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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

THOMAS ALLEN SMITH,

APPELLANT

APPELLATE CASE NO. 2018-001133

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
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	)
COUNTY OF GREENWOOD	) EIGHTH JUDICIAL CIRCUIT
	)
State of South Carolina,	) Case No(s).:2016GS2400795
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Thomas Allen Smith,	) Volume 1 of 4
	)
Defendant.	)
	)

June 11 - 14, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

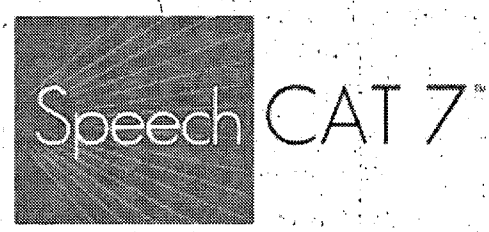
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P R O C E E D I N G S

(Proceedings begin on the 11th day of June, 2018 at approximately 1:12 p.m.)

THE COURT: All right. Ladies and Gentlemen, we -- the first case that is being called for trial that we will start sometime this afternoon is the State of South Carolina versus Thomas Allen Smith.

Mr. Smith, if you'd stand and just face the panel briefly. Very good. Thank you, sir. Have a seat.

Ladies and Gentlemen, Mr. Smith has been charged and indicted with one offense. I'm going to read to you the indictment, but let me first explain to you what an indictment is. An indictment is not any proof as to any guilt on Mr. Smith's part. Indictment serves as notice to Mr. Smith as to the charge that he is being tried on. It is the document that gets us into court where we are today. The indictment serves no other purpose. And it is not proof of the allegations.

They contain -- the indictment contains allegations, and it's up to the State of South Carolina -- and I will explain more about this

later. It's up to the State of South Carolina to prove the allegations beyond a reasonable doubt standard.

Let me publish the indictment to you. It says, as follows: Thomas Allen Smith, on or about February 28th, 2016 in Greenwood County, willfully and unlawfully while armed with a deadly weapon or while alleging, either by actions or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously took away from the person or presence of a Gail Sinclair, by means of force or intimidation, goods or monies described, as follows, United States currency, with the intent to deprive the owner, South State Bank, permanently of such property in violation of Section 16-11-330, Code of Laws for South Carolina.

Now, the same rules apply as they did earlier. If there is a question -- and there's going to be some questions that I'm going to tell you, do not respond in front of everybody, but we'll do so privately. But the same rules

apply. If there's a question that you are a little reluctant to respond to in front of everybody, I will give you an opportunity to speak with me privately, at this time, in the presence of the court reporter and the attorneys involved.

Any member of the jury panel related by blood or marriage to either Thomas Allen Smith or Gail Sinclair? If so, please stand.

(No audible response.)

Any member of the jury panel have or had, in the past, a close personal or social relationship with either Thomas Allen Smith or Gail Sinclair? If so, please stand.

(No audible response.)

I'm going to publish to you a list of potential witnesses in the case. This doesn't mean that they will absolutely testify, but they may. The list is, as follows: Mike Dixon with the Greenwood Police Department, Blake Moore with Greenwood Police Department, Lasheka Murray, Gail Sinclair, Mitch McCallister, Kenya Griffin, Quitta -- that's Q-u-i-t-t-a -- Deal, Warren Hill, Andrew Holmes, Josh Hood, Johnny McCalla, James Adams, Jeffrey Smith, Gary

Smith, Robert Smith, Ernest Smith, Wesley McClinton, Whit Brooks, Jamie Lovett, Chad Cox, Clint Burden, Jeffrey Johnson, William Kay, Matthew Blackwell, Wells Ballentine, Mark Perry, Melody Samples, Jennifer Young, Greg Allison, Michael Belcher.

Any member of the jury panel related by blood or marriage, either now or formerly, to any of those individuals that I just named? Or any member of the jury panel have or had in the past a close personal or social relationship with any of the people that I have just named? If so, please stand.

(No audible response.)

Any member of the jury panel know or know of any of the potential witnesses in this case that I have just named, including knowing or knowing of any of the potential witnesses through your involvement in the community? If that applies to you, please stand.

