

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

On Writ of Certiorari to Aiken County
Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2018-001674

RECEIVED

JUN 27 2019

S.C. SUPREME COURT

JOHN UPSON,

Respondent,

vs.

THE STATE,

Petitioner.

APPENDIX

ALAN WILSON
Attorney General

TOMMY A. THOMAS
Attorney at Law

MARK R. FARTHING
Assistant Attorney General

Post Office Box 88
Irmo, SC 29063
(803) 732-5507

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

ATTORNEY FOR RESPONDENT

ATTORNEYS FOR PETITIONER

INDEX

Index.	i
Trial Transcript (April 15-16, 2014).	1
Arrest Warrant.	271
Indictments.	273
Verdict Form.	279
Sentencing Sheets.	281
South Carolina Department of Corrections Inmate Records.	284
Final Brief of Appellant.	290
Final Brief of Respondent.	313
Final Reply Brief of Appellant.	340
S.C. Court of Appeals Opinion No. 2016-UP-237 (filed June 1, 2016).	352
Remittitur.	355
Post-Conviction Relief Application.	357
Return to Application.	365
Post-Conviction Relief Hearing Transcript (May 5, 2018).	372
Applicant's Exhibits from Hearing.	468
Order Granting Post-Conviction Relief.	475
Amended Order Granting Post-Conviction Relief.	485
Motion to Alter or Amend Pursuant to Rule 59(e).	494
Order Denying Defendant's Motion for Reconsideration.	508

1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

CIRCUIT COURT
2014-GS-02-0074, -79, -80

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 JOHN LYNDON UPSON,
6 Defendant.

7
8 HEARD ON TUESDAY, APRIL 15, 2014

9 & WEDNESDAY, APRIL 16, 2014

10 BEFORE:

11 THE HONORABLE DONALD B. HOCKER

12 AND A JURY

13
14
15 APPEARANCES:

16 Counsel on behalf of the State:
17 Jeffrey Alan Slocum, Jr., Esq.
Kevin R. Molony, Esq.

18 Counsel on behalf of the Defendant:
19 Andrew Smith, Esq.
De Grant Gibbons, Esq.

20
21
22 Cheri L. Young, RPR
23 Official Court Reporter
24 P O Box 5232
Aiken, SC 29804-5232
25

APP'X 1

INDEX

1		
2	SELECTION OF THE JURY.....	19
3	OPENING ON BEHALF OF THE STATE.....	43
4	OPENING ON BEHALF OF THE DEFENSE.....	48
5	Witnesses on Behalf of the State:	
6	JAMESHIA ALSTON	
7	DIRECT BY MR. SLOCUM	54
8	CROSS BY MR. SMITH	68
9	REDIRECT BY MR. SLOCUM	78
10	SCOTT AARON HALL	
11	DIRECT BY MR. SLOCUM	78
12	CROSS BY MR. SMITH	92
13	REDIRECT BY MR. SLOCUM	97
14	RECROSS BY MR. SMITH	98
15	WILLIAM ROYSTER	
16	DIRECT BY MR. MOLONY	100
17	CROSS BY MR. SMITH	108
18	REDIRECT BY MR. MOLONY	122
19	RECROSS BY MR. SMITH	129
20	REDIRECT BY MR. MOLONY	133
21	RECROSS BY MR. SMITH	137
22	KAREN MILBRODT	
23	DIRECT BY MR. SLOCUM	136
24	CROSS BY MR. SMITH	141
25	REDIRECT BY MR. SLOCUM	145

1	DESRA SHERYL FRASER	
2	DIRECT BY MR. SLOCUM	147
3	CROSS BY MR. SMITH	157
4	REDIRECT BY MR. SLOCUM	162
5	Witnesses on Behalf of the Defendant:	
6	PHILLIP STEPHEN MIANO, III	
7	DIRECT BY MR. SMITH	175
8	CROSS BY MR. MOLONY	180
9	REDIRECT BY MR. SMITH	182
10	SERENA GREEN WALKER	
11	DIRECT BY MR. SMITH	183
12	CROSS BY MR. MOLONY	187
13	REDIRECT BY MR. SMITH	190
14	JANET LAVERNE WILLIAMS	
15	DIRECT BY MR. SMITH	191
16	CROSS BY MR. MOLONY	195
17	VERNON LEE WRIGHT	
18	DIRECT BY MR. SMITH	200
19	CROSS BY MR. SLOCUM	202
20	CLOSING STATEMENTS BY THE DEFENSE.....	210
21	CLOSING STATEMENTS BY THE STATE.....	224
22	JUDGE'S CHARGE TO THE JURY.....	239
23	VERDICT & SENTENCING.....	258
24	COURT REPORTER'S CERTIFICATE.....	269
25		

EXHIBIT INDEX

MAR ADM

State's:

1			
2			
3			
4	1	Photograph	90
5	2	Photograph	90
6	3	Photograph	90
7	4	Photograph	90
8	5	Photograph	90
9	6	Photograph	65
10	7	Photograph	65
11	8	Photograph	65
12	9	Photograph	65
13	10	Photograph	90
14	11	Photograph	90
15	12	Photograph	90
16	13	Photograph	65
17	14	Photograph	65
18	15	Pen-Link report	152
19	16	Verizon Wireless records	141
20	17	Map	155
21	18	Map	155
22	19	Map	155
23	20	Map	155
24	21	Map	155
25	22	Map	155

1	23	Map		155
2	24	Map		155
3	25	Map		155
4	26	Map		155
5	27	Aiken Center for the Arts poster	190	191
6				
7		Defendant's:		
8	1	Alston statement of 11-27-13	70	72
9	2	Case notes and summary	113	
10	3	Photograph	115	116
11	4	Photograph	115	116
12	5	Photograph	115	116
13	6	Verizon Wireless records	144	147
14	7	ATF map	161	164
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 ON TUESDAY, APRIL 15, 2014 AT 10:53 A.M.:

2 THE COURT: The State of South Carolina versus John
3 Lyndon Upson, U-P-S-O-N.

4 Have him come up.

5 (Defendant takes seat at counsel table.)

6 This is the Defendant, Mr. Upson.

7 And he has been indicted on three charges. Now let
8 me just tell you, I'm holding these indictments. They're
9 not evidence of guilt whatsoever. They're just the
10 charging papers, the mechanism in order to get a criminal
11 case into court for trial.

12 But, and I'll tell you this again when I give you
13 some preliminary comments later on, the indictment is not
14 evidence whatsoever of the guilt or innocence of the
15 Defendant.

16 But he is charged with armed robbery and two counts
17 of kidnapping. And the details of that will be further
18 explained to you as we go along. At this time, I'm going
19 to ask the solicitor and the defense counsel and anybody
20 that you have with you at your respective tables to
21 introduce yourselves to the jury panel. Solicitor?

22 MR. SLOCUM: Thank you, Your Honor.

23 My name is Jay Slocum. I'm an assistant solicitor
24 here in Aiken County, and Assistant Solicitor Kevin Molony
25 and I will be trying this case.

1 MR. SMITH: My name's Andy Smith and this is Grant
2 Gibbons. And we're -- and Mr. Upson.

3 THE COURT: Is any member of the jury panel related
4 by blood or marriage to the Defendant, John Lyndon Upson?
5 If so, please stand.

6 (No response.)

7 THE COURT: Does anyone have a close personal or
8 social relationship with the Defendant, John Lyndon
9 Upson? If so, please stand.

10 (No response.)

11 THE COURT: I'm going to publish a list of possible
12 or potential witnesses in this case. And then after I do
13 that, if anyone is related by blood or marriage to any of
14 those potential witnesses, then you will -- or if you have
15 a close personal or social relationship with any of those
16 people, you will need to stand.

17 The possible witnesses in the case are as follows:
18 Detective Billy Royster with the Aiken Department of
19 Public Safety; Chad Cathcart with the Aiken Department of
20 Public Safety.

21 Jameshia J-A-M-E-S-H-I-A, Alston.

22 Scott Hall, Jr.

23 Devin Johnson.

24 Desra Fraser with the Federal Bureau of Alcohol,
25 Tobacco and Firearms.)

1 Karen Milbrodt, that's M-I-L-B-R-O-D-T, with
2 Verizon Wireless.

3 Vernon Wright.

4 Janet Williams.

5 Serena Walker.

6 William Keels.

7 Ernie Folks.

8 Ivory Corley.

9 Investigator Robert Anderson. Investigator Steve
10 Miano.

11 Cassandra Keels.

12 Detective William Royster.

13 And Sean Corley.

14 Anyone related by blood or marriage or have a close
15 personal or social relationship with any of those
16 individuals? If that applies to you, please stand.

17 Yes, ma'am, your number and your name?

18 THE JUROR: Juror Number 32, Leslie Council.
19 Vernon Wright.

20 THE COURT: Okay. Which witness?

21 THE JUROR: Vernon Wright.

22 THE COURT: Vernon Wright. Are you related or know
23 or what?

24 THE JUROR: Marriage.

25 THE COURT: Excuse me?

1 THE JUROR: By marriage.

2 THE COURT: You're related by marriage. All right.
3 So the fact that you are related by marriage to a
4 potential witness, Vernon Wright, would that prevent you
5 from being fair and impartial to both the State and the
6 defense in this case?

7 THE JUROR: Yes -- no, not really.

8 THE COURT: Ma'am?

9 THE JUROR: No.

10 THE COURT: You can be fair and impartial to both
11 the State and the defense?

12 THE JUROR: Yes. Uh-huh.

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

14 All right. The attorneys have represented
15 themselves to you, but I'm required to ask: Is there any
16 member of the jury panel that's ever been represented by
17 any of the attorneys in this case or their respective
18 offices? If so, please stand.

19 (No response.)

20 THE COURT: Is anyone related by blood or marriage
21 or have a close personal or social relationship with the
22 attorneys involved in this case? If so, please stand.

23 (No response.)

24 THE COURT: Now I'm sure most, if not all of you,
25 really don't know anything about this case. But I am

1 required to ask if there's any member of the jury panel
2 who's already formed or expressed an opinion about any
3 issue or matter or anything involved in this case. If
4 that applies to you, please stand.

5 (No response.)

6 THE COURT: Is any member of the jury panel aware
7 of any bias or prejudice towards either the State or the
8 Defendant in this case? If so, please stand.

9 (No response.)

10 THE COURT: This next question, I don't think this
11 applies but I need to ask it anyways. Is there any member
12 of the jury panel that was a member of the grand jury
13 which issued the three indictments in this case? If that
14 applies to you, please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel
17 who is a member of or a contributor to any group which has
18 as its primary concern the promotion of law enforcement or
19 victim's rights? And some of these groups, certainly not
20 limiting it to these groups, but some of these groups are
21 MADD, SADD, or Citizens Against Violent Crime. If that
22 applies to you, please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel or
25 anybody in your family or any of your close personal

1 friends been a victim of a crime involving kidnapping? If
2 that applies to you, please stand.

3 (No response.)

4 THE COURT: Let me just mention too, and I should
5 have mentioned this. Again, if any of these questions
6 that I'm asking you concerning this particular case, if
7 you're hesitant to respond in public and wish to come down
8 and talk with me privately, then I will again give you
9 that opportunity to do so.

10 Any member of the jury panel or any of your family
11 members or any close personal friends been a victim of a
12 crime involving robbery? If that applies to you, please
13 stand.

14 I'm sorry. Yes, ma'am, your number and your name?

15 THE JUROR: One-eighteen. My sister worked at
16 Security Federal in North Augusta and she was robbed.

17 THE COURT: Okay. The fact that your sister was
18 robbed at her place of employment, would that prevent you
19 from being fair and impartial to both the State and the
20 defense in this case?

21 THE JUROR: No.

22 THE COURT: Thank you, ma'am.

23 Is there any member -- yes, sir. Your name and
24 number?

25 THE JUROR: Juror Number 18, Ted Cain. My mother

1 was a bank teller at Farmers and Merchant Bank, Mitchell
2 Shopping Center, in the '70s and a robbery occurred.

3 THE COURT: The fact that your mother was robbed at
4 her place of employment, would that prevent from you being
5 fair and impartial to both the State and the defense in
6 this case?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 Yes, ma'am, your number and name?

10 THE JUROR: Juror Number 83, Rhonda Hatcher. You
11 asked about family members who were victims of kidnapping,
12 and I did have a cousin who was kidnapped.

13 THE COURT: Okay. All right. Would that prevent
14 you from being fair and impartial to both the State and
15 the defense in this case?

16 THE JUROR: No, sir.

17 THE COURT: Thank you. Could I see the lawyers for
18 just one second, please?

19 (Off-the-record discussion.)

20 THE COURT: All right. Any member of the jury
21 panel or any of your family members or close personal
22 friends ever been a victim of a crime of violence? If
23 that applies to you, please stand.

24 Yes, ma'am, your number and name?

25 THE JUROR: One-thirty, Cheryl Murphy. The murder

1 of Master Public Safety Officer Scotty Richardson.

2 THE COURT: Would that prevent you from being fair
3 and impartial to both the State and the defense?

4 THE JUROR: I don't know if I can do it.

5 THE COURT: Okay. I tell you what. Let's do this,
6 ma'am.

7 When I invite members to come down to the front,
8 you come down. We'll talk about it further. Okay?

9 Yes, ma'am. Your number and name?

10 THE JUROR: I'm Juror 79, Kimberley Hardy. My
11 uncle -- do you want his name?

12 THE COURT: No.

13 THE JUROR: No? Okay. He was killed in the line
14 of duty in Augusta.

15 THE COURT: Okay. Would that prevent you from
16 being fair and impartial to both the State and the
17 defense?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am. Yes, ma'am, your
20 number and name?

21 THE JUROR: Juror 67, Annette Frazier. I had a
22 close cousin that was murdered.

23 THE COURT: Okay. Would that prevent you from
24 being fair and impartial to both the State and the defense
25 in this case?

1 THE JUROR: No.

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

3 Even though those who have responded to having
4 family members or close friends involved in kidnapping and
5 robbery, I think everybody has indicated that they could
6 be fair and impartial.

7 I will ask this: Would that -- the existence of
8 that, would that create any bias or prejudice in favor of
9 or against either the State or the defense? The fact that
10 you had a family member or a close friend be the victim of
11 the crime of kidnapping or robbery, would that create any
12 bias or prejudice?

13 (No response.)

14 THE COURT: Does any member of the jury panel know
15 of any bias that you may have against either the State or
16 the Defendant in this case?

17 (No response.)

18 THE COURT: Any member of the jury panel or any of
19 your family members, close personal friends, relatives of
20 police officers, State Law Enforcement Division Officers,
21 any employee with the Solicitor's Office of the Second
22 Judicial Circuit, Attorney General's Office, federal law
23 enforcement agencies, law enforcement agencies of any
24 other state, or any prosecutor's office in the State of
25 South Carolina or any other state or, will add, the Public

1 Defenders Office for the Second Judicial Circuit? Close
2 friends, or know of any of those individuals.

3 I know that was kind of a lengthy-type question.
4 If anybody needs me repeating that, I'll be glad to.

5 Yes, ma'am, your number and name?

6 THE JUROR: Thirty-three, Lisa Count. My husband
7 is Captain of Investigations for North Augusta Public
8 Safety.

9 THE COURT: Okay. The fact that your husband is
10 involved in law enforcement, would that prevent you from
11 being fair and impartial to both the State and the defense
12 in this case?

13 THE JUROR: No.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am?

16 THE JUROR: Number 118, Linda McDonald. My nephew
17 is an investigator at North Augusta Police.

18 THE COURT: Okay. Would that prevent you from
19 being fair and impartial to both the State and the defense
20 in this case?

21 THE JUROR: No.

22 THE COURT: Thank you, ma'am.

23 THE JUROR: One thirty-four. My twin sister works
24 for the solicitor's office here in Aiken County.

25 THE COURT: Okay. Would that prevent you from

1 being fair and impartial to both the State and the defense
2 in this case?

3 THE JUROR: No, sir.

4 THE COURT: Yes, sir?

5 THE JUROR: Juror 126. I don't know what -- my
6 previous employment; you know, is considered with
7 Wackenhut Services. Prior to that I served as United
8 States Secret service Officer, three years.

9 THE COURT: Would that prevent you from being fair
10 and impartial to both the State and the defense?

11 THE JUROR: No, sir.

12 THE COURT: Thank you, sir.

13 Yes, ma'am?

14 THE JUROR: Juror 130, Cheryl Murphy. I have a
15 cousin who is employed with the Aiken County Sheriff's
16 Department.

17 THE COURT: Would that prevent you from being fair
18 and impartial to both the State and the defense in this
19 case?

20 THE JUROR: That would not.

21 THE COURT: Okay. Thank you.

22 Any member of the jury panel have this case
23 discussed with you or been approached by anyone regarding
24 this case?

25 (No response.)

1 THE COURT: Has any member of the jury panel or any
2 of your family members or close personal friends, ever now
3 or in the past, worked at Captain D's on Whiskey Road here
4 in Aiken?

5 If that applies to you, please stand.

6 (No response.)

7 THE COURT: Has any member of jury panel read
8 anything in the newspaper, seen anything on television, or
9 heard anything about this case on the radio? If so,
10 please stand.

11 Yes, ma'am, your name and number?

12 THE JUROR: Juror Number 43.

13 THE COURT: Name?

14 THE JUROR: Cara Day.

15 THE COURT: Okay. Yes, ma'am?

16 THE JUROR: I work at the newspaper place.

17 THE COURT: You work at the newspaper?

18 THE JUROR: Aiken Standard. So I read everything
19 in the newspaper.

20 THE COURT: Okay. Have you -- by virtue of you
21 working at the newspaper, do you know anything about this
22 case?

23 THE JUROR: (Nods head.)

24 THE COURT: Okay. All right. You're excused from
25 the trial of this case, ma'am.

1 THE JUROR: Thank you.

2 THE COURT: Be sure to call back after six o'clock.

3 THE JUROR: Okay.

4 THE COURT: Yes, ma'am?

5 THE JUROR: Juror 14, Shanquita Brown. I know one

6 of the workers that was working at Captain D's

7 THE COURT: You know what now?

8 THE JUROR: I knew one of the workers that was

9 working there.

10 THE COURT: All right. During the period of time

11 in question?

12 THE JUROR: Yes, sir.

13 THE COURT: You're excused from the trial of this

14 case. Call back after six o'clock.

15 THE CLERK: What was her number?

16 THE COURT: Give us your number again, ma'am.

17 THE JUROR: Fourteen.

18 THE CLERK: Fourteen.

19 THE COURT: Any exceptions or additional voir

20 dire -- exceptions to or additional voir dire from the

21 State?

22 MR. SLOCUM: None from the State, Your Honor.

23 THE COURT: Okay. Any exceptions to the voir dire

24 or any additional voir dire from the defense?

25 MR. SMITH: None, Your Honor.

1 THE COURT: Okay. Thank you very much.

2 All right. Now, ladies and gentlemen of the jury
3 panel, we are now going to start the actual trial jury
4 selection. What you will be asked to do, if your name is
5 called out, you'll be asked to come down to the front,
6 turn, face the attorneys. And they will make a
7 determination whether or not they want to select you on
8 the trial jury or not.

9 If you're not selected, please do not take any
10 offense to not being selected. (Laughter.)

11 These lawyers, and I'll tell you, these are
12 excellent attorneys who will be prosecuting and defending
13 this case. And they have certain reasons for wanting
14 someone to serve on the jury or someone not to serve on
15 their jury. But it's not personal. Don't take it as
16 personal. Don't take offense to it. Okay?

17 So we will start the selection process in due
18 course.

19 MR. SMITH: Your Honor, could we approach?

20 THE COURT: Sure.

21 (Off-the-record discussion.)

22 THE COURT: Before we do that, there's one lady
23 that might need to come down and there might be some
24 others. I apologize for that.

25 All right. Anybody want to come down to the front

1 and meet with me privately, do so at this time.

2 (Jurors approach. The following was heard
3 privately by the Judge and the attorneys.)

4 THE COURT: Number and name?

5 THE JUROR: 130, Cheryl Murphy. (Crying,
6 inaudible.)

7 THE COURT: It's going to be really difficult for
8 you to sit on the jury, I understand.

9 THE JUROR: I thought I could do it but I can't do
10 it in this room.

11 THE COURT: I know, I know. I'm going to go ahead
12 and excuse you for the week. Even though I think we're
13 only going to have one trial, I'm going to go ahead and
14 excuse you for the balance of the week. Okay?

15 THE JUROR: Okay. All right. Thank you very much.

16 THE COURT: Is that it?

17 THE BAILIFF: Your Honor, we have some jurors that
18 need to use the restroom.

19 THE COURT: Okay. Let's do this then. Let's take
20 about a 10-minute break and then be back in the jury room
21 promptly in about 10 minutes and we'll start the selection
22 process then.

23 (Break taken at 12:12 P.M.)

24 THE COURT: Let me see the lawyers for just a
25 second, Solicitor.

1 (Off-the-record discussion.)

2 (At 12:25 P.M., the trial resumed:)

3 THE COURT: It's my understanding all the members
4 are back in the courtroom. We'll now proceed with the
5 selection of the trial of the jury.

6 Madam Clerk?

7 THE COURT: Stand, give us your name and number,
8 sir.

9 THE JUROR: Ted Cain, Juror Number 18. A situation
10 occurred kind of during the break I probably need to talk
11 to you about.

12 THE COURT: Okay. Come down front.

13 (Juror approaches to converse with Judge and
14 attorneys.)

15 THE COURT: Yes, sir.

16 THE JUROR: I'm a teacher at South Aiken High
17 School. During the break one of my students shook my
18 hand, said -- he said, "My sister was involved in this
19 case."

20 THE COURT: Okay. Well, inadvertent contact but I
21 probably need to excuse you from the trial of this case.
22 Any objection from the State?

23 MR. SLOCUM: No, sir.

24 THE COURT: Defense?

25 MR. SMITH: No, sir.

1 THE COURT: You're excused from the trial. Just
2 call back after six o'clock.

3 THE JUROR: Okay.

4 THE BAILIFF: Got one more.

5 THE COURT: Your number and name, sir?

6 THE JUROR: I thought I knew the Defendant. Yes,
7 sir.

8 THE COURT: All right. The fact that you know the
9 Defendant, would that prevent you from being fair and
10 impartial to both the State and the defense?

11 THE JUROR: No.

12 THE COURT: Can you be fair and impartial --

13 THE JUROR: Yeah.

14 THE COURT: -- even though you know him?

15 Your number again?

16 THE JUROR: One-0-eight.

17 MR. SLOCUM: One-0-eight.

18 THE COURT: Okay. All right. Have a seat back
19 there.

20 THE JUROR: Okay.

21 THE COURT: All right. Madam Clerk?

22 THE CLERK: When I call your juror number, please
23 come to the front and turn around and face the audience,
24 please.

25 Number 90, Michael Hillman.

1 (White male comes forward.)
2 THE CLERK: What say you for the State?
3 MR. SLOCUM: Please present Mr. Hillman.
4 THE CLERK: What say you for the defense?
5 MR. SMITH: Please seat the juror.
6 THE CLERK: Please have a seat in the jury box.
7 THE BAILIFF: Right here, sir.
8 THE CLERK: 161, Curtis Schofield.
9 (Black male comes forward.)
10 THE CLERK: What say you for the State?
11 MR. SLOCUM: Please present Mr. Schofield.
12 THE CLERK: What say you for the defense?
13 MR. SMITH: Please seat Mr. Schofield.
14 THE CLERK: Please have a seat in the jury box.
15 Fifty-one, Suzanne Dyke.
16 (White female comes forward.)
17 THE CLERK: What say you for the State?
18 MR. SLOCUM: Please present Ms. Dyke.
19 THE CLERK: What say you for the defense?
20 MR. SMITH: Please seat Ms. Dyke.
21 THE CLERK: Please have a seat in the jury box.
22 One-fourteen, Paige Mathis.
23 (Black female comes forward.)
24 THE CLERK: What you for the State?
25 MR. SLOCUM: Please present Ms. Mathis.

1 THE CLERK: What say you for the defense?
2 MR. SMITH: Please seat Ms. Mathis.
3 THE CLERK: Please have a seat in the jury box.
4 One thirty-six, Julie Orillion-Gunter.
5 (White female comes forward.)
6 THE CLERK: What say you for the State?
7 MR. SLOCUM: Please present Ms. Orillion-Gunter.
8 THE CLERK: What say you for the defense?
9 MR. SMITH: Please seat Ms. Gunter.
10 THE CLERK: Please have a seat in the jury box.
11 One fifty-six, Stanley Rzonca.
12 (White male comes forward.)
13 THE CLERK: What say you for the State?
14 MR. SLOCUM: Please excuse Mr. Rzonca from this
15 case.
16 THE CLERK: Please return to your seat.
17 One seventy-nine, Kris Usry.
18 (White male comes forward.)
19 THE CLERK: What say you for the State?
20 MR. SLOCUM: Please present Mr. Usry.
21 THE CLERK: What say you for the defense?
22 MR. SMITH: Please seat Mr. Usry.
23 THE CLERK: Please have a seat in the jury box.
24 Seventy-seven, Deloris Gunnells.
25 (White female comes forward.)

1 THE CLERK: What say you for the State?

2 MR. SLOCUM: Please excuse Ms. Gunnells from this
3 case.

4 THE CLERK: Please return to your seat.

5 One ten, Julie Long.

6 (White female comes forward.)

7 THE CLERK: What say you for the State?

8 MR. SLOCUM: Please present Ms. Long.

9 THE CLERK: What say you for the defense?

10 MR. SMITH: Please seat Ms. Long.

11 THE CLERK: Have a seat in the jury box.

12 Seventy-nine, Kimberley Hardy.

13 (White female comes forward.)

14 THE CLERK: What say you for the State?

15 MR. SLOCUM: Please present Ms. Hardy.

16 THE CLERK: What say you for the defense?

17 MR. SMITH: Please excuse Ms. Hardy.

18 THE CLERK: Please return to your seat.

19 Number 11, Tiffany Bodie.

20 (White female comes forward.)

21 THE CLERK: What say you for the State?

22 MR. SLOCUM: Please present Ms. Bodie.

23 THE CLERK: What say you for the defense?

24 MR. SMITH: Please seat Ms. Bodie.

25 THE CLERK: Please have a seat in the jury box.

1 One ninety-seven, David Wood.
2 (White male comes forward.)
3 THE CLERK: What say you for the State?
4 MR. SLOCUM: Please present Mr. Wood.
5 THE CLERK: What say you for the defense?
6 MR. SMITH: Please seat Mr. Wood.
7 THE CLERK: Please have a seat in the jury box.
8 Number 26, Velvet Champagne.
9 (White female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. SLOCUM: Please present Ms. Champagne.
12 THE CLERK: What say you for the defense?
13 MR. SMITH: Please seat Ms. Champagne.
14 THE CLERK: Please have a seat in the jury box.
15 One fifty-four, Michael Rushton.
16 (White male comes forward.)
17 THE CLERK: What say you for the State?
18 MR. SLOCUM: Please present Mr. Rushton.
19 THE CLERK: What say you for the defense?
20 MR. SMITH: Please excuse Mr. Rushton.
21 THE CLERK: Please return to your seat.
22 Sixty-seven, Annette Frazier.
23 (Black female comes forward.)
24 THE CLERK: What say you for the State?
25 MR. SLOCUM: Please excuse Ms. Frazier from this

1 case.

2 THE CLERK: Please return to your seat.

3 One-eleven, Juan Lopez.

4 (Hispanic male comes forward.)

5 THE CLERK: What say you for the State?

6 MR. SLOCUM: Please present Mr. Lopez.

7 THE CLERK: What say you for the defense?

8 MR. SMITH: Please seat Mr. Lopez.

9 THE CLERK: Have a seat in the jury box.

10 One seventy-four, Conrad Starke.

11 (White male comes forward.)

12 THE CLERK: What say you for the State?

13 MR. SLOCUM: Please present Mr. Starke.

14 THE CLERK: What say you for the defense?

15 MR. SMITH: Please seat Mr. Starke.

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

17 THE COURT: All right. We agreed to two
18 alternates.

19 THE CLERK: One-sixty, Charmaine Schoellkopf.

20 (White female comes forward.)

21 THE CLERK: What say you for the State?

22 MR. SLOCUM: Please present Ms. Schoellkopf.

23 THE CLERK: What say you for the defense?

24 MR. SMITH: Please seat Ms. Schoellkopf.

25 THE COURT: Alternate one.

1 THE CLERK: One ninety-two, David Williams.

2 (White male comes forward.)

3 THE CLERK: What say you for the State?

4 MR. SLOCUM: Please present Mr. Williams.

5 THE CLERK: What say you for the defense?

6 MR. SMITH: Please seat Mr. Williams.

7 THE COURT: Alternate two.

8 Ladies and gentlemen of the jury, congratulations.

9 I'm going to ask that you go to your jury room. The
10 bailiffs will escort you to the jury room so you can get
11 kind of acclimated of where you'll be spending some time
12 this week. And then they'll provide you with some
13 instructions. I'll bring you back out in just a few
14 minutes. So if you'll retire to your jury room at this
15 time. Thank you.

16 (Jury exits courtroom at 11:38 A.M.)

17 THE COURT: Any objections or exceptions to the
18 selection of the jury from the State?

19 MR. SLOCUM: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. SMITH: None, Your Honor.

22 THE COURT: Thank you very much. All right.

23 The remaining members of the jury panel, I know
24 some of you may be disappointed for not getting selected.
25 Some of you maybe are very excited that you were not

1 selected. But nonetheless, we appreciate you being here.

2 As I indicated to you, it's very, very likely that
3 we will not need you back but, again, things can change.

4 So I remind you to be sure to call that number
5 after six o'clock tonight for further instructions. And
6 you'll need to do that so you'll need to know what to do
7 as far as tomorrow and then of course the remainder the
8 week. They may instruct you to call back in after six the
9 following day, but we'll see.

10 Nonetheless, it's great seeing everybody. If I
11 don't have an opportunity to see your smiling faces again,
12 I hope you have just a great afternoon, evening and a
13 great rest of the week.

14 Thank you. You're now excused.

15 (Jury panel exits courtroom at 11:40 A.M.)

16 THE COURT: I think we can probably get done
17 everything we need to do, also -- and have some lunch and
18 start back at two o'clock.

19 Suit you guys?

20 MR. SMITH: Yes, Your Honor. I'm fine.

21 MR. SLOCUM: Your Honor, may we approach for a
22 second, please?

23 THE COURT: Sure.

24 (Off-the-record discussion.)

25 THE COURT: If the jury is ready you can bring them

1 back out. If they're ready.

2 THE BAILIFF: All right.

3 (Jury enters courtroom at 11:44 A.M.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, as I indicated to you we're going to not start the
6 case until this afternoon.

7 And so we're going to be in recess until 2:30. So
8 you'll have a little longer lunch break than what I would
9 normally give you. But, again -- and I'll tell you this
10 throughout the course of this whole trial -- don't talk
11 about the case among yourselves. Don't talk about the
12 case with people that you may come into contact with, over
13 the lunch break or even in the evening when we adjourn for
14 the day. It's so very, very important that you follow
15 that instruction from the Court.

16 So with that said, have a good lunch. And we'll
17 see you back at 2:30. You've been instructed on where to
18 report back to.

19 So we'll see you -- or you have not? So you can
20 let them know exactly where they need to come when they
21 come back at 2:30. Okay? Have a good lunch.

22 (Jury exits courtroom at 11:46 A.M. Thereafter,
23 other matters were heard. The luncheon recess was taken
24 and the trial of this matter resumed at 2:32 P.M.:)

25 THE COURT: All right. We're back on the record.

1 Anything from the State or the defense before we bring the
2 jury out and have them sworn?

3 MR. SLOCUM: Nothing from the State.

4 MR. SMITH: Yes, Your Honor. I would just ask to
5 have the State's fact witnesses be sequestered only during
6 the period of time that the other fact witnesses will be
7 testifying.

8 THE COURT: And the position of the State?

9 MR. SLOCUM: Your Honor, our fact witnesses are
10 Jameshia Alston, Scott Hall, and Detective Billy Royster.

11 Under 16-3-1550(b) a person must not be sequestered
12 from a proceeding adjudicating an offense of which he was
13 a victim. Both Jameshia and Scott are victims. And
14 Detective Royster will be assisting the prosecution as the
15 lead case agent. And we would argue their presence is
16 allowed.

17 THE COURT: Typically victims are allowed to remain
18 in. Do you want to address that point?

19 MR. SMITH: Yes, sir. I'm not asking to have
20 Jameshia or Scott sequestered for the duration of the
21 trial, merely for the testimony of the other fact
22 witnesses just to ensure that there's no contamination of
23 testimony or chance to correct or --

24 THE COURT: Let me take a look at that. What's
25 that section again, Solicitor?

1 MR. SLOCUM: 16-3-1550(b).

2 THE COURT: Okay.

3 Mr. Smith, the statute, I think, would not allow me
4 to sequester just for a brief period of time as you are
5 requesting. It says: A person must not be sequestered
6 from a proceeding adjudicating an offense of which he was
7 a victim.

8 So that sounds pretty much non-discretionary with
9 me.

10 I'll be glad to hear any further argument you'd
11 like to make, or from the State, but that's the way I'm
12 reading it. Certainly I've always -- you know, it's
13 pretty commonplace to keep victims in, but I don't think
14 this would let me carve out anything.

15 MR. SMITH: Yes, sir. I would just like to protect
16 the record.

17 This case is primarily based on the identification
18 by the witnesses that were there that night. And just to
19 avoid any -- just to maintain the process, the due process
20 that's to be afforded to Mr. Upson as the Defendant in
21 this case --

22 THE COURT: Right.

23 MR. SMITH: -- under the constitution, I would ask
24 to be protected on that basis.

25 THE COURT: Right. And you are protected on the

1 record. I trust that you don't dispute the fact that they
2 would be classified as victims; correct?

3 MR. SMITH: I do not dispute that.

4 THE COURT: Your motion is so noted and denied.
5 Thank you.

6 Anything further before we bring the jury out?

7 MR. SLOCUM: Nothing from the State.

8 THE COURT: And from the defense, Mr. Smith?

9 MR. SMITH: No, Your Honor.

10 THE COURT: Okay. Bring the jury out, please.

11 (Jury enters courtroom at 2:37 P.M.)

12 THE COURT: Okay. Let the record reflect that the
13 jury is back in. And -- good afternoon, and hopefully you
14 folks have had a good lunch and are ready to get to work
15 this afternoon.

16 Madam Clerk, would you swear this trial jury in,
17 please, ma'am?

18 THE CLERK: Yes.

19 (Jury impaneled.)

20 THE CLERK: You may be seated.

21 THE COURT: Ladies and gentlemen of the jury, we
22 need to pick a foreperson, foreman, or if it's a female,
23 forelady of the jury. I'm going to do that in just a
24 moment.

25 I'm going to explain to you the role of the

1 foreperson of the jury. First of all, their vote counts
2 no more than everybody else's vote. But we have to have
3 a spokesperson for the jury to -- if there's any
4 communication that's needed between the jury and the Court
5 then we need to have someone to handle that line of
6 communication.

7 Secondly, we need to have someone just to make sure
8 that whatever instructions that are given to the jury --
9 for example, my continuous instruction will be that you
10 not begin your deliberations or discuss anything about
11 this case among yourselves or with anybody else until you
12 are instructed to do so -- I need to ask someone to
13 oversee, oversee that.

14 And, thirdly, once you get the case to begin your
15 deliberations, then we have to have someone to oversee
16 those deliberations and to make sure that they begin and
17 that they are handled properly.

