to a jury trial and was convicted as indicted. On May 1, 2009 the Honorable W. Jeffery Young sentenced Applicant to thirty (30) years' imprisonment for kidnapping, thirty (30) years' imprisonment for armed robbery, and fifteen (15) years' imprisonment for second-degree burglary, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathryn Hudgins, Esquire, with the Office of Appellant Defense perfected the appeal. The Court of Appeals

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).



affirmed the Applicant's conviction and sentence by order dated November 15, 2011. State v. John Jabbar Greene, No. 2011-UP-507 (S.C. Ct. App., filed November 15, 2011).

2012-CP-22-0164

Applicant filed his first application for PCR on February 21, 2012, in which he alleged the following grounds for relief:

1. Ineffective assistance of trial counsel.
 - a. "Prior post-conviction relief counsel failed to file an appeal from Judge Hayes order."
2. Ineffective assistance of appellate counsel.
 - a. "Appellate counsel never try to appell [sic] the trial courts denial of directed verdict.
3. Conflict of Interest/Judicial Bias
 - a. "Trial counsel refuse to recuse trial judge because trial judge stated that he knew one of the victims [sic] for year's."
4. Defective Chain of Custody
 - a. "The gun never made it to (S.L.e.d.) as the source of the samples."
5. Fourth and Fifth Amendment Violation
 - a. "The intrusions into my body without probale [sic] cause; Miranda violation, officer testified that he continued to question me when I invoked fifth amendment right to remain quiet."

An evidentiary hearing was convened on October 27, 2014 before the Honorable John C. Hayes, at which Applicant was represented by Robert Mason, Esquire. Relief was denied and the matter was dismissed by an order dated November 16, 2014 and filed December 5, 2014. Applicant did not appeal.

Current Application (2015-CP-22-0949)

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
 - a. "Prior post-conviction relief counsel failed to file an appeal from Judge Hayes order."

Before this Court are the records of the Georgetown County Clerk of Court regarding Applicant's convictions, the records from the South Carolina Department of Corrections, Applicant's prior PCR application and the corresponding Order of Dismissal, and the obituary of Applicant's prior PCR counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because his prior PCR counsel, Robert C. Mason, Esquire, passed away shortly after the service of the order of dismissal in Applicant's prior PCR action. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

Respondent consents to allow Applicant a belated review of the denial of his PCR application (2012-CP-22-0164). After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly, this Court grants Applicant a belated review of the denial of post-conviction relief pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, Applicant must appeal from this Order.

CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and

Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

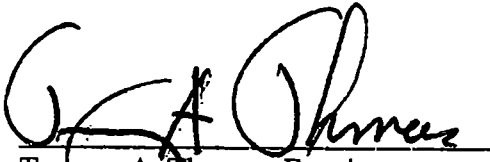
1. That Applicant be granted an appeal of case 2012-CP-22-0164 pursuant to Austin v. State;
2. That all other PCR allegations are waived and dismissed with prejudice;
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

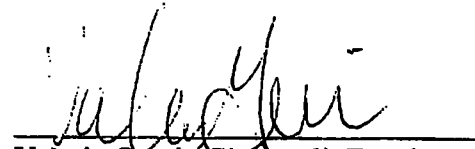
AND IT IS SO ORDERED this 24 day of March, 2017.

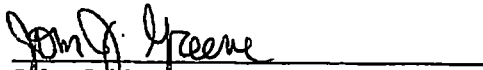

 BENJAMIN H. CULBERTSON
 Chief Administrative Judge
 Fifteenth Judicial Circuit

Georgetown, South Carolina.

We Consent:


 Tommy A. Thomas, Esquire
 Attorney for the Applicant


 Valerie Garcia Giovanoli, Esquire
 Assistant Attorney General
 Attorney for the Respondent


 John Jabbar Greene, #219696
 Applicant

00448

00448