Okay. We will start on the front row and try to work our way back. And again, give me your name and your juror number, if you know it.

POTENTIAL JUROR: Sharon Smith,

Number 138. At one time, I had Wells Ballentine at school.

THE COURT: Okay.

POTENTIAL JUROR: But that's been years ago.

THE COURT: You could still be fair and impartial to both sides in this case?

POTENTIAL JUROR: I think so.

THE COURT: Okay. All right. Have a seat, ma'am.

POTENTIAL JUROR: Holly Moss, 110. Lasheka Murray is a patient of mine.

THE COURT: Okay. Currently?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Can you still be fair and impartial to both the State and the defendant in this case?

POTENTIAL JUROR: Yes.

THE COURT: All right. Have a seat.

POTENTIAL JUROR: Zach Calhoun. I think it's number 16. I know Mr. Wells Ballentine, as well, as well as a couple of officers that you named there ---

THE COURT: Okay.

POTENTIAL JUROR: --- Mr. McClinton and

Mr. Hood.

THE COURT: All right. Can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: I believe so.

THE COURT: Okay. Thank you, sir.

POTENTIAL JUROR: Number 154, Randall Todd. I know Wesley and Mike.

THE COURT: Mike?

POTENTIAL JUROR: Dixon.

THE COURT: All right. Can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you.

POTENTIAL JUROR: Henry Smithdeal, Number 137. I know Wells through church.

THE COURT: Okay. All right. You can still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay.

POTENTIAL JUROR: Ryan Boggs, number 8, my family is close friends with a couple of the officers.

THE COURT: Your family is close -- are you close friends or is your family close friends?

POTENTIAL JUROR: Both. Both. Sorry.

THE COURT: Sir?

POTENTIAL JUROR: Both of us are.

THE COURT: Okay. To the officers involved?

POTENTIAL JUROR: A couple of them, yes, sir.

THE COURT: Okay. All right. Let me see the lawyers for just a moment.

(Bench conference is held off the record.)

THE COURT: All right, sir. I'm going to excuse you from the trial of this case. Remain with us. Okay.

POTENTIAL JUROR: Scott White, 164. I believe you named a Mr. Blackwell on that list. If it's the same Mr. Blackwell I'm thinking about, I went to high school and we grew up together.

THE COURT: Matthew Blackwell?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. The fact that you went to school with Mr. Blackwell, can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: Yes.

THE COURT: All right. Thank you. Yes, ma'am.

POTENTIAL JUROR: Kathy Worthington, 173. Michael Belcher, is that one of the police officers?

THE COURT: Is that?

MR. BROWN: Yes, sir.

THE COURT: Yes.

POTENTIAL JUROR: He's the resource officer at the school where I work.

THE COURT: All right. The fact that he is a school resource officer at the school where you work, can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

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

POTENTIAL JUROR: Cindy Britt, juror number 13. Officer Belcher is a resource officer at the school that I monitor.

THE COURT: Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

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

POTENTIAL JUROR: Leticia Manuel. I believe it's 96.

THE COURT: Okay.

POTENTIAL JUROR: I also know Officer Belcher from the school that I work at.

THE COURT: Okay. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you.

For those who just stood, the fact that you have some knowledge or know some of the potential witnesses in this case, has that caused you, in any way, to form any opinion about anything related to this case? If so, please stand.

(No audible response.)

All right. I'm going to allow the attorneys now to introduce themselves. I know all three attorneys extremely well. They have tried many cases in this court. They are all excellent attorneys. I will allow the State to go first.

MR. BROWN: Thank you, Your Honor.

Good afternoon, my name is Yates Brown. I'm Deputy Solicitor for Greenwood and Abbeville County. Trying this case with me is Assistant Solicitor Micah Black. Blake Moore, an officer in this case, with the Greenwood Police

Department.

THE COURT: Mr. Henderson.

MR. HENDERSON: Yes, my name is Carson Henderson. I'm an attorney here in town. I represent Mr. Thomas Smith. And I'm here with my private investigator Christy Lumley.

THE COURT: Any member of the jury panel ever been represented by any of the attorneys involved in this case or anyone in their respective offices or law firms? If so, please stand.

(No audible response.)