18 So, but other than that, the foreperson's no more
19 important than everybody else that's on this jury.

20 I'm going to appoint Suzanne Dyke. Ms. Dyke, I'm
21 going to appoint you as the Foreperson of the Jury. Now
22 you stay in that seat for right now but the next time you
23 come in, you will maintain that first seat at all times.
24 Okay?

25 And our two alternates. Raise your hands. Okay?

1 You are seated in the right seats. You maintain those two
2 seats at all times.

3 Everybody else, you can sit where you like. Now
4 it's been my experience that juries are kind of like
5 attending church. You sit in the same pew every Sunday.
6 Most jurors like to sit in the same seat. You don't have
7 to but, you know, if that's the collective desire of the
8 jury then certainly you can do that. But as far as the
9 Forelady of the Jury and your two alternates, you retain
10 those same seats all the time. Okay?

11 I appreciate everybody being prompt in their return
12 from lunch. That is so vitally necessary that you always
13 be prompt when you return back, either from a lunch break
14 or return in the morning after breaking for the evening,
15 because if you're not prompt and if you're not back here
16 in time we can't do anything. Our hands are tied. And,
17 so it's very important, as you've already done, to be
18 prompt.

19 Now, what we're going to do to start off with is
20 I'm going to give you a, what we call a preliminary
21 instruction just to kind of give you some things, some
22 guidelines to follow. And then once that is done the
23 lawyers will make some opening arguments to you.

24 So we're going to start the case of the State of
25 South Carolina versus John Lyndon Upson.

1 Now, Mr. Upson has been indicted on three charges.
2 And I'm going to publish those to you in just a second.
3 Again, I want to emphasize, and as I told you earlier,
4 that the indictments are not evidence of guilt. They are
5 just merely the mechanism in which we get a case in to
6 court for purposes of disposition, trial or otherwise.
7 But the indictments serve no further purpose other than
8 that, and of course to put the Defendant on notice of
9 actually what he is being tried on.

10 And I give these in no significant order, just
11 whatever first on the stack is. The kidnapping
12 indictment is 2014-GS-02-00080, the State versus John
13 Lyndon Upson. And it states as follows: -- these are
14 merely allegations made by the State -- that John Lyndon
15 Upson did in Aiken County on or about November 27, 2013,
16 unlawfully seize, confine, inveigle, decoy, kidnap,
17 abduct, or carry away Scott Hall, without authority of
18 law, all in violation of 16-3-910, Code of Laws of South
19 Carolina as amended.

20 The second indictment is 2014-GS-02-00079, the
21 State of South Carolina versus John Lyndon Upson which
22 states as follows: John Lyndon Upson did in Aiken County
23 on or about November 27, 2013, unlawfully seize, confine,
24 inveigle, decoy, kidnap, abduct, carry away Jameshia
25 Alston, without authority of law, all in violation of

1 Section 16-3-910, Code of Laws of South Carolina as
2 amended.

3 And the third indictment is 2014-GS-02-00074, the
4 State of South Carolina versus John Lyndon Upson. And
5 it's for armed robbery. And it states as follows: That
6 John Lyndon Upson along with another did in Aiken County
7 on or about November 27, 2013, while armed with a deadly
8 weapon or while alleging either by action or words that he
9 was armed while using a representation of a deadly weapon
10 or an object which a person present during the commission
11 of the robbery reasonably believed to be a deadly weapon,
12 to wit, a handgun, feloniously take away the person or
13 presence of Devin Johnson by means of force or
14 intimidation, goods or moneys of Captain D's, such goods
15 or moneys being described as follows, US currency, all in
16 violation of Section 16-11-330, Code of Laws of South
17 Carolina as amended.

18 Now, Madam Forelady, and ladies and gentlemen of
19 the jury, before we begin this trial, I want to tell you
20 that this trial probably will be different from what you
21 might expect.

22 I'm having a computer issue here. Bear with me
23 just a second.

24 ...be different from what you might expect. Many
25 people do not have a chance to attend actual court

1 sessions as you're doing now and may think from watching
2 television or movies or reading books that trials are
3 always full of high drama, intense action and riveting
4 circumstances.

5 While all of these things may be true at times,
6 this trial is not for entertainment. It is a fundamental
7 part of our democracy, a search for the truth in an effort
8 to make sure that justice is done between the parties
9 before the Court.

10 Searching for the truth and making sure that
11 justice is done is often slow, deliberate and repetitive,
12 the opposite of what you may have seen on television,
13 movies or have read in books.

14 This courtroom is a place of honor, dedicated to
15 the protection and preservation of citizen's rights
16 through -- and I stated this earlier to you -- what many
17 have called to be the greatest justice system ever
18 created.

19 The attorneys appearing before you are advocates
20 for the parties they represent. First and foremost
21 they're officers of the Court, sworn to uphold the
22 integrity and fairness of our judicial system and to help
23 you in the search for the truth. You should expect them
24 to be professional, competent and ethical in the
25 representation of their client's interests which I'm sure

1 that they will be. I have no question about that.

2 And you are also expected to be professional,
3 reasonable and ethical as well.

4 I want to thank you, once again, for accepting the
5 important responsibility of jury service and for your
6 contribution today to our justice system.

7 What I will now say is intended to serve as an
8 introduction to the trial of the case. These remarks are
9 not a charge on the law in the case. I will instruct you
10 on the law applicable to this case at the end of the trial
11 before you retire to consider and deliberate your verdict.

12 This is merely an explanation of the procedure that
13 we will follow in the trial of the case so that you may
14 better understand what may be happening here today.

15 And I will tell you, Madam Forelady and ladies and
16 gentlemen of the jury, I will not permit you to take any
17 notes during the trial. Consequently you will need to be
18 very attentive throughout this entire trial.

19 Your purpose as jurors on this trial jury is to
20 find and determine the facts. You are the sole judge of
21 the facts. If at any time I make any comment regarding
22 the facts, you must disregard that comment. You are to
23 determine the facts from the testimony you hear and other
24 evidence introduced in court. It is up to you to
25 determine the inferences which you feel may properly be

1 drawn from the evidence.

2 It is especially important that you perform your
3 duty of determining the facts diligently and
4 conscientiously because ordinarily there is no way to
5 correct an erroneous determination of the facts by a jury.

6 And on the other hand and with equal emphasis, the
7 same law that makes you the judges of the facts make me
8 the judge of the law. The law as given by the Court is
9 the only law that you may consider. You must accept and
10 follow it even though you may disagree with it.

11 I cannot tell you what the facts are, and you
12 cannot disagree with me about what the law is or should
13 be. Your job is to take the law as I give it to you and
14 apply it to the facts as you find them from the testimony
15 of the witnesses and any other evidence that is
16 introduced. After doing that, then you will render your
17 verdict, a verdict under your solemn oath that you just
18 took moments ago.

19 And, again, you'll hear me say this so many times
20 but it's so, so important. You cannot begin your
21 deliberations until you are instructed to. Consequently
22 you cannot discuss this case among yourselves until I tell
23 you to. And you cannot discuss this case with anyone,
24 friends, family members, anyone that you may come into
25 contact with, until this case is concluded.

1 You must decide this case based solely on the
2 evidence presented here in this courtroom. This means
3 that during the course of this trial you must not conduct
4 any independent research about this case on your own.

5 The facts of the case, the evidence presented in
6 the case, and the people, organizations involved in any
7 way in this case, please do not try to find out
8 information from any source outside this courtroom. In
9 other words, you can't go online to do any research, you
10 can't go to any reference materials, anything whatsoever,
11 you cannot do. You're strictly prohibited from doing so.
12 If that is done and you find out that a fellow juror has
13 done that, then, Madam Forelady, that would need to
14 brought to the attention of the Court.

15 And, likewise, I don't know if there's going to be
16 any media account or reports of this particular case, I
17 would have no way of knowing that, but if it does appear
18 in the newspapers or on the radio or television, you are
19 instructed not to consider that or pay any attention to
20 such media reports.

21 It's very important that you keep an open mind and
22 not decide any issue in the case until all of the evidence
23 has been presented, the parties have made their closing
24 arguments to you, and I have instructed you on the law in
25 this case.

1 It is your solemn responsibility to determine the
2 guilt or innocence of the Defendant. And your verdict
3 must be based solely on the evidence as it is presented to
4 you in this trial and on the law as I instruct you during
5 and at the close of the trial.

6 Now there will be times during the course of this
7 trial that one of the lawyers may say, "Judge, I've got an
8 objection," or "Judge, I have a matter of law that we need
9 to take up with the Court."

10 That may require from time to time to have you
11 retire to the jury room. And the reason for that is that
12 on ruling on a particular matter that one of the attorneys
13 brings up, it may require me to make some comment or
14 discussion on the facts. Consequently, I don't want to
15 influence you at all concerning your determination of what
16 the facts are in this case. So that's why it may be
17 necessary from time to time to have you retire to your
18 jury room in order for me to discuss those matters with
19 the lawyers.

20 And, again, as I told you, because I'm not allowing
21 you to take any notes, it's so vitally important for you
22 to pay very close attention to everything that goes on,
23 testimony from the witnesses, the evidence as presented,
24 anything that the attorneys may do or say, and whatever
25 the Court says. It's very important for you to be very

1 attentive to what goes on.

2 At this time I'm going to ask: Is there any
3 exceptions or objections to the preliminary charge from
4 the Court, from the State?

5 MR. SLOCUM: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: Nothing, Your Honor.

8 THE COURT: Okay. Thank you very much.

9 Now the lawyers will make their opening arguments
10 to you. And they're not evidence in the case. It's just
11 their statement of what they believe their respective
12 positions to be, and what they believe the evidence shall
13 be during the course of this trial.

14 But it is not evidence. It's just an opening
15 statement as it is called. So we'll hear from the State
16 first. Solicitor?

17 MR. SLOCUM: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. SLOCUM: Mr. Smith, Mr. Gibbons, ladies and
21 gentlemen.

22 November 27th, 2013. Last November. The day
23 before Thanksgiving, it was a Wednesday, around 10
24 o'clock, two men arm robbed the Captain D's here on
25 Whiskey Road, a couple miles down the road.

1 The State's about to show you evidence that one of
2 those individuals was John Upson. This is John Upson's
3 day in court. And I don't want you to lose sight of that
4 throughout the case. We're here for John Upson and John
5 Upson alone.

6 You're going to hear evidence that's going to show
7 that these two men armed with a handgun, used that handgun
8 to force the employees inside Captain D's to give them
9 money. You're going to hear how that handgun was used,
10 how it was put to the back of one of those individual's
11 head.

12 You're going to hear, evidence is going to show
13 you, of how law enforcement came to understand, to know it
14 was John Upson that did this.

15 Mr. Upson is represented by Mr. Andy Smith. And he
16 is a fine defense attorney. And it's his job to advocate
17 for his client, just as it is my job to advocate for the
18 State.

19 I ask you to stay focused on John Upson in this
20 case. As I just said earlier, this is John Upson's day in
21 court. These witnesses that I just discussed, that I
22 just brought up, are going to tell you their story of what
23 happened that night a little after 10 o'clock on the 27th
24 of November. They're going to sit right up there and tell
25 you what all happened. I want you to listen to their

1 testimony. Pay attention. I ask you as jurors to pay
2 attention.

3 And your job is to judge the facts in this case.
4 My job is to put up the evidence. It's your job to be the
5 judge of the facts. It's the Judge's job to give you the
6 law.

7 Now in being the judges of the facts, I ask you to
8 use your common sense. You do it everyday, at the store,
9 at work, at home, using your common sense to judge the
10 credibility and the believability of what you hear and
11 what you see.

12 An example of that would be one of your young'uns
13 at home coming up with chocolate on their hands, on their
14 face. And, did you get in the cookie jar? Did you get in
15 the chocolate? No. Well, right then you can judge that
16 young'un right in front of you. And although you didn't
17 see them eating chocolate, you can surmise that they got
18 into the chocolate.

19 And we call that circumstantial evidence. It's
20 one type of evidence. Circumstantial and direct. Direct
21 evidence is something you see, touch. You feel it, you
22 hear it.

23 Circumstantial is something that based on what you
24 know you can piece together to get you to a certain
25 ending. We're in a room right now. No windows. Can't

1 see outside. We don't know what's going on outside.
2 Three people walk in that back door. The first two are
3 holding wet umbrellas. The third one is soaking wet.
4 Now, we don't know what's happening outside. We don't see
5 that it's raining outside, but based on those two wet
6 umbrellas and the third person being soaking wet, you can
7 piece it all together to know that it's raining outside
8 even though you don't see it direct, touch it, smell it,
9 hear it, feel it. You can use your common sense and your
10 ability to judge the credibility and the believability of
11 a witness to put those pieces together.

12 The State's going to show you how all these pieces
13 fit together, how John Upson along with another
14 individual -- now that other individual, it's not his day
15 in court today. This is John Upson's day. But on
16 November 27, 2013, John Upson along with another
17 individual by use of force and intimidation took personal
18 property away from Captain D's, that being money, while
19 being armed with a deadly weapon, with a gun.

20 That's armed robbery. It's simple. It's robbing
21 someone while being armed with a deadly weapon.

22 We're also going to show you how John Upson along
23 with another individual -- again, I ask you not to lose
24 sight of John Upson. This is his day in court. How John
25 Upson seized or confined Jameshia Alston and Scott Hall

1 without legal authority to do so. Kidnapping. That's
2 what kidnapping is.

3 Now the Judge just told you, he's the one that
4 gives you the law. And what I just told you, if the
5 Judge's law differs in any way, shape or form, I ask you
6 to go with what he tells you to do.

7 Now the first sentence of those charges are "John
8 Upson along with another." Another portion of our law in
9 South Carolina we have the hand of one is the hand of all.
10 That means that if one person does something, the second
11 person is just as guilty as the other person. They both
12 acted together. They both did it together. Just
13 because one person, say, had the gun, the other person did
14 not doesn't mean they're not both guilty of armed
15 robbery.

16 You're going to hear testimony-John Upson didn't
17 have a gun. It doesn't mean he's not guilty of armed
18 robbery because of our law, the hand of one is the hand of
19 all. If one person does something the other person's just
20 as guilty.

21 Thank you all for being here, for your time. I
22 ask you to pay attention. I ask you to, at the end of
23 the day once you see all this evidence, once you hear all
24 of the testimony, that you will be firmly convinced in the
25 Defendant's guilt.

1 And the State has the burden of proving that. We
2 have the burden to present you evidence to prove to you
3 beyond a reasonable doubt the Defendant's guilt. Not all
4 doubt, but what's reasonable, what makes sense. Using
5 your common sense, what is reasonable. And all that is is
6 being firmly convinced in the Defendant's guilt.

7 Thank you. And I ask at the end of this trial you
8 return a verdict of guilty.

9 THE COURT: Thank you, Solicitor. Mr. Smith?

10 MR. SMITH: Thank you, Your Honor. May it please
11 the Court.

12 Mr. Solicitor, Mr. Molony.

13 Good afternoon. You're here today as a jury for
14 12, 14 individuals here, and you're in a tough situation.
15 I don't envy your spot. You're where the rubber meets the
16 road in our republic. Okay.

17 This is where it happens. This is where, as the
18 Judge explained, you have the power to prevent
19 governmental overreach, government abuses. And on the
20 other end of that spectrum you have the power to prevent
21 mistakes that come from miscommunications,
22 misunderstandings, mistakes. In this room a mistake means
23 a man goes to prison. A mistake is a big deal in this
24 room. You have the power as a jury to prevent that
25 mistake.

1 In this case the State just spent a few minutes
2 talking about how there are going to be holes in their
3 case and how you're going to have to try to fill in the
4 holes of the case for the State. Okay.

5 What I want you to worry about is what you think
6 about the evidence you're going to hear. You're going to
7 hear a lot of evidence. Some of it may sound complex.
8 Some of it's going to be real simple. This isn't a really
9 difficult case. Some of it's going to be very simple.
10 There's a little bit of nuances to it.

11 We've had our heads dug real deep into it for a
12 while. We're going to try to help make sure that you
13 understand everything clearly. Okay?

14 The State is going to try to show, like they just
15 said, that John Upson, the man sitting right there, the
16 man that is presumed innocent in your eyes and the eyes of
17 the Court, in the eyes of the State, that man is presumed
18 innocent. They're going to try to prove that he was
19 involved with an armed robbery and a kidnapping.

20 Now that's a difficult burden for them to carry.
21 They have to convince you beyond a reasonable doubt.
22 Right now if you're looking at the scales of justice, this
23 is John Upson, in favor of John Upson. It would tip like
24 this. It would tip really heavy because he's got this
25 heavy presumption of innocence. Okay?

1 For this -- for you to return a verdict of guilty,
2 the State has to convince you beyond a reasonable doubt to
3 bring up the scales, not to be even, but to outweigh,
4 it's not to be -- you have to be convinced beyond a
5 reasonable doubt. Each of you.

6 We always talk about a verdict being, the meaning
7 of the word being "to speak the truth." Okay? And for a
8 true verdict to come out of this jury, it has to be the
9 truth of what you believe individually.

10 It has to be the truth of what you believe. What
11 you believe. What you believe. It has to be the truth of
12 what you believe individually for it to be a true verdict
13 of the jury.

14 You're also going to hear some other things that
15 we're going to talk about, that John Upson wasn't there,
16 that he was elsewhere and among others. You'll get to
17 hear about that. We just want you to be considerate of
18 the people you're going to listen to, pay attention.
19 You're going to hear things that are going to stick out to
20 you.

21 What I want you to do is, those things are for
22 particular a reason. They may mean something to you but
23 not mean something to somebody else. You're going to hear
24 these things. And when you hear them, just take them and
25 set them aside. Put them in a little bag that you can

1 take with you back into the jury room. You're going to
2 hear things that are beneficial to John Upson. You take
3 those and put them in a bag. You may hear things that are
4 beneficial to the State. You take those and put them in a
5 bag. Some things are going to be good for the State, some
6 things may be beneficial for John Upson. You're going to
7 take that back with you and you're all going to compare.

8 Okay.

9 But you need to take note of those things so when
10 you go back into that jury room that you've done, you've
11 honored your oath, that you've honored the system, that
12 you've honored what we're here to do, and that you have
13 something to talk about, that you paid attention, that you
14 held onto these things and considered them.

15 When it all comes down to the end, I'm going to ask
16 you to just come back in with a true verdict, a verdict
17 that represents what each of you individuals believe, what
18 each of you individually is convinced of or not convinced
19 of.

20 And I hope that that verdict will be a verdict of
21 not guilty.

22 Thank you.

23 THE COURT: Thank you, Mr. Smith. The State ready
24 to proceed?

25 MR. SLOCUM: We are, Your Honor.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 THE COURT: Call your first witness, please.

2 MR. SLOCUM: The State calls Jameshia Alston.

3 JAMESHIA ALSTON, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your full name for the Court and spell your last, please.

7 THE WITNESS: Jameshia Brenae Alston, A-L-S-T-O-N.

8 DIRECT EXAMINATION

9 BY MR. SLOCUM:

10 Q. Ms. Alston, good afternoon.

11 A. Good afternoon.

12 Q. Please tell the jury where you are from.

13 A. Aiken, South Carolina.

14 Q. And how long have you lived in Aiken?

15 A. All my life, basically.

16 Q. Are you in school?

17 A. Yes, sir.

18 Q. Where are you in school?

19 A. Twelfth grade at South Aiken High School.

20 Q. And will you graduate in May?

21 A. Yes, sir.

22 Q. What are your plans after school?

23 A. To join the Army.

24 Q. When are you going to do that?

25 A. July 15th.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And any secondary school after that?

2 A. I want to go to Lander University to take up
3 nursing, night classes.

4 Q. Where do you work?

5 A. Captain D's.

6 Q. And where is Captain D's located?

7 A. In Aiken, South Carolina, on Whiskey Road.

8 Q. Is that Aiken County?

9 A. Yes, sir.

10 Q. And did you work at Captain D's on November 27,
11 2013?

12 A. Yes, sir.

13 Q. Let's go back to that day, if you would. Where
14 were you on November 27th, 2013, around ten o'clock?

15 A. I was counting my money at the back of the store at
16 a desk. At first I didn't really pay it attention that
17 someone was coming into the store with an armed robbery,
18 like, whatever. And I stood up and my reaction was, "Oh
19 my God, I'm going to die."

20 Q. Now you said you were counting your money. What
21 does that mean?

22 A. I was counting my drawer down to 150. I do this
23 every night after I close or after my shift was over. I
24 count my drawer down to 150 and I set my drawer to the
25 printer and I count my deposit out.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. When you say "your drawer," is that a cashier
2 drawer?

3 A. Yes, sir.

4 Q. You're a cashier up front?

5 A. Yes, sir.

6 Q. Had you all closed for the day?

7 A. Yes, sir.

8 Q. I'm sorry. I didn't mean to cut you off. What
9 happened next?

10 A. Okay. After that I was counting my money whenever
11 they came and I said, "Oh my God, I'm going to --

12 THE COURT: You need to speak up, ma'am, a little
13 louder, please.

14 THE WITNESS: The first boy asked Scott to walk him
15 to the safe. And the other boy, he told me to stay in the
16 back, and he told me not to go anywhere. And I was just,
17 like, "I want to go home." And he was, like, "No, stay
18 right there."

19 So I stayed there, whatever. And I didn't hear
20 what else was going on in the front.

21 So he walked me over to the, by the cooler and I
22 stood there for a minute. And then he said, "Get inside
23 the cooler." So I got inside the cooler. And then they
24 brought the other two boys back, but before that they
25 searched our pockets and stuff for cell phones and

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 anything else that we had.

2 Q. Okay. Back you up just a little bit. Right when

3 they first came in the door --

4 A. Yes, sir.

5 Q. -- did one of them have a gun?

6 A. Yes, sir.

7 Q. What did that -- what was that individual doing

8 with the gun?

9 A. He had it to the back of Scott's head.

10 Q. Who was Scott?

11 A. My fellow employee.

12 Q. He was working with you that night?

13 A. Yes, sir.

14 Q. Okay. And the individual who had the gun to the

15 back of Scott's head, where did they go?

16 A. To the front of Captain D's.

17 Q. Where were you?

18 A. I was -- stayed in the back by the file cabinet at

19 the time.

20 Q. Were you alone?

21 A. Yes, sir. With John Upson.

22 Q. With who?

23 A. John Upson.

24 Q. Could you please point him out?

25 A. Right here. The blue shirt with the red tie.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 MR. SLOCUM: Your Honor, please let the record
2 reflect that she pointed to the Defendant.

3 THE COURT: Okay. So noted for the record.

4 BY MR. SLOCUM:

5 Q. Now you said you were in the back with John Upson.
6 Did you know it was John Upson at this time?

7 A. No, sir. I didn't.

8 Q. Okay. When did you come to learn it was John
9 Upson?

10 A. I went home that night after the robbery and I was
11 just, like, on the Internet doing some research. And one
12 of my co-workers that worked with me is friends with him
13 because I had saw him two days before the robbery, he came
14 inside of Captain D's.

15 Q. The Defendant. You had seen the Defendant two days
16 before the robbery?

17 A. Yes, sir.

18 Q. Okay.

19 A. So, and it's my job to remember my customers if I
20 take their order to remember their faces. And so I
21 remembered his face, but I didn't know his name at the
22 time.

23 Q. Did he order anything that night?

24 A. He ordered a Sprite, a large Sprite to drink, the
25 two days before the robbery.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And you were the cashier?

2 A. Yes, sir. And I looked and I saw his face and I
3 looked at him and, like I said, it's my job to remember my
4 customers. So that's what I did. And I remembered the
5 face.

6 So I got home and I was looking on the Internet and
7 I saw pictures of him on one of my co-worker's page and I
8 jumped up from the computer because I knew I had saw this
9 person and I knew that's who it was with me in the back
10 when the robbery happened.

11 Q. Okay. When they first came in, the two
12 individuals that were doing the robbery, what were they
13 wearing?

14 A. All black. Like, they had on black hoodies, black
15 pants. They had, like, surgical gloves on, and bandanas.

16 Q. Bandanas where?

17 A. Right here (indicating), below their nose down.

18 Q. Was there a portion of their face exposed?

19 A. Only their eyes. Well, I only saw the second
20 boy's. Only his eyes and his nose were showing.

21 Q. When you saw the second boy, who are you referring
22 to?

23 A. John Upson.

24 Q. How did you know it was John Upson?

25 A. Because, like I say, it's my, you know, job to

APP'X 57

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 remember my customers. So, and I remember his eye. Like,
2 that's the thing that caught me, his eye and his bald
3 head. And I was, like, I know this person, but I don't
4 know his name.

5 Q. So you weren't aware of his name at the time of the
6 incident?

7 A. No, sir.

8 Q. You did discover it later, though; right?

9 A. Yes, sir. I went home and I looked it up.

10 Q. About what time did this all happen?

11 A. At 10:15.

12 Q. Well, why do you say 10:15?

13 A. Because I was counting my money right after we
14 close, and then it felt like about 10:15. That's how
15 long.

16 Q. Do you close at 10?

17 A. Yes, sir.

18 Q. And do you always count your money after you close?

19 A. Yes, sir.

20 Q. And what do you do with that money?

21 A. I put it in the safe in the front, but I didn't get
22 a chance to get it to the safe fast enough.

23 Q. Do you count your money each night?

24 A. Yes, sir. Every night that I work I count my
25 register down to 150.

APP'X 58

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And when you mean -- "count it down to 150," what
2 does that mean?

3 A. I take my change and I count. Like, I add it all
4 up and I stop at 150. Then I take the rest of the money
5 out and I make out my deposit.

6 Q. Okay.

7 A. And I count that money and put it in the drop box.
8 But, like I said, I didn't get that far that night.

9 Q. Okay. Now, you put the deposit -- you said you
10 have a deposit and a cash drawer. Where does each money
11 go?

12 A. In the safe.

13 Q. They both go in the safe?

14 A. Yes, sir.

15 Q. Did the man who was in back with you say anything
16 to you?

17 A. He was -- I was, like, "Can I go home?" And he
18 was, like, "No. Stand right here. Don't move." And I
19 was just, I was scared for my life.

20 Q. Did you feel like you could leave at any time?

21 A. No, sir.

22 Q. Let's go back to the gun. Did you see what color
23 the gun was?

24 A. It was black.

25 Q. Did it appear to be a real gun to you?

JAMESHIA ALSTON - DIRECT BY SLOCUM

- 1 A. Yes, sir.
- 2 Q. Why do you say that?
- 3 A. Because the first boy -- it was heavy to hold up.
- 4 Like, you could tell there was weight to the gun.
- 5 Q. The individuals, what, if anything, did you notice
- 6 about their demeanor when they walked in?
- 7 A. They were forceful.
- 8 Q. Were they yelling?
- 9 A. Not yelling, but their voice was more demanding
- 10 than calm.
- 11 Q. Were you afraid?
- 12 A. Yes, sir.
- 13 Q. Who put you in the freezer, stand-up refrigerator?
- 14 A. John Upson.
- 15 Q. About how long were you in the refrigerator?
- 16 A. It felt like 30 minutes to me.
- 17 Q. Were you upset at this time?
- 18 A. Yes, sir.
- 19 Q. Did you ever get out of the refrigerator?
- 20 A. No, sir. I came by after the robbery was over.
- 21 Q. Not during the robbery?
- 22 A. No, sir.
- 23 Q. About how long after that you said?
- 24 A. Thirty minutes.
- 25 Q. Did you speak to law enforcement when they showed

APP'X 60

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 up that night?

2 A. Yes, sir.

3 Q. What did you tell them?

4 A. I told them everything that happened at the store.
5 And they asked me to give my statement, and I wrote it
6 down for them or whatever. And I told them that I had
7 recognized one of the guy's faces but I didn't know his
8 name at the time.

9 Q. You're referring to the Defendant?

10 A. Yes, sir.

11 Q. About how long after the robbery did you discover
12 -- did you see that picture and discover it was John
13 Upson?

14 A. About an hour after I was at home. And I was
15 looking on the Internet and then I jumped up because I saw
16 his face and I knew that was him, like.

17 Q. Is there any doubt in your mind who it was?

18 A. It was him.

19 Q. Who did you send -- or, what did you do with those
20 pictures?

21 A. I e-mailed them to Detective Royster.

22 Q. The police officer?

23 A. A detective. Yes, sir.

24 Q. How long have you been at Captain D's working?

25 A. For two years.

APP'X 61

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. Do you know the phone number at Captain D's?

2 A. 803-641-6476.

3 MR. SLOCUM: Permission to approach, Your Honor?

4 THE COURT: Certainly.

5 BY MR. SLOCUM:

6 Q. Ms. Alston, I'm handing you what's been previously
7 marked as State's Exhibits Six, Seven, Eight, Nine, 13,
8 and 14. Would you please take a look at these?

9 A. Yes, sir.

10 Q. Do you recognize those pictures?

11 A. Yes, sir.

12 Q. How do you recognize them?

13 A. That's where I work. That's my job.

14 Q. And have these pictures -- what about 13 and 14,
15 how do you recognize those?

16 A. That's the guy that I saw in the back of the store
17 with me that day we got robbed.

18 Q. Do these pictures accurately depict and reflect the
19 store you work at in the two pictures you sent law
20 enforcement on November 27th, 2013?

21 A. It is.

22 Q. Have they been changed or altered in any way,
23 shape, or form?

24 A. No, sir.

25 MR. SLOCUM: Your Honor, at this time the State

APP'X 62

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 moves to admit Exhibit Six, Seven, Eight, Nine, 13 and 14
2 into evidence.

3 THE COURT: What says the defense?

4 MR. SMITH: Without objection, Your Honor.

5 MR. SLOCUM: Your Honor, at this time may the
6 witness step down so that we may publish these to the
7 jury?

8 THE COURT: Sure.

9 (State's Exhibit Nos. 6, 7, 8, 9, 13 and 14,
10 photographs, received into evidence.)

11 THE COURT: Madam Witness, I'm going to ask you to
12 speak up very loud. You're going to be facing away from
13 the court reporter, and she'll need to take down
14 everything you say.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 THE WITNESS: You're welcome.

18 BY MR. SLOCUM:

19 Q. This is State's Exhibit Six. Can you please tell
20 the jury what this is we're looking at?

21 A. This is my work station where I count my money down
22 every night.

23 Q. Is this where you were when the robbery occurred?

24 A. Yes, sir.

25 Q. State's Exhibit Seven, what are we looking at here?

APP'X 63

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 A. This is the cooler in the back of Captain D's.
2 Q. Is this where you were --
3 A. That's where I --
4 Q. -- forced to go into?
5 A. Yes, sir.
6 Q. State's Exhibit Eight, what are we looking at
7 here?
8 A. That's the inside of the cooler in the back of
9 Captain D's.
10 Q. State's Exhibit Nine?
11 A. And that's how it was when they closed the door.
12 Q. The same cooler?
13 A. Yes, sir.
14 Q. With the door closed?
15 A. Yes, sir.
16 Q. State's Exhibit, next, 11 -- 13. State's Exhibit
17 13, Jameshia, what is that?
18 A. The guy that was in the back with me the day of the
19 robbery.
20 Q. The man that told you you couldn't leave?
21 A. Yes, sir.
22 Q. The man that put you in the cooler?
23 A. Yes, sir.
24 Q. Fourteen?
25 A. This is the same guy.

APP'X 64

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. Are those two pictures, 13 and 14, the ones you
2 sent to law enforcement?

3 A. Yes, sir.

4 Q. That's all. You can have a seat back up there.

5 A. (Returns to witness stand.)

6 Q. Jameshia, a few more questions. What time did the
7 store close?

8 A. At 10 o'clock.

9 Q. You testified earlier that you were in the back
10 with a boy. When you say "boy", do you mean a man or a
11 child?

12 A. A man.

13 Q. The Monday before when the Defendant was in
14 there --

15 A. Yes, sir.

16 Q. -- did he do anything unusual while he was there?
17 Did you notice anything?

18 A. He took a picture of one of my co-workers, and I
19 thought that was real weird.

20 Q. And who was that co-worker?

21 A. William Keels.

22 Q. Whose Facebook page did you see the Defendant on?

23 A. William Keels'.

24 Q. Did you recognize the man that had the gun?

25 A. No, sir.

APP'X 65

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. Only the man who was in the back with you?

2 A. Yes, sir.

3 Q. Only the Defendant?

4 A. Yes, sir.

5 MR. SLOCUM: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. SLOCUM: Jameshia, thank you. Please answer
10 any questions Mr. Smith has for you.

11 THE WITNESS: You're welcome. Yes, sir.

12 THE COURT: Mr. Smith, cross-examination?

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Good afternoon, Jameshia.

16 A. Hello.

17 Q. Thanks for coming today.

18 A. You're welcome.

19 Q. Jameshia, I understand that night you were pretty
20 shook up, weren't you?

21 A. Yes, sir.

22 Q. And you were scared?

23 A. Yes, sir.

24 Q. You really wanted to catch -- you wanted to help
25 the police who had come in and robbed the place?

JAMESHIA ALSTON - CROSS BY SMITH

1 A. Yes, sir.

2 Q. You really wanted to help them out?

3 A. Yes, sir.

4 Q. So you told them everything you knew about who came
5 in that night?

6 A. Yes, sir.

7 Q. You told them what color hair they had?

8 A. I didn't say what color hair they had.

9 Q. No, you didn't. Did you talk about any facial
10 hair?

11 A. No, sir.

12 Q. Eyes?

13 A. Yes, sir.

14 Q. Height?

15 A. No, sir.

16 Q. Weight?

17 A. Yes, sir.

18 Q. Clothing?

19 A. Yes, sir.

20 Q. And did you tell them that this person had been in
21 Captain D's before?

22 A. Yes, sir.

23 Q. And you put all that stuff in your statement;
24 right?

25 A. Yes, sir.

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. Let me show you something.

2 (Defendant's Exhibit No. 1, statement of 11-27-13,
3 marked for identification.)

4 BY MR. SMITH:

5 Q. Jameshia, I'm going to show you what's been marked
6 Defendant's Exhibit One.

7 A. Okay.

8 Q. I want you to take a look at that. Do you know
9 what that is?

10 A. A statement.

11 Q. A statement?

12 A. Yes, sir.

13 Q. Is that the statement you gave police that night?

14 A. Yes, sir.

15 Q. Okay. Does it say anything about that -- in that
16 statement about what the suspects were wearing?

17 A. No, sir. It just states his weight, their weight.

18 Q. What did it say about their weight?

19 A. The heavysset boy stayed in the back with me and the
20 skinny boy walked Devin and Scott to the front after
21 retrieving their --

22 Q. Okay. What does it say about what clothes they
23 were wearing?

24 A. It doesn't say that, but I told that to the cops.

25 Q. And I'm just asking about your statement.

APP'X 68

JAMESHIA ALSTON - CROSS BY SMITH

1 A. Yes, sir.

2 Q. Does it say anything in your statement about seeing
3 them in the store before?

4 A. No, sir.

5 Q. But you just told me that all of that stuff was in
6 your statement; didn't you?

7 A. I told that to the police, sir.

8 Q. But just a second ago you told me all that stuff I
9 was asking you about, you put in your statement to the
10 police?

11 A. Can you rephrase that?

12 Q. Just a second ago I asked you a series of
13 questions. Did you tell the police about height, weight,
14 hair color, clothing, if the man had been in the store
15 before. And you answered the questions. And I asked you
16 if you had put that in your statement to the police and
17 you told me yes.

18 A. I put the height and the size in there.

19 Q. You put the height?

20 A. The size and the weights.

21 Q. Skinny and?

22 A. Skinny and heavy.

23 Q. Skinny and heavy. That's height and weight.

24 Your Honor, I'd move to introduce into evidence
25 Defendant's Exhibit One as witness Jameshia Alston's

JAMESHIA ALSTON - CROSS BY SMITH

1 statement to the police that night.

2 THE COURT: What says the State?

3 MR. SLOCUM: Without objection.

4 THE COURT: All right. Without objection, will be
5 Defense Exhibit Number One.

6 (Defendant's Exhibit No. 1, Alston statement of
7 11-27-13, received into evidence.)

8 BY MR. SMITH:

9 Q. Now, Jameshia, the night that -- the night that you
10 say that John Upson was in the store --

11 A. Yes, sir.

12 Q. -- on a Monday?

13 A. Yes, sir.

14 Q. Was it a Monday?

15 A. Yes, sir.

16 Q. Was he with anybody else?

17 A. He was.

18 Q. Okay. Who was he with?

19 A. I can't identify the other person.

20 Q. You don't know his name?

21 A. No, sir.

22 Q. Okay. But you'd recognize him if you saw him?

23 A. Sir?

24 Q. You'd recognize him if you saw him?

25 A. I just know the Defendant. That's all I

JAMESHIA ALSTON - CROSS BY SMITH

1 recognized. I didn't know the other person at all.

2 Q. Didn't you just say your job is to remember your
3 customers?

4 A. But he wasn't one of my customers. He didn't come
5 talk to me personally at my register, so.

6 Q. Do you remember me?

7 A. No, sir. You're not one of my customers.

8 Q. Okay. Now when the people came in the back door
9 and when you were in the back of the store, the subject
10 that was back there with you, was he standing behind you?

11 A. No, sir.

12 Q. Did he have his hood on?

13 A. He did have his hood on.

14 Q. He had a hood on, and he had a bandana?

15 A. Yes, sir. Over his nose.

16 Q. Covering his mouth?

17 A. Yes, sir.

18 Q. Okay. Did you describe the other person?

19 A. No, sir. Not at all.

20 Q. Did you remember what the other, the appearance of
21 the other person?

22 A. I just know they both had on black, and they had
23 on, like, surgical gloves.

24 Q. Do you remember any distinguishing characteristics
25 of that person?

APP'X 71

JAMESHIA ALSTON - CROSS BY SMITH

1 A. No, sir.

2 Q. Okay. Did they act -- when they came in, did they
3 act like they knew where they were going?

4 A. The first boy he was, like, "Take me to the safe in
5 the front." That's what he said.

6 Q. Okay. Now when you left there that night, when
7 you went home, did Detective Royster tell you to go home
8 and go look on Facebook?

9 A. No, sir. I just decided to take it to my own and
10 do it myself.

11 Q. Did you call him and tell him what you had found?

12 A. Yes, sir. I did.

13 Q. And he asked you to send him the photos?

14 A. Yes, sir.

15 Q. Do you remember what time it was that you called
16 him?

17 A. I know I got home and I did that about an hour
18 after everything had happened at Captain D's. So I don't
19 know exact timing.

20 Q. Okay. Do you know what time you got home?

21 A. Not exactly. Like, an hour later and some minutes,
22 but not exact time.

23 Q. Okay. Now when you went and looked on Facebook --
24 that's where you looked; right?

25 A. Yes, sir.

APP'X 72

JAMESHIA ALSTON - CROSS BY SMITH

- 1 Q. You scrolled down through the pictures?
- 2 A. Yes, sir. I did.
- 3 Q. Or, did you type in John Upson's name?
- 4 A. No, I went on William Keels' page and I found his
- 5 name. And when I saw his picture I jumped up because I
- 6 knew that was him. And then I, like, clicked on his name
- 7 and I was scrolling through his pictures. As I was
- 8 looking I jumped up again. I told my mom that was him.
- 9 Q. How many pictures do you think you looked at before
- 10 you found his?
- 11 A. Two pictures.
- 12 Q. Two?
- 13 A. Yes, sir. I found those two.
- 14 Q. How many pictures on William Keels' Facebook did
- 15 you look through --
- 16 A. Oh, I just saw one picture. It's, like, when you
- 17 look on somebody else page, it's only one profile picture.
- 18 Q. Does he have a lot of pictures of other people on
- 19 his --
- 20 A. I didn't look at that.
- 21 Q. You didn't look at anybody else's picture?
- 22 A. No, sir. I just looked at his name, who I was
- 23 looking for.
- 24 Q. You were just looking for John Upson?
- 25 A. Yes, sir.

APP'X 73

JAMESHIA ALSTON - CROSS BY SMITH

- 1 Q. And you looked for his name?
- 2 A. No. I was looking at pictures while I was
3 scrolling -- I was on William Keels' page.
- 4 Q. Yes.
- 5 A. And you can scroll through a friend list. And I
6 saw his picture and I clicked on his name. I didn't know
7 his name at the time but I clicked on it because I knew
8 his face. I saw the picture and I jumped up. I told my
9 mom that's him.
- 10 Q. I guess my question wasn't clear. When you were
11 looking through William Keels' pictures --
- 12 A. I didn't go through his pictures. I was just
13 looking at his friends' list.
- 14 Q. That's what I'm saying. You were looking through
15 his friends' list and looking at pictures on the friends'
16 list; right?
- 17 A. Yes, sir.
- 18 Q. That's how you found this picture --
- 19 A. Yes, sir.
- 20 Q. -- that you used to identify John Upson?
- 21 A. Yes, sir.
- 22 Q. About how many of those pictures had you gone
23 through before you found John Upson?
- 24 A. I don't know exactly.
- 25 Q. And you didn't look any more before -- after you

APP'X 74

JAMESHIA ALSTON - CROSS BY SMITH

1 found that picture?

2 A. No, sir.

3 Q. So you don't know if there's anybody else on that
4 Facebook page --

5 A. No, sir.

6 Q. -- that would resemble the person that was in the
7 store with you?

8 A. No, sir.

9 Q. You don't know?

10 A. No, sir.

11 Q. And William Keels has a lot of friends; doesn't he?

12 A. Yes, sir.

13 MR. SMITH: Beg the Court's indulgence.

14 THE COURT: Sure.

15 (Pause.)

16 BY MR. SMITH:

17 Q. Jameshia, do you know a guy named Ishmael Norid-
18 Deen?

19 A. No, sir.

20 Q. Were you ever shown a police lineup? Were you
21 shown a lineup of six people?

22 A. A list of names.

23 Q. You were shown names?

24 A. Yes, sir.

25 Q. The police never showed you a lineup of anybody?

JAMESHIA ALSTON - REDIRECT BY SLOCUM

1 A. Not people, like, pictures; no, sir.

2 Q. Okay.

3 MR. SMITH: No further, Your Honor.

4 THE COURT: Anything on redirect?

5 MR. SLOCUM: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SLOCUM:

8 Q. Jameshia, Mr. Smith just showed you your written

9 statement --

10 A. Yes, sir.

11 Q. -- to the police that night?

12 A. Yes, sir.

13 Q. Did you also give a verbal statement to the police

14 that night?

15 A. Yes, sir; I did.

16 Q. Is everything in your written statement the same in

17 verbal and vice versa or do they, are they different?

18 A. In the statement it just states the weight and what

19 they were -- like, it just states the weight of the skinny

20 boy and heavysset boy. But I told the police verbally what

21 they wore and stuff like that.

22 Q. Told them everything you told us today?

23 A. Yes, sir.

24 Q. In regards to these Facebook pictures --

25 A. Yes, sir.

1 Q. -- why did you stop looking after you found John
2 Upson?

3 A. Because I knew this was the person that was in the
4 back with me on the day of the robbery.

5 Q. The same person that forced you into the --

6 A. Cooler.

7 Q. -- refrigerator?

8 A. Yes, sir.

9 Q. The same person that wouldn't let you leave?

10 A. Yes, sir.

11 Q. The same person that came in with another
12 individual who had a handgun?

13 A. Yes, sir.

14 Q. Real quick. You mentioned telling law
15 enforcement -- Mr. Smith asked you about the eyes. What
16 was it about Mr. Upson's eyes that you remember?

17 A. He has a lazy eye. It's kind of droopy, like that.

18 MR. SLOCUM: Beg the Court's indulgence?

19 THE COURT: Sure.

20 (Pause.)

21 MR. SLOCUM: Nothing further, Your Honor.

22 THE COURT: Okay. Anything on recross?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Okay. Thank you for your testimony,
25 ma'am. You can step down.

SCOTT AARON HALL - DIRECT BY SLOCUM

1 THE WITNESS: You're welcome.

2 MR. SLOCUM: Your Honor, the State calls Scott

3 Hall.

4 SCOTT AARON HALL, having been duly sworn, was

5 examined and testified as follows:

6 THE CLERK: Have a seat in the witness box. State

7 your full name for the Court.

8 THE WITNESS: Scott Aaron Hall, H-A-L-L.

9 DIRECT EXAMINATION

10 BY MR. SLOCUM:

11 Q. Mr. Hall, good afternoon.

12 A. Good afternoon.

13 Q. Mr. Hall, how old are you?

14 A. I'm 21.

15 Q. And where are you from?

16 A. Ridge Spring, South Carolina.

17 Q. And where do you live now?

18 A. In Aiken, South Carolina.

19 Q. How long have you been in Aiken?

20 A. Just about 10 years now.

21 Q. Are you married?

22 A. No, sir.

23 Q. Have any kids?

24 A. Yes, sir.

25 Q. How old are your kids?

SCOTT AARON HALL - DIRECT BY SLOCUM

- 1 A. Nine months.
- 2 Q. Do you provide for this child?
- 3 A. Yes, sir.
- 4 Q. Where were you on November 27, 2013?
- 5 A. Out back, taking the trash out at Captain D's where
- 6 I work.
- 7 Q. You were working at Captain D's?
- 8 A. Yes, sir.
- 9 Q. And what did you do for Captain D's that November
- 10 of last year?
- 11 A. I was a cook.
- 12 Q. And how long had you been working as a cook up
- 13 until November 27th?
- 14 A. Just about 11 months.
- 15 Q. What were you doing around 10 o'clock?
- 16 A. Finishing up, closing up, taking the trash out to
- 17 the trash cans and bringing them back inside.
- 18 Q. Had business closed down for the day?
- 19 A. Yes, sir.
- 20 Q. What happened to you that night while you were
- 21 taking the trash it?
- 22 A. I was approached by two black males who, the first
- 23 one he placed a gun to the back of my head before I could
- 24 get the trash cans into the store.
- 25 Q. Please show us where.

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. Oh. Right below my right ear. Right there. He
2 placed the gun right there. And he ordered me to take him
3 up front to where the safe was.

4 Q. Did you happen to see a gun?

5 A. Yes, sir.

6 Q. Did you see what color it was?

7 A. Yes, sir. Black.

8 Q. Did it appear to be a real gun to you?

9 A. Yes, sir. I could feel the heaviness and the
10 coldness on my ear as he was holding it there. I could
11 feel the coldness to it.

12 Q. Did you see what these individuals were wearing?

13 A. Yes, sir. Black sweat pants and black hoodies with
14 black hoods over them and had bandanas as well.

15 Q. About how far from the back door were you when
16 approached by the two men?

17 A. I'd say two or three feet from the back door.

18 Q. Was the door open or closed?

19 A. Yes, sir. It was open. It was propped with a
20 stick because if it closes it locks on its own. So we
21 wouldn't have had a way back inside. So I had it propped
22 open with a stick.

23 Q. Is that what you normally do when you take the
24 trash out?

25 A. Yes, sir. Yes, sir.

APP'X 80

1 Q. At this time that, did you recognize any of the
2 men?

3 A. No, sir.

4 Q. When you were forced up front, please tell us what
5 happened next.

6 A. When -- after I was forced up front he still had
7 the gun to the back of my head. He told me to get on all
8 fours and keep my head down between my legs so I wouldn't
9 look up and see anything.

10 Q. Were you afraid?

11 A. Yes, sir. Very.

12 Q. What happened next?

13 A. I could hear him demanding Devin, which is our
14 other employee, to give him money and to keep the change
15 because he didn't, he wasn't fooling with the change.

16 MR. SMITH: Objection, Your Honor. It's hearsay.

17 MR. SLOCUM: Your Honor, it's a statement by a
18 co-conspirator in furtherance of a conspiracy. It's
19 allowed.

20 THE COURT: Okay. Let, let's do this, Madam
21 Forelady and ladies and gentlemen of the jury. It's one
22 of these times that a matter of law needs to be addressed
23 with the attorneys so, and it's probably, maybe a good
24 time to take a little short break.

25 So if you'll retire to your jury room. I caution

1 you and remind you not to discuss anything about this case
2 among yourselves.

3 Get you back out shortly.

4 (Jury exits courtroom at 3:39 P.M.)

5 THE COURT: Mr. Smith, the basis for your
6 objection, is that it is hearsay?

7 MR. SMITH: Yes, sir.

8 THE COURT: Now, I'm looking at Rule 801(d)(2).
9 Statements which are not hearsay and Subsection E, a
10 statement by a co-conspirator of a party during the course
11 and furtherance of the conspiracy.

12 Now, I realize that one of the charges -- he's not
13 charged with conspiracy, but would not that be a
14 conspiracy or alleged conspiracy by virtue of what is
15 being claimed that the Defendant and the other person
16 did?

17 Be glad to hear from you on this point.

18 MR. SMITH: Your Honor, at this point there's been
19 no evidence presented that there is a conspiracy. Up
20 until a conspiracy has been established, there's --
21 letting in evidence that would be -- a statement of a
22 co-conspirator would be in the hopes that in the future
23 conspiracy is shown. At this point there haven't even
24 been allegations that there's a co-conspirator.

25 THE COURT: Okay.

1 MR. SMITH: There haven't been allegations that one
2 of the employees is a co-conspirator.

3 THE COURT: Now, this statement that this witness
4 gave, he's repeating what person number one said, correct,
5 not an employee? My understanding -- is that correct,
6 Solicitor? Or, correct me if I'm wrong.

7 MR. SLOCUM: Your Honor, the statement that he's
8 being addressed -- that Mr. Hall is testifying to is a
9 statement made by the gunman, the second individual.
10 There's no tie to anyone at this point. It's just being a
11 second individual with Mr. Upson who entered the Captain
12 D's.

13 THE COURT: Well, just by virtue of the testimony
14 thus far, allegedly that, that the gunman and Mr., and the
15 Defendant came in and did what has been testified that
16 they did, would that not in and of itself make it a
17 conspiracy?

18 MR. SMITH: Your Honor, I'm objecting to any
19 statement from a co-worker --

20 THE COURT: Okay.

21 MR. SMITH: -- in this case. I think they were
22 getting ready to ask him about a statement from a
23 co-worker. I believe they were getting ready to ask that
24 question.

25 THE COURT: Well, so far, this last statement that

1 was objected to, it's my understanding and I think agreed
2 to by the Solicitor that it was a statement of person
3 number one or the gunman. I think this witness over here
4 called it boy number one and boy number two.

5 MR. SLOCUM: That's correct.

6 THE COURT: The gunman.

7 MR. SLOCUM: That's correct.

8 THE COURT: Right. Okay. And I don't think,
9 Solicitor, you were planning to get into any statements by
10 any employees; correct?

11 MR. SLOCUM: That is correct, Your Honor.

12 THE COURT: Okay. All right. So I think -- I
13 think your concern is resolved.

14 MR. SMITH: Yes, sir.

15 THE COURT: Okay. So that objection would be
16 withdrawn?

17 MR. SMITH: Yes, sir.

18 THE COURT: Okay. Thank you very much, Mr. Smith.
19 Let's take a five-minute break before we start
20 back.

21 MR. SLOCUM: Yes, sir.

22 (Break taken at 3:49 P.M., until 3:53 P.M., and the
23 trial resumed:)

24 THE COURT: Bring the jury out, please, sir

25 (Jury enters courtroom at 3:53 P.M.)

SCOTT AARON HALL - DIRECT BY SLOCUM

1 THE COURT: Let the record reflect that the jury is
2 back in.

3 I will just remind and caution the jury that it's
4 very important that all of you be very attentive and be
5 very alert because otherwise then you're not going to be
6 able to properly make a determination in this case. So I
7 just remind everybody, all 14 of you, to be very alert, be
8 very attentive during the course of this trial.

9 Thank you.

10 BY MR. SLOCUM:

11 Q. Mr. Hall, what happened after you were forced up
12 front with a gun to your head?

13 A. He -- after he had gotten the money and everything,
14 he had issued us -- he had issued me to get up off the
15 ground, still with my hands raised.

16 Q. He is who?

17 A. The gunman.

18 Q. What did he do in terms of getting money?

19 A. I -- he received it from Devin, after Devin fumbled
20 with it a couple times to get the safe open.

21 Q. Did he -- how did he ask to take the money?

22 A. He said, "Give me the money, I don't want the damn
23 coins," -- "the damn change" is his exact words.

24 Q. Did he put it in a bag?

25 A. Yes, sir. He snatched a takeout bag from one of

SCOTT AARON HALL - DIRECT BY SLOCUM

1 our takeout bags from the front counter.

2 Q. After he received the money, what happened?

3 A. He issued me to get up off the ground, still to
4 keep my hands above my head. And this whole time he still
5 had the gun to the back of my head. He issued us to walk
6 into the cooler.

7 Q. Did you at any time feel free to leave?

8 A. No, sir.

9 Q. Were you afraid?

10 A. Yes, sir.

11 Q. You said earlier it was a black gun?

12 A. Yes, sir.

13 Q. Handgun?

14 A. Yes, sir.

15 Q. Do you know what type of handgun?

16 A. It looked similar to a nine millimeter, but I'm not
17 sure if that was what it was.

18 Q. Was it semiautomatic?

19 A. Yes, sir.

20 Q. It was?

21 A. Yes, sir.

22 Q. Okay. Did you speak to law enforcement that night?

23 A. Yes, sir.

24 Q. And were you able to give them any descriptions of
25 the suspects?

APP'X 86

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. Just the facial features.

2 Q. Any of their clothing? Outer wear?

3 A. Yes, sir. Their weight and their height as well.

4 Q. What did you tell them?

5 A. That they were about six foot, and the gunman was a

6 little but shorter. He was a little bit taller than me,

7 probably about five-eleven. They were both black males.

8 And the gunman had a, somewhat of a teardrop tattoo or a

9 birthmark under his left eye. And that's all I could see

10 from his nose down.

11 Q. About how quick was the time frame did you have to

12 get a look at these folks?

13 A. Just a few seconds.

14 Q. It happened pretty fast?

15 A. Yes, sir.

16 Q. Did you ever turn around to look at the gunman?

17 A. No, sir. He just approached me. Whenever he was

18 running up, that's the only time I seen his face.

19 Q. Did you ever give law enforcement a name of who it

20 was?

21 A. No, sir.

22 MR. SLOCUM: Permission to approach, Your Honor?

23 THE COURT: Certainly.

24 BY MR. SLOCUM:

25 Q. Mr. Hall, I'm handing you what's previously --

SCOTT AARON HALL - DIRECT BY SLOCUM

1 excuse me, Your Honor.

2 Mr. Hall, I'm handing you what's previously marked
3 for identification purposes as State's Exhibit One through
4 Five, and State's Exhibit 10, 11 and 12.

5 Would you please take a look at these, please, sir?

6 A. Yes, sir.

7 Q. And I ask you: Do you recognize those photos?

8 A. Yes, sir. This is Captain D's where I work.

9 Q. And that goes for all the photos I just handed you?

10 A. Yes, sir.

11 Q. Do those photos fairly and accurately depict
12 Captain D's as it was on November 27th of 2013?

13 A. Yes, sir.

14 Q. Have they been changed, altered or deleted in any
15 form or fashion?

16 A. No, sir.

17 MR. SLOCUM: Your Honor, at this time the State
18 moves to enter Exhibits One through Five, 10, 11 and 12
19 into evidence.

20 THE COURT: Okay. What says the defense?

21 MR. SMITH: Without objection, Your Honor.

22 THE COURT: Without objection, State's Exhibits One
23 through Five, 10 through 12 into evidence.

24 (State's Exhibit Nos. 1, 2, 3, 4, 5, 10, 11, 12,
25 photographs, received into evidence.)

SCOTT AARON HALL - DIRECT BY SLOCUM

1 MR. SLOCUM: Your Honor, at this time may the
2 witness step down so we can publish to the jury?

3 THE COURT: Sure. I would ask the witness to speak
4 up loud since you're facing away from the court reporter.

5 BY MR. SLOCUM:

6 Q. Mr. Hall, this is State's Exhibit One. Can you
7 please tell the jury what that is?

8 A. That's a picture of the front of Captain D's
9 Restaurant.

10 Q. The Captain D's where you work?

11 A. Yes, sir.

12 Q. Where is that Captain D's located?

13 A. Whiskey Road.

14 Q. In the City limits of Aiken?

15 A. Yes, sir.

16 Q. Aiken County?

17 A. Yes, sir.

18 Q. State's Exhibit Two, what is that?

19 A. Those are the trash -- those are the trash, where
20 we have to take the trash cans back there. That is the
21 back of, I believe, Dunkin' Donuts and Five Guys which is
22 directly right beside our restaurant.

23 Q. Do you use those trash cans?

24 A. Yes, sir.

25 Q. Can you please point out Captain D's?

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. That's ours right there, those cans.

2 Q. And State's Exhibit Three, what is this we're
3 looking at?

4 A. That's a little bit past the trash cans, just a
5 little bit in front of it. And that's the back door in
6 which we come. This is the direction we come to take the
7 trash back there.

8 Q. State's Exhibit Four, what are we looking at here?

9 A. That's the direction in which I was approached by
10 the two black males. They ran up over our sidewalk, right
11 here, and then they came up, right there, exactly where
12 that trash can is.

13 Q. That's where you were?

14 A. Yes, sir.

15 Q. State's Exhibit Five?

16 A. That's, once again, the trash can. That exact
17 general area, right where I was located. I was right
18 there at the door.

19 Q. Where did they put the gun to your head?

20 A. Just about right, like, right there. It was a
21 camera, like, literally focused right down there so about
22 right there. It was right -- as soon as I turned around
23 to grab the trash can, they already had it to my head.

24 Q. And State's Exhibit 10, what are we looking at
25 here?

APP'X 90

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. That's the front of the Captain D's Restaurant.

2 That's the registers. And right in here, right down

3 here -- which you might not be able to see this -- this is

4 where they asked me to place my head down and get down on

5 all fours.

6 Q. Was this the location where the money was taken?

7 A. Yes, sir. That's the safe as well. Yes, sir.

8 Q. State's Exhibit 11?

9 A. This is the -- that's the exact spot to where I was

10 forced to lay down. And that's where Devin was and the

11 gunman was right here demanding money out of the safe.

12 Right there.

13 Q. Okay. And 12?

14 A. And that's the same thing. That's where he

15 actually got the bag from to get the money from, little

16 plastic bag right there.

17 Q. Okay. You can have a seat.

18 A. (Complying.)

19 Q. About how long did this robbery take? How long did
20 it occur?

21 A. Two to three minutes.

22 Q. And how long were you in the freezer?

23 A. For about five minutes.

24 Q. What did you do after you got out of the freezer?

25 A. We eased our way out of the cooler, well, the

SCOTT AARON HALL - CROSS BY SMITH

1 freezer. And we just made our way to the front of the
2 store because that's where the phone was and everything.
3 And then Devin called 9-1-1. I just followed behind him.

4 Q. Did you talk to law enforcement when they showed
5 up?

6 A. Yes, sir.

7 Q. Did you tell them what you told us here today?

8 A. Yes, sir.

9 Q. Did you give a written and a verbal statement?

10 A. Yes, sir.

11 MR. SLOCUM: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Sure.

14 (Pause.)

15 BY MR. SLOCUM:

16 Q. Did you feel free to leave at any time?

17 A. No, sir.

18 MR. SLOCUM: Please answer any questions Mr. Smith
19 has for you. Thank you.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross-examination?

22 MR. SMITH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Hall, thanks for coming today.

SCOTT AARON HALL - CROSS BY SMITH

1 A. You're welcome.

2 Q. Do you know John Upson?

3 A. No, sir.

4 Q. Did you ever identify John Upson?

5 A. No, sir.

6 Q. Were you ever shown a photo lineup?

7 A. No, sir.

8 Q. Did you ever see anybody like that in the store

9 before?

10 A. No, sir.

11 Q. Now, when you went -- when you were brought to the

12 front of the store --

13 A. Uh-huh.

14 Q. -- who was at the front of the store?

15 A. Devin.

16 Q. Devin?

17 A. Yes, sir.

18 Q. And who's he?

19 A. He was one our employees as well.

20 Q. Was he the manager that night?

21 A. Yes, sir.

22 Q. Okay. Is he the only one that had access to the

23 safe?

24 A. Yes, sir.

25 Q. Okay. Did you ever see the face of the guy who

APP'X 93

SCOTT AARON HALL - CROSS BY SMITH

1 stayed in the back of the store?

2 A. No, sir.

3 Q. Okay. But the guy that escorted you to the front
4 of the store, you had a first split-second or a few
5 seconds or whatever, you could tell that he had a mark on
6 his eye?

7 A. Yes, sir.

8 Q. Either a teardrop tattoo or a birthmark or
9 something?

10 A. Yes, sir.

11 Q. Anything else that you saw about him?

12 A. No, sir. Just that he had dreads as well.

13 Q. Okay. Now, when you were face down on the ground,
14 were you laying on the ground?

15 A. Yes, sir. My knees were on the ground, and my
16 hands. He told me to get on all fours.

17 Q. Was your belly on the ground?

18 A. No, sir. Kind of like on all fours. Like, a
19 crawling position as well with my head, like, down.

20 Q. Your head was tucked down?

21 A. Yes, sir.

22 Q. Okay. The way your head was, you couldn't see the
23 safe --

24 A. No, sir.

25 Q. -- right? Okay. And you couldn't see the cash

APP'X 94

SCOTT AARON HALL - CROSS BY SMITH

1 register?

2 A. No, sir.

3 Q. And you didn't see any of the money?

4 A. Huh-uh.

5 Q. Okay. When you were taken -- after you stood up
6 and went to the back -- when you went to the back, was the
7 freezer open or closed?

8 A. It was open. I was waiting, really, for them to
9 put us in there. Jameshia was already in there as well.

10 Q. Could you tell if it had been closed and they
11 opened it when you came back, or was it just open?

12 A. It was just open.

13 Q. It was just open. You said that they had, that
14 both of them had bandanas on their faces?

15 A. Yes, sir.

16 Q. When was the first time that you told somebody
17 that?

18 A. It should've been the night that we got robbed.
19 That night I told officers that.

20 Q. Okay. Do you remember the heights? How tall they
21 were?

22 A. The man with the dreads, the gunman, he was a
23 little bit shorter than John.

24 Q. You say John, but you don't know who --

25 A. No.

SCOTT AARON HALL - CROSS BY SMITH

1 Q. -- the other guy was?

2 A. No, sir.

3 Q. So the gunman was shorter than the guy that was
4 standing in the back?

5 A. Yes, sir.

6 Q. Now -- beg the Court's indulgence.

7 THE COURT: Sure. (Pause.)

8 BY MR. SMITH:

9 Q. Scott, could you tell us -- could you tell us
10 exactly what each of them had on? Start with the guy with
11 the gun.

12 A. The gunman had on a hooded sweatshirt and black, it
13 was black sleeves and surgical gloves, and black
14 sweat pants, and black shoes as well.

15 Q. Okay. Did he have a bandana on?

16 A. Yes, sir. Black bandana.

17 Q. And he had a hood over his head?

18 A. Yes, sir.

19 Q. How much of his face could you see?

20 A. Just about that much (indicating). Just from,
21 like, the bottom of his nose to about his forehead and his
22 hair. His dreads were already out. I saw those as well.

23 Q. Was the bandana covering his mouth or was --

24 A. Yes, sir. It was teetering, covering half his nose
25 and covering the remainder of his mouth as well.

APP'X 96

SCOTT AARON HALL - REDIRECT BY SLOCUM

1 Q. So it was perched on there?

2 A. Yes, sir.

3 Q. The other guy, the guy that was in the back --

4 A. Uh-huh.

5 Q. -- what was he wearing?

6 A. A black hoody, black hooded-sweatshirt, black
7 pants, and a big, like, bulky black sweatshirt as well.
8 He had -- a lot bigger than the gunman.

9 Q. Okay. Did he have his hood up?

10 A. Yes, sir.

11 Q. And he had a bandana on?

12 A. Yes, sir.

13 Q. And how much of his face could you see?

14 A. Not really any at all.

15 MR. SMITH: Nothing further, Your Honor.

16 THE COURT: Okay. Any redirect?

17 MR. SLOCUM: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SLOCUM:

20 Q. Scott, do you ever work up front?

21 A. No, sir.

22 Q. Where do you work at Captain D's?

23 A. I work in the back, in the cooking.

24 Q. Were you working two days prior to the --

25 A. No, sir. I don't believe so.

SCOTT AARON HALL - RECROSS BY SMITH

1 Q. -- robbery? Was there money missing from the safe?

2 A. Yes, sir. That night.

3 Q. Were you paying more attention to the gunman or the
4 guy behind the gunman?

5 A. The gunman.

6 Q. And about how long did it, did it take when they
7 approached you, took you back inside?

8 A. Two, three minutes.

9 Q. The whole thing?

10 A. Yes, sir.

11 Q. I believe you testified earlier it was a matter of
12 seconds before the gun was --

13 A. Yes, sir.

14 Q. -- to your head? About how much time did you have
15 to look at both suspects?

16 A. Just a few seconds.

17 Q. It happened pretty quick?

18 A. Yes, sir.

19 MR. SLOCUM: That's all the questions I have, Your
20 Honor.

21 THE COURT: Recross?

22 MR. SMITH: Briefly, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. When you were up front and you were face down, you

SCOTT AARON HALL - RECROSS BY SMITH

1 couldn't see the safe?

2 A. No, sir.

3 Q. You couldn't see the registers?

4 A. No, sir.

5 Q. You don't handle the registers, do you?

6 A. No, sir.

7 Q. So you don't know for sure if money was taken?

8 A. No, sir. I had to count the money, whatever was
9 left over that we had in the store after the money was
10 taken.

11 Q. But you don't know if money was taken?

12 A. No, sir. I just had to count the money that was
13 left in the drawers. Yes, sir.

14 MR. SLOCUM: Thank you.

15 THE COURT: Thank you for your testimony, sir. You
16 can step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Solicitor?

19 MR. MOLONY: Thank you, Your Honor. The State
20 calls Detective Billy Royster.

21 WILLIAM ROYSTER, having been duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Have a seat in the witness box.

24 State your full name for the Court and spell your
25 last, please.

APP'X 99

WILLIAM ROYSTER - DIRECT BY MOLONY

1 THE WITNESS: William Royster, R-O-Y-S-T-E-R.

2 DIRECT EXAMINATION

3 BY MR. MOLONY:

4 Q. Detective Royster, where are you employed at?

5 A. Aiken Department of Public Safety.

6 Q. And what are your duties there now?

7 A. I'm a criminal investigator.

8 Q. Prior to becoming an investigator there, what if
9 anything did you do?

10 A. I've been working there for 22 years. I've spent
11 time in patrol, worked my way up to a sergeant in the
12 patrol division until I was promoted into the criminal
13 investigative division eight years ago.

14 Q. Were you working as a criminal investigator on the
15 night of November 27th, 2013?

16 A. Yes, sir. I was the on-call detective for that
17 night.

18 Q. And explain to the jury how you became involved
19 initially in this case.

20 A. Since we don't -- detectives don't work 24 hours a
21 day. We have somebody on call. That was my week to be on
22 call for any major crime that the patrol division would
23 need help investigating.

24 So shortly after the crime was reported, they
25 called me and I responded.

APP'X 100

WILLIAM ROYSTER - DIRECT BY MOLONY

1 Q. Describe what the scene looked like when you
2 arrived at Captain D's that night.

3 A. There was several officers there. The employees
4 were there. They were writing statements and we were
5 trying to determine what happened. I looked around to see
6 what was in the restaurant at that time, took some
7 photographs of the safe, where it was, and the condition
8 it was in at the time.

9 Q. You said "employees." Throughout your
10 investigation, were you able to determine how many actual
11 employees were working at the time of this armed robbery?

12 A. There was three at the establishment when it was
13 robbed.

14 Q. All right. Other than the two we've heard from
15 today, who was the third employee that was working that
16 night?

17 A. Devin Johnson.

18 Q. Devin Johnson?

19 A. Yes.

20 Q. He was the one the defense referred to earlier as
21 the manager?

22 A. Yes. He was the person in charge that night.

23 Q. That night. Okay. Now, throughout your
24 investigation, were you able to determine if any video
25 surveillance images were able to be taken from the Captain

WILLIAM ROYSTER - DIRECT BY MOLONY

1 D's that night?

2 A. They had one but the recording device was broken
3 and did not work.

4 Q. Did you try to get it?

5 A. They tried to get it, yes. It would -- there was
6 nothing there.

7 Q. What about any of the surrounding businesses?

8 A. The camera angles that they showed did not show us
9 anything.

10 Q. What about fingerprints? Did you -- were
11 fingerprints lifted from the scene?

12 A. No. They were talking about how the, both subjects
13 that came in were wearing gloves.

14 Q. Now, did you receive an e-mail from one of the
15 employees in this case that night?

16 A. Yes, I did.

17 Q. And who did you receive an e-mail from?

18 A. From Ms. Alston.

19 Q. At what point in your investigation did the
20 Defendant become a suspect in this case?

21 A. When I received the e-mail about 11:30, 12 o'clock
22 that night.

23 Q. When were the arrest warrants acquired for the
24 Defendant?

25 A. That Thursday morning.

WILLIAM ROYSTER - DIRECT BY MOLONY

1 Q. Thursday, the next morning?

2 A. Yes.

3 Q. Now after these arrest warrants were acquired, did
4 you have the opportunity to speak with the Defendant?

5 A. Yes, I did. By phone.

6 Q. And when was that?

7 A. Thanksgiving afternoon about five o'clock. He
8 called my cell phone.

9 Q. Okay. And what's your cell phone number?

10 A. 803-270-1759.

11 Q. And were you able to look at your cell phone when
12 he called to see what number he was calling from?

13 A. Yes.

14 Q. And what number was that?

15 A. 803-646-6125.

16 Q. Did you have a conversation with the Defendant at
17 that time?

18 A. Yes, we did.

19 Q. Did you inform the Defendant that he was wanted --

20 A. Yes, I did.

21 Q. -- for this crime at that time?

22 A. I told him I had a warrant for his arrest.

23 Q. What did the Defendant -- what, if anything, did he
24 tell you on the phone at that time?

25 MR. SMITH: Objection, Your Honor.

WILLIAM ROYSTER - DIRECT BY MOLONY

1 THE COURT: Okay.

2 MR. SMITH: Statement of hearsay.

3 THE COURT: Okay. Let -- have the lawyers

4 approach for just a second.

5 (Off-the-record discussion.)

6 THE COURT: Mr. Smith, concerning that objection?

7 MR. SMITH: Your Honor, I withdraw my objection.

8 THE COURT: Withdraw it at this time. Thank you

9 very much.

10 All right. Will you repeat your question,

11 Solicitor, so we can kind of, you know, see where we are?

12 MR. MOLONY: I'll do it, Your Honor.

13 Q. Detective Royster, after you were able to determine

14 that there was a cell phone call coming in on your phone,

15 did you answer the phone at that time?

16 A. Yes, I did.

17 Q. And who was on the other end of the phone?

18 A. John Upson.

19 Q. What did the Defendant tell you at that time?

20 A. Told me that he was downtown that evening at a

21 comedy show.

22 Q. Did he tell you -- what, if anything, did he say he

23 did after the comedy show?