Any member of the jury panel related by blood or marriage, either now, formerly, or have or had in the past a close personal or social relationship with any of the attorneys involved in this case or anyone in their respective offices or law firms? If so, please stand.

(No audible response.)

Any member of the jury panel already formed or expressed any opinion about any issue or matter involved in this case? If so, please stand.

(No audible response.)

Any member of the jury panel aware of any bias or prejudice towards either the State or the defendant in this case? If so, please stand.

(No audible response.)

Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victim's rights? These groups would include, but certainly are not limited to -- and I will give you the acronyms -- MADD, SADD or CAV? If that applies to you, please stand.

(No audible response.)

Is there any member of the jury panel who had any formal or informal legal training? This would include, but not limited to law school, college, business law, paralegal training, law enforcement training or any training of such in the course of your employment. If that applies to you, please stand.

(No audible response.)

Any member of the jury panel ever been a civilian or military law enforcement officer? Now, I know we already have one who indicated

that he worked in Laurens County some time back. So, you don't need to stand again. Any other member of the jury panel ever been a civilian or military law enforcement officer? If so, please stand.

(No audible response.)

Is any member of the jury panel related to or a close personal friend of anyone employed by any law enforcement agency? I know we already had some that said they knew some of the officers involved in this case. You don't need to stand again. But anybody else? Any member of the jury panel who is related to or a close personal friend to any law enforcement person? If so, please stand.

Yes, ma'am.

POTENTIAL JUROR: Cody Bishop. He's a neighbor.

THE COURT: And where does he work?

POTENTIAL JUROR: He's the captain of drug enforcement at the Sheriff's Department.

THE COURT: All right. The fact that he is a neighbor of yours, can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Thank you.

MR. HENDERSON: Your Honor, can we get her name and number?

THE COURT: I'm sorry. Your name and number, ma'am?

POTENTIAL JUROR: Oh, Adrian McDade, 101.

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

Any member of the jury panel who would automatically believe the testimony of a law enforcement officer over the sworn testimony of either the defendant or a witness for the defendant? If that applies to you, please stand.

(No audible response.)

Any member of the jury panel who has followed this case through the media or social media? If that applies to you, please stand.

(No audible response.)

Any member of the jury panel who has ever posted online comments in response to articles published on the *Greenwood Today* or in the *Greenwood Today*, *Index Journal* and/or other sites which allow readers to post comments on articles? If that applies to you, please stand.

(No audible response.)

Any member of the jury panel who, on a regular basis, reads the comments which appear in response to articles published on *Greenwood Today*, *Index Journal* and/or other sites which allow readers to post comments on articles? If that applies to you, please stand.

(No audible response.)

All right. The next four questions -- and I'm going to do it in groups of two. If you need to respond, don't do it in front of everybody, but form a line and you can speak with me privately. First two, any member of the jury panel or any member of your immediate family or close personal friend ever been arrested by and/or had other dealings with state, federal or local law enforcement agencies? That's the first question.

Second question, any member of the jury panel has ever been a witness in a criminal case? Those two questions, if you need to respond, then I need for you to do it in private. If you will, form a line. Anybody? Okay. We've got one.

(Bench conference is held on the record with Juror Number 56, Catherine Girvin.)

THE COURT: Your name and number.

POTENTIAL JUROR: My name is Catherine Girvin. My number is 56.

THE COURT: Okay. Yes, ma'am.

POTENTIAL JUROR: My son is in the system now. He has not been formally charged with domestic violence charge.

THE COURT: Okay. He's not been arrested yet?

POTENTIAL JUROR: Oh, yes, sir. Yes, sir.

THE COURT: But he hasn't gone to trial.

POTENTIAL JUROR: He hasn't gone to trial.

THE COURT: I gotcha. Okay. The fact that your son currently has a pending criminal charge, can you still be fair and impartial?

POTENTIAL JUROR: This just breaks my heart. I am so sorry.

THE COURT: Okay. All right. Okay. All right. No, I can understand. I'm going to excuse you. You're free to go.

POTENTIAL JUROR: Thank you.

(Juror Number 56 exits the bench.)

THE COURT: All right. This juror is excused.