24 A. That it was -- he was at a bar afterwards.

25 Q. Did he mention anything in regards to his phone

WILLIAM ROYSTER - DIRECT BY MOLONY

1 records?

2 A. He told me to get his cell phone records to find

3 out where he was.

4 Q. Okay. Again, what time about, roughly, was this

5 conversation?

6 A. Five o'clock Thanksgiving Day.

7 Q. When was the Defendant ultimately arrested?

8 A. The next Monday, the 2nd of December.

9 Q. And what, if anything, did you do in regards to the

10 Defendant's cell phone records on that same day?

11 A. I obtained a search warrant for Verizon to obtain

12 his phone records for the time period around the robbery.

13 Q. Now, were these records from the same number you

14 had just spoken with him?

15 A. Yes, they were.

16 Q. Did you actually receive these records from

17 Verizon?

18 A. Yes, I did.

19 Q. Throughout your investigation, were you able to

20 determine whether or not there was actually a comedy show

21 in Aiken that night?

22 A. Yes, there was.

23 Q. And where was this comedy show located?

24 A. Aiken Center of the Arts.

25 Q. Were you able to determine approximately what time

WILLIAM ROYSTER - DIRECT BY MOLONY

1 that show was supposed to start?

2 A. It was scheduled to start at eight P.M. that night.

3 Q. And what time, roughly, was it supposed to end?

4 A. It was supposedly an after-party at a bar near

5 there starting around 11.

6 Q. And where was this bar?

7 A. Hotel Aiken.

8 Q. Is that also downtown?

9 A. Yes it.

10 Q. Where was this comedy show actually held?

11 A. Aiken Center of the Arts is located at

12 South.

13 Q. Were you able to determine the phone number for

14 Aiken Center of the Arts?

15 A. Yes, sir. It's 803-641-9064.

16 Q. What about the phone number for Captain D's, the

17 one on Whiskey Road here in Aiken?

18 A. Yeah, it's 803-641-6476.

19 Q. Now in regards to this gunman, what, if any,

20 suspects do you have at this time as to who the gunman

21 was?

22 A. I don't have a suspect as to who the gunman was.

23 Q. You don't know who he was at this time?

24 A. No, I do not. It's still an ongoing investigation.

25 Q. What about in regards to any other individuals, not

WILLIAM ROYSTER - DIRECT BY MOLONY

1 the gunman, but that may have been involved in this crime
2 that night?

3 A. Yes, sir. Other suspects have been developed.

4 Q. At this time in regards to that night, have any
5 other arrests been made?

6 A. One other arrest was made, a person named Cassandra
7 Ellis on a charge of misprision of a felony.

8 Q. But in regards to the actual planning and the
9 robbery actually being carried out, have any other charges
10 actually been brought at this time?

11 A. No, nobody, no, sir.

12 Q. And what's the status of the investigation today?

13 A. It's ongoing.

14 Q. Now Cassandra Ellis, who is she?

15 A. She is an employee there and a friend of John
16 Upson's.

17 Q. Okay. And who is Cassandra Ellis's son?

18 A. William Keels.

19 Q. Devin Johnson, the third suspect -- I mean, the
20 third witness that was actually an employee and in the
21 store at the time of the armed robbery, has he been
22 charged with anything?

23 A. No, no.

24 Q. At this time, is he a suspect?

25 A. No, not at all.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. Now the defense brought up a name "Norid-Deen."

2 Does that name ring a bell?

3 A. Yes, it does. Ishmael Norid-Deen.

4 Q. Why does his name ring a bell in this case?

5 A. Through the course of the investigation he's known
6 to John Upson. And through Mr. Norid-Deen's cell phone
7 records I was able to make a connection between the two,
8 particularly on the night in question.

9 Q. At this time again, no charges have been brought --

10 A. Oh, no.

11 Q. -- against Norid-Deen?

12 A. No.

13 MR. MOLONY: Beg the Court's indulgence, Your
14 Honor.

15 (Pause.)

16 MR. MOLONY: Thank you. Please answer any
17 questions the defense has, Detective.

18 THE COURT: Cross-examination?

19 MR. SMITH: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Good afternoon, Detective Royster.

23 You said you had checked for video surveillance at
24 Captain D's?

25 A. Yes.

WILLIAM ROYSTER - CROSS BY SMITH

- 1 Q. They've got video cameras?
- 2 A. They got cameras but their hard drive is broken.
- 3 They didn't know how long it had been down.
- 4 Q. Okay. How did you determine that the hard drive
- 5 was broken?
- 6 A. They had it examined and they told me that they
- 7 sent it off to get it, see what could be found on it. And
- 8 they said there was nothing that they could retrieve from
- 9 it.
- 10 Q. Did you ever examine it?
- 11 A. No.
- 12 Q. Did you ever refer to -- send it to anybody that --
- 13 A. No.
- 14 Q. -- the information, taking it to people to check it
- 15 out?
- 16 A. No, sir.
- 17 Q. Okay. Now, this case is a, basically an eyewitness
- 18 identification case; isn't it?
- 19 A. Yes.
- 20 Q. And in an identification case, eyewitness
- 21 identification case it's very important to get
- 22 descriptions of the suspects?
- 23 A. Yes.
- 24 Q. And so that night when you got descriptions from
- 25 the employees that were there, you encouraged them to be

WILLIAM ROYSTER - CROSS BY SMITH

1 detailed?

2 A. It's hard to get details from somebody who's that
3 scared.

4 Q. Yes, sir.

5 A. They were quite upset. Mr. Hall was still
6 shaking. He was visibly shaking.

7 Q. You made suggestions to them of maybe writing about
8 what they were wearing or maybe --

9 A. I asked them questions. Ms. Alston kept telling me
10 that she had seen -- he had been in the store, that he had
11 talked to another employee just a couple days before.

12 Q. But none of that's reflected in any of their
13 statements, is it?

14 A. It was not in their written statement, no.

15 Q. In verbal statements?

16 A. Yes.

17 Q. Did you record any of those statements?

18 A. No, I did not.

19 Q. Okay. So in your report I imagine you wrote down
20 what they told you?

21 A. I wrote a lot of it down. Yes, sir.

22 Q. Okay. Can you show me in your report -- do you
23 have your report with you?

24 A. No, sir. I don't.

25 Q. Would you like to see a copy?

APP'X 110

WILLIAM ROYSTER - CROSS BY SMITH

1 A. Yeah.

2 MR. SMITH: What I'm about to show Detective
3 Royster is a case notes and summary. I'd like if I could
4 have this marked as Defendant's Exhibit Two.

5 (Defendant's Exhibit No. 2, case notes and summary,
6 marked for identification.)

7 BY MR. SMITH:

8 Q. If you'd take a look at that. Tell me if that's a
9 copy of your case notes summary.

10 A. Just, this is the case notes. This part is the
11 affidavit to the warrant.

12 Q. Okay. In your case notes that you have there, can
13 you point out where you wrote down where they told you
14 about the bandana?

15 A. I didn't. I wrote down that I went and talked to
16 Mr. Keels.

17 Q. Okay. Can you tell me in your case notes, show me
18 in your case notes where you wrote down anything about
19 surgical gloves?

20 A. No, I didn't.

21 Q. You didn't write that down?

22 A. No.

23 Q. Wouldn't that be important to put in a report?

24 A. It's -- somebody wearing gloves committing a crime
25 is kind of standard nowadays.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. So it wouldn't be important to write down?

2 A. It's not critical, no.

3 Q. That they were wearing bandanas?

4 A. Not really. I mean, I go by what -- what I need to
5 make my case. What I had was Ms. Alston telling me that
6 she had seen him. He was in the store two days prior. I
7 talked to a fellow employee named Williams Keels. I left
8 the restaurant and went to Mr. Keels' house to talk with
9 him to see who was in there talking with him that two days
10 before.

11 Q. You talked about videotapes at surrounding
12 businesses and didn't you check with any surrounding
13 businesses to see if --

14 A. I went in to Baskin Robbins. I asked them. They
15 didn't have anything. And Five Guys, which is part of the
16 same building as the Baskin Robbins, didn't have anything.

17 Q. And on the other side there's a Pizza Hut.

18 A. The other side is a Pizza Hut but from what I was
19 being told, they had probably come -- from what Mr. Hall
20 was saying, he thought they came from behind the Staples
21 store. But being dark at night, nothing shows.

22 Q. Did you get a description of a vehicle from
23 Mr. Hall?

24 A. No.

25 Q. Okay.

WILLIAM ROYSTER - CROSS BY SMITH

1 A. No vehicle was seen.

2 Q. Okay.

3 (Defendant's Exhibit No. 3, 4, and 5, photographs,
4 marked for identification.)

5 BY MR. SMITH:

6 Q. I'm going to hand you what's been marked as
7 Defendant's Exhibit Number Three. Can you tell the jury
8 what that picture shows?

9 A. It's the front part of Captain D's on Whiskey Road.

10 Q. Okay. And I'm going to show you Number Four,
11 Defendant's Exhibit Four. What does that show?

12 A. It looks like the -- looking towards the rear of, I
13 assume it's Staples because it has Staples on the door
14 there.

15 Q. Yes, sir. Let me show you Defendant's Exhibit
16 Number Five. Can you tell me what that shows?

17 A. Same as the second picture, just closer.

18 Q. It's the back corner of Staples?

19 A. Yes.

20 Q. This is Staples. You said Scott Hall told you they
21 probably came from back behind Staples?

22 A. He said he thought they did.

23 Q. Okay. Do these pictures fairly and accurately
24 represent Captain D's?

25 A. Yes, sir.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. And the back side of Staples?

2 A. Yes, sir.

3 MR. SMITH: Your Honor, at this time I move to admit
4 into evidence Defendant's Exhibits Three, Four and Five.

5 THE COURT: What says the State?

6 MR. MOLONY: No objection, Your Honor.

7 THE COURT: Without objection Three, Four and Five
8 on behalf of the State (verbatim).

9 Mr. Smith, what are your intentions concerning
10 Two? Is that just for identification only?

11 MR. SMITH: Yes, sir.

12 THE COURT: Case notes. I want to make sure.
13 Thank you.

14 (Defendant's Exhibit Nos. 3, 4, and 5, photographs,
15 received into evidence.)

16 BY MR. SMITH:

17 Q. In State's (verbatim) Five, can you tell me what
18 that looks like on the top back corner of the building of
19 Staples?

20 A. It could be a camera.

21 Q. Looks like a video camera?

22 A. Could be.

23 Q. Surveillance camera. Did you talk to Staples about
24 that camera?

25 A. No, sir. I did not.

WILLIAM ROYSTER - CROSS BY SMITH

- 1 Q. It's possible that if there's a camera shining
2 there that it would have seen the entry of these two
3 fellows?
- 4 A. From that distance at night in that dark --
- 5 Q. You're not sure?
- 6 A. -- I would be very doubtful of it.
- 7 Q. But it's possible?
- 8 A. Oh, it's possible.
- 9 Q. But you didn't check?
- 10 A. No.
- 11 Q. Are there any, any other source of video cameras in
12 the area? Traffic cameras?
- 13 A. They don't record.
- 14 Q. The traffic cameras --
- 15 A. No, sir.
- 16 Q. -- in Aiken don't record?
- 17 A. No, sir. Those do not record.
- 18 Q. Okay. Now you had a report of the guy with the gun
19 had a teardrop tattoo and dreads?
- 20 A. Yes. That's the way they described him.
- 21 Q. Did you check to see if anybody had been booked at
22 the Aiken County Detention Center --
- 23 A. Yes, I did.
- 24 Q. -- to see if anybody had a teardrop tattoo?
- 25 A. I went through the whole jail system online with

WILLIAM ROYSTER - CROSS BY SMITH

1 the general description that they gave. I found one
2 person who matched that description, and when I checked on
3 their name I found out they were incarcerated in the
4 Department of Corrections at the time of the robbery.

5 Q. How many people came up in your search of people
6 with teardrop tattoos?

7 A. One.

8 Q. One with a teardrop tattoo?

9 A. Oh, the tattoo? There was probably several with a
10 tattoo, but only one with long dreads.

11 Q. Long dreads and a tattoo?

12 A. Yeah.

13 Q. Now, you didn't check for any fingerprints; right?

14 A. That's correct.

15 Q. Because they were wearing gloves?

16 A. Yes.

17 Q. You didn't check for any DNA?

18 A. No, sir.

19 Q. You didn't get any description of a vehicle?

20 A. No vehicle was seen.

21 Q. And the description that you had of the suspects
22 that night when you left Captain D's was a very -- it
23 wasn't a very full description, was it?

24 A. Oh, no, no.

25 Q. Did you send Jameshia Alston home to look on

WILLIAM ROYSTER - CROSS BY SMITH

1 Facebook?

2 A. No, I didn't. I wouldn't want her to do that,
3 really. I'd much rather develop a suspect and show a
4 lineup.

5 Q. Now you talked about phone numbers for -- that
6 you've found that were connected with John Upson. You
7 said Ishmael Norid-Deen was a phone number that had been
8 in contact with John Upson?

9 A. Yes.

10 Q. Okay. Did you ever run a photo lineup of John
11 Upson or -- excuse me. Oh, answer that.

12 A. No, I did not.

13 Q. Did you ever run one of Ishmael Norid-Deen?

14 A. I did. It was a long shot because he really didn't
15 meet the physical description, but just to make sure I
16 did. And I showed it to Devin Johnson.

17 Q. You didn't show it to anybody else, did you?

18 A. No, I didn't. Devin was the one that told me he
19 would know that person if he saw him again. He said, "I
20 got a good look at his eyes. I would know that person if
21 I saw him again."

22 Q. Now, Ishmael Norid-Deen used to work at Captain
23 D's, didn't he?

24 A. I recently learned that, yes.

25 Q. Okay. And did you ever find the phone number for

WILLIAM ROYSTER - CROSS BY SMITH

1 Devin Johnson?

2 A. No, I did not. His phone was stolen that night.

3 And I have -- when I needed to talk to him, I just went by
4 the restaurant to talk with him.

5 Q. You never learned what his phone number was?

6 A. He did give me the number of the phone that was
7 stolen.

8 Q. Okay. Didn't you pull the phone records for that
9 phone number?

10 A. Yeah, I did. It was mixed up in my notes with
11 everything else I had. And in checking on them, trying to
12 find out which carrier it was, yeah, I did include that
13 number to a warrant for AT&T for another phone number.

14 Q. Okay. Did you notice any connection of phone calls
15 with Ishmael Norid-Deen?

16 A. Yes, I did.

17 Q. That night?

18 A. Yes, sir. I did.

19 Q. The night of the robbery?

20 A. Yes, sir. There was, I believe, four attempts but
21 it appeared that no connection was made.

22 Q. Okay. And in your opinion Devin Johnson had
23 something to do with this robbery, didn't he?

24 A. No, not at all. It wouldn't make sense.

25 Q. Didn't you tell Devin Johnson that you know he was

WILLIAM ROYSTER - CROSS BY SMITH

1 involved with this?

2 A. No, I did not.

3 Q. You didn't interview Devin Johnson yesterday
4 morning?

5 A. Yes, we did. Myself and Steve Miano.

6 Q. And in that interview didn't you tell Devin Johnson
7 that you know he had something to do with this?

8 A. No, I did not.

9 Q. Okay.

10 A. I never really -- it didn't make sense for Devin to
11 be involved. He left a lot of money in the safe. If he
12 was involved, why wouldn't he give them all the money?

13 Q. Do you have any other warrants pending in this
14 case?

15 A. No, I do not.

16 Q. You don't have anybody else out there?

17 A. No.

18 Q. But you have other suspects; right?

19 A. Oh, yes.

20 Q. Ishmael Norid-Deen's one of them?

21 A. As a person who could be involved, yes.

22 Q. Did you run anybody else's phone records that
23 night?

24 A. Anybody else's?

25 Q. Yeah. Did you run --

WILLIAM ROYSTER - CROSS BY SMITH

1 A. William Keels'.

2 Q. You did William Keels'. Did you do Jameshia

3 Alston's.

4 A. Whose?

5 Q. Jameshia Alston's?

6 A. No.

7 Q. Did you run Scott Hall's phone records?

8 A. No.

9 Q. Do you admit or deny telling Devin Johnson that you

10 were going to help him remember what we need to know?

11 A. I don't recall ever saying that to Devin Johnson.

12 Q. You don't remember or you deny saying that?

13 A. No, I did not say that, no.

14 Q. You're going to help him?

15 A. No.

16 Q. Who gave you the description -- since it's not in

17 your report, do you remember who gave you the description

18 of the teardrop tattoo and dreads?

19 A. That was Devin.

20 Q. Devin told you that?

21 A. Yeah.

22 MR. SMITH: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. SMITH:

25 Q. Now there was -- we're here today for, for charges

WILLIAM ROYSTER - CROSS BY SMITH

1 against John Upson for armed robbery and two counts of
2 kidnapping; right?

3 A. Yes.

4 Q. But there were three people inside of the store?

5 A. That's correct.

6 Q. And wasn't there another indictment for kidnapping?

7 A. As far as I know there was.

8 Q. And it's not part of this case?

9 A. Apparently not, no.

10 Q. Do you know why that indictment was pulled?

11 A. No, I don't.

12 Q. Okay. Judge, can I request a sidebar?

13 THE COURT: Sure.

14 (Off-the-record discussion.)

15 BY MR. SMITH:

16 Q. Detective Royster, isn't it true that there is a
17 video of your interview with Devin Johnson from yesterday?

18 A. Yes.

19 Q. Okay. And isn't it true that on that video you
20 have accused him of playing a part in this?

21 A. Steve Miano and I kept talking with him about it.
22 I didn't accuse him. It was Steve Miano that kept
23 badgering, good cop-bad cop, and talking with him just to
24 make sure.

25 I don't remember ever saying that to him during

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 that interview.

2 Q. You deny saying that?

3 A. Yeah. I don't -- I don't recall saying that.

4 Q. Do you think that Devin was truthful or do you
5 think he's part of this case?

6 A. I think he was being truthful. There was a good
7 bit of money left behind and his cell phone got stolen. I
8 mean, it wouldn't make sense for him to be a part of it.

9 Q. Okay.

10 THE COURT: All right. We'll put on the record
11 what we discussed sidebar in just a little bit.

12 MR. SMITH: Okay.

13 THE COURT: So you're good.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Redirect?

16 MR. MOLONY: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MOLONY:

19 Q. Detective Royster, why was Devin Johnson being
20 interviewed yesterday?

21 A. When we got to looking at phone records we saw that
22 he called Mr. Norid-Deen that evening several times from
23 his cell phone. And we learned that Mr. Norid-Deen
24 received a phone call from Captain D's that night also.
25 All those calls taking place at about the same time,

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 roughly 10 P.M.

2 We got him in to talk to him about that. He was
3 telling us, and he stuck with his story, that he knows
4 Mr. Norid-Deen and he does not have a car. He lives in
5 New Ellenton, and he was trying to get a ride home after
6 work.

7 MR. SMITH: Objection, Your Honor. Hearsay.

8 THE COURT: I believe it would be hearsay. And
9 I'll sustain the objection and strike it from the record.
10 And caution or instruct the jury, rather, to disregard
11 that last bit of testimony concerning what Devin Johnson
12 allegedly told this officer.

13 You may proceed.

14 BY MR. MOLONY:

15 Q. Don't tell me what anybody said. But subsequent to
16 the interview with Devin Johnson, was he arrested for
17 anything involved in this case?

18 A. Not at all, no.

19 Q. Now, had you known or after that interview had you
20 thought that he was involved, would you have brought
21 charges against him?

22 A. Yes, I would have, if I could prove it. But, no,
23 he is not a suspect. He has not been a suspect.

24 Q. Was he under subpoena to be here today?

25 A. As far as I know, he was.

1 Q. Again, who did you say that he was calling?

2 A. Norid-Deen.

3 Q. And what makes Norid-Deen, what raised the red flag
4 as to Norid-Deen?

5 A. Phone records and his connection to John Upson.

6 Q. So since the day of the armed robbery, November
7 27th, that night, later that night when you actually
8 received the e-mail and able to get a name from Jameshia
9 and everything else, since that day and John Upson became
10 a suspect and arrest warrants were drawn, has anything
11 changed as to John Upson's involvement in this case?

12 A. Absolutely none.

13 MR. MOLONY: No further questions, Your Honor.

14 THE COURT: Okay. Thank you for your testimony,
15 Officer. You can step down.

16 Madam Forelady, and ladies and gentlemen of the
17 jury, we're going to go ahead and recess now for the
18 evening.

19 I understand that there will be potentially a
20 couple more witnesses for the State and if they are called
21 we'll do those in the morning.

22 We're going to start back at nine o'clock in the
23 morning, a little bit earlier than we normally do but I
24 want to start back at nine. So please be prompt in
25 getting to your jury room by nine o'clock. If you're not

1 prompt, then we can't start any business.

2 So please allow yourself plenty of time, make sure
3 everything is taken care of and in order with your
4 personal affairs before you come.

5 I remind you, there may be some curiosity as far as
6 what you've been doing today with friends and family
7 members. And, I mean, there's nothing wrong in saying
8 that you're on a trial jury but leave it at that. Don't
9 discuss with anybody you come into contact with anything
10 about this case and certainly not, no discussion among
11 yourselves.

12 And we'll see you back promptly at nine o'clock in
13 the morning. Hope you have a great evening.

14 (Jury exits courtroom at 4:52 P.M.)

15 THE COURT: Okay. Gentlemen, we discussed at a
16 sidebar conference, first, the defense wants to play while
17 the officer's on the stand -- I understand, and you
18 correct me, Mr. Smith, if I'm misstating anything.

19 MR. SMITH: Yes, sir.

20 THE COURT: You wanted to play a redacted version
21 of this video that was testified to. And that's going to
22 be done in the morning. Give you a chance to do your
23 redaction specifically related to the issue of what may or
24 may not have been said by the officer to Devin Johnson;
25 correct?

1 MR. SMITH: Yes, sir.

2 THE COURT: Okay. So, the officer will be subject
3 to being recalled to the stand.

4 Officer, since we're still in the middle of your
5 testimony you can't -- even though you are the lead
6 investigator in this case, you really are now kind of
7 prevented from discussing your testimony with the
8 solicitors because we are in the middle of your testimony.

9 Now with that said, then, the -- Solicitor, you
10 indicated that you want the right to recall the officer as
11 it relates to cell phone records. You have someone from
12 Verizon coming in the morning to testify and you may find
13 a need to recall the officer concerning cell phone
14 records; correct?

15 MR. MOLONY: That's correct, Your Honor.

16 THE COURT: Okay. And you'll have the right to do
17 that if that's a decision that you make in the morning.

18 MR. MOLONY: Yes, sir.

19 THE COURT: So as I understand you got two more
20 witnesses from the State. And then of course certainly
21 the defense will inform us what they plan to do as far as
22 a case or not and any testimony related to that.

23 Anything further we need to put on the record
24 before we adjourn for this afternoon?

25 MR. SLOCUM: Your Honor, the State would request

1 since we've started the trial that the Defendant be taken
2 into custody until the end of the trial.

3 THE COURT: Okay. And what says the defense?

4 MR. SMITH: Your Honor, the Defendant is out on,
5 he's on home arrest. He's got an ankle monitor on. I
6 don't think there's any danger that he flees. His
7 whereabouts is monitored --

8 THE COURT: Okay.

9 MR. SMITH: -- by the detention center.

10 THE COURT: Okay. Mr. Upson, I'm going to allow --
11 I'm not going to revoke your bond.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: I'm going to allow you to remain out,
14 not to suggest that I'm thinking you're not going to show
15 up tomorrow and whatever other days we have of your
16 trial. But understand that if you fail to appear then
17 that will be, constitute a revocation of your bond and a
18 bench warrant will be issued for your arrest.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Whatever your lawyers say for you to be
21 back in the courthouse, you be back in the courthouse.
22 Okay?

23 THE DEFENDANT: Yes, sir, Your Honor. Thank you
24 very much.

25 THE COURT: Anything else from the State?

1 MR. SLOCUM: Nothing from the State, Judge.

2 THE COURT: Defense?

3 MR. SMITH: Nothing from the defense, Your Honor.

4 THE COURT: We'll be in recess until nine o'clock
5 tomorrow morning. Everybody have a great evening. We're
6 going to try to do a few pleas before we finish up for
7 today.

8 END OF DAY'S PROCEEDINGS: 4:56 P.M.

WILLIAM ROYSTER - RECROSS BY SMITH

1 ON WEDNESDAY, APRIL 16, 2014 AT 9:20 A.M.:

2 THE COURT: Thank you very much. Have a seat.

3 Gentlemen, are we ready for the jury?

4 MR. SLOCUM: We are, Your Honor.

5 MR. SMITH: Yes, sir.

6 THE COURT: Very good. Bring the jury out, please.

7 THE BAILIFF: Okay.

8 (Jury enters courtroom at 9:20 A.M.)

9 THE COURT: Let the record reflect the jury's all
10 in. Good morning.

11 THE JURY (COLLECTIVELY): Good morning.

12 THE COURT: Hope everyone's doing well, you had a
13 good, restful evening and you're ready to start back to
14 work this morning.

15 Solicitor?

16 MR. MOLONY: Detective Billy Royster, Your Honor,
17 back on the stand.

18 THE COURT: All right. I just remind you that
19 you're still under oath from yesterday, sir.

20 THE WITNESS: Yes, sir.

21 RECROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. Good morning, Detective Royster.

24 Just, I got a quick question before we get into
25 what we were into yesterday. How tall is John Upson?

WILLIAM ROYSTER - RECROSS BY SMITH

1 A. I'd say around five-seven, five-eight.

2 Q. Would it help you to look at your incident report
3 to remind you?

4 A. It's not my incident -- I didn't write that report.

5 Q. Is that your name at the bottom of that report?

6 A. That's me as part of it. Chad Cathcart wrote that
7 report.

8 Q. And does it have John Upson's name and biographical
9 information on that report?

10 A. Yes, it does.

11 Q. How tall does it say he is?

12 A. Five-seven.

13 Q. Thank you.

14 Detective Royster, yesterday we talked about a
15 video interview that you did with Devin Johnson on Monday
16 of this week.

17 A. Yes, sir.

18 Q. I'm going to ask you a few questions about that
19 video, about statements that you made on the video.

20 A. Okay.

21 Q. Do you admit that during that video, during that
22 interview you told Devin Johnson that someone that you
23 thought was involved or something that led you to believe
24 that he was involved, that he was having a lot of contact
25 with Devin Johnson (verbatim) and you asked him what was

WILLIAM ROYSTER - RE CROSS BY SMITH

1 running through your mind?

2 A. I made mention to him about the contact that we
3 found between him and Norid-Deen that night on his cell
4 phone, and on the phone for the restaurant itself. I did
5 question him about that.

6 Q. Okay. And you think, you think that Ishmael
7 Norid-Deen was involved with this robbery?

8 A. I would consider him a person of interest, yes.

9 Q. Not a prime suspect?

10 A. He does not match the description of the second
11 person who went in. I think he's involved, but I do not
12 think he went in.

13 Q. That's -- well, the question I'm asking you is: Do
14 you think he's a prime suspect of somebody who's
15 involved? I'm not saying who went in.

16 A. Yeah. I think he's a person of interest of someone
17 involved in this robbery.

18 Q. Okay. But you wouldn't go so far as to say he was
19 a suspect?

20 A. I'm getting close to that point.

21 Q. Okay. Do you admit saying the words to Devin
22 Johnson during that interview, "I'm hoping that what we
23 talk about will help you remember what we need to know"?

24 A. I don't recall those exact words, but if I said
25 something to him in that nature, it would be our

WILLIAM ROYSTER - RE CROSS BY SMITH

1 conversation with him about what happened that night would
2 help him remember things that happened that night, that
3 may help us.

4 Q. Okay. So you don't admit it but you --

5 A. I may have said it. That was an hour-and-a-half
6 long interview.

7 Q. Okay. Do you admit telling Devin Johnson that
8 when he made the phone calls to Ishmael Norid-Deen that
9 Ishmael Norid-Deen was a stone's throw from Captain D's?

10 A. Yeah, I told him that.

11 Q. That he was probably looking at it?

12 A. Yes, sir.

13 Q. Do you admit that towards the end of the interview
14 you tell him, you're talking to him about how you think it
15 might be an inside job. You tell him, "You can understand
16 how we're thinking that somebody has to let them know when
17 it's time to come in"?

18 A. Yeah. It's logical the way the establishment is
19 set up and built.

20 MR. SMITH: Thank you. Beg the Court's
21 indulgence.

22 THE COURT: Sure.

23 BY MR. SMITH:

24 Q. And when you were talking with him about an inside
25 job and that somebody had to let him in, do you think it

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 was Devin Johnson that was the one who was the inside guy?

2 A. We were thinking that since we had the phone calls
3 from his cell phone to Norid-Deen's cell phone, and then
4 there was a phone call from the restaurant itself to
5 Norid-Deen's phone, the idea did cross my mind that he's
6 the one telling them it's time to come in; yes.

7 Q. Okay. Thank you.

8 THE COURT: Anything on redirect, Solicitor?

9 MR. MOLONY: Briefly, Your Honor.

REDIRECT EXAMINATION

10
11 BY MR. MOLONY:

12 Q. Detective Royster, this interview with Devin
13 Johnson you said it was an hour and a half long?

14 A. Yes.

15 Q. And what was the purpose of the interview at this
16 time?

17 A. With those phone records, seeing that the calls
18 made from his cell phone to Norid-Deen's cell phone, and
19 then right after those calls were made, a call was made
20 from the restaurant to Norid-Deen's phone. He never made
21 connection to Norid-Deen's cell phone because he ran out
22 of minutes. He told us he was asking for a ride home. He
23 lives in New Ellenton. He did not have a car. He said,
24 "Sometimes I walk home after work."

25 MR. SMITH: Objection, Your Honor. This is hearsay.

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 THE COURT: Okay. Sustained.

2 BY MR. MOLONY:

3 Q. After the interview with Devin Johnson, did -- at
4 that time was he still a suspect in this case?

5 A. No. After that interview, at the end of that
6 interview I told him, "I always thought you were straight
7 with us."

8 Q. Up until you became aware of these phone calls from
9 Devin Johnson to Norid-Deen, was he a suspect in this
10 case?

11 A. No, he was not.

12 Q. So when you found out you brought him in to talk to
13 him about it?

14 A. That's correct.

15 Q. Now, these calls to Norid-Deen, did -- was a search
16 warrant done for Norid-Deen's cell phone records?

17 A. Yes, it was.

18 Q. Do you remember Norid-Deen's cell phone number?

19 A. His cell phone number is 803-508-1571. He has
20 since changed his number. That's the number he had at
21 that time.

22 Q. The 508 number, that's the number that Devin
23 Johnson attempted to call?

24 A. That's correct.

25 Q. That's the number that the Defendant was in

WILLIAM ROYSTER - RECROSS BY SMITH

1 constant contact with?

2 A. That's correct.

3 Q. And Norid-Deen is a suspect in this case?

4 A. That's correct.

5 MR. MOLONY: No further questions, Your Honor.

6 THE COURT: Recross?

7 RECROSS-EXAMINATION

8 BY MR. SMITH:

9 Q. Did you make a photo lineup of Ishmael Norid-Deen?

10 A. Yes, I did.

11 Q. Did you show that to anybody other than Devin
12 Johnson?

13 A. No, I did not.

14 Q. Okay. Were there any phone calls between Devin
15 Johnson and John Upson that night?

16 A. No, there was not.

17 MR. SMITH: Okay. Nothing further, Your Honor.

18 THE COURT: Thank you, sir, for your testimony.
19 You can step down.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Call your next witness, Solicitor.

22 MR. SLOCUM: Your Honor, the State calls Ms. Karen
23 Milbrodt.

24 KAREN MILBRODT, having been duly sworn, was
25 examined and testified as follows:

KAREN MILBRODT - DIRECT BY SLOCUM

1 THE CLERK: Have a seat in the witness box. State
2 your full name for the Court and spell your last, please.

3 THE WITNESS: My name is Karen Milbrodt. And
4 Milbrodt is spelled M-I-L-B-R-O-D-T.

5 DIRECT EXAMINATION

6 BY MR. SLOCUM:

7 Q. Ms. Milbrodt, good morning.

8 A. Good morning.

9 Q. Who do you work for?

10 A. I work for Verizon Wireless.

11 Q. And what do you do for Verizon Wireless?

12 A. I'm a records custodian for Verizon.

13 Q. What does that mean?

14 A. That means if our records are ever needed to go to
15 court, I would either bring the records or they're already
16 here and I just explain how to interpret our business
17 records.

18 Q. And how long have you been doing this?

19 A. I've been doing records custodial work since 2011.

20 Q. And how long have you been employed with Verizon?

21 A. Fifteen years.

22 Q. I'm sorry?

23 A. Fifteen years.

24 Q. What did you do before being a records custodian?

25 A. Well, I've worked in the executive relations office

KAREN MILBRODT - DIRECT BY SLOCUM

1 since 2005. And that's an office where we handle
2 complaints that are either filed to, like, the president's
3 seal or government agencies like FCC, attorney general.
4 So I manage -- I investigate these and try to work that
5 out with our customer.

6 Q. How do the records get from an individual cell
7 phone to Verizon?

8 A. Well, we have a billing system called MARS. And
9 the records will, the cell towers would convey this
10 information to a switch and the switch dumps it into MARS
11 and then we turn that into a billing record.

12 Q. So is it done automatically?

13 A. It's electronically.

14 Q. Okay. And who is Cellco?

15 A. Cellco Partnership is our legal entity name.
16 Verizon Wireless is a company of several merger companies
17 so that's the umbrella name. And then we are Cellco
18 Partnership doing business as Verizon Wireless.

19 Q. The cell phone records, do you have access to those
20 or who has access to those records?

21 A. Anyone in our business that would have a need to
22 use those records, either our billing department or
23 customer service, our engineers have access to them, our
24 law enforcement resource group which is the group that
25 compiled the records in this situation.

KAREN MILBRODT - DIRECT BY SLOCUM

1 Q. Are you aware of a search warrant that was sent to
2 Verizon Wireless in this case?

3 A. I am.

4 Q. And are you aware that cell phone records were
5 obtained?

6 A. They were.

7 MR. SLOCUM: Permission to approach, Your Honor?

8 THE COURT: Certainly.

9 BY MR. SLOCUM:

10 Q. I'm handing -- Ms. Milbrodt, I'm handing you what's
11 been previously marked as State's Exhibit 16. Would you
12 flip through that and tell me if you recognize it?

13 A. Yes, I recognize these records.

14 Q. And what are they?

15 A. These are business records that are the incoming
16 and outgoing call information for a particular phone
17 number.

18 Q. And what phone number is that?

19 A. 803-646-6125 is the target number.

20 Q. Are these Verizon Wireless cell phone records?

21 A. They are.

22 Q. Are they a complete and accurate depiction of cell
23 phone records for that number you just told the Court?

24 A. Yes, sir.

25 Q. Have they been changed, altered or deleted in any

KAREN MILBRODT - DIRECT BY SLOCUM

1 way, shape or form from, incoming from Verizon parent
2 company?

3 A. No, sir.

4 MR. SLOCUM: Beg the Court's indulgence, Your
5 Honor.

6 THE COURT: Sure.

7 MR. SLOCUM: Your Honor, at this time the State
8 would move to enter into evidence State's Exhibit 16.

9 THE COURT: Okay. What says the defense?

10 MR. SMITH: Without objection.

11 THE COURT: All right. Into evidence, State's
12 Number 16.

13 MR. SLOCUM: Thank you, Judge.

14 (State's Exhibit No. 16, Verizon Wireless records,
15 received into evidence.)

16 BY MR. SLOCUM:

17 Q. Ms. Milbrodt, could you flip through those records
18 and turn to November 27th, 2013?

19 A. Yes, sir.

20 Q. In fact, could you please tell the Court, when do
21 those records begin and when do they end?

22 A. November 27, 2013, at 10 seconds -- oh, this is in
23 military time. So 12:10 in the morning through December
24 1st, 2013, at 2026 military time. So that would be 8:26
25 in the evening.

KAREN MILBRODT - DIRECT BY SLOCUM

1 Q. Okay. And if you could turn to about nine o'clock
2 on 11-27?
3 A. A.M. or P.M.?
4 Q. P.M. Sorry. The calls beginning at nine o'clock,
5 are there cell phone towers on those records showing where
6 the calls were made?
7 A. Yes, sir.
8 Q. And how does that work when you make a call? How
9 does it know what tower to go to?
10 A. Well, our switch is the part of our network that
11 determines how to route a call. It will find or locate
12 where the call, or customer is with that phone number and
13 determine what cell tower is best able to connect the
14 call.
15 Q. Okay.
16 A. So the switch does the thinking of our network.
17 Q. Okay. At nine o'clock, how many cell towers
18 picked up from phone calls made during that hour?
19 A. There were three cell sites.
20 Q. And how many at 10 o'clock?
21 A. There were none at 10 o'clock.
22 Q. And how many at 11 o'clock?
23 A. Four.
24 Q. And this is -- cell sites, how are they categorized
25 in Verizon?

KAREN MILBRODT - CROSS BY SMITH

1 A. By number codes.

2 Q. Okay. Are the number codes for those cell sites
3 you just gave me on those records?

4 A. They are.

5 Q. From the three cell sites at nine o'clock, what are
6 their numbers?

7 A. 1625 and 1630, 877.

8 Q. And the others from 11 o'clock?

9 A. We have a 920, 1630, 1600, 877.

10 Q. Thank you.

11 Beg the Court's indulgence, Your Honor?

12 THE COURT: Sure.

13 MR. SLOCUM: Ms. Milbrodt, that's all the questions
14 I have for you at this time. Please answer any Mr. Smith
15 has for you.

16 THE WITNESS: Certainly.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. Good morning, Ms. Milbrodt.

21 A. Good morning.

22 Q. Thanks for coming down.

23 A. Sure.

24 Q. These phone records that you provided, do they --
25 do you record the actual conversation?

KAREN MILBRODT - CROSS BY SMITH

1 A. No.

2 Q. You just record the phone number it comes from and
3 the phone number it goes to, how long it lasts, which
4 towers it's used on, that sort of thing; right?

5 A. Correct.

6 Q. No contents recorded --

7 A. No.

8 Q. -- on these phone calls? And there's no way to
9 tell who's actually making the phone call; is there?

10 A. No.

11 Q. Were you asked to check phone records for a period
12 of time prior to November 27th in this case for that phone
13 number?

14 A. I would have to look at the subpoena again. I
15 personally was not asked. We have a group in New Jersey
16 that produces records.

17 Q. The records that you have start on November 27th?

18 A. Correct.

19 Q. And they end on what date?

20 A. December 1st, 2013.

21 Q. Okay. Now were you asked to provide phone records
22 for anybody else in this case?

23 A. Not that I'm aware of.

24 Q. Ms. Milbrodt, I'm going to show to you...

25 (Defendant's Exhibit Six, Verizon Wireless records,

KAREN MILBRODT - CROSS BY SMITH

1 marked for identification.)

2 BY MR. SMITH:

3 Q. I'm going to show you what's been marked as Defense
4 Exhibit Number Six. Would you take look at that? Does
5 that look like a Verizon record?

6 A. It does.

7 Q. Okay. Can you tell me the phone number that that
8 record belongs to?

9 A. 803-508-1571.

10 Q. Okay. Could you also tell me the date that these
11 phone records covered?

12 A. November 27, 2013, again at midnight and 10
13 seconds, through November 28, 2013 at 9:15.

14 Q. Thank you.

15 Beg the Court's indulgence.

16 THE COURT: Okay.

17 BY MR. SMITH:

18 Q. Ma'am, I'm going to ask you to do the same thing
19 that you did just a second ago --

20 A. Uh-huh.

21 Q. -- and read off the cell towers where calls were
22 made from, between the hours of nine and 10, between 10
23 and 11, 11 to 12.

24 A. So from nine to 12 midnight?

25 Q. Initial section, between nine and 10, which cell

KAREN MILBRODT - CROSS BY SMITH

1 towers were used.

2 A. P.M. or A.M.?

3 Q. Nine P.M. Sorry.

4 A. 27th?

5 Q. Yes, ma'am.

6 A. These are all off the Atlanta switch cell tower 54,
7 cell tower 30, cell tower 71, 100, 91, 9, 16, 94, 26, 20,
8 39, 18.

9 Q. Now these are all between nine and ten o'clock?

10 A. Nine and?

11 Q. Nine and 10 P.M.

12 A. Twenty-six, 18, 20 and 39 are all after 10 P.M., so
13 those are later.

14 Q. Okay.

15 A. Forgive me. I have to retract that. The calling
16 number was different. So the cell sites are different.
17 Forgive me.

18 Cell tower 877, cell tower 1630, cell tower 902.

19 Those are the cell sites.

20 Q. And that's between nine and 10 P.M.?

21 A. Correct.

22 Q. Now, between 10 and 11 P.M.?

23 A. Cell tower 649. Cell tower 862, 1658, 1640, 887.

24 There's one at 11. Do you want me to include that?

25 Q. Yes, ma'am. Between 11 and 12 P.M.?

KAREN MILBRODT - REDIRECT BY SLOCUM

1 A. Okay. Between 11 and 12 is cell tower 920, 1628.

2 I'm now on November 28th. Do you want me to
3 continue?

4 Q. No, that's fine. Just up until midnight on the
5 27th.

6 A. That was 1628.

7 Q. Thank you.

8 Court's indulgence one more time. (Pause.)

9 MR. SMITH: Your Honor, I move to introduce into
10 evidence phone records, Defendant's Exhibit Six.

11 THE COURT: And what says the State?

12 MR. SLOCUM: No objection.

13 THE COURT: All right. Without objection the
14 Defendant's Exhibit Number Six into evidence.

15 (Defendant's Exhibit No. 6, Verizon Wireless
16 records, received into evidence.)

17 MR. SMITH: No further questions, Your Honor.

18 THE COURT: Anything on redirect?

19 MR. SLOCUM: Real brief, Your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 BY MR. SLOCUM:

23 Q. Ms. Milbrodt, you just testified that Defense
24 Exhibit Six on November 27, 2013, at 11 o'clock, what
25 tower was that phone pinging off of? Specifically, let

KAREN MILBRODT - REDIRECT BY SLOCUM

1 me -- at 11 o'clock on the dot, what tower is that phone
2 pinging off of?

3 A. Cell tower 920.

4 Q. Thank you. State's Exhibit 16, at 11:01, what cell
5 tower is that phone number pinging off of?

6 A. Cell tower 920.

7 MR. SLOCUM: No further questions, Judge.

8 THE COURT: Okay. Any direct -- I mean, recross?

9 MR. SMITH: None, Your Honor.

10 THE COURT: Okay. You can step down, ma'am. Thank
11 you for your testimony.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Any objections to this witness being
14 excused from the courthouse?

15 MR. SLOCUM: None from the State.

16 THE COURT: From the defense?

17 MR. SMITH: None from the defense, Your Honor.

18 THE COURT: Ma'am, you're excused. You're welcome
19 to remain with us if you'd like or if you need to leave
20 that's fine too.

21 THE WITNESS: Thank you.

22 THE COURT: Solicitor?

23 MR. SLOCUM: Your Honor, the State calls Desra
24 Fraser with Alcohol, Tobacco and Firearms.

25 DESRA SHERYL FRASER, having been duly sworn, was

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 examined and testified as follows:

2 THE CLERK: Having a seat in the witness box.
3 State your full name and spell your last for the Court,
4 please.

5 THE WITNESS: My full name is Desra Sheryl Fraser.
6 Fraser is F-R-A-Z-E-R.

7 DIRECT EXAMINATION

8 BY MR. SLOCUM:

9 Q. Ms. Frazer, who do you work for?

10 A. The Bureau of Alcohol, Tobacco, Firearms and
11 Explosives.

12 Q. And how long have you been there?

13 A. Seven years.

14 Q. What do you do for ATF?

15 A. I'm an intelligence research specialist. So I work
16 along with the criminal -- with the special agents and
17 basically provide intel for their cases.

18 Q. And what all does that encompass?

19 A. Depending on the case, it can be call detail
20 records, tracking of phone, bank records, international
21 travel, identifying people, photographs, criminal
22 histories, looking into business records.

23 Q. Were you asked to help on this case?

24 A. Yes, sir.

25 Q. And how did you become involved?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. I currently work with the ATF Task Force located
2 here in Aiken. And since I have worked on other cases
3 with them, they know that I have the ability to use
4 Pen-Link on call-detail records and I was brought in.

5 Q. What is Pen-Link?

6 A. Pen-Link is a database that takes the raw data
7 provided from the phone companies, we upload it and it
8 allows you to do -- you can extract data from those
9 records however you need them.

10 Q. Were you provided records from the phone companies
11 in this case?

12 A. Yes, sir.

13 Q. Who gave those to you?

14 A. Aiken Department of Public Safety e-mailed me the
15 raw data from Verizon Wireless.

16 MR. SLOCUM: Permission to approach, Judge?

17 THE COURT: Sure.

18 BY MR. SLOCUM:

19 Q. Ms. Fraser, I'm asking you to look at State's
20 Exhibit 16 that's been admitted into evidence. Do you
21 recognize those?

22 A. Yes, I do.

23 Q. What are these?

24 A. These are the call detail records in the original
25 format that we received from Verizon Wireless.

DESRA SHERYL FRASER - DIRECT BY SLOCUM

- 1 Q. From Detective Royster in this case?
- 2 A. Yes. Yes, sir, from his search warrant.
- 3 Q. Okay. And as a result of receiving those records,
4 what did you do?
- 5 A. This information was uploaded into Pen-Link so that
6 I can map the phone calls, and the location of where he
7 was when he made the phone calls.
- 8 Q. And based on your involvement and your work in this
9 case, what, if anything, did you make for the detective?
- 10 A. I was asked specifically to do a specific time
11 frame. And in that time frame I was able to locate where
12 the phone was, but I was also able to show that the call
13 was blocked when he called Captain D's, when the phone
14 called Captain D's.
- 15 Q. Okay. We'll get to that in just a minute.
- 16 A. Okay.
- 17 Q. I'm showing you what's been previously marked for
18 identification as State's Exhibit 15.
- 19 A. Yes.
- 20 Q. Do you recognize that, Ms. Fraser?
- 21 A. Yes, I do.
- 22 Q. What is that?
- 23 A. This is a report that is generated from the
24 Pen-Link system.
- 25 Q. That's your report --

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes, sir.

2 Q. -- that you made as a result of receiving those
3 records?

4 A. Yes, sir.

5 Q. Has that report been altered, changed, deleted in
6 any way, shape or form?

7 A. No, sir.

8 Q. Does it fairly and accurately depict your report
9 that you derived from those records?

10 A. Yes, sir.

11 MR. SLOCUM: Your Honor, at this time the State
12 wishes to move State's Exhibit 15 into evidence.

13 THE COURT: And what says the defense?

14 MR. SMITH: Your Honor, I'd like to see it.

15 THE COURT: Sure.

16 MR. SLOCUM: My apologies.

17 (Document handed to defense counsel.)

18 MR. SMITH: No objection, Your Honor.

19 THE COURT: Without objection, it will be State's
20 Exhibit 15 into evidence.

21 (State's Exhibit No. 15, Pen-Link report, received
22 into evidence.)

23 BY MR. SLOCUM:

24 Q. Ms. Fraser, can you please look at those records
25 and specifically the time frame starting at nine o'clock?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes, sir.

2 Q. And what do those records indicate that you made?
3 Please tell the jury what you discovered.

4 A. The time frame that I was asked to focus on started
5 at 2137. And at that time I see an incoming phone call
6 from this telephone to Captain D's.

7 Q. What else does -- is in that time frame?

8 A. Then after that phone call, there was a phone call
9 that was blocked back to Captain D's. And then at 2147, a
10 gentleman by the name --

11 THE COURT: Madam Witness, it would be helpful for
12 the jury if you'd convert to military time from regular
13 time.

14 THE WITNESS: Okay.

15 THE COURT: It may be helpful to them. You can't
16 do that?

17 THE WITNESS: I have to subtract. So 9:47. I'm
18 sorry.

19 BY MR. SLOCUM:

20 Q. Okay.

21 A. 9:47. I'll redo them again. I'm sorry.

22 At 9:37 there's an outgoing phone call from this
23 cell phone to Captain D's.

24 Q. Did that phone make any calls prior to that 9:47
25 and 9:37 you just testified to?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

- 1 A. Yes, sir.
- 2 Q. From nine o'clock forward, tell us if it made any
3 other calls --
- 4 A. Yes, sir.
- 5 Q. -- in that nine o'clock time frame? I'm sorry.
- 6 A. In the entire hour or just before that time?
- 7 Q. Just that hour.
- 8 A. Okay. Ten.
- 9 Q. And were you asked to make any maps of those phone
10 calls?
- 11 A. Yes, sir. I was.
- 12 Q. And did you make maps?
- 13 A. Yes, sir.
- 14 MR. SLOCUM: Permission to approach, Your Honor?
- 15 THE COURT: Certainly.
- 16 BY MR. SLOCUM:
- 17 Q. Ms. Fraser, I'm handing you State's Exhibit for
18 identification only 17, 18, 19, 20, 21, 22, 23, 24, 25,
19 and 26. Could you, please take a look at these?
- 20 A. Yes, sir.
- 21 Q. And what are they?
- 22 A. This is -- each map represents a phone call that
23 was made on this phone and which cell towers it hit off
24 of.
- 25 Q. Now were those maps derived from your work in this

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 case?

2 A. Yes, sir.

3 Q. Derived from cell phones records that you were
4 sent?

5 A. Yes, sir.

6 Q. Have those maps been changed, altered, or deleted
7 in any way, shape or form from when you made them?

8 A. No.

9 Q. Do they fairly and accurately depict the map you
10 made in reference to this case?

11 A. Yes, sir.

12 MR. SLOCUM: Your Honor, at this time the State
13 moves to enter into evidence State's Exhibit 17 through
14 26.

15 THE COURT: All right. Sixteen is already into
16 evidence. On the other exhibits, any objection to it?

17 MR. SMITH: Without objection, Your Honor.

18 THE COURT: Okay. Without objection 17 through 26
19 with the exception of 16 which is already in evidence will
20 be into evidence on behalf the State.

21 MR. SLOCUM: Thank you, Your Honor.

22 (Thereupon, State's Exhibit Nos. 17, 18, 19, 20,
23 21, 22, 23, 24, 25 and 26, maps, were received into
24 evidence.)

25 BY MR. SLOCUM:

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 Q. Ms. Fraser, what phone numbers are related -- what
2 number is related to that map?

3 A. This map is phone calls. 803-646-6125.

4 Q. And were you given any information at all as to who
5 owned that number, who belonged to that number?

6 A. No, sir.

7 Q. If you take a look at State's 17, what does this
8 map depict?

9 A. This map is actually depicting two different, three
10 different phone calls. And it shows the cell towers that
11 they hit off of.

12 Q. Okay. And what are the numbers associated with
13 that cell tower?

14 A. The tower numbers?

15 Q. That's correct?

16 A. 1600, 877, and 920.

17 Q. And what do these arcs depict?

18 A. Cell towers have three different sides and what
19 these are --

20 MR. SLOCUM: Your Honor, may the juror (verbatim)
21 step down and show the jury what she's testifying to?

22 THE COURT: Sure.

23 BY MR. SLOCUM:

24 Q. Could you please tell the jury what you're
25 testifying to?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes. The towers are three sided so what this is
2 showing you is the side of the tower and location of where
3 the cell phone was. So basically the call was made within
4 the colored pie shape, or in -- it depends on what the
5 function is, but that's what this is indicating.

6 Q. This map shows where a call either began or ended?

7 A. Or if he was stationary, or both. It could be in
8 the same tower.

9 Q. Do you know how far apart those towers are?

10 A. Yes, sir. They're 14.7 miles.

11 Q. And where did you get that information?

12 A. Google Earth.

13 Q. I want to show you State's Exhibits 18 through 26
14 that are already in evidence. And what do these maps
15 depict?

16 A. They all depict phone calls but some actually
17 depict that there was possible movement when a cell phone
18 was made, when the call was made.

19 Q. How are you able to tell that?

20 A. The green indicates the cell tower the call began
21 off of, and the red indicates the cell that was used when
22 the phone call ended.

23 Q. Can you show the jury that on the remainder of the
24 exhibits?

25 A. This cell phone basically was stationary so there's

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 only one pie shape. Once again, the green was at the
2 beginning of the cell phone call, the red is at the end.

3 This cell phone was stationary.

4 And another stationary phone call.

5 Once again, a stationary phone call.

6 Another one.

7 Another one.

8 And, once again, a moving. Green showing the
9 beginning, red showing the end.

10 Q. What time was that call made?

11 A. This call was at 9:48.

12 Q. Ms. Fraser, is it possible to start a phone call in
13 one area -- show the jury these two that overlap -- in
14 that overlapped area, for it to jump towers; can that
15 happen?

16 A. It's possible but in my experience this shows the
17 movement of a cell phone call.

18 Q. And you testified earlier that the triangulation or
19 triangle --

20 A. Yes.

21 Q. -- is that, again, arcs that are shown?

22 A. Yes. Basically the phone call, he was in this
23 location when the phone call was made, and he ended in
24 this location. So it's within the pies.

25 Q. And again, if you know, how would it jump from one

DESRA SHERYL FRASER - CROSS BY SMITH

1 tower to another if you were stationary in that
2 overlapping?

3 A. The only time I have seen that is when it would
4 jump to another phone carrier's tower.

5 Q. Okay.

6 A. But on Verizon, that doesn't usually happen.

7 Q. Verizon tower?

8 A. Yes, sir.

9 Q. Ms. Fraser, thank you. That's all the questions I
10 have. Please answer any Mr. Smith has for you.

11 THE COURT: Cross-examination, Mr. Smith?

12 MR. SMITH: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Good morning, Ms. Fraser.

16 A. Good morning.

17 Q. Again, there's no way to say who was holding the
18 telephone --

19 A. No, sir.

20 Q. -- when it made the phone call? You keep saying
21 "he" but you don't know who was on the phone?

22 A. No, sir; I do not.

23 Q. When you say "he" you mean the phone?

24 A. Yes.

25 Q. Okay. Again, there's no way to know what the

DESRA SHERYL FRASER - CROSS BY SMITH

1 content of the phone conversation is?
2 A. No, sir.
3 Q. Okay. Now these maps that you're showing, they
4 cover a broad area --
5 A. Yes.
6 Q. -- don't they?
7 A. Yes, they do.
8 Q. And they overlap. What would happen if, say, I
9 start on this tower --
10 A. Uh-huh.
11 Q. -- and I move and go to this tower, and before the
12 call is over I'm back into this area? Does it show
13 beginning and ending call here?
14 A. Since it's one call, all it will show is the
15 beginning cell tower and the ending cell tower.
16 Q. So you don't know if movement occurred?
17 A. No.
18 Q. So these where you say it's stationary --
19 A. Correct.
20 Q. -- the phone could be moving anywhere within that
21 cell tower area?
22 A. Yes, yes.
23 Q. And the phone could leave this area, go into a
24 different area and come back and it would still show just
25 that pie chart?

DESRA SHERYL FRASER - CROSS BY SMITH

1 A. No, sir. If it leaves outside that pie, it will
2 show a different pie even if it's on the same cell tower.
3 Each pie represents one side of it. So it would show a
4 different, either cell tower or a different side of that
5 one tower.

6 Q. If the call started in this tower and in this --

7 A. And moved.

8 Q. -- and moved --

9 A. Yeah.

10 Q. -- and came back and ended in that?

11 A. No, sir.

12 Q. So, it's possible for me to start a phone call in
13 this segment --

14 A. Uh-huh.

15 Q. -- leave to a different segment, come back to this
16 segment, and it would look like it was stationary?

17 A. Possible. Yes, sir.

18 Q. Okay. Now you provided various maps. Have you
19 provided any other maps? You provided other maps to the
20 solicitor's office, didn't you, other than these?

21 A. In this case?

22 Q. Yes.

23 A. I had one with all the calls.

24 (Defendant's No. 7, ATF map, marked for
25 identification.)

DESRA SHERYL FRASER - CROSS BY SMITH

1 BY MR. SMITH:

2 Q. I'm going to show you what's been marked as
3 Defendant's Exhibit Seven. Can you tell me what that is?

4 A. Yes, sir. It is a phone call showing the beginning
5 location of the cell tower was 1600 and the ending cell
6 tower was 877.

7 Q. Okay. Is that the same towers that are shown on
8 State's Exhibit 20?

9 A. Yes, sir. It looks to be the same.

10 Q. Okay. Did you prepare Defendant's Exhibit Seven?

11 A. Yes, I did.

12 Q. Okay. So these are, these are the same thing.
13 They're just, one's in color and one's black and white?

14 A. Yes, sir.

15 Q. They represent the same towers?

16 A. And information that -- the cell tower's specific
17 information was removed so it was a clear map.

18 Q. Okay. Could you explain to us why the coverage
19 area of the pie sections are different from one map to the
20 other?

21 A. Without me having the map -- I mean, the cell tower
22 location actually on this map, it would be hard. I can't
23 specifically say that it's the same tower. So, I wouldn't
24 feel comfortable. It looks to be the same but without
25 that information, I don't know. And I would really --

DESRA SHERYL FRASER - CROSS BY SMITH

1 Q. Well, you've got the information right here, don't
2 you?

3 A. Well, you're saying that they're different. So
4 without having these cell towers actually listed on there.

5 Q. This is State's Exhibit 20.

6 A. Yes.

7 Q. And it's the call from 907; correct?

8 A. Yes, it is.

9 Q. It's from phone number that ends in 6125?

10 A. Yes, sir. But this one, I do not know what time
11 the phone call ended. That was a working copy.

12 Q. But you can tell which tower it was made from;
13 right?

14 A. The difference in the mapping would have to be a
15 Verizon. I can't answer that question.

16 Q. You don't know the answer to that question?

17 A. No, that's more of a technical question.

18 Q. Okay. But you prepared both of these?

19 A. Yes, sir, I did.

20 MR. SMITH: Beg the Court's indulgence. (Pause.)

21 Your Honor, at this time I'd move the Court to
22 admit into evidence Defendant's Exhibit Seven.

23 MR. SLOCUM: May I see it?

24 (Shown to State's Attorney.)

25 MR. SLOCUM: Yeah. Without objection.

1 THE COURT: All right. Without objection it will
2 be Defendant's Exhibit Number Seven into evidence.

3 (Defendant's Exhibit No. 7, ATF map, received into
4 evidence.)

5 MR. SMITH: Thank you. No further questions.

6 THE COURT: Anything on redirect, solicitor?

7 MR. SLOCUM: Yes. Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SLOCUM:

10 Q. You testified earlier about star 67?

11 A. Yes, sir.

12 Q. What did you mean by that?

13 A. Coming from Verizon Wireless they send us --

14 MR. SMITH: Objection, Your Honor. I didn't ask
15 anything on cross-examination about star 67.

16 THE COURT: Solicitor?

17 MR. SLOCUM: I withdraw the question.

18 THE COURT: Okay. Thank you for your testimony,
19 ma'am. You can step down.

20 Any objection to this witness being excused?

21 MR. SLOCUM: No sir.

22 MR. SMITH: No, Your Honor.

23 THE COURT: You're welcome to stay with us or
24 you're free to leave.

25 Anything further from the State?

1 MR. SLOCUM: The State rests at this time, Judge.

2 THE COURT: All right.

3 Madam Forelady and ladies and gentlemen of the
4 jury, we're going to take a break. And I'm going to ask
5 that you retire to your jury room.

6 And, again, as I've stated previously, don't talk
7 about this case among yourselves. Certainly don't start
8 your deliberations yet. We'll get you back out here
9 shortly. Thank you.

10 (Jury exits courtroom at 10:10 A.M.)

11 THE COURT: Okay. Mr. Smith, anything from you,
12 sir?

13 MR. SMITH: Yes, Your Honor.

14 Your Honor, at this time the defense would move for
15 a directed verdict with regards to the kidnapping charges,
16 both kidnapping charges, as well as the armed robbery
17 charge but specifically towards the armed robbery charge.

18 The State has presented no credible evidence upon
19 which a jury would be able to base a decision of guilt. I
20 say that for all of them, but specifically, Your Honor,
21 with regard to the armed robbery. There's been no
22 testimony of money that was taken, and no testimony of any
23 property that was taken that wasn't stricken from the
24 record as hearsay.

25 Your Honor, they had a witness that they could have

1 called, Devin Johnson. He was on subpoena to be here.
2 They moved forward without him. On the indictment that
3 was presented on the armed robbery it lists him as the
4 person from whom goods or money were taken.

5 THE COURT: Okay. Solicitor, let me hear from you
6 on this.

7 MR. SLOCUM: Your Honor, I'm not exactly sure what
8 Mr. Smith is referring to. I believe at sidebar we
9 discussed the statement made by co-conspirator in
10 furtherance of a conspiracy which was ultimately allowed
11 in. That testimony came through Scott Hall, the
12 individual who had the gun to the back of his head. That
13 statement was, "Put the money in the bag, I don't care
14 about the change."

15 It was further testimony that there was money kept
16 in the safe each night by Jameshia Alston, the cash
17 drawers. There's testimony that Scott Hall again about,
18 "Put the money in the bag, I don't want change."

19 There's evidence of -- pictures of empty cash
20 drawers and change lying on the ground which would
21 circumstantially and directly show that money was taken
22 out of the safe, all derived from testimony on behalf of
23 the State.

24 THE COURT: The testimony, if I remember correctly,
25 that necessitated a sidebar conference, I think,

1 Mr. Smith, you initially thought that Devin Johnson was
2 being quoted by the witness.

3 And then after we talked at sidebar, I think then
4 it was realized that they were quoting the, the other guy
5 with the gun. And I think as a result of that then you
6 withdrew your objection.

7 MR. SMITH: I withdrew my --

8 THE COURT: Just -- I just want to make sure we
9 clear that up. All right.

10 I have had some concern with the issue of the
11 money. Now according to my notes, and that's not
12 necessarily to suggest that I'm going to agree with the
13 defense, but we need to really air this out completely
14 because I've had some concern with the evidence related to
15 the issue of money. Okay?

16 Now Jameshia Alston's testimony was that she was in
17 the process, and I'm paraphrasing now. I'm not
18 necessarily directly quoting verbatim these witnesses.
19 She was in the process of counting her money when the two
20 fellows came in, and she did not get as far as she
21 normally does by putting the money into the, on deposit
22 into the lock box or wherever the money goes. Okay.

23 But she did not necessarily say what happened to
24 the money. She just did not get through the whole
25 process of counting money.

1 And that was, that was all that I remember her
2 stating concerning anything about money.

3 Now, first I'm going to say: Do you agree or
4 disagree with the Court's memory on her testimony?

5 MR. SLOCUM: Yes, Your Honor.

6 However, there's more that I would request that we
7 discuss in reference to her testimony.

8 THE COURT: Okay. That's what I want to do. I
9 want to go through each witness.

10 MR. SLOCUM: That particular night, that is
11 correct, she was in the process of counting her money.
12 However, I asked her if -- she had been working at Captain
13 D's for two years and her normal practice each night, once
14 she finishes counting down that money is to put that money
15 in a change drawer and put it into the safe for the next
16 day. That's been her practice for two years. She did it
17 every night.

18 Circumstantially money in the cash drawer goes into
19 the safe. Now in reference to her testimony and money,
20 that's where we would take the position for her.

21 And, further, it's corroborated by Scott Hall's
22 testimony which we --

23 THE COURT: We'll get to Scott in a minute.

24 MR. SLOCUM: Yes, sir.

25 THE COURT: All right. Mr. Smith, related to

1 Ms. Alston's testimony, what is your recollection?

2 MR. SMITH: Your Honor, I recall that she was asked
3 what she was doing. She said that she was counting her
4 drawer down to 150 and that she usually takes it from
5 there to the safe. But she never made it that far.

6 I don't recall her saying anything about any money
7 being taken from her or any money missing from her drawer.

8 THE COURT: All right. Okay.

9 Then we move over to Scott Hall. And in direct
10 examination he said the gunman got the money from the safe
11 and put it in a bag that they used for carry-out orders.
12 He says that on direct.

13 But then he comes around on recross and stated he
14 did not know if the money had been taken because he was on
15 all fours not looking in the direction of the safe or the
16 cash registers.

17 Solicitor, what do you remember concerning Scott
18 Hall?

19 MR. SLOCUM: Your Honor, that he did testify and
20 even showed the jury on a picture the bag that the gunman
21 grabbed. The statement he said, "Put the money in the
22 bag, I don't want the change" which was further
23 corroborated by the empty cash drawers and the change on
24 the ground.

25 The other issue in terms of what he said on cross

1 is an issue for the jury to determine via credibility,
2 believability of the witness. We feel it survives a
3 directed verdict motion.

4 THE COURT: Mr. Smith, concerning Scott Hall?

5 MR. SMITH: Your Honor, I did ask him directly if
6 he saw them take any money from the safe or the cash
7 registers. And he said, no, he did not see them. He says
8 he heard a demand for money, but a demand for money is not
9 taking the money.

10 There was testimony that there was money still left
11 in the safe.

12 Your Honor, he told us specifically that he could
13 not have seen it from the way that he was looking.

14 THE COURT: Right. Well, as you fellows know, in
15 determining or making a ruling on a motion for directed
16 verdict of course the Court looks at any direct evidence
17 and any substantial circumstantial evidence is the
18 standard, which you guys know.

19 So what I've got to make a determination is this
20 circumstantial evidence. I guess the gunman's statement,
21 "Put the money in the bag," and that was done according to
22 Scott Hall, that probably would be direct evidence.

23 But the empty cash drawers, change on the floor,
24 Ms. Alston's testimony that she was prevented from
25 finishing the counting of the money, is that enough

1 circumstantial evidence to survive a motion for directed
2 verdict? Again, I'm not concerned with the weight. All
3 I'm concerned with is the existence of any direct
4 substantial circumstantial evidence.

5 And the fact that Scott Hall may have contradicted
6 himself, I don't know if that -- that would probably go to
7 the weight, which I'm not concerned with, and not
8 necessarily to the existence.

9 It's a close case. And, like I said, I've had
10 concerns. I mentioned this to Lyon early on. I had
11 concerns with the State's presentation of the issue of the
12 money in the armed robbery.

13 Viewing that, viewing the evidence in the light
14 most favorable to the State, I'm going to deny. And,
15 again, I recognize it's a close call, Mr. Smith, but I'm
16 going to deny your motion for a directed verdict. I think
17 there's enough there to send it to the jury.

18 Now anything specifically as it relates to the
19 kidnapping charge? I know you've made a motion for
20 directed verdict. And certainly you're protected on the
21 record on that. Is there anything else specifically on
22 that?

23 MR. SMITH: Your Honor, just one thing further just
24 to protect the record --

25 THE COURT: Sure.

1 MR. SMITH: -- on the armed robbery. They could
2 have called Devin Johnson. He could have provided an
3 accounting. He was under subpoena. They chose to go
4 forward without him. That would just be another ground
5 for the armed robbery.

6 THE COURT: Right.

7 MR. SMITH: With regard to the kidnapping, no
8 additional grounds.

9 THE COURT: Okay. You know, of course, you want
10 to renew this motion at the conclusion of the case, I may
11 have some epiphany and something may just go off in my
12 head and I may change positions. But right now I'm
13 denying the motion, but you're protected on the record.

14 MR. SMITH: Thank you.

15 THE COURT: Okay. You had indicated in chambers,
16 Mr. Smith, that it was your plan at least this morning,
17 earlier this morning, that you were going to call some
18 witnesses in your case?

19 MR. SMITH: Yes, sir.

20 THE COURT: All right. Let me go ahead and give
21 the standard instruction to your client. You may want to
22 explain to him what I'm going to do because it will take
23 me just a minute to pull up my script.

24 MR. SMITH: Yes, sir. Could we have a minute?

25 THE COURT: Yes, sir. Do y'all want to take about

1 a five-minute break?

2 MR. SLOCUM: Can we approach, Judge?

3 THE COURT: Yeah.

4 (Off-the-record discussion.)

5 (A recess was taken from 10:27 A.M., until 10:49
6 A.M., and the trial resumed:)

7 THE COURT: Thank you very much. Have a seat.
8 We're back on the record.

9 And since the State has rested, I need to -- before
10 I examine the Defendant, you wanted to put some additional
11 matters on the record, Solicitor, as it relates to the
12 defense motion for directed verdict?

13 MR. SLOCUM: Yes, sir. Just on the existence of
14 circumstantial evidence.

15 THE COURT: Right.

16 MR. SLOCUM: Detective Royster in his testimony
17 discussed his knowledge of some of the money taken. And
18 again, I'm paraphrasing, that they didn't even take all of
19 the money in the safe, was --

20 THE COURT: Right.

21 MR. SLOCUM: -- came out in his testimony. That
22 along with testimony of Scott and Jameshia corroborated by
23 the pictures, we feel adds to the existence of
24 circumstantial evidence. And we just wanted to put that
25 on the record.

1 THE COURT: Thank you very much.

2 Okay. Mr. Upson, would you please stand? And
3 Madam Clerk, would you swear this Defendant in, please?

4 (Defendant placed under oath.)

5 THE COURT: Mr. Upson, at this time I'm going to
6 explain to you certain of your rights. If you do not
7 understand anything I say, please let me know. If you
8 want me to explain anything in more detail, please let me
9 know that as well.

10 Do you understand so far?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: We've now reached the stage of the
13 trial where you may present your defense. You have the
14 right to claim the protections given to you by the Fifth
15 Amendment to the Constitution of the United States. This
16 amendment states in part: No person shall be compelled in
17 any criminal case to be a witness against himself.

18 This means that you cannot be required to testify
19 in this case. You have the right to testify on your own
20 behalf, however no one can make you testify. This is a
21 personal right and no one can waive this right except
22 you. If you decide to testify you will be subject to the
23 same rules that govern other witnesses and you may be
24 examined and cross-examined on any relevant issue in this
25 case.

1 In addition, if you have any convictions involving
2 dishonesty or false statement or for crimes punishable by
3 imprisonment for more than one year and this Court
4 determines that the probative value of admitting this
5 evidence outweighs its prejudicial effect to you, the
6 solicitor will be able to introduce your record to attack
7 your credibility.

8 If you decide to testify, this decision is on your
9 part. And it must be freely, voluntarily, and
10 intelligently made, with knowledge of the protections
11 given to you by the Fifth Amendment and the consequences
12 of your decision to testify.

13 If you decide not to testify, I will instruct the
14 jurors that they cannot give the fact that you did not
15 testify any consideration whatsoever, and that there is to
16 be absolutely no prejudice to you because you did not
17 testify.

18 It is left entirely up to you whether or not you
19 testify. You certainly have the right to talk with your
20 attorneys, your family members, friends, anyone else. But
21 the final decision will be left entirely up to you.

22 Have you understood exactly what I have explained
23 to you thus far?

24 THE DEFENDANT: Yes, sir, I have.

25 THE COURT: Okay. And do you have any questions

1 about what I've explained to you thus far?