THE CLERK: She's excused for the week,

Jimmy.

THE COURT: Ma'am, you're excused for the whole week. You're free to go.

(Bench conference is held on the record with Juror Number 137, Natasha Smith.)

THE COURT: Yes, ma'am. Your name?

POTENTIAL JUROR: Natasha Smith Jackson. You said, do I know anyone who's ever served time?

THE COURT: I think the question was, ever been arrested.

POTENTIAL JUROR: Yeah, so many.

THE COURT: Anybody on the panel, any immediate family member, close personal friend ever been arrested?

POTENTIAL JUROR: Yes, my brother ---

THE COURT: Okay.

POTENTIAL JUROR: --- my children's father, my neighbor ---

THE COURT: Okay.

POTENTIAL JUROR: There's so many. Also, I know the officer there.

THE COURT: Okay. All right. He's not involved in this case?

MR. BROWN: No, sir.

POTENTIAL JUROR: Okay.

THE COURT: All right. The fact that you've had some personal friends and family members who have been arrested, can you be fair and impartial to both sides?

POTENTIAL JUROR: I can.

THE COURT: Okay. Thank you, ma'am. You stay with us. Okay?

POTENTIAL JUROR: Uh-huh.

(Juror Number 137 exits the bench.)

(Bench conference is held on the record with Juror Number 64, Kristen Hallerud.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Kristen Hallerud, Number 162 [verbatim].

THE COURT: Yes, ma'am.

POTENTIAL JUROR: I have a family member that's been arrested and in jail.

THE COURT: Okay. Can you still be fair to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you.

MR. HENDERSON: Number 60 ---

POTENTIAL JUROR: Four.

MR. HENDERSON: --- four. Okay.

(Juror Number 64 exits the bench.)

(Bench conference is held on the record with Juror Number 175, Tia Zinck.)

THE COURT: Yes, ma'am.

POTENTIAL JUROR: Tia Zinck, 175. My husband was arrested and convicted in California.

THE COURT: How long ago was that?

POTENTIAL JUROR: It was in '98. He served four years.

THE COURT: Okay. Okay. For what offense? You remember what it was?

POTENTIAL JUROR: Assault with a deadly weapon.

THE COURT: Okay. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

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

POTENTIAL JUROR: Thank you.

(Juror Number 175 exits the bench.)

MR. HENDERSON: What was her number?

THE COURT: The last one? 175.

(Bench conference is held on the record with Juror Number 105, Erma Miller.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Erma Miller, 105.

THE COURT: Okay.

POTENTIAL JUROR: I have a friend that's incarcerated on the other side of Columbia.

THE COURT: All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Sure.

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

(Juror Number 105 exits the bench.)

(Bench conference is held on the record with Juror Number 164, Scott White.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Scott White, 164.

THE COURT: Okay. Yes, sir.

POTENTIAL JUROR: My brother was arrested six years ago.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. Thank you.

(Juror Number 164 exits the bench.)

(Bench conference is held on the record with

Juror Number 144, Clarence Stribble.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Clarence Stribble, 144.

THE COURT: Okay.

POTENTIAL JUROR: I have a cousin who was employed by the Newberry Sheriff's Department.

THE COURT: Okay.

POTENTIAL JUROR: I believe he is, officially, undercover here in Greenwood.

THE COURT: Okay. All right.

POTENTIAL JUROR: And I have gotten three cousins that have served time for selling methamphetamines and marijuana to undercover cops.

THE COURT: Okay. All right. The fact that you have some relatives who have been arrested and you have a relative who is law enforcement, can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Thank you, sir. Stay with us.

(Juror Number 144 exits the bench.)

(Bench conference is held on the record with

Juror Number 96, Leticia Manuel.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Leticia Manuel.

THE COURT: Uh-huh.

POTENTIAL JUROR: I think it's 96.

THE COURT: Okay.

POTENTIAL JUROR: And I have a family member in a different state. I don't know much of their case and I really don't have any close connection with them. I just found out.

THE COURT: All right. You can still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you. Stay with us.

POTENTIAL JUROR: Yes, sir.

(Juror Number 96 exits the bench.)