2 THE DEFENDANT: No, sir. I do not, Your Honor.

3 THE COURT: Have you had sufficient time to talk
4 with your attorneys and anybody else whether or not you
5 should testify?

6 THE DEFENDANT: Yes, sir. I have, Your Honor.

7 THE COURT: Okay. And do you need any more time
8 to talk with your attorneys on this particular issue?

9 THE DEFENDANT: Concerning me testifying, Your
10 Honor?

11 THE COURT: Right. Concerning whether or not you
12 testify or not.

13 THE DEFENDANT: No, sir, Your Honor.

14 THE COURT: Okay. And have you made a decision
15 whether or not you're going to testify?

16 THE DEFENDANT: Yes, sir. We have, Your Honor.

17 THE COURT: And what is that decision?

18 THE DEFENDANT: No, sir. We're not going.

19 THE COURT: You're not going to testify. Okay.
20 And have you made that decision freely, voluntarily, and
21 intelligently?

22 THE DEFENDANT: Yes, sir. I have, Your Honor.

23 THE COURT: Thank you very much, sir.

24 THE DEFENDANT: Thank you, sir, Your Honor.

25 THE COURT: Let the record reflect that the Court

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 does find that Mr. Upson has made the decision not to
2 testify in this case. He has done so freely, voluntarily,
3 and intelligently, having received competent counsel and
4 advice from his attorneys in this matter.

5 Anything else before we bring the jury out?

6 MR. SLOCUM: Not from the State.

7 MR. SMITH: Nothing from the defense.

8 THE COURT: Thank you very much. Bring the jury
9 out, please, sir.

10 (Jury enters courtroom at 10:55 A.M.)

11 THE COURT: Let the record reflect the jury's back
12 in. Mr. Smith?

13 MR. SMITH: Thank you, Your Honor. The defense
14 calls Investigator Steve Miano.

15 PHILLIP STEPHEN MIANO, III, having been duly sworn,
16 was examined and testified as follows:

17 THE CLERK: Have a seat in the witness box. State
18 your full name for the Court and spell your last, please.

19 THE WITNESS: My name is Phillip Stephen Miano the
20 Third, M-I-A-N-O.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. Investigator Miano, is it okay if I call you Steve?

24 A. That's perfectly fine.

25 Q. Is that what you go by?

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 A. Yes, sir.

2 Q. Okay. Can you tell the jury where you work?

3 A. I'm currently employed by the Second Judicial
4 Circuit Solicitor's Office in the capacity of chief
5 investigator.

6 Q. Okay. How long have you worked there?

7 A. I've worked in the solicitor's office since the end
8 of October, I couldn't give you a direct date, 2013.

9 Q. Last year?

10 A. Yes, sir.

11 Q. Okay. And where did you work before that?

12 A. Prior to that I was employed at Aiken Public
13 Safety.

14 Q. Okay. What are the roles -- what is your role as
15 an investigator at the solicitor's office?

16 A. My role as an investigator at the solicitor's
17 office is, once a case is made by a jurisdiction within
18 the Second Judicial Circuit that case is then forwarded to
19 the solicitor's office for prosecution.

20 During that time period before it goes to trial or
21 a resolution is made, myself and other investigators will
22 take those cases and kind of find things inside those
23 cases that we might need further information on, such as
24 if a video wasn't turned over.

25 And we also provide subpoenas to witnesses and

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 other folks.

2 Q. Basically you prepare a case for trial?

3 A. Yes, sir.

4 Q. Okay. How is what you do at the solicitor's
5 office different than, like, the police department role?

6 A. I think it probably would be hard to kind of put a
7 specific, I guess, attachment on the difference. I mean,
8 we're all investigators. The only difference is that
9 we're not the charging agency.

10 Q. Okay. Now, you have an opinion about robberies
11 that occur at restaurants?

12 A. Do I have an opinion?

13 Q. Yeah. What -- can you answer that? Have you
14 formed an opinion about how robberies that occur at
15 restaurants come about?

16 A. As a whole, no, sir, I haven't.

17 Q. Do you believe that restaurant robberies are
18 primarily inside jobs?

19 A. I would say there's a percentage of them that are.
20 And I would -- I wouldn't be able to put a percentage on
21 those. I mean, it's like the majority of crimes.
22 Oftentimes there are people on the inside that do assist
23 with them.

24 Q. Okay. Do you recall an interview that you had
25 with Devin Johnson on Monday this week?

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 A. Yes, sir. I do.

2 Q. And do you recall in that interview that you told
3 him that on restaurant robberies there's usually an inside
4 element?

5 A. I don't remember specifically.

6 Q. Do you recall a statement to Devin Johnson where
7 you told him that Ishmael Norid-Deen is a prime suspect?

8 A. I don't know if I used the word "prime". I did say
9 that he was a suspect.

10 Q. Okay. Do you remember the statement you made to
11 Devin Johnson that Ishmael Norid-Deen is wanted for
12 robbery?

13 A. I did allude that he was wanted. I don't know if
14 I said armed robbery, robbery. I don't know the specific
15 charge I said, but I did allude that he was wanted.

16 Q. Okay. Now do you think -- do you remember your
17 statement to Devin Johnson during that interview that you
18 thought that he had something to do with this armed
19 robbery at Captain D's?

20 A. Yes, sir.

21 Q. Do you remember telling him that the hammer's going
22 to fall hard?

23 A. I believe I did use that language.

24 Q. Do you remember the statement you made to him, you
25 said, "I don't think you'd pass a polygraph," with regard

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 to his phone conversations to Ishmael Norid-Deen?

2 A. I don't know. I know that I did have mention of a
3 polygraph while we were doing the interview, but I don't
4 know the specific verbiage that I used with him.

5 Q. Okay. Do you recall a statement that you made to
6 Devin Johnson during that interview where you talked to
7 him about calling somebody five times before the robbery,
8 and how he had access to the safe, and that it looks like
9 it's an inside job?

10 A. I don't know the specific number of phone calls but
11 we did, during the course of that interview, present some
12 of those facts to him.

13 MR. SMITH: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. SMITH:

16 Q. Do you think that Devin Johnson is involved with
17 this case?

18 A. After my interview that I sat in with Detective
19 Royster, I do not believe that Devin Johnson is involved
20 in this case.

21 Q. Do you believe that Ishmael Norid-Deen is involved
22 in this case?

23 A. I do not know enough of the specifics of the case
24 to determine one way or the other about his involvement
25 within the case.

PHILLIP STEPHEN MIANO III - CROSS BY MOLONY

1 Q. You helped investigate this case, didn't you, or
2 helped prepare it for court?

3 A. No, sir. Actually not completely. I did not.
4 There's another investigator that helped prepare the case
5 for Court. That investigator was out of town on Monday,
6 and I assisted with the interview.

7 Q. So Monday is when you got involved?

8 A. Yes, sir.

9 Q. Okay. But from your impression on Monday, the
10 interview on Monday, do you believe that Ishmael Norid-
11 Deen may have a role in this robbery?

12 A. From -- I can't make a statement one way or the
13 other whether he does or doesn't.

14 MR. SMITH: Okay. Thank you.

15 THE COURT? Cross-examination?

16 MR. MOLONY: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. MOLONY:

19 Q. Investigator Miano, you were present at this
20 interview on Monday; right?

21 A. Yes, sir.

22 Q. And this is the one that the defense has spoken in
23 great detail to Detective Royster about in this case.
24 What -- explain to the jury briefly what the purpose of
25 that interview was.

PHILLIP STEPHEN MIANO III - CROSS BY MOLONY

1 A. The purpose of that interview is really to not
2 leave any stone unturned. Oftentimes -- and, like I
3 said, I can't really put a percentage mark on it, whether
4 it's a robbery or other violent crimes. You want to make
5 sure that there's -- that you've examined all leads. And
6 that's pretty much what we were doing on Monday was trying
7 to really eliminate, if not confirm, that Mr. Johnson was
8 involved or was not involved in the robbery.

9 Q. You would agree with me that at the time of the
10 interview we had just, as the State, had just basically
11 learned some evidence that he had been in contact with
12 Norid-Deen moments before the armed robbery; is that
13 right?

14 A. Yes, sir.

15 Q. Okay. And we knew that Norid-Deen's cell phone
16 number -- you at that time knew that his cell phone number
17 had been on the Defendant's records a whole bunch that
18 night; isn't that right?

19 A. Yes -- well, yes, sir.

20 Q. Norid-Deen's cell phone number. Norid-Deen, the
21 name that he's bringing up that you stated is, I guess you
22 really didn't have enough information to make a judgment
23 one way or the other, but ultimately were you doing your
24 job to try to further investigate this case?

25 A. Absolutely.

PHILLIP STEPHEN MIANO III - REDIRECT BY SMITH

1 Q. And if something would have come up at that time
2 that would have given you or any other investigator enough
3 to arrest Devin Johnson, would you have done that at that
4 time?

5 A. Yes, sir.

6 Q. That was the purpose of the interview, wasn't it?

7 A. Yes, sir.

8 Q. To see if he was actually involved; is that right?

9 A. Right. Yeah.

10 Q. That's your job as an investigator; isn't it?

11 A. Correct.

12 MR. MOLONY: No further questions, Your Honor.

13 THE COURT: Redirect?

14 MR. SMITH: Briefly.

15 REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Devin Johnson is a victim in this case; right? He
18 was an important witness. Do you know why your office
19 didn't call him as a witness?

20 A. Do I know why we didn't call him as a witness?

21 THE COURT: Speak up, sir.

22 THE WITNESS: Okay. I'm sorry.

23 THE COURT: That's all right.

24 BY MR. SMITH:

25 Q. Yes, sir. His name is listed on the indictment.

SERENA GREEN WALKER - DIRECT BY SMITH

1 He wasn't called as a witness. Do you know why?

2 A. I don't know why. I haven't -- I've had limited
3 interaction with the case. From my understanding I think
4 he was subpoenaed for the trial.

5 Q. Okay.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Thank you for your testimony,
8 Investigator. You can step down.

9 MR. SMITH: Defense calls Serena Walker.

10 THE COURT: Okay.

11 SERENA GREEN WALKER, having been duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Have a seat in the witness box. State
14 your full name for the Court and spell your last.

15 THE WITNESS: My name is Serena Green Walker,
16 W-A-L-K-E-R.

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Good morning, Ms. Walker.

20 A. Good morning.

21 Q. Thanks for coming today. Ms. Walker, can you tell
22 the jury where you're from and what you do for a living?

23 A. I'm from Aiken, South Carolina. And I work at
24 Sprint Gas Station.

25 Q. Okay. Now, do you remember the night of November

SERENA GREEN WALKER - DIRECT BY SMITH

1 27th?

2 A. Yes, I do.

3 Q. Okay. Why do you remember that night?

4 A. Because my brother put on a comedy show downtown.

5 Q. Who is your brother?

6 A. Ivory Corley.

7 Q. Were you involved with setting up that show?

8 A. Yes, I was.

9 Q. Okay. Who else was involved with that show?

10 A. As far as setting up?

11 Q. Yes, ma'am.

12 A. My son and a couple other people that were already

13 there.

14 Q. Okay. Do you know John Upson?

15 A. Yes, I do.

16 Q. Was John Upson involved with setting up that show?

17 A. Yes, he was. He helped my son bring my food

18 upstairs.

19 Q. Okay. Do you know when that show was supposed to

20 start?

21 A. It was supposed to start at nine.

22 Q. Okay. And when did it start?

23 A. It started after nine. I'm not sure exactly how

24 late, but it was after nine.

25 Q. When did you get to this benefit?

SERENA GREEN WALKER - DIRECT BY SMITH

1 A. About eight o'clock.

2 Q. Okay. And what did you do when you got there?

3 A. I sat and waited for my son to come upstairs, and

4 when he came upstairs it was him and John together. And

5 they were bringing my food. And John had set my food in

6 the wrong spot and I made him move it.

7 Q. Okay. That's John Upson?

8 A. John Upson, yes.

9 Q. Okay. And that was around eight o'clock?

10 A. Uh-huh. Yes, it was.

11 Q. Was that the first time that you saw John at the

12 benefit?

13 A. That night?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And what was your role at this benefit?

17 A. Just attending. Because my brother put on this

18 show, we were able to have our own table in VIP.

19 Q. Okay. Did you help set up for the show?

20 A. I set up my table, yes.

21 Q. Did you -- and were you there for the duration of

22 the show?

23 A. Yes, I was.

24 Q. What did you do after the show?

25 A. We all walked down towards the club, and I went

SERENA GREEN WALKER - DIRECT BY SMITH

- 1 home because I had to go to work the next morning.
- 2 Q. When you say "the club", where are you talking
3 about?
- 4 A. On the corner of , the hotel.
- 5 Q. Hotel Aiken?
- 6 A. Uh-huh, yes.
- 7 Q. Do you know about what time the show ended?
- 8 A. No, I don't.
- 9 Q. When you left this benefit, who was with you?
- 10 A. My sister, a couple other women, my son, John
11 Upson; it was just a whole group of us walking and playing
12 and cutting up together.
- 13 Q. Okay. How was John acting that night?
- 14 A. Like he always act; funny, you know, telling jokes,
15 playing around. He was acting no different than any
16 other time I see him.
- 17 Q. Okay.
- 18 MR. SMITH: I beg the Court's indulgence. (Pause.)
- 19 Q. Could you estimate about what time the show ended
20 and y'all walked over to the Hotel Aiken?
- 21 A. Not really because I really wasn't paying attention
22 to the time.
- 23 Q. You said the show started late?
- 24 A. Yes.
- 25 Q. Do you remember about what time it ended up

SERENA GREEN WALKER - CROSS BY MOLONY

1 starting?

2 A. No, I don't.

3 Q. Okay. You said it was supposed to start at nine?

4 A. Yes.

5 Q. Okay. What was this benefit for?

6 A. What was the benefit for?

7 Q. Yes, ma'am.

8 A. He usually put on a comedy show every year, but
9 this year they were also raising money for some kids for
10 Christmas.

11 Q. Okay. And do you know about how many people were
12 there?

13 A. The room was full. So, whatever the capacity of
14 the room was, I'm sure it was at capacity. But I really
15 don't know what the capacity was.

16 Q. Okay. Where was this benefit held?

17 A. At the Arts Center downtown on

18 MR. SMITH: Okay. Thank you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. MOLONY:

23 Q. Hey, Ms. Walker, how are you doing?

24 A. I'm okay.

25 Q. You stated that your brother is Ivory Corley?

SERENA GREEN WALKER - CROSS BY MOLONY

1 A. Yes.

2 Q. And he's a comedian, isn't he?

3 A. Yes.

4 Q. And he put on the show that night?

5 A. Yes.

6 Q. Now you testified that the show was supposed to
7 start at eight o'clock; is that right?

8 A. No. Nine o'clock.

9 Q. At nine o'clock?

10 A. I got there at eight o'clock.

11 Q. Okay. This show -- I'm going to show you -- can I
12 mark this?

13 (State's Exhibit Number 27, ACR poster, marked for
14 identification.)

15 MR. MOLONY: May I approach, Your Honor?

16 THE COURT: Sure.

17 BY MR. MOLONY:

18 Q. All right. Ms. Walker, I'm going to show you
19 what's been marked for identification as State's Exhibit
20 27, and ask you if you recognize this.

21 A. Yes.

22 Q. Who is this first picture of, right here?

23 A. My brother, Ivory.

24 Q. Okay. And is this the show you're referring to at
25 the Aiken Center of the Arts?

SERENA GREEN WALKER - CROSS BY MOLONY

1 A. Yes.

2 Q. Was this a flyer for it?

3 A. Yes.

4 MR. MOLONY: Your Honor, at this time the State
5 would move to introduce state's Exhibit 27.

6 THE COURT: What says the defense?

7 MR. SMITH: Without objection.

8 THE COURT: Okay. Without objection, Number 27 for
9 the State into evidence.

10 MR. MOLONY: Thank you.

11 (State's Exhibit No. 27, ACR poster, received into
12 evidence.)

13 BY MR. MOLONY:

14 Q. Now, Ms. Walker, you would agree that this flyer
15 for the show with your brother on it states that it was
16 supposed to start at eight o'clock; isn't that right?

17 A. Yes.

18 Q. So you're just confused about it actually suppose
19 to start at nine?

20 A. I guess. You know, like I said, I thought it
21 started at nine o'clock instead of eight.

22 Q. Yes, ma'am. And this after-party, you're not sure
23 exactly what time it was going to be starting; right?

24 A. No.

25 Q. So, if the show started at eight, and it was -- say

SERENA GREEN WALKER - REDIRECT BY SMITH

1 it was late starting, you said?

2 A. Yes, it was.

3 Q. Okay. You saw him before the show, and then you
4 saw him after the show; is that right?

5 A. Correct.

6 Q. You didn't see him during the show, did you?

7 A. No. I don't remember seeing him during the show.

8 Q. So you're not sure where he was during the hour
9 before you -- or from the first time you saw him until the
10 last time you saw him?

11 A. Correct.

12 MR. MOLONY: Thank you, Ms. Walker.

13 THE WITNESS: You're welcome.

14 THE COURT: Anything on redirect?

15 REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Ms. Walker, you were a little confused about the
18 time this show started. Are you confused about seeing
19 John Upson there that night?

20 A. No. I may have the times confused, but I'm not
21 confused about seeing him that night.

22 Q. Okay. And you saw him -- when exactly did you see
23 him again?

24 A. An hour before the show started because I got there
25 an hour before to set up my food on my table.

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 Q. And then?

2 A. I saw him after the show.

3 MR. SMITH: Okay. Thank you.

4 THE WITNESS: Uh-huh.

5 THE COURT: Thank you for your testimony, ma'am.

6 You can step down.

7 With no objection, you are excused or you're
8 certainly welcome to remain with us.

9 THE WITNESS: All right. Thank you.

10 MR. SMITH: No objection, Your Honor.

11 MR. MOLONY: No, objection.

12 MR. SMITH: The defense calls Janet Williams.

13 JANET LAVERNE WILLIAMS, having been duly sworn, was
14 examined and testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for the Court and spell your last, please.

17 THE WITNESS: My name is Janet Laverne Williams.

18 W-I-L-L-I-A-M-S.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q. Good morning, Ms. Williams.

22 A. Good morning.

23 Q. Thanks for coming. Can you tell the jury where
24 you're from and what you do for a living?

25 A. I'm from Aiken, South Carolina. And I'm employed

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 by Aiken County Department of Social Services. I'm an
2 eligibility worker.

3 Q. Okay. Now do you remember the night of November
4 27th?

5 A. I do.

6 Q. Okay. Why would you remember that night?

7 A. Because I don't normally go out. And I was invited
8 to go to this comedy show. And the comedy show was on
9 at the Art Center which I didn't even know
10 they had little rooms to, I guess, to rent out for
11 events.

12 So, got dressed and met my cousin up there and we
13 went to this comedy show.

14 Q. Who's your cousin?

15 A. Her name's Marty Williams.

16 Q. Okay. Do you know John Upson?

17 A. I do, yes.

18 Q. How do you know him?

19 A. We were actually raised in the same neighborhood.
20 He's older than me but, you know, me being the little
21 young, aggravating child, I would see him from time to
22 time.

23 Q. Okay. Now did you see John Upson that night?

24 A. I did. Yes, sir.

25 Q. Okay. Where were you seated?

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 A. Right directly in front of the stage. I was in,
2 they had a VIP section. And when I say "directly in front
3 of the stage," I was, like, looking up like this
4 (indicating). So, you know.

5 Q. Okay. Do you remember seeing John Upson that
6 night?

7 A. I do. Uh-huh.

8 Q. Okay. When did you see him?

9 A. Well, actually I saw him when, I guess my nerves
10 calmed down and the show was pretty much over because I
11 wouldn't look back. It was so many people. It was very
12 crowded in there.

13 When I was getting ready to leave out, I pretty
14 much ran into everybody I knew. I was a little emotional
15 because during the show they brought up two family members
16 that I had lost, like, a month apart.

17 So, you know, he was trying to console me and, you
18 know, things of that nature. We talked about it because
19 of course he knew my cousins. So we, we talked and
20 walked and, you know.

21 Q. Did you go to the after-party?

22 A. I did. I didn't know that was a part of the VIP
23 section so they kind of forced me into 100 Laurens which
24 is where it's located.

25 Q. Did you see John Upson there?

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 A. I did. He actually walked me down there. We were
2 all walking down. I had on my cousin's shoes and I came
3 out of there, I was kind of walking without my shoes on.
4 It was -- kind of calmed me down because I was a little
5 emotional, like I stated. You know, I was very teary-eyed
6 because I hadn't dealt with the deaths of my family
7 members.

8 Q. How was John acting that night when you saw him?

9 A. Like she stated, like John. I mean, like I said, I
10 was emotional. And, you know, I mean, he can be a bit of
11 a jokester but at the time that's what's needed, you know,
12 because I was supposed to have been out enjoying myself.
13 So, he was just being John.

14 Q. Do you remember at the show about how many people
15 were there?

16 A. When I was young they used to say "filled to the
17 rim with brim". I mean, it was packed. It was a lot of
18 people. The few times that I attempted to look back, you
19 know, it was so many people. So I realized all I needed
20 to do was to look up, so --

21 Q. Okay.

22 A. -- it was a lot of people.

23 MR. SMITH: Thank you. Beg the Court's indulgence.

24 (Pause. Conferring with Defendant.)

25 BY MR. SMITH:

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 Q. Do you remember about what time the show ended?

2 A. It was probably around -- because it started late,
3 I want to say, like, it wasn't 11. I'm just guessing
4 maybe, like, 10:30, quarter to 11.

5 Because I know by the time I made it down to the
6 club it was, it was, like, almost 11 o'clock. And we
7 were in the club and, like I stated, I was just in an
8 emotional, you know, state. And I was standing in the
9 corner trying to, you know, just uplift my spirits. And
10 actually John saw that I was so emotional. He actually
11 pulled me outside and that's when I broke down, so.

12 Q. Okay. Thank you. Nothing further.

13 THE WITNESS: Uh-huh.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. MOLONY:

17 Q. Hey, Ms. Williams. How are you?

18 A. Hello. How are you?

19 Q. Doing well. So you just testified that the
20 Defendant, you saw him at the very end of the show?

21 A. Yes, uh-huh.

22 Q. Okay. And you were sitting right up front?

23 A. Yeah. I was right, right there by the stairs and
24 right there on the stage almost but not, you know,
25 standing on the stage. I was -- my table was right there.

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 Q. Okay. Where, where did you see him? Where was
2 he?

3 A. When I was getting ready to leave, you know, like,
4 I sat there for a while after everybody was trying to
5 leave. I don't like crowds, so I was waiting for the room
6 to kind of get a little thin. When I was walking out I
7 had to go to the restroom, so my cousin showed me where
8 the restroom was and I was coming back out looking for
9 her.

10 So before I got to the elevators -- I had never
11 been in this building before. I guess once you come out
12 of the room, this is where they had the table where you
13 showed your, your tickets or whatever. And I want to say
14 I was about to get on the elevator and when I looked over
15 he was walking towards me. He was asking me, was I okay.
16 I said, you know, "I'm all right."

17 Q. Yes, ma'am.

18 A. Right there by the elevator when I was getting
19 ready to leave out.

20 Q. Yes, ma'am. So, this was -- the show was done,
21 lights were on?

22 A. Oh, yeah. Uh-huh. They were actually getting rid
23 of tables and everything because when I stated I was
24 waiting for the room to kind of thin out, I was waiting.

25 Q. Yes, ma'am. And so when you actually saw him it

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 wasn't actually in the room where the comedy show was
2 being held, it was basically towards where the elevator
3 was?

4 A. Yes, uh-huh.

5 Q. The elevator wasn't in the room where the comedy
6 show was being held, was it?

7 A. No, sir.

8 Q. Okay. How long have you known the Defendant?

9 A. I've known him, I would say, all of my life of
10 remembering, I guess. Childhood friends, I guess.

11 Q. Yes, ma'am. Now, this after-party at Hunter and
12 Laurens?

13 A. Uh-huh.

14 Q. You testified, you were kind of guessing time?

15 A. Yes.

16 Q. Did you ever look at your watch when you got to
17 Hunter and Laurens?

18 A. Watches don't work on me.

19 Q. So you're not exactly sure of the time?

20 A. I'm not. No, sir. Huh-uh.

21 Q. As to --

22 A. But I know it wasn't 11 o'clock.

23 Q. Okay.

24 A. I do know because once I got into the club and got
25 very emotional, I actually text somebody to come get me

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 because I was just too emotional to drive. And that's
2 when he saw me getting upset. Everybody was kind of
3 consoling me. They're not used to seeing me out in clubs,
4 so. And I actually had a couple people come over. John
5 was one of them, "Janet, let's walk outside and get some
6 air." You know, "Thank you," and I walked outside.

7 Q. How do you know it wasn't 11 o'clock?

8 A. Because when I started texting --

9 Q. Yes, ma'am.

10 A. -- the person I started texting him, probably it
11 was a little bit after 11. I had been in the club for a
12 little while.

13 Q. When you say a "little while", couple minutes? Ten
14 minutes?

15 A. Maybe 10, 15 minutes. Uh-huh. Yes.

16 Q. Okay. You've known the Defendant your whole life.
17 You're aware of his cell phone number?

18 A. No.

19 Q. 646-6125?

20 A. I moved away. I lived in Charlotte for 15 years
21 and I've only been back for five years to take care of my
22 grandmother, so.

23 Q. Okay. You've known him for a long time --

24 A. I've known him -- exactly.

25 Q. -- but you're not real close with him?

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 A. No, sir.

2 Q. And you weren't with him that --

3 A. No.

4 Q. -- night because you didn't see him until after?

5 A. No, sir.

6 MR. MOLONY: Thank you, Your Honor.

7 THE COURT: Redirect?

8 MR. SMITH: Nothing further.

9 THE COURT: Thank you for your testimony, ma'am.

10 You may step down. Any objection to this witness being
11 excused?

12 MR. MOLONY: No, sir, Judge.

13 THE COURT: You're free to leave or you're welcome
14 to stay with us.

15 MR. SMITH: Your Honor, the defense calls Vernon
16 Wright.

17 THE COURT: Okay.

18 VERNON LEE WRIGHT, having been duly sworn, was
19 examined and testified as follows:

20 THE CLERK: Have a seat in the witness box.

21 State your full name for the Court and spell your
22 last.

23 THE WITNESS: Vernon Lee Wright, W-R-I-G-H-T.
24
25

VERNON LEE WRIGHT - DIRECT BY SMITH

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good morning, Vernon.

A. Good morning.

Q. Thanks for coming this morning.

Could you tell the jury just a little bit about yourself, where you grew up and what you do for a living?

A. Yes, sir. I'm from here. I'm originally from here in Aiken, South Carolina. I served Aiken County Sheriff's Office under the Detention Division for 11 years. And I currently work for Augusta Technical College as a college professor.

Q. Thank you. Do you remember the night of November 27th?

A. Yes, sir.

Q. Okay. Why do you remember that day?

A. Because there was a special event and I had reserved a table for my business.

Q. Okay. What business is that?

A. I own a barber shop here in town.

Q. Okay. Do you know John Upson?

A. Yes, sir. I do.

Q. How do you know John?

A. I know John Upson from school.

Q. Okay. Did you see John Upson the night of this

APP'X 200

VERNON LEE WRIGHT - DIRECT BY SMITH

1 benefit?

2 A. Yes, sir.

3 Q. When did you see him?

4 A. I can't exactly tell you the time. I do know that
5 the show was supposed to start at eight and it was
6 extremely late. I've seen Mr. Upson when I was on my way
7 to the restroom, and we actually spoke to one another.

8 Q. Okay.

9 A. And when I went back into the room, he was still
10 pretty much standing in the same spot.

11 Q. Now when you had a chance to speak with him, had
12 the show already started?

13 A. No, sir. Ivory had been on the stage, but the
14 actual show aspect of it hadn't started yet.

15 Q. So it was just getting to the point of starting?

16 A. Right. At least we were under the impression that
17 it was about to start but then there was a pause there, I
18 don't know, for maybe 10, 15 minutes before the acts
19 actually got on the stage.

20 Q. Did you go to that after-party?

21 A. Yes, I did.

22 Q. Okay. Did you see John Upson there?

23 A. I don't recall seeing John at the after-party.

24 Q. Okay. Do you remember when you spoke with John
25 that time, that evening, do you remember how he was

VERNON LEE WRIGHT - CROSS BY SLOCUM

1 acting?

2 A. He was -- actually we were surprised to see one
3 another. I hadn't seen him in several years.

4 Q. Okay. Was he acting normal?

5 A. Yes.

6 Q. Okay. Not nervous or upset or anything?

7 A. No, sir.

8 Q. Okay.

9 MR. SMITH: Beg the Court's indulgence. (Pause.)

10 Nothing further, Your Honor.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. SLOCUM:

14 Q. Mr. Wright --

15 A. Yes, sir.

16 Q. -- you know Mr. Upson from school; is that correct?

17 A. Yes, sir.

18 Q. What school?

19 A. I know John from when I was in middle school at
20 Kennedy B. (verbatim) Middle School, here in Aiken.

21 Q. So he was a buddy of yours?

22 A. No, we're not buddies but we know each other.

23 Q. And you said you couldn't tell exactly when the
24 show started. It was extremely late. Is that your
25 testimony?

1 A. Yes, sir.

2 Q. How long did the show last?

3 A. I do know that the show was supposed to end --
4 well, we were supposed to be out of the building by
5 midnight and if I'm not mistaken the show actually ended
6 before midnight.

7 Q. Okay. And then it ended just before midnight, then
8 you went to the bar, right, the after-party?

9 A. Yes, sir.

10 Q. Where was the after-party?

11 A. It was

12 Q. And you didn't see Mr. Upson at that?

13 A. There were several people there, sir, I -- you
14 know; I can't recall.

15 Q. Do you know Ishmael Norid-Deen?

16 A. No, I don't.

17 Q. You don't?

18 MR SLOCUM: Beg the Court's indulgence. (Pause.)

19 Nothing further, Judge.

20 THE COURT: Redirect?

21 MR. SMITH: Nothing.

22 THE COURT: Thank you for your testimony, sir. You
23 can step down. If there's no objection to being excused,
24 you are free to leave or you're welcome to remain with us.

25 MR. SMITH: Judge, can we approach?

1 THE COURT: Sure.

2 (Off-the-record discussion.)

3 THE COURT: Any further witnesses on behalf of the
4 defense?

5 MR. SMITH: Nothing further, Your Honor. The
6 defense rests.

7 THE COURT: Okay. And any reply case on behalf of
8 the State?

9 MR. SLOCUM: None from the State, Your Honor.

10 THE COURT: Okay. that concludes the evidentiary
11 record in this case.

12 Madam Forelady and ladies and gentlemen of the
13 jury, what we have left to do is the lawyers will make
14 their closing arguments to you, and the Court will give
15 you the final charge on the law in the case.

16 But, we're going to wait and do that after the
17 lunch break. And I'm going to give you -- I may have
18 given you a little longer lunch break yesterday, I can't
19 remember, and I'm going to do it again today. So we're
20 going to be in recess until 1:30. So you got two hours
21 to have lunch and tend to whatever other business you may
22 need to tend to.

23 So I ask that you promptly be back in your jury
24 room at 1:30. And then we'll proceed at that time with
25 the closing arguments and the final charge on the law.

1 Okay? Again, I remind you, don't discuss this case
2 amongst yourselves or anybody you come in contact with
3 over lunch break. Don't discuss anything about this case.
4 We'll see you back at 1:30. Have a good lunch.

5 (Jury exits courtroom at 11:34 A.M.)

6 THE COURT: Okay. Anything for the record before
7 we take our lunch break, from the State?

8 MR. SLOCUM: Nothing from the State.

9 THE COURT: From the defense?

10 MR. SMITH: Your Honor, I'd just like to renew my
11 motion for directed verdict on the armed robbery as well
12 as for the kidnapping.

13 THE COURT: Okay.

14 MR. SMITH: For the same reasons stated previously
15 for the armed robbery.

16 THE COURT: Okay. Thank you very much. The motion
17 is denied.

18 All right. We'll be in recess until 1:30. As I
19 indicated to you at our sidebar we had a moment ago, we'll
20 provide you with a draft of the final charge for you to
21 look at. We'll probably -- and the verdict form too.

22 If y'all want to hang around for just a little bit
23 before you take off for lunch, we can probably get you a
24 copy before you break for lunch. So if you'd just hang
25 around for a little bit, please.

1 MR. SLOCUM: Yes, sir.

2 MR. MOLONY: Yes, sir.

3 (Lunch break taken at 11:36 A.M. At 1:44 P.M., the
4 trial resumed:)

5 THE COURT: All right. Let's go back on the
6 record -- oh, we're missing --

7 MR. GRIMES: We can do the preliminary stuff, Your
8 Honor. He's on the way in, but we can start.

9 THE COURT: Well, I don't mind waiting.

10 MR. GRIMES: That's all right. We talked about
11 stuff.

12 THE COURT: All right. The proposed charge, does
13 the State have any objections, changes, amendments?

14 MR. SLOCUM: Yes, sir, Your Honor. Just to the --
15 amendment to the charge of armed robbery. We actually
16 dealt with this here recently in this circuit about the
17 armed robbery. During the commission of attempted
18 robbery, one reasonably believes the item used to be a
19 deadly weapon, those words "reasonably believed" are not
20 in the charges that we reviewed earlier.

21 And we would just ask that that be amended to
22 include the new language.

23 THE COURT: Okay. Let me look here.

24 Solicitor, help me out a little bit more. What
25 specifically -- which page are we referring to?

1 MR. SLOCUM: On page, I believe it begins on page
2 10, the last paragraph --

3 THE COURT: Okay.

4 MR. SLOCUM: -- of the charges that were provided
5 to us.

6 THE COURT: Right.

7 MR. SLOCUM: Finally, the State must prove beyond a
8 reasonable doubt that the Defendant was armed with a
9 deadly weapon during the robbery. A deadly weapon is any
10 article, instrument, or substance which is likely to cause
11 death or great bodily harm. Whether an instrument has
12 been used as a deadly weapon depends on the facts and
13 circumstances of each case. The following are examples of
14 instruments which may be deadly weapons; pistol, shotgun,
15 rifle, dirk, dagger, knife, slingshot, metal knuckles,
16 razor, gasoline, fire bomb, Molotov cocktail. A gun may
17 be a deadly weapon even if it's not operating.

18 The Statute 16-11-330 on armed robbery is as
19 follows: A person who commits a robbery while armed with
20 a pistol, dirk, slingshot, metal knuckles, razor, or other
21 deadly weapon, or while alleging either by actions or
22 words he was armed while using a representation of a
23 deadly weapon, or any object which a person present during
24 the commission of a robbery reasonably believes to be a
25 deadly weapon --

1 THE COURT: Do you want to just hand me what you're
2 reading?

3 MR. SLOCUM: Yes, sir. It's 16-11-330 Section A.
4 The bottom of that page, Your Honor.

5 THE COURT: Okay. All right. So what --

6 MR. SLOCUM: The only thing we would like to
7 include is that the -- someone could reasonably believe
8 the object being used is a deadly weapon.

9 THE COURT: I'm just trying to figure out how I
10 want to fit it in. So just give me a moment, please.

11 MR. SLOCUM: Yes, sir.

12 THE COURT: What I will do, I will charge -- I will
13 say -- I'll just do that at the very end of the proposed
14 charge.

15 I will charge: A person who commits robbery while
16 armed with a deadly weapon -- I will not define that
17 again -- or while alleging either by action or words he
18 was armed while using a representation of a deadly weapon,
19 or any object which a person present during the commission
20 of a robbery reasonably believed to be a deadly weapon,
21 period.

22 Satisfactory?

23 MR. SLOCUM: It is, Your Honor. Thank you.

24 THE COURT: Okay. All right. Anything else from
25 the State as to charges?

1 MR. SLOCUM: No, sir. Nothing from the State.

2 THE COURT: And the proposed verdict form is
3 satisfactory?

4 MR. SLOCUM: It is, Your Honor.

5 THE COURT: Now from the defense. Any changes to
6 the charge?

7 MR. SMITH: Nothing, Your Honor.

8 THE COURT: Okay. And the verdict form is
9 satisfactory to the defense?

10 MR. SMITH: Yes, sir.

11 THE COURT: All right.

12 Is the -- does the State intend to open on the law
13 and close or close in full?

14 MR. SLOCUM: We would waive opening on the law.

15 THE COURT: Very good. Anything else we need to
16 take up before we bring the jury out?

17 MR. SLOCUM: Nothing from the State, Your Honor.

18 MR. SMITH: Nothing from the defense.

19 THE COURT: Okay. All right. Thank you very
20 much.

21 Let's bring the jury out, please.

22 THE BAILIFF: Okay.

23 (Jury enters courtroom at 1:50 P.M.)

24 THE COURT: Let the record reflect the jury is back
25 in.

1 Madam Forelady and ladies and gentlemen of the
2 jury, we are now at the stage, as I had mentioned to you
3 before we broke for lunch, that the lawyers will give
4 their closing arguments to you. And I will then, after
5 that is done, I will give you the charge on the law and
6 your final instructions.

7 So if you will pay very close attention. Give your
8 undivided attention to the lawyers as they present their
9 closing arguments. Okay?

10 Mr. Smith?

11 MR. SMITH: Thank you, Your Honor. May it please
12 the Court.

13 THE COURT: Yes, sir.

14 MR. SMITH: Mr. Slocum, Mr. Molony.

15 Good afternoon, ladies and gentlemen of the jury.
16 Thank you for your service.

17 We know that this is an imposition on your time and
18 your lives and we truly value your service. It's
19 something to remember for the rest of your lives.

20 We talked about -- before this all got started, we
21 kind of gave you an idea what was going to happen. We
22 told you you were going to hear all this evidence and now
23 you've heard it. I talked about you having two different
24 bags, a bag of good stuff, a bag of bad stuff, stuff that
25 you didn't want to hear. The stuff that you don't

1 consider important, you just throw it away.

2 Now you all paid good attention the whole time.
3 You've all remembered things you've heard. Some things
4 mean a lot to you. Some things don't.

5 What we're going to do now is go through some
6 things you heard. We're going to review it.

7 The night this happened, John Upson was involved
8 with a benefit, a comedy show that was a benefit. He was
9 there ahead of time. He was helping set up. He was
10 involved with the setup of the show. He was seen at the
11 show, you heard, right up until the point of the start.
12 Okay.

13 You also heard testimony that he was seen right
14 there when it ended. A lady who was sitting right up
15 front, she was sitting right up front, and she was
16 watching the show. She wasn't paying attention to what's
17 going on behind her, beside her.

18 She was watching the show. She didn't see John
19 Upson during the show but when it was over, she got up and
20 she walked back and as she went back she saw John Upson.
21 What time was that? She says about 10:30, 10:45.

22 What time did this robbery occur? Did you hear
23 that? Do you remember that?

24 He would have had to jumped into his car, sped back
25 downtown, parked, jumped out, ran upstairs, see his good

1 friend and say, Oh, how are you doing? Are you okay? I
2 notice you've been crying. I'm going to comfort you.

3 Are those the actions of a man who just arm robbed
4 a Captain D's? A man who the State is trying to say goes
5 in with a bandana over his mouth, a hoody on, gloves on,
6 rushes in there, rushes out, and then he's cool as a
7 cucumber? That doesn't make sense. That doesn't make
8 sense.

9 Why does this man leave the show if he's so
10 invested in it? He's there before, he's there after.
11 He's there at the after-show, the show where his childhood
12 friends are attending, his childhood friends are putting
13 on. The State's asking you to believe that he's going to
14 leave there.

15 I got an idea. Why don't we go and rob the Captain
16 D's? That's cool. I'd much rather do that than watch
17 this show. It doesn't make any sense.

18 You heard good evidence. You heard good testimony
19 from witnesses putting him there. Okay. That's
20 important for you to consider.

21 What else did you hear about? Well, you heard
22 about phone records.

23 And all of this stuff has been admitted. You're
24 going to get to take this all back with you into the jury
25 room. And you can flip through anything that you want.

1 There's a lot here. There are pages and pages of small
2 typed phone records, cell tower records, maps, all this
3 stuff that's been printed out for you, all this stuff.

4 What does it show? What is the State hoping to
5 show from this? I know what it doesn't show. It doesn't
6 show that John Upson was at Captain D's robbing the place.
7 It doesn't show that. It can't show through any of this
8 phone stuff that John Upson was at Captain D's.

9 This doesn't help you one bit in making your
10 decision. It's for you to consider. You can spend your
11 time. I encourage you, if you want to look into it, look
12 into it. There's good information in there.

13 But ultimately what you're not going to find in
14 there, you're not going to find anything that tells you
15 that John Upson was at Captain D's at the time of the
16 robbery. It's not there. Okay.

17 We're going to play a little game. Okay? You're
18 going to like this. What I'm showing you is a picture of
19 a bunch of people's noses and eyes. Okay. These are
20 people that you all have seen. These are people that you
21 would know and recognize them. These are pictures that
22 show maybe about what was shown to Jameshia when she got
23 put in the freezer by the guy with the mask, with a
24 bandana over his face and hoody on.

25 I'm going to ask you guys who some of these people

1 are because you know who they are. You've seen them. You
2 didn't see them for just a split second a few days ago.
3 You didn't see them for a few minutes a few days ago.
4 These are people you've seen repetitively for a long time,
5 for years. Let me see if you know these people. Don't
6 answer me out loud. Okay. I want you to look at them. I
7 want you to think. Let's start with this one. Let's
8 start with this one.

9 I want y'all to look at it. Get a good look.
10 Think in your mind who you might think that is. If you
11 need any more time to look at it, let me know. I'll give
12 you more time.

13 This one right here. Okay. Are you guys ready
14 for the great reveal? See how many of you got this right.
15 Brad Pitt. You guys have seen him before; right? It's
16 just an exercise to get you guys to know what she saw.
17 What are we expecting her to do? The State is trying to
18 -- they're resting their entire case on this. Okay.
19 They're resting their whole case on that (indicating).

20 You heard from the investigators. You heard
21 Investigator Royster tell you that there are no other
22 suspects in this case. And you heard Investigator Miano
23 talk about how he thinks that the guy named Ishmael Norid-
24 Deen was a suspect in this case.

25 You heard about photo lineups. But did you hear

1 about a photo lineup of John Upson? No, you didn't. You
2 didn't hear about a photo lineup of John Upson because
3 none was ever done. None was ever done. They didn't show
4 his picture to anybody. They took what Jameshia Alston
5 found on Facebook, said, all right, we got our guy.

6 That's good enough for us. Let's go to court with it.

7 They didn't investigate. I mean, they -- they had
8 an opportunity to look for video footage. They checked at
9 Captain D's. Their system was out. Isn't it convenient
10 that the guy that they were interrogating at the last
11 minute on Monday morning is a manager at Captain D's who
12 they thought might be involved with this? Isn't it
13 convenient that there's no video footage? That the hard
14 drive wasn't functioning properly? It just seems a little
15 convenient.

16 What about the camera at Staples? You heard from
17 Scott that he thought they had come up from behind
18 Staples. Well, there, sitting perched like an eagle on
19 the back corner of Staples, right up to -- right up to the
20 back corner of Captain D's we see this. Do you see
21 that? A big old thing sticking right up there in the back
22 corner looking right at the back door of Captain D's. Did
23 anybody even ask about that? They didn't even go talk to
24 Staples about that.

25 Round two. Round two.

1 Let's do another one. Let's try the big one.
2 Okay. It may be a little more difficult. Take a good
3 look. Enough time? Who do you think that is? It's
4 Jay-Z. Got Jay-Z on there. Okay.

5 Let's talk about what Scott Hall said. Scott Hall
6 was there. He was in a bad position. He had a gun put
7 to the back of his head. He sees these guys. Right? He
8 sees them wearing their bandanas over their faces, hoodies
9 over their heads. They order him to the front. They put
10 him down, a gun to his head. What does he say about
11 those guys? He doesn't get a real good look. He can't
12 identify them. But what can he tell you? He can tell you
13 how tall they were. That was about the best description
14 we got of anybody was out of Scott Hall. Black male, two
15 black males, one about five-eleven, one taller than that.

16 Do you remember how tall Scott Hall was? He wasn't
17 that tall. He's not five-eleven. Five-eleven. Taller
18 than that.

19 Now, do you remember, I asked Detective Royster:
20 How tall is John Upson? John Upson's not very tall. He's
21 five-seven. And we're talking about the difference
22 between me and Michael Jordan. If Michael Jordan's in
23 here, you're going to be able to say, that's Michael
24 Jordan. That's Andy Smith. That's a big difference
25 there. It's a big difference. And what's more than the

1 four or five inches. What's more than that.

2 When people who are a certain height -- how do you
3 judge people's heights? You look at somebody and say he's
4 six-two, she's five-three. They don't do that. A lot of
5 times what they do is they say, hey, the guy's taller than
6 me. That guy's shorter than me. Scott Hall, John Upson,
7 about the same height.

8 Why would he say that? Why would he say that this
9 guy's five-eleven and the other guys over five-eleven, six
10 foot or more if it's John Upson? Well, the answer to that
11 is because it wasn't John Upson. He wasn't there. He's
12 downtown at the benefit, spending the evening with his
13 friends and his family.

14 We'll go to round three with the pictures. Who
15 should we do? How about we do this one. This big one
16 right here.

17 All right. Do you have in your mind who you think
18 it is? Let me show you. Michael Jordan. It's hard to
19 tell from those little, that little view of him; isn't
20 it?

21 Now, we've got Jameshia Alston. She's scared. I
22 feel bad for Jameshia Alston. She's counting down her
23 money, just like she does every night. It's every other
24 night for her. She's counting down her till, closing up,
25 getting ready to go home, enjoy Thanksgiving break and

1 somebody rushes in the door with a gun.

2 And she sees the gun and she is freaked out. She
3 told you that she was afraid that she was going to die.
4 When someone's afraid that they're going to die and they
5 see somebody running around the store, are they gazing
6 into somebody's eyes? Are they staring at their face?
7 Guess what? The guy who's she's saying is John Upson
8 isn't the guy with the gun.

9 Two guys coming in and one's got a gun, who are you
10 watching? The guy with the gun. You don't care so much
11 about the other guy. You're concerned about the guy with
12 the gun. The other guy's got a mask over his face and a
13 hoody on, marches you to a freezer, puts you in the
14 freezer, closes the door. And this freezer doesn't have a
15 window on it. She's in a windowless freezer, telling you
16 what a man who has his face covered and hoody on, telling
17 you who that is.

18 Now she doesn't know John Upson. She wasn't
19 raised with John Upson. She's never spent a day with
20 John Upson's family. She doesn't know him.

21 She knows him as a customer from two days prior.
22 She doesn't know me as a customer. She knows John Upson
23 from two days prior as a customer.

24 The people who are up here in this stand -- Janet
25 Williams, Vernon Wright, Serena Walker -- they know John

1 Upson. And guess what? When they're with John Upson, he
2 didn't have his face covered. He didn't have a hoody on.
3 That's easy for them to say, yeah, I'm with John Upson, a
4 guy I know, a guy who's not trying to hide himself.

5 And what did they tell you about John? Did they
6 tell you that he was acting nervous? That he was
7 fidgety? Did they tell you that he was sweaty, acting
8 weird? No. Remember? They all said he was being John
9 Upson. He was being gregarious. He was trying to comfort
10 me. He was making me laugh. He was walking with me
11 across the street. We were going to go spend some time at
12 the after-party together. That's the John Upson they
13 saw. They didn't see a guy who had just robbed Captain
14 D's. Okay.

15 I don't know that we're going to do all of these.
16 I know you want to. Let's do this one. This bottom big
17 one here. Take a good look. Think in your mind who it
18 might be. Ready? Here goes.

19 Barry White. Barry White. If I was given a
20 description of a guy who robbed me that night and that guy
21 happened to be John Upson, that's an easy thing to say. I
22 want you to remember. You listened to all of this stuff.

23 The State brought this case against John Upson.
24 They decided when was enough investigation. Did they
25 investigate this enough? We're ready to come to court.

1 We're ready to present it to the jury.

2 But there's some stuff that's missing, isn't
3 there? Okay. You got stuff that's missing. What
4 happened to Devin Johnson? You heard this guy's name a
5 lot during the trial.

6 Devin Johnson never sat up there. Why didn't he
7 sit up here? Devin Johnson's name is on one of the
8 indictments. He's a victim. He's a victim. He's an
9 important witness. The State didn't get him up here.
10 They chose to go forward with this case. They chose what
11 evidence to present.

12 And remember who's burden this is. Who has the
13 burden here? Remember the scales at the beginning? We
14 talked about the scales. John Upson, it's all in his
15 favor when we start. The State is the one who has to tip
16 the scales. Not just so they're even. They got to tip
17 them all in the other direction.

18 You have to be convinced beyond a reasonable
19 doubt. The State decides, hey, what evidence can we
20 present to the jury to convince them beyond a reasonable
21 doubt? Do we need to gather more evidence? Do we have
22 enough? They decided they had enough, and they didn't
23 need to investigate this any more.

24 They didn't need to call all these witnesses.
25 They didn't call Devin Johnson. They didn't call William

1 Keels. They didn't call Cassandra Ellis. They didn't
2 call these people, these people who were mentioned in the
3 story. You don't know anything about these people. And
4 the reason you don't know anything about them is because
5 the State didn't present that evidence to you.

6 But you deserve to hear all of the evidence. Is
7 it too much to ask a panel of 12 people to make a decision
8 on somebody's life to decide whether to take away
9 somebody's liberty with just some of the information?
10 Just a little bit? You deserve it all. Okay. You
11 deserve it all.

12 And, remember, it's not John Upson's job to defend
13 himself. It's the government's job to prove to you
14 beyond a reasonable doubt that he's guilty. And they
15 decide how they're going to do it.

16 Remember what they didn't give you. We don't have
17 any videos. You don't have any photo lineups. We're
18 missing witnesses.

19 Now, remember, when you go back into this room
20 you're going to be asked to discuss the case. You're
21 going to be asked to render a verdict. And I'll tell you
22 what a verdict means. A verdict means to speak the truth.
23 Remember, we talked about this at the beginning; speak the
24 truth.

25 The truth of the verdict, a jury's verdict has to

1 be your truth. It has to be your truth. And your
2 truth. And your truth. It has to be every individual's
3 truth. We don't have a decision from a jury until we
4 have a unanimous decision from all 12 members of the
5 jury. All 12 of you have to agree.

6 And guess what? There may be differences of
7 opinion. You may -- some may be stronger in favor of
8 guilty. Some may be firmly convinced the State didn't
9 prove guilt. Because, remember, we don't have to prove
10 him innocent. You just have to be convinced beyond a
11 reasonable doubt by the State that he's guilty. The
12 other side is, they -- did they meet that burden. Not
13 that he's innocent, because they didn't meet that burden.
14 Some of you guys are going to be convinced of that.

15 It's not your job to bully each other. It's not
16 your job to strong arm each other, to beat each other to
17 fall into line. We got to get back out there and get a
18 verdict. You don't have to do that. It's okay for
19 people to have different opinions. If you all have the
20 same opinion, you got a verdict. Okay. If you don't all
21 have the same opinion, you don't have a verdict. Keep
22 that in mind. It's got to be your decision.

23 Now when you go back there and vote, I want you to
24 pay attention to how you do it. You're going to discuss
25 things. And you're going to be asked to vote and when it

1 comes time to vote you're going to have to commit to
2 something, one way or another. Commitment's a big thing.
3 You got to ask yourself you how do you feel. What does my
4 body do when it's time to step across the line for guilty
5 or step across the line for not guilty?

6 When you're asked if you are firmly convinced
7 beyond a reasonable doubt that the State has proven him
8 guilty, if you find yourself leaning back in your chair,
9 folding your arms, taking a deep breath before you cast
10 your vote, guess what that is? That's reasonable doubt.

11 That hesitation that you have to act, that shows
12 something. That shows you that you're not firmly
13 convinced. Some people have -- respond different ways.
14 I raise my eyebrows. I do it all the time. All in
15 favor of guilty, raise eyebrows, lean back, take a deep
16 breath. That's reasonable doubt right there. Pay
17 attention to those feelings. Okay. They inform you what
18 you really believe.

19 We really do appreciate your time. A lot of
20 people get up here and they ask you, they ask you to come
21 back with something. They ask you to find somebody
22 guilty. They ask you to find somebody not guilty.

23 I think it's disingenuous. I'm going to ask you to
24 vote what you're firmly convinced of. I'm going to ask
25 you -- or not convinced of, as it may be. If you're not

1 convinced, if you're not convinced that the State has
2 proved him guilty beyond a reasonable doubt, that's easy;
3 that's not guilty.

4 If you're not convinced, if you have questions, if
5 you have doubts; that's easy.

6 I'm going to ask you to vote your truth. To
7 return a true verdict, not a bullied verdict, not a
8 strong-arm verdict; your truth. So that when you come
9 back out here and you tell the Court either, "Sorry, we
10 can't come up with a verdict," or "This is our verdict,"
11 that whatever you say reflects what you truly believe. I
12 know you will.

13 I appreciate your time. Thank you.

14 THE COURT: Thank you, Mr. Smith. Solicitor?

15 MR. SLOCUM: Thank you, Your Honor. May it please
16 the Court.

17 THE COURT: Certainly.

18 MR. SLOCUM: Mr. Gibbons. Mr. Smith.

19 Ladies and gentlemen, good afternoon.

20 I want to address a few things that Mr. Smith just
21 told you. I told you in my opening that he's a fine
22 attorney and it's his job to advocate for Mr. Upson. He's
23 done a great job of doing that.

24 But what he's done is ask you to look over here;
25 look at what's going on down here; check out this camera;

1 or what about this fellow; what about what's going on over
2 here. He doesn't want you to look at what has actually
3 been shown to you and what actually happened that night.
4 He doesn't want you to look at the truth from that night.

5 He said to you about your job. It's not your job
6 to punish someone. It's not your job to punish someone,
7 to take away their liberty. It's not your job to reward
8 someone either. You took an oath and that's why we chose
9 you; to be fair and impartial and to be the finders of the
10 fact. That is it. That is all we want you to do today.

11 Mr. Smith wants you to think there's no way John
12 Upson could have been involved because he was downtown the
13 entire time at this comedy show. But all three people
14 that got up there that testified for the Defendant gave
15 you times of 10:45, 11 o'clock, just before midnight. One
16 didn't even know the time, didn't know when the show
17 started or when the show ended. No one could give you a
18 concrete time.

19 But cell phone records do. And I ask you to look
20 at those. Mr. Smith said if you want to look at them,
21 please look at them. They're in evidence. Check them
22 out. See for yourself.

23 Mr. Smith wants you to think there's some
24 conspiracy, some reason they didn't check the camera. He
25 said that law enforcement didn't check the camera. The

1 reason we interviewed this person, the reason law
2 enforcement did this has nothing to do with John Upson.
3 Nothing to do with John Upson and what happened on
4 November 27th, 2013. Nothing at all.

5 The date this all happened, November 27th, 2013,
6 was when two people went into that Captain D's and robbed,
7 with a gun, Captain D's. Forced Jameshia Alston and Scott
8 Hall into a cooler and left. One of those persons was
9 Mr. Upson, the Defendant in this case.

10 However, this whole story really starts on November
11 25th, 2013, two days before that. Ms. Alston was
12 working. She said that the Defendant came in that night,
13 on the 25th, ordered a large Sprite and took a picture of
14 William Keels who was a co-worker with her that night on
15 the 25th.

16 The details, ladies and gentlemen. She remembers
17 the details. If you're going to make up something, make
18 up a whopper of a story. But she doesn't. She tells you
19 exactly what happened because that's what happened. She's
20 not making it up. A large Sprite and took a picture of
21 William Keels. And we'll get to William Keels a little
22 more in a minute.

23 But on November 27th, those two people come in the
24 back door in all black with a hood on and bandanas up here
25 (indicating). She makes eye contact with that person in

1 the back with her. She sees the gun. The gun -- the
2 gunman goes up to the front, puts it to the back of Scott
3 Hall's head. She doesn't see that. She's in the back
4 with John Upson by herself. And she sees those eyes.

5 The same eyes that she saw the two nights before that
6 ordering a Sprite, took a picture of William Keels. She
7 says she remembered it because of his lazy eye. She
8 didn't make that up. She told you that because that's
9 what happened.

10 This area we were just talking about in the back
11 with Jameshia. She was there. Right here. She said she
12 was at this desk when it happened. They'd come in that
13 back door. She is with Upson by herself, no one else.

14 She's not -- the gun's gone. She's not
15 concentrating on the gun. She said when she saw his eyes
16 she knew him, but she didn't know a name. So she didn't
17 tell law enforcement a name. If you're going to make it
18 up, let's give him a name and go with it that night. She
19 didn't because she wasn't sure. She just knew that she
20 knew him.

21 And so what's she do? She thinks back, all right,
22 two days earlier William Keels, the picture. So she goes
23 to William Keels' Facebook page. She didn't know the
24 guy. She just remembered him two days before. And what
25 does she see? John Upson. And she stops. She stops

1 looking because -- what'd she say -- "I almost jumped out
2 of my chair."

3 She knew. She sat up there and told you. She
4 knew. No doubt in her mind that's who it was. She had
5 the time back then. She's not making this up.

6 Mr. Hall, Scott Hall, who was working with
7 Ms. Alston that night; has a gun, a black gun, pistol --
8 she told you it was black, Ms. Alston told you it was
9 black -- put to the back of his head and he could tell it
10 was real by how cold it was. He's forced up front.
11 Forced on his hands and knees with the gun still to the
12 back of his head. Says, "The gunman grabbed the bag."
13 Showed you the bag he grabbed off of this little rack they
14 got there where they give the food. Grabbed a bag, said,
15 "Put the money in the bag, I don't want the change."

16 Ladies and gentlemen, we have empty cash registers
17 and change. This corroborates his story. He's not
18 making it up. He couldn't give you a great description.
19 He had a few seconds. He told you that, "I had a few
20 seconds, that's all I could see."

21 I imagine with a gun to your head and a few
22 seconds, I'm surprised anything at all was remembered. I
23 submit to you that what he's telling you happened
24 happened. He's not making it up. If he were going to
25 make it up, let's get a name. Let's go looking for

1 everybody. As a matter of fact who will make it up, let's
2 get a second name. Let's make it up for a second name, a
3 second suspect, the gunman. Law enforcement didn't, she
4 didn't, Scott didn't, because they didn't know.

5 But Jameshia knew. She knew.

6 And when she saw him, when she saw this portion of
7 his eyes she knew (snaps fingers). Now she told you that
8 when this all happened she was afraid. She felt like she
9 was going to die. She was back there held against her
10 will. She told you she did not feel free to leave.
11 Scott told you he did not feel free to leave. He had a
12 gun to his head. She's scared to death. Upson takes her
13 and puts her in the freezer.

14 And then when the gunman comes back with Scott and
15 the other fellow, Mr. Johnson who we'll talk about just a
16 little bit more, puts them all in the freezer. Upson
17 helps with that. They had just taken the money out of the
18 safe, out of the registers, those drawers.

19 You heard Jameshia talk about it. She counts it
20 down every night she works and puts the money in the
21 safe. We got an empty safe. We've got money gone. We've
22 got, "Give me the money, don't give me the change."

23 Well, the change is still there. We don't know how
24 much money because they don't know. Law enforcement
25 didn't know. They didn't make up a number, some arbitrary

1 number. Money was taken.

2 "Give me the money, I don't want the change," and
3 then they throw them in the freezer.

4 After all of that happens, Jameshia tells you she
5 talks to law enforcement. Scott talks to law enforcement.
6 Jameshia says she knows the guy, "Saw him in here two days
7 earlier but I don't know his name." She didn't give law
8 enforcement his name because she didn't know.

9 But when she got home, she's going through
10 Facebook, pictures of William Keels, the same guy that she
11 saw John Upson take a picture of two days before. She
12 sees this picture and about jumped out of her chair.

13 So what's she do? She got those two pictures, sent
14 them to Detective Royster. There's John Upson. That's
15 the Defendant. She didn't make up a name. It wasn't
16 until after she saw his picture, "This is him." She sat
17 up there on the stand, "This is him." No doubt. She
18 knew.

19 That's all you need. That's all the law requires
20 for a verdict of guilty.

21 That is direct evidence. That's what she saw.
22 It's what she felt.

23 Circumstantial evidence with Scott. Snatching the
24 bag, "Give me the money. Leave the change." Well, empty
25 cash register and change. You put it together. It's just

1 what I asked you to do in opening. Please use your common
2 sense. You can put things together. The law makes no
3 distinction between direct evidence and circumstantial
4 evidence. You only need one. You only need direct -- you
5 only need what Jameshia told us during this trial. That's
6 all you need.

7 But look at everything. Look at all of it.

8 The next day, the 28th, after Detective Royster
9 told you he went to John Upson's house looking for him, he
10 wasn't there. The Defendant calls him on the phone.
11 Calls him from 803-646-6125. You'll see it here in just a
12 minute. Talks to Detective Royster, tells him he's got a
13 warrant for him. John Upson said, "I was downtown at the
14 comedy show, check my phone. I was down there the whole
15 time. Check my phone."

16 Well, Detective Royster did just that. Here's the
17 phone call I was telling you about. Detective Royster
18 told you his number was 803-270-1759. You can check all
19 of this on your own in the cell records. I urge you to
20 please look at these.

21 Calls him on the 28th, 5:02. Detective Royster
22 calls him right back at this 646-6125. Calls from the
23 same phone, the exact same number. We'll get into the
24 Defendant's cell phone records now.

25 And I'm going to show you what happened here. I

1 want you to look when you go back there as well. You can
2 see on the 27th, 2013, these are phone calls that the
3 Defendant makes to this Ishmael Norid-Deen, the fellow
4 that you've heard his name. The funny thing about it
5 here, the name Ishmael Norid-Deen, Williams Keels and
6 Devin Johnson that Detective Royster told you about, and
7 Devin Johnson was one of the fellows on the inside of the
8 store, the one that was there with Scott Hall in the
9 front, Scott Hall said took the money, is they're all tied
10 into John Upson. That's the common denominator in all of
11 this.

12 But you look here, 8:12, Ishmael Norid-Deen calls
13 John Upson. 8:17, John Upson makes a phone call. Someone
14 calls up. Defendant called. Defendant called. Norid-
15 Deen. Norid-Deen. 8:12, 8:17, 8:18, 9:02, 9:05, 9:07,
16 9:27. All while he's at the show, watching the show
17 supposedly. He ain't watching the show. He's on his
18 phone. We're not saying he's not downtown because the map
19 will show you, he's downtown at this time. His phone is
20 pinging off towers that are downtown. We're not arguing
21 that. The State is not arguing that.

22 But you look here. At 9:37, a phone call was made
23 to Captain D's from the Defendant's cell phone. Two
24 minutes later, oops, let's star 67 before we call Captain
25 D's.

1 Desra Fraser, she didn't get into it much but she
2 said, brought it up about the Defendant dialing star 67 to
3 block his call right before he called Captain D's. We all
4 know what star 67 is. What do we have here at 9:47? A
5 call to William Keels. He's back in the picture. John
6 Upson went up there to see him on Monday, took a picture
7 of him. That's how Jameshia knew him, through William
8 Keels. He calls William Keels right before the armed
9 robbery happens, but at 9:48 he makes one last call to
10 Captain D's through star 67 and then silence. Not a
11 peep.

12 The armed robbery happened, Jameshia told you,
13 about 10:15 she said. At 11:01, the police check the
14 records, this 864 number, calls the Defendant's cell phone
15 at 11:01. Pinging off tower 920. Right down here.
16 There's downtown. Here's tower 920. At 11:01. Please
17 look at this. Please look at those records.

18 He wasn't downtown. The cell phone's pinging
19 downtown all before that. We're not denying that. 11:01,
20 he wasn't downtown. Let's take a look at what's in
21 between downtown and where this phone pings. Captain
22 D's.

23 Now Mr. Upson got to be the most unlucky man in the
24 planet to just have called Captain D's three times before
25 it's robbed and the person he was seeing two days before,

1 before it's robbed. It's got be the worst luck ever.

2 Ladies and gentlemen, Mr. Upson went in that night
3 with another fellow, We don't know. We didn't make it
4 up. She didn't make it up. That was Jameshia against her
5 will. Put her in the freezer. Was there when the other
6 gunman had a gun to the back of Scott Hall's head, took
7 money out of that safe and they left.

8 Now you'll see phone calls that are made after the
9 armed robbery. These are two days later. Please look at
10 them. You heard Detective Royster testify about the
11 numbers to Aiken Center of the Arts. And you can see it
12 in there. It's in the records.

13 He calls Captain D's again at 11:29, two days after
14 at 9:30 A.M. However he leaves a number out. You can see
15 that on the records, a number is missing. Then he gets it
16 right, he calls Captain D's without star 67. And then
17 calls the Aiken Center of the Arts, star 67, the same
18 place where the comedy show was, the same exact place.

19 Now, what are the odds of all of that? This has
20 just got to be bad luck; right? The worst day ever. The
21 worst day ever.

22 Ladies and gentlemen, circumstantially this all
23 adds up. Common sense will tell you. Jameshia told you
24 direct. Her story has not changed since day one. She has
25 not wavered one iota from the start of all of this.

1 Please look at these. Look at what we've showed
2 you, what the State has presented to you.

3 Now, the State is alleging that John Upson along
4 with another committed armed robbery and two counts of
5 kidnapping.

6 And I want to address something really quick about
7 Devin Johnson. He was a third individual there that
8 night. He was the one that was also put in the freezer.
9 However you heard Detective Royster talk about how they
10 wanted to uncover every stone. Detective Miano uncovered
11 every stone, and they did their due diligence. They
12 thought he might be involved in connection to Norid-Deen.
13 So they went and checked on him. They did their job,
14 exactly what they wanted to do.

15 I submit that if they hadn't done it it would be
16 brought up as well but it doesn't matter because it's all
17 smoke and mirrors. It has nothing to do with John Upson
18 and what he did that night.

19 The armed robbery was the Defendant, John Upson,
20 along with the another. We don't know the other, but we
21 know that he used a gun and that they took personal
22 property of another person, another individual at Captain
23 D's. That money did not belong to them when they went in
24 there. They took it by force or intimidation. By force
25 with a gun to the back of Scott Hall's head. And that

1 they used a deadly weapon, a pistol or what appeared to be
2 a deadly weapon. Scott told you he felt the coldness of
3 the steel. He knew it was real. Jameshia saw him holding
4 it up against the back of his head. She thought it was
5 real.

6 That's all armed robbery is. Like I told you in
7 opening. Robbing somebody with a gun. Kidnapping,
8 knowingly, unlawfully seizing or confining only for a
9 moment another person without authority of law.
10 Kidnapping can happen (snaps fingers) like that.

11 "Can I leave? No, stay right here." She was
12 afraid for her life. She was put in the freezer. She
13 told you that. Scott told you that. They did not feel
14 free to leave. Kidnapping. That's all it takes (snaps
15 fingers) just that.

16 Now here in South Carolina and on these two things,
17 armed robbery and kidnapping, the Judge is going to direct
18 you on the law. As I told you in opening, whatever he
19 says, please go with it.

20 The hand of one, hand of all means that two people
21 acting together for the common plan or intent. Here we
22 have John Upson and an unknown individual entered the
23 Captain D's with a gun with the intent of robbing it.

24 Now, during this crime he helped. He held
25 Jameshia in the back. He helped put them in the freezer.

1 He assisted. He aided. He abetted in the crime. So he
2 is just as guilty as the person with the gun. It doesn't
3 matter who actually had the gun, all are guilty. The hand
4 of one is the hand of all.

5 Ladies and gentlemen, I told you in opening that I
6 want you to use your common sense to weigh the
7 believability and credibility of the witnesses. I ask
8 you that when you go back there to do just that.

9 Jameshia, 18 years old, about to graduate high
10 school. What reason does she have to lie, to making this
11 up? If she was going to lie, let's blow it up. Let's
12 blow it out of the water. Let's pick the other guy and go
13 after him, but she didn't. She told law enforcement that
14 night she didn't know who it was but she had seen him
15 before two days earlier. She recognized his lazy eye she
16 saw that picture and (snaps fingers) about jumped out of
17 her chair. The story hasn't changed since November 27th,
18 2013.

19 Please look at the phone records. Look at the
20 maps. You can put it all together. Please use your
21 common sense.

22 I thank you for your time and your service. And I
23 think that once you get back there, see all of this, the
24 only verdict reasonable, and the only verdict which you
25 will be firmly convinced for armed robbery and two counts

1 of kidnapping is that Mr. John Upson is guilty.

2 Thank you.

3 THE COURT: Thank you, Solicitor.

4 Madam Forelady, ladies and gentlemen of the jury,
5 I'm going to take about a five-minute break before we
6 start the final charge on the law by the Court, give
7 everybody a chance to kind of catch their breath. So just
8 retire back to your jury room and we'll bring you out
9 shortly.

10 Again, don't start your deliberations. Don't
11 discuss this case among yourselves.

12 (Jury exits courtroom at 2:39 P.M.)

13 THE COURT: One matter on the record. Jameshia's
14 last name is not spelled correctly on the indictment.
15 Would you -- it's missing the S on Alston.

16 MR. SLOCUM: Does it have an S or it doesn't have
17 an S?

18 THE COURT: It does not have an S.

19 MR. SLOCUM: We would move to amend it, Judge.

20 THE COURT: If you have any objections to letting
21 the solicitor just pen through it and leaving it in?

22 MR. SMITH: None, Your Honor.

23 THE COURT: We'll take about a five-minute break.

24 MR. SLOCUM: Thank you, Your Honor.

25 (Break taken at 2:39 P.M. At 2:52 P.M., the trial

1 resumed:)

2 THE COURT: All right. Bring the jury out,
3 please.

4 (Jury enters courtroom at 2:52 P.M.)

5 JUDGE'S CHARGE TO THE JURY

6 THE COURT: Let the record reflect the jury's back
7 in.

8 Madam Forelady and ladies and gentlemen of the
9 jury, I now will charge you on the law applicable to this
10 case. And you must consider the charge as a whole and
11 not focus on some portions to the exclusion of other
12 portions.

13 The indictments charge the Defendant with armed
14 robbery, kidnapping of Jameshia Alston, and kidnapping of
15 Scott Hall.

16 And, again, I remind you, the fact that the
17 Defendant was arrested, charged and indicted in this case
18 is not evidence in this case and cannot be considered by
19 you as evidence of guilt in this case, nor does it create
20 any presumption or inference of guilt.

21 These documents, as I told you at the outset of
22 this case, are simply the formal written instruments which
23 contain the charges made against the Defendant. These
24 are the formal documents by which this case is brought
25 into this court.

1 The indictments in this case allege several
2 different offenses against the Defendant. The charges
3 are: In Indictment 2014-GS-02-74, armed robbery;
4 Indictment 2014-GS-02-79, kidnapping of Jameshia Alston;
5 and Indictment 2014-GS-02-80, kidnapping of Scott Hall.