(Bench conference is held on the record with Juror Number 143, Colby Stone.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Colby Stone, 143. My father was an officer with the Ninety Six Police Department. He's now a state constable.

THE COURT: Okay. Can you still be fair

and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you, sir. Stay with us.

(Juror Number 143 exits the bench.)

(Bench conference is held on the record with Juror Number 13, Cynthia Britt.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Cindy Britt. My number is 13.

THE COURT: Okay.

POTENTIAL JUROR: My niece and nephew, by marriage, have been arrested for substance abuse.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: I sure can.

THE COURT: Thank you, ma'am.

(Juror Number 13 exits the bench.)

MR. HENDERSON: Did she say sex abuse or drug abuse?

THE COURT: Sex abuse.

MR. HENDERSON: Sex abuse, okay.

MR. BROWN: I thought she said substance abuse.

COURT REPORTER: She said substance abuse.

THE COURT: Substance. All right.

MR. HENDERSON: I couldn't hear what she said.

THE COURT: Oh, substance abuse. I thought she said sex abuse.

MR. BROWN: I have substance.

MR. HENDERSON: Okay. Okay.

THE COURT: I can get her back up, if you want to.

MR. HENDERSON: No, I'm good with this.

(Bench conferences are concluded.)

THE COURT: All right. Next two questions, Ladies and Gentlemen, the same rules apply. I don't want you to respond in front of everybody. We'll form a line. I realize we're well in the lunch break time, but we need to go ahead and finish this and get a jury picked. Then, I promise you, we will break, at that time. I appreciate your patience. Just hang in there with us, if you will.

Next two questions, don't respond. Any member of the jury panel, any of your immediate family members, close personal friends ever been the victim of a violent crime, including but not

limited to, armed robbery? The second question, any member of the jury panel, immediate family member or close personal friends ever been the victim of theft, larceny, shoplifting, breach of trust and/or any other type of property crime? So if anybody needs to respond to either or both of those questions, please stand.

(Bench conference is held on the record with Juror Number 112, Ellen Nix.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: 112, Ellen Nix.

THE COURT: Okay.

POTENTIAL JUROR: Someone did steal from us.

THE COURT: Somebody stole from you?

POTENTIAL JUROR: Yeah.

THE COURT: Okay. How long ago was that?

POTENTIAL JUROR: Two or three years ago.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: Yes.

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

(Juror Number 112 exits the bench.)

(Bench conference is held on the record with Juror Number 137, Natasha Smith.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Tasha Smith, 137.

THE COURT: Okay. Yes, ma'am.

POTENTIAL JUROR: My neighbor was charged with strong armed robbery, grand theft, stealing.

THE COURT: Okay. So your neighbor's been charged or convicted or whatever of those property --

POTENTIAL JUROR: Uh-huh.

THE COURT: Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

THE COURT: Thank you, ma'am.

POTENTIAL JUROR: Thank you.

(Juror Number 137 exits the bench.)

(Bench conference is held on the record with Juror Number 21, Lacodian Carter.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Lacodian Carter, Number 21.

THE COURT: Yes, sir.

POTENTIAL JUROR: It was a guy that renovated some apartments across from where I was staying, he broke in my house and stole a concealed weapon.

THE COURT: Okay. How long ago was that?

POTENTIAL JUROR: Round about three years ago.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides in this case?

POTENTIAL JUROR: Yes, sir. I can.

THE COURT: Okay. Thank you.

MR. HENDERSON: What was his number again?

THE COURT: Number 2?

POTENTIAL JUROR: 21.

MR. HENDERSON: 21?

THE COURT: Oh, 21.

MR. HENDERSON: And then, that was a gun that was stolen, right?

POTENTIAL JUROR: A gun.

THE COURT: Right. Yeah. Thank you.

(Juror Number 21 exits the bench.)

(Bench conference is held on the record with

Juror Number 101, Adrian McDade.)

THE COURT: Yes, ma'am. Your name and juror number again.

POTENTIAL JUROR: Adrian McDade, 101. My car got broken into at the Civic Center.

THE COURT: Okay.

POTENTIAL JUROR: My purse was stolen.

THE COURT: Okay.

POTENTIAL JUROR: And we've had several car thefts at my house and our neighbor's house.