6 Each indictment charges a separate and distinct
7 offense. You must decide each indictment separately on
8 the evidence and the law applicable to it, uninfluenced by
9 your decision as to any other indictment.

10 The Defendant may be convicted or acquitted on any
11 or all of the offenses charged. You'll be asked to write
12 a separate verdict of guilty or not-guilty for each
13 indictment.

14 Now, Madam Forelady and ladies and gentlemen of the
15 jury, I remind you that during this trial you and I have
16 had certain duties to perform. As the Trial Judge, it
17 has been my responsibility to preside over the trial of
18 this case and I also have the duty to rule or have had the
19 duty to rule on the admissibility of the evidence offered
20 during this trial.

21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered stricken
23 from the record in this case during this trial, then you
24 must disregard that testimony. You are to consider only
25 the testimony which has been presented from the witness

1 stand, any exhibits which have been made a part of the
2 record in this case, and any stipulations of counsel.

3 I have the additional duty to charge you the law
4 applicable to this case. As the Presiding Judge, I'm the
5 sole judge of the law of this case. And it's your duty
6 as jurors to accept and apply the law as I now state it to
7 you.

8 As I told you at the outset, if you already have an
9 idea as to what the law is or what the law ought to be and
10 it does not agree with what I now tell you the law is, you
11 must abandon that idea because you are sworn to accept the
12 law and apply the law exactly as I state it to you.

13 In every case tried in this court before a jury,
14 the jury becomes the sole and exclusive judge of the facts
15 in the case. A Trial Judge cannot intimate, state,
16 comment on, or make any statement to a trial jury about
17 the facts in the case.

18 Since you, the jury, are the sole judge of the
19 facts in this case, you are not to infer from what I have
20 said during the progress of this trial, in ruling upon
21 admissibility of evidence or otherwise, or anything that I
22 say now during the course of this instruction to you that
23 I have any opinion about the facts in this case.

24 I do not have an opinion. The law does not allow
25 me to have an opinion about the facts in this case. This

1 is a matter solely for you, the jury, to determine.

2 As jurors it is your duty to determine the effect,
3 value, weight, and truth of the evidence presented during
4 this trial.

5 The Defendant has pled not guilty to the three
6 indictments. And that plea of not guilty puts the burden
7 on the State to prove the Defendant guilty. A person
8 charged with committing a criminal offense in South
9 Carolina is never required to prove himself or herself
10 innocent.

11 I charge you that it is an important rule of the
12 law that a Defendant in a criminal trial, no matter what
13 the seriousness of the charge may be, will always be
14 presumed to be innocent of the crime for which the
15 indictment was issued unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt.

18 This presumption of innocence does not end when you
19 begin your deliberations but it accompanies the Defendant
20 throughout the trial unless you reach a verdict of guilt
21 based on evidence satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed upon the shoulders of the Defendant
25 which remains with the Defendant unless it has been

1 stripped from the Defendant by evidence satisfying you of
2 the Defendant's guilt beyond a reasonable doubt.

3 Now, Madam Forelady and ladies and gentlemen of
4 this jury, the presumption of innocence is not mere legal
5 theory. It is not just a legal phrase. It is a
6 substantial right to which every defendant is entitled
7 unless you, the jury, are satisfied from the evidence of
8 the Defendant's guilt beyond a reasonable doubt.

9 Once again, the State has the burden of proving the
10 Defendant guilty beyond a reasonable doubt as to each
11 indictment.

12 Some of you may have served as jurors in civil
13 cases where you were told that it is only necessary to
14 prove that a fact is more likely true than not true such
15 as by the greater weight or preponderance of the evidence.
16 In criminal cases the State's proof must be more powerful
17 than that. It must be beyond a reasonable doubt. Proof
18 beyond a reasonable doubt is proof that leaves you firmly
19 convinced of the Defendant's guilt.

20 There are very few things in this world that we
21 know with absolute certainty. And in criminal cases the
22 law does not require proof that overcomes every possible
23 doubt. If, based on your consideration of the evidence,
24 you are firmly convinced that the Defendant is guilty of
25 the crime charged, you must find the Defendant guilty.

1 If, on the other hand, you think that there is a
2 real possibility that the Defendant is not guilty, you
3 must give the Defendant the benefit of the doubt and find
4 him not guilty.

5 Necessarily, you must determine the credibility of
6 the witnesses who have testified in this case.
7 Credibility simply means believability.

8 It becomes your duty as jurors to analyze -- it
9 becomes your duty as jurors to analyze and to evaluate the
10 evidence and determine which evidence convinces you of its
11 truth. In determining the believability of witnesses who
12 have testified in this case you may believe one witness
13 over several witnesses, or several witnesses over one
14 witness. You may believe a part of the testimony of a
15 witness and reject the remaining part of the testimony of
16 that same witness. You may believe the testimony of a
17 witness in its entirety or reject the testimony of a
18 witness in its entirety.

19 You may consider whether any witness has exhibited
20 to you any interest, bias, prejudice, or other motive in
21 this case. You may also consider the appearance and
22 manner of a witness while on the witness stand.

23 An issue in this case is the identification of the
24 Defendant as the person who committed the crimes charged.
25 The State has the burden of proving identity beyond a

1 reasonable doubt. You must be satisfied beyond a
2 reasonable doubt of the accuracy of the identification of
3 the Defendant before you may convict the Defendant.

4 Identification testimony is an expression of belief
5 or impression by a witness. You must determine the
6 accuracy of the identification of the Defendant. You
7 must consider the believability of each identification
8 witness in the same way as any other witness.

9 You may consider whether the witness had an
10 adequate opportunity to observe the offender at the time
11 of the offense. This will be affected by things like how
12 long or short of time was available, how far or close the
13 witness was, the lighting conditions, whether the witness
14 had a chance to see or know the person in the past.

15 Once again, I instruct you, the burden of proof on
16 the State extends to every element of the crime charged.
17 And this specifically includes the burden of proving
18 beyond a reasonable doubt the identity of the Defendant as
19 the person who committed the crimes.

20 If after examining the testimony you have a
21 reasonable doubt as to the accuracy of the identification,
22 you must find the Defendant not guilty.

23 Now, Madam Forelady and ladies and gentlemen of the
24 jury, I instruct you and emphasize that the fact that the
25 Defendant did not testify is not a factor to be considered

1 by you in any way in your deliberation and in your
2 consideration on the question of the guilt or the
3 innocence of the Defendant. It must not be considered by
4 you in any manner whatsoever.

5 A defendant has the constitutional right to remain
6 silent. And the assertion of this right must not be
7 considered by you in your deliberations. I repeat, under
8 your oath you are to draw no conclusion whatsoever from
9 the fact that the Defendant in this case did not testify.

10 The fact that this Defendant did not testify should
11 not even be discussed in the jury room. The burden of
12 proof, as I have stated to you, is on the State. The
13 Defendant is not required to prove his innocence. The
14 burden of proof remains on the State to prove guilt beyond
15 a reasonable doubt.

16 Now, Madam Forelady and ladies and gentlemen of the
17 jury, as already stated, the Defendant is charged with
18 several crimes. One is armed robbery. That is found in
19 Section 16-11-330, Code of Laws of South Carolina.

20 In order to prove this offense, the State must
21 first prove beyond a reasonable doubt that the Defendant
22 took personal property or money from the person or
23 presence of another person. Property is in the presence
24 of a person if it is within the person's reach,
25 inspection, observation, or control so that the person

1 could, if not overcome with violence or prevented by fear,
2 keep possession of the property.

3 The State must also prove beyond a reasonable doubt
4 that the Defendant carried the property away intending to
5 permanently deprive the owner of the property and to keep
6 the property for the Defendant's own use. The slightest
7 removal of the property or the complete possession of the
8 property, even for an instant, by the Defendant is
9 sufficient to show a taking and carrying away of the
10 property. The taking and carrying away of the property
11 must have been done with violence or by putting the owner
12 of the property in fear of violence.

13 Finally, the State must prove beyond a reasonable
14 doubt that the Defendant was armed with a deadly weapon
15 during the robbery. A deadly weapon is any article,
16 instrument, or substance which is likely to cause death or
17 great bodily harm. Whether an instrument has been used
18 as a deadly weapon depends on the facts and circumstances
19 of each case.

20 And the law provides examples of instruments which
21 may be considered deadly weapons. And I'm going to give
22 you all of those various examples that the law gives. A
23 pistol, shotgun, rifle, a dirk, a dagger, a knife, a
24 slingshot, metal knuckles, a razor, gasoline, fire bomb,
25 or Molotov cocktail, and lighter fluid.

1 A gun may be a deadly weapon even if it is not
2 operating.

3 I would further charge you concerning the offense
4 of armed robbery, a person who commits robbery while armed
5 with a deadly weapon or while alleging either by actions
6 or words he was armed while using a representation of a
7 deadly weapon or any object which a person present during
8 the commission of the robbery reasonably believed to be a
9 deadly weapon.

10 Madam Forelady, ladies and gentlemen of the jury,
11 the other offenses that the Defendant is charged with is
12 two counts of kidnapping. That's found in Section
13 16-3-910, Code of Laws of South Carolina. The Defendant
14 is charged with kidnapping. The State must prove beyond a
15 reasonable doubt that the Defendant knowingly and
16 unlawfully seized, confined, inveigled, decoyed,
17 kidnapped, abducted, or carried away another person
18 without authority of law.

19 To do a thing unlawfully is to do it willfully
20 against the law.

21 Knowingly means with knowledge, consciously, not
22 accidentally.

23 Seize means to take hold of suddenly or forcibly.

24 Confine means to limit, restrict, or enclose within
25 bounds, imprison, or shut or keep in.

1 Inveigle means to lure, entice, or lead astray by
2 false representations, promises, or other deceitful
3 means.

4 Decoy means to lure by or as if by decoy. A decoy
5 is something to entice a person into a trap.

6 Kidnap is to remove a person against his will by
7 unlawful force or by fraud.

8 Abduct means to carry off secretly or by force for
9 an illegal purpose.

10 Carry away means to remove.

11 The State does not have to prove that the Defendant,
12 did all of these things. Instead, if you find beyond a
13 reasonable doubt that the Defendant did any of these
14 things, you may find the Defendant guilty of kidnapping.

15 Something done without authority of law is
16 something which the law does not sanction, permit, allow,
17 condone, or provide justification for.

18 The kidnapping does not have to be for any personal
19 or monetary gain, for any illegal purpose, but may be for
20 any reason whatsoever.

21 Now, Madam Forelady, ladies and gentlemen of the
22 jury, if a crime is committed by two or more people who
23 are acting together in committing a crime, the act is
24 one -- the act of one is the act of all. A person who
25 joins with another to commit an unlawful act is criminally

1 responsible for everything done by the other person which
2 happens as a probable or natural consequence of the acts
3 done in carrying out the common plan and purpose.

4 Just to give you an example. Two people can be
5 guilty of killing another person when only one of the two
6 had a gun, there was only one bullet, and only one of the
7 two fired a shot that caused the death. If two or more
8 people are together, acting together, assisting each other
9 in committing the offense, the act of one is the act of
10 all, or as it sometimes is said, the hand of one is the
11 hand of all.

12 Prior knowledge that a crime is going to be
13 committed without more is not sufficient to make a person
14 guilty of that crime. Mere knowledge that another person
15 is going to commit a crime, even if the Defendant is
16 present when the crime is committed, is not sufficient to
17 convict the Defendant as a principal.

18 Guilt as a principal is shown by actual or
19 constructive presence at the scene as a result of a prior
20 arrangement.

21 Therefore, finding of a prior arranged plan or
22 common scheme is necessary for a finding of guilt as a
23 principal. The State must prove beyond a reasonable doubt
24 with competent evidence the theory of the hand of one is
25 the hand of all.

1 A principal in a crime is one who either actually
2 commits the crime or who is present, aiding, abetting, or
3 assisting in committing the crime.

4 When a person does an act in the presence of and
5 with the assistance of another, the act is done by both.
6 Where two or more, acting with a common plan or intent are
7 present at the commission of a crime, it does not matter
8 who actually commits the crime, all are guilty. The hand
9 of one is the hand of all.

10 Present at the commission of a crime means to be
11 sufficiently near to aid and abet and assist in the
12 commission of the crime. However, mere presence at the
13 scene of a crime is not sufficient to convict one as a
14 principal on the theory of aiding and abetting.

15 Intent is also a necessary element for there must
16 have been a common design or intent to commit the crime,
17 and the crime must have been committed pursuant thereto
18 with the person aiding and abetting by some overt act.

19 Intent means intending the result which actually
20 occurs, not accidentally or involuntarily. Intent may be
21 shown by acts and conduct of the Defendant and other
22 circumstances from which you may naturally and reasonably
23 infer intent.

24 The State must prove these elements beyond a
25 reasonable doubt.

1 Now the Defendant has raised a defense of alibi.
2 In order to establish an alibi, it must be shown that the
3 Defendant was at another specified place at the time the
4 crime was committed and that it was therefore impossible
5 for the Defendant to have been at the scene of the crime.

6 Mere denial of presence at the scene of a crime
7 does not constitute an alibi. There is no burden on the
8 Defendant to prove an alibi. The burden is on the State
9 to prove beyond a reasonable doubt that the Defendant was
10 actually present at the scene of the crime, actually
11 participated in it, and was not somewhere else. In other
12 words, the State has the burden of disproving the
13 Defendant's alibi defense.

14 Now in the course of giving you this instruction I
15 have realized that there's one other particular part that
16 I need to instruct you. So everybody be at ease for just
17 a moment.

18 Lawyers want to approach?

19 (Off-the-record discussion.)

20 THE COURT: Madam Forelady, ladies and gentlemen of
21 the jury, there are two types of evidence which are
22 generally presented during a trial; that being direct
23 evidence and the other evidence is circumstantial
24 evidence.

25 Direct evidence directly proves the existence of a

1 fact and does not require deduction. Circumstantial
2 evidence, however, is proof of a chain of facts and
3 circumstances indicating the existence of a fact.

4 Crimes may be proven by circumstantial evidence.
5 The law makes no distinction between the weight or value
6 to be given to either direct or circumstantial evidence.
7 However, to the extent the State relies on circumstantial
8 evidence, all of the circumstances must be consistent with
9 the other and, when taken together, point conclusively to
10 the guilt of the accused beyond a reasonable doubt.

11 If these circumstances merely portray the
12 Defendant's behavior as suspicious, the proof has failed.

13 The State has the burden of proving the Defendant
14 guilty beyond a reasonable doubt. This burden rests with
15 the State regardless of whether the State relies on direct
16 evidence, circumstantial evidence, or a combination of the
17 two.

18 Now, Madam Forelady and ladies and gentlemen of the
19 jury, your verdict must be unanimous as to each
20 indictment. And I'm going to step down now and show you
21 what we call a verdict form, and instruct you on how it
22 needs to be completed.

23 The top part is just the indication of the case,
24 the State of South Carolina versus the Defendant. These
25 are the indictment numbers. And there are three

1 sections, two possible verdicts for each section. All
2 right.

3 As to the first Indictment 74, concerning armed
4 robbery, we, the jury, find the Defendant guilty, or not
5 guilty.

6 Now the order that "guilty" or "not guilty" have
7 been placed has no significance whatsoever. One has to
8 go before the other, but it has no significance to it.

9 So you would mark as to the armed robbery charge
10 either guilty or not guilty depending upon what your
11 unanimous verdict is.

12 And then you'll go to the next indictment which is
13 the kidnapping charge concerning Jameshia Alston. The
14 same thing, you will mark guilty or not guilty, depending
15 on what your unanimous verdict is.

16 And, lastly, the kidnapping indictment concerning
17 Scott Hall. Again you will mark guilty or not guilty
18 depending upon what the unanimous verdict is.

19 And then, Madam Forelady, you will sign where it
20 has "Foreperson". You'll sign that and when you have
21 finished your deliberations and reached a unanimous
22 verdict on each of the three indictments, then you'll
23 inform the bailiffs who will be positioned outside the
24 jury room that you have reached a verdict. Okay?

25 Now, what I'm going to ask you to do is to retire

1 to the jury room. Do not yet begin your deliberations.
2 When the bailiff brings you the verdict form, the three
3 indictments, and all of the evidence, the physical
4 evidence, that is, the exhibits that have been put into
5 evidence, once that is done two things will happen.

6 One, the two alternates will then leave the jury
7 room. You'll be free to go at that time or if you would
8 like to stay with us you're free to stay with us. That's
9 purely your call.

10 And the second thing that will happen is that then
11 you'll be allowed to start your deliberations. Okay?

12 So, but I'm going to ask that you go back to your
13 jury room. Don't start your deliberations yet until the
14 documents are brought to you. You may retire to your jury
15 room.

16 (Jury exits courtroom at 3:18 P.M.)

17 THE COURT: Okay. Any exceptions or challenges to
18 the Court's final charge from the State?

19 MR. SLOCUM: Nothing from the State, Judge.

20 THE COURT: From the defense?

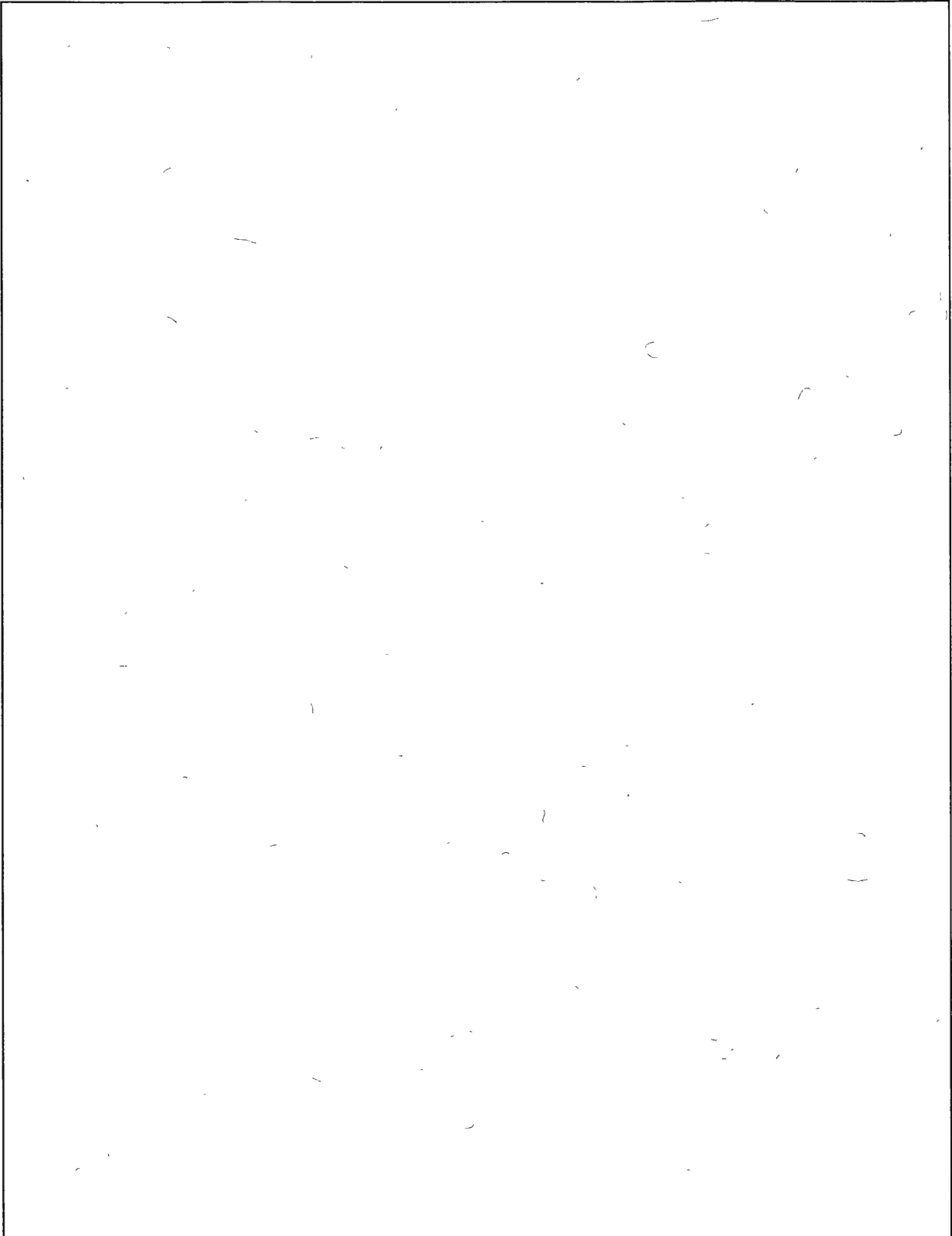
21 MR. SMITH: No, Your Honor.

22 THE COURT: Thank you very much.

23 (Off-the-record discussion.)

24 (Deliberations commence at 3:20 P.M.)

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



APP'X 256

1 (At 4:42 P.M.):

2 THE COURT: All right. Gentlemen, I understand
3 that the jury has, just a few moments ago, reached a
4 verdict.

5 Anything we need to discuss or take up on the
6 record before we bring the jury out and receive the
7 verdict?

8 MR. SLOCUM: Nothing further from the State, Your
9 Honor.

10 MR. SMITH: Nothing, Your Honor.

11 THE COURT: All right. Not that I anticipate that
12 there's anyone here who may feel compelled to make some
13 sort of outward sign of emotion or reaction to the verdict
14 of whatever the verdict may be, if you feel like you're
15 going to be able unable to hold that in, your emotions or
16 your expressions, then I'm going to ask that you leave the
17 courtroom at this time.

18 If you do make some indication once the verdict is
19 read, then the Court will have to deal with that
20 particular matter.

21 Okay. Bring the jury out, please.

22 THE BAILIFF: Okay.

23 (Jury enters courtroom 4:43 P.M.)

24 THE COURT: So used to seeing 14 people, I had to
25 count them to make sure.

1 Let the record reflect that the jury's in.

2 Madam Forelady, I have been informed that you have
3 reached a verdict in this case.

4 FOREPERSON of the JURY: Yes, sir.

5 THE COURT: And was the verdict reached
6 unanimously?

7 FOREPERSON OF THE JURY: Yes, sir.

8 THE COURT: As to each indictment?

9 FOREPERSON OF THE JURY: Yes, sir.

10 THE COURT: The verdict form, would you hand that
11 to the bailiff please, sir -- please, ma'am. Sorry.

12 FOREPERSON OF THE JURY: (Complying.)

13 THE COURT: Madam Clerk, if you will publish the
14 verdict, please?

15 And if the Defendant would please stand.

16 THE CLERK: Your Honor, we have the State of South
17 Carolina versus John Lyndon Upson. As to Indictment
18 2014-GS-02-00074, the charge of armed robbery, we, the
19 jury, find the Defendant guilty.

20 As to Indictment 2014-GS-02-00079, the charge of
21 kidnapping of Jameshia Alston, we, the jury, find the
22 Defendant guilty.

23 As to Indictment 2014-GS-02-00080, the charge of
24 kidnapping of Scott Hall, we, the jury, find the Defendant
25 guilty.

1 Signed April 16th, 2014, by Forelady Suzanne Dyke.

2 Ladies and gentlemen of the petit jury, is this
3 your verdict and do you still agree?

4 THE JURY (COLLECTIVELY): Yes.

5 THE COURT: Okay. Does the defense want
6 individual polling of the members of the trial jury?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. You can have a seat. Thank
9 you.

10 Madam Forelady and ladies and gentlemen of the
11 jury, let me thank you for your jury service. As I
12 discussed with you on Monday it's -- serving on a jury is
13 a very high, very important civic responsibility that we
14 all have.

15 And our system of justice that we have in this
16 state and in this country certainly could not operate in
17 any way without a jury such as yourselves and we
18 appreciate your jury service very much.

19 Now, so I don't forget, Madam Forelady, you'll need
20 to sign the indictments. And just when I release you,
21 you'll just need to get with the clerk to sign that
22 paperwork.

23 You are free, if you so choose, to discuss this
24 matter with anyone that you would like to talk with.
25 Sometimes the lawyers like to contact a person on a jury

1 or several persons on a jury just to see what they thought
2 of their representation of their respective client.

3 That's certainly permissible. And you are free to talk
4 with anybody if you want to.

5 Now, just take that one step further. If
6 somebody -- and I'm not suggesting this is going to
7 happen, but if someone were to contact you and wanted to
8 discuss this case with you and you didn't want to, and
9 they continued to insist, then you have every right to
10 contact the Court and certainly I will deal with that.

11 And, again, I'm not suggesting that's going to
12 happen. But we like to protect our jurors. And so,
13 again, if someone wants to talk to you and discuss this
14 case and get your individual thoughts, it's usually not a
15 good idea to disclose what has taken place back in the
16 jury room, but to get your individual thoughts about the
17 case, the lawyer's performance, their representation, that
18 certainly is permissible and entirely left up to you.

19 Finally, ladies and gentlemen, we have no further
20 need for any further jurors for this week. We will be
21 concluding matters. We're going to be working this
22 afternoon and into tomorrow pretty hard, but we're not
23 going to have any other trials.

24 And of course the courthouse is closed on Friday
25 because of Good Friday. So, you are excused for the

1 remainder of the week. I wish you a good evening and I
2 wish you just a great and happy and blessed Easter. You
3 are free to go at this time.

4 And, again, Madam Forelady, if you would just get
5 with the clerk so you can sign the backs of the
6 indictments.

7 Good evening.

8 (Jury exits courtroom at 4:49 P.M.)

9 THE COURT: In order to give everyone kind of time
10 to collect their thoughts before we proceed into the
11 sentencing phase, I'll give you 10 or 15 minutes if you
12 need to do that, if you need some private consultation
13 with -- Mr. Smith, with your client, law enforcement can
14 assist in that. And we'll deal with some other things we
15 need to do and we can handle the sentencing. Okay?

16 Any post-trial motions that need to be noted on the
17 record before we conclude this case?

18 MR. SMITH: Yes, sir, Your Honor.

19 I would like to renew my previous motions for a
20 directed verdict based on the previous grounds that I made
21 as well as make another motion for a mistrial -- or to
22 make another motion for a new trial based on the previous
23 grounds that I have, and objections that I've made.

24 THE COURT: All right. Thank you very much,
25 Mr. Smith.

1 Your three motions are respectfully denied but so
2 noted on the record.

3 MR. SMITH: Thank you.

4 (Thereafter, other matters were heard by the Court.
5 At 5:06 P.M., the trial resumed:)

6 THE COURT: Okay. We're in the sentencing phase of
7 the case of the State of South Carolina versus John Lyndon
8 Upson. And what I typically do in this situation is allow
9 the State to make its presentation as to sentencing, put
10 up anybody that wants to speak, and then turn it over to
11 the defense and allow your presentation to be offered into
12 the record.

13 So, Solicitor, I'll be glad to hear from you, sir.

14 MR. SLOCUM: Thank you, Judge.

15 First we'd like to go over the Defendant's prior
16 conviction record.

17 THE COURT: Yes, please.

18 MR. SLOCUM: From 1993, two counts of forgery and a
19 possession of crack cocaine.

20 From 1994, five counts of forgery.

21 From 1995, a strong-arm robbery.

22 From 2000, a petty larceny.

23 From 2001, two counts of federal counterfeiting.

24 2004, two counts of forgery.

25 2005, a grand larceny.

1 In 2012, a petty larceny and a fraudulent check.

2 Your Honor, Ms. Jameshia Alston, who was present in
3 the courtroom throughout the trial and testified, does not
4 wish to address the Court. Mr. Hall who was the victim
5 was not able to attend this afternoon. Detective Royster
6 I do not believe wants to address the Court at this time.

7 The last two things the State would like to bring
8 to the Court's attention is that even after the verdict
9 was rendered, we approached the Defendant's attorney and,
10 seeing if he was willing to cooperate as to the name of
11 the gunman and provide a statement. However, it is our
12 understanding that he has declined to do so.

13 Secondly, that we would -- I'm requesting a finding
14 on the record as to the kidnapping not being sexual in
15 nature and not requiring the mandatory sex offender
16 registry.

17 THE COURT: Right. Right. The Court is unaware
18 of any evidence that was put into the record at the trial
19 of the case that would necessitate such a placement with
20 the sexual predator registry.

21 So the Court will specifically note on the
22 sentencing sheet that that should not be done

23 MR. SLOCUM: Thank you, Judge. That's all from the
24 State.

25 THE COURT: Thank you very much, Mr. Solicitor.

1 Mr. Smith, be glad to hear from you, be glad to
2 hear from the Defendant, and be glad to hear from anybody
3 that wants to speak on his behalf. It's up to you.

4 MR. SMITH: Yes, sir. Thank you. May it please
5 the Court.

6 Judge, Mr. Upson is 42 years old. He grew up here
7 in Aiken. He graduated from South Aiken High School
8 here. He's been a barber, Your Honor. He attended
9 Southern Barber College as well as Aiken Tech. And that's
10 primarily the work that he's done. Your Honor, he's
11 single. He doesn't have any kids, but he's got his family
12 here with him.

13 Your Honor, John Upson maintains his innocence. He
14 understands that he's been found guilty by a jury but he
15 maintains that he was not involved with this incident.

16 His brother, Charlie, would like to address the
17 Court at this time.

18 THE COURT: Okay. You'll need to be sworn and then
19 I'll be glad to hear from you.

20 (Oath administered.)

21 THE COURT: Would you please state your name for
22 the record?

23 MR. CHARLIE UPSON: Okay. My name is Charlie
24 Upson.

25 THE COURT: Okay. Be glad to hear from you,

1 Mr. Upson.

2 MR. CHARLIE UPSON: Thank you, Judge. Just a
3 moment.

4 THE COURT: Take your time, sir.

5 MR. CHARLIE UPSON: This is a bit overwhelming for
6 my family and me, given the gravity of the situation.

7 We can only ask and implore the Court for mercy.
8 My brother is 42 years old. I am five years his senior.
9 I ask for mercy not primarily for him but for my parents
10 who are elderly and, as you've heard, have endured the
11 lifelong situation such as this, not as serious but,
12 still.

13 Again, given the gravity of the situation and what
14 he's faced with, and the age of my parents, my father who
15 will be 84 this year, Your Honor, and, and I would hate
16 for him to pass while my brother's incarcerated.

17 So, again, I just implore the Court to keep that in
18 mind. And I realize that you have to take everything into
19 account. You have to take into account the nature of the
20 crime, and the victims. I'm not unaware of that. I'm
21 not insensitive to that, but just would ask that you take
22 that into account, please.

23 THE COURT: Thank you very much, Mr. Upson.

24 MR. CHARLIE UPSON: Thank you.

25 THE COURT: Okay. Mr. Smith, was there another

1 gentleman that wanted to speak?

2 MR. SMITH: It appears that his father would like
3 to speak also.

4 THE DEFENDANT: No, I'd like to say something, Your
5 Honor.

6 THE COURT: Just consult with your attorney.

7 MR. SMITH: Yes, sir. It's --

8 THE COURT: I'll be glad to hear from you. Okay?
9 Yes, sir.

10 THE DEFENDANT: Your Honor, I said I didn't do
11 this. Any time they came to me with a plea for a lesser
12 sentence, I turned it down.

13 My father's 84 years old. My mother's 73.

14 Prior to me coming back home I was working in North
15 Dakota in the oil fields. I came back because of my
16 father's age to help him with his property and my mother.

17 To the victims of the crime, I'm sorry that it
18 happened to them but I had no part in this.

19 Again, the State came to me just now again asking
20 if there was anything that I could do to lessen my
21 sentence to give information I would have, but I didn't
22 because I know no information about this robbery. I did
23 not participate in this robbery.

24 To my daddy, my brother, friends. To my father,
25 don't never think anything negative. Best childhood I

1 ever had. Unfortunately what most know, most black kids
2 never get. I had done some things more or less paper
3 hanging and I was wrong for that.

4 As far as the strong-arm robbery going to the cash
5 register and dealing with the counterfeit money, but I
6 ain't never robbed nobody. I never put a gun on nobody.
7 I'm not a violent individual.

8 And, again, I apologize to the victims for what
9 they went through but to my father and my family, I ask
10 they forgive for whatever's going on now with this here
11 because they don't -- my father provided the best for me.
12 He provided the best for me. I didn't want for nothing.

13 Robbing somebody is something that I did not do.
14 Saying I'm a six feet tall individual. I ain't six feet.

15 What is done is done. The evidence and then of
16 course the jury's made their decision, Your Honor.

17 I'm just asking that you have mercy on me. I may
18 never get to see my family. I may not be able to see ever
19 my father on the other side of the gate again, attend his
20 funeral or my mother's, for that matter. God forbid that
21 it comes to it. I would rather see my demise before
22 theirs.

23 But, again, I throw myself at the mercy of the
24 Court and thank you for listening to me, Your Honor.

25 THE COURT: Thank you, sir.

1 Mr. Smith, anything further from you?

2 MR. SMITH: Nothing, Your Honor.

3 THE COURT: Anything further from the State?

4 MR. SLOCUM: Not from the State, Judge.

5 THE COURT: Give me just a few moments. You can
6 stand down. Be with you shortly.

7 (Pause from 5:18 P.M., until 5:22 P.M.:)

8 THE COURT: All right. We're back on the record in
9 the sentencing phase of the State versus John Lyndon
10 Upson.

11 And, Mr. Upson, you know, regardless of however I
12 view the case from the factual standpoint or from a guilt
13 or sentence standpoint, I must and do accept the verdict
14 of the jury. And they considered the evidence and made a
15 determination that you were guilty of all three.

16 And it certainly goes without saying that these are
17 serious charges, extremely serious charges. They carry a
18 maximum sentence of 30 years in prison. Armed robbery
19 carries a mandatory minimum of 10 years. Not a whole lot
20 of offenses that carry that mandatory minimum. So they
21 are very serious.

22 And I've considered everything. I considered
23 everything that was said. I would commend all four
24 attorneys for an excellent presentation of their
25 respective cases.

1 And THESE SENTENCE WILL RUN CONCURRENT. THE
2 SENTENCE OF THE COURT IS YOU BE COMMITTED TO THE STATE
3 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS.
4 THAT'S ON EACH INDICTMENT. NO SEXUAL OFFENDER REGISTRY ON
5 THE TWO KIDNAPPING INDICTMENTS.

6 And good luck to you, sir.

7 THE DEFENDANT: Thank you, Your Honor.

8 BOTTOM LEFT: Thank you, Your Honor.

9 MR. SLOCUM: Thank you, Your Honor.

10 END OF CASE: 5:20 P.M.

11 ** **

12 CERTIFICATE OF REPORTER

13
14 STATE OF SOUTH CAROLINA)

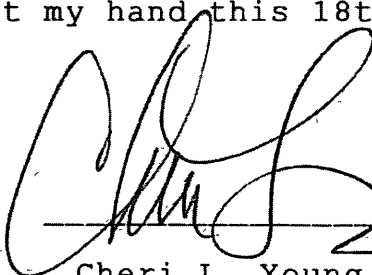
15
16 COUNTY OF AIKEN)

17
18 I, Cheri L. Young, Registered Professional Reporter
19 and Official Court Reporter for the State of South
20 Carolina, Second Circuit-At Large, do hereby certify that
21 the foregoing proceedings were written stenographically by
22 me using computer-aided translation; further, that the
23 foregoing is a true, accurate and complete record, to the
24 best of my skill and ability, of all the proceedings had
25 and evidence introduced in the hearing of the captioned

1 case, relative to appeal, in the Court of General Sessions
2 for Aiken County, on the 15th and 16th days of April,
3 2014.

4 I do further certify that I am neither of kin,
5 counsel, nor interest to any party hereto.

6 I have hereunder set my hand this 18th day of
7 September, 2014.

A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

Cheri L. Young, RPR
Official Court Reporter