THE COURT: Okay. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

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

(Juror Number 101 exits the bench.)

(Bench conference is held on the record with Juror Number 96, Leticia Manuel.)

POTENTIAL JUROR: Leticia Manuel.

THE COURT: Give me your name and juror number again.

POTENTIAL JUROR: Leticia Manuel. I think it's 96. 96. I have close friends that have been victims of robbery.

THE COURT: Close friends that what?

POTENTIAL JUROR: Have been victim of

robbery.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. Thank you. Have a seat.

(Juror Number 96 exits the bench.)

(Bench conference is held on the record with Juror Number 172, Beth Wood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Beth Wood, Number 17 [verbatim].

THE COURT: Okay.

POTENTIAL JUROR: I've had some things stolen and my sister was held up at knifepoint in an apartment.

THE COURT: Okay. How long ago was your sister --

POTENTIAL JUROR: I was in high school. Late '80s.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Thank you.

(Juror Number 172 exits the bench.)

(Bench conference is held on the record with Juror Number 20, Geraldine Carter.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Geraldine Carter, number 20.

THE COURT: Okay, Ms. Carter.

POTENTIAL JUROR: I had checks stolen -- my nephew, he's disabled, had checks stolen from him.

THE COURT: Okay. All right. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

THE COURT: Thank you, ma'am.

(Juror Number 20 exits the bench.)

(Bench conference is held on the record with Juror Number 140, Shana Southard-Dobbs.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Shana Southard-Dobbs, Number 140.

THE COURT: Okay.

POTENTIAL JUROR: I have been the victim of a vehicle break-in.

THE COURT: Okay. How long ago was that?

POTENTIAL JUROR: I, honestly, can't remember.

THE COURT: Okay. Can you still be fair and impartial to both sides?

POTENTIAL JUROR: Yes, Your Honor.

THE COURT: Okay. Thank you.

(Juror Number 140 exits the bench.)

(Bench conference is held on the record with Juror Number 26, Patricia Coleman-Sloan.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Patricia Coleman. I think I'm 26. Patricia Sloan? Coleman?

THE CLERK: Uh-huh.

THE COURT: Yes, ma'am.

POTENTIAL JUROR: I had someone to break in my car at one point. I also had my sister to -- someone stole a lot of stuff out of her storage.

THE COURT: Okay. How long ago was those incidences?

POTENTIAL JUROR: Mine, probably about two years ago. Hers, probably about three and a half.

THE COURT: Okay. Can you still be fair

and impartial to both sides?

POTENTIAL JUROR: No.

THE COURT: You don't think you can?

POTENTIAL JUROR: No.

THE COURT: Okay. All right. I'm going to excuse you for the week. You're free to go.

POTENTIAL JUROR: Okay.

(Juror Number 26 exits the bench.)

(Bench conferences are concluded.)

THE COURT: This juror is excused.

THE CLERK: Is that for the week?

THE COURT: For the week.

All right. Ladies and Gentlemen, I have asked many of you this question, but it is very important, and I'm going to ask the whole panel. Is there any member of the jury panel, for whatever reason, believe you cannot be fair and impartial to both the State and the defendant? Any reason whatsoever? I need for you to stand at this time.

(No audible response.)

All right. Does the State have any exceptions to the Court's voir dire, or any additional voir dire questions?

MR. BROWN: Not from the State.

THE COURT: And from the defense?

MR. HENDERSON: None, Your Honor.

THE COURT: Okay. Thank you very much.

All right. Ladies and Gentlemen, we're winding down this process. It will be just a few minutes. What will happen is this, if your name is called out, you will come down with your back to that microphone, facing the double doors. You may hear words, such as, "swear the juror," "seat the juror," "we accept the juror," or you may hear, "strike the juror" or "excuse the juror."

If you are not selected, don't take it personally. The reason why I say that is because it's not personal. These lawyers have certain reasons why they want certain people on the jury and reasons why they don't. So do not take it personally if you're not accepted after your name is called to come down front.

If you are accepted, any personal belongings you may have with you, bring them because you're going to go straight to the -- straight to the jury box.

All right, 5 and 10 strikes.

MR. HENDERSON: Yes, sir.

THE COURT: Two alternates. Two and one, on each alternate.

(There is a pause.)

THE COURT: You ready?

THE CLERK: 108, Damion Moragne.

What say the State?

MR. BROWN: Please present Mr. Moragne.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE BAILIFF: Come this way, sir.

THE CLERK: 99, Lowell Martindill.

What say the State?

MR. BROWN: Please present Mr. Martindill.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE BAILIFF: Go back to your seat, sir.

THE CLERK: 107, Alicia Mingo.

What say the State?

MR. BROWN: Please present Ms. Mingo.

THE CLERK: What say the defense?

THE COURT: Don't go away. We need to see what the defense says, ma'am.

MR. HENDERSON: Please swear the juror.

THE CLERK: 139, Henry Smithdeal.

What say the State?

MR. BROWN: Please present Mr. Smithdeal.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 173, Cathy Worthington.

What say the State?

MR. BROWN: Please present Ms. Worthington.

MR. HENDERSON: Please swear the juror.

THE CLERK: 13, Cynthia Britt.

What say the State?

MR. BROWN: Please present Ms. Britt.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror, Your Honor.

THE BAILIFF: Back to your seat, please, ma'am.

THE CLERK: 175, Tia Zinck.

What say the State?

MR. BROWN: Please excuse Ms. Zinck from the trial of this case.

THE CLERK: Number 128, Allison Rutland.

What says the State?

MR. BROWN: Please present Ms. Rutland.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 110, Holly Moss.

What say the State?

MR. BROWN: Please present Ms. Moss.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE BAILIFF: Back to your seat, please, ma'am.

THE CLERK: 54, Robert Gilchrest.

What say the State?

MR. BROWN: Please present Mr. Gilchrest.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE BAILIFF: Come this way, please, sir.

THE CLERK: 174, Amber Young.

What say the State?

MR. BROWN: Please present Ms. Young.

THE CLERK: What says the defense?

MR. HENDERSON: Please excuse the juror.

THE CLERK: Juror number 23, Joyce Chapell.

What say the State?

MR. BROWN: Please excuse Ms. Chappell from the trial of this case.

THE CLERK: 150, Danielle Tavernier.

What say the State?

MR. BROWN: Please present Ms. Tavernier.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 96, Leticia Manuel.

What say the State?

MR. BROWN: Please present Ms. Manuel.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE CLERK: 22, Marquetta Carter.

What say the State?

MR. BROWN: Please excuse Ms. Carter from the trial of this case.

THE CLERK: 127, Laura Rust.

What say the State?

MR. BROWN: Please present Ms. Rust.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 154, Randall Todd.

What say the State?

MR. BROWN: Please present Mr. Todd.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE CLERK: 95, Jennifer Madden.

What say the State?

MR. BROWN: Please present Ms. Madden.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 144, Clarence Stribble.

What say the State?

MR. BROWN: Please excuse Mr. Stribble from the trial of this case.

THE CLERK: 73, Carol Hopkins.

What say the State?

MR. BROWN: Please present Ms. Hopkins.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE CLERK: 43, Laura Elrod.

What say the State?

MR. BROWN: Please present Ms. Elrod.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 74, Jordan Hudgens.

What say the State?

MR. BROWN: Please present Ms. Hudgens.

THE CLERK: What say the defense?

MR. HENDERSON: Please excuse this juror.

THE CLERK: 102, Sarah McFarland.

What say the State?

MR. BROWN: Please present Dr. McFarland.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 140, Shana Southard-Dobbs.

What say the State?

MR. BROWN: Please excuse Ms. Southard-Dobbs from the trial of this case.

THE CLERK: 20, Geraldine Carter.

Any excusable cause from the State?

MR. BROWN: None from the State.

THE CLERK: From the defense?

MR. HENDERSON: Please swear the juror.

THE COURT: Two alternates.

THE CLERK: 16, Zachary Calhoun.

What say the State?

MR. BROWN: Please present Mr. Calhoun.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE CLERK: 21, Lacodian Carter.

What say the State?

MR. BROWN: Please present Mr. Carter.

THE CLERK: What say the defense?

MR. HENDERSON: Please swear the juror.

THE COURT: Does the State have any exceptions or objections to jury selection?

MR. BROWN: None from the State.

THE COURT: From the defense?

MR. HENDERSON: None from us, Your Honor.

THE COURT: Thank you very much. We now have a jury seated.

Congratulations, Ladies and Gentlemen. You have now been selected as the trial jury in this case. We're going to break for lunch. I want you back here at 3:30. Hopefully, that will give you enough time to grab a bite to eat. Let me give you some instructions and what I want you to -- to do when you get back.

First of all, there can be no discussion among yourselves about anything related to this case. That applies from now until it's time for you to deliberate in order to reach a verdict. So up until that time when I tell you to begin your deliberations, you can have no discussion about anything among yourselves related to this case.

That also applies to anybody that you come into contact with, whether over the lunch break or when we break for this evening. You certainly can tell folks that you've been selected on a jury, but leave it at that. Okay?

Thirdly, and I'll explain more about this when you come back, you may be tempted to do

some research into armed robbery cases or the defendant or the lawyers or anything related to this case -- we have that ready access to a wealth of information, as we all know, the Internet, social media and the like -- but you can't do that, and I'll explain more about that when you get back.

When you get back, you'll come straight to the jury room right here. The bailiffs will be here to help you in. When all 14 of you get back, I want you to select a foreperson of the jury. I sometimes select the foreperson. Sometimes -- I'm without a law clerk right now, but sometimes my law clerk does, and sometimes, I'll allow juries to select their own foreperson.

Let me explain a little bit about this. If it is a man, it's foreman. If it's a lady, it's forelady. The foreperson will wear several hats. One, I need a person to be the go-between the jury and the Court. If, at any time during the course of this trial, there's some concern, a question when you begin your deliberations, and there needs to be some communication with the Court, then I need that person, that foreperson,

to write it out on piece of paper in order to submit to me. And then, I can deal with it appropriately.

Also, I need someone to make sure that all of my instructions are being followed -- that's everybody's responsibility, but primarily the foreperson -- such as, my instruction on no discussion about this case among yourselves. I need the foreperson to be the watchdog, so to speak.

Thirdly, when you are instructed to begin your deliberations in this case, in order to reach a unanimous verdict, I need someone to oversee those deliberations. The vote of a foreperson carries no greater weight than the vote of the remaining members of the jury. It's all equal voting, but I need someone to wear those various hats. I'm confident that all 14 of you would make excellent forepersons, but we can only have one. So when we get back -- and the two alternates are entitled to vote on the foreperson. Okay. So when all 14 of you get back, you can make that decision.

The foreperson always will retain that front seat. The two alternates will retain those

two seats where you're at. The rest of you can sit where you like. It's been my experience that jurors, more often than not, like to sit in the same seat throughout the trial. It's kind of, like, at church. You've got your same seat at church and that's where you always sit. But that's totally up to you. The foreperson and two alternates have their assigned seats. Okay.

So be promptly back here at 3:30. If you decide to go to a local restaurant, if you don't mind, keep your juror badge visible. Some of the lawyers and people involved in this case may be at that same restaurant, talking about the case. We don't want you to overhear what they may be saying. They may not recognize you, initially, from being on the jury. But if they see your little badge there, then they'll know not to speak too loud where you can hear.

All right. Thank you for your patience. We'll see you back here at 3:30. Report back to the jury room when you get back to the courtroom.

Whoa. Stay here. I'm going to let you go in just a minute. Trial jury is excused. You've got about two more minutes with me.

(Jury exits at approximately 2:13 p.m.)

THE BAILIFF: That's my fault, Judge.

THE COURT: Unfortunately, Mr. Hamby's with me all week.

All right. Ladies and Gentlemen, I know some of you may be a little disappointed you were not selected. Some of you probably are glad that you were not selected. We may very well have another trial later on in the week. We'll just have to see. I can't let you loose for the whole week yet.

What you need to do, on that card that provided you with the information that you had to give us during roll call, there is a number to call in. Call in after 6 o'clock this evening, and there will be a recorded message telling you what to do. More than likely, it's going to tell you to call after six tomorrow evening, but I don't know that for sure. So be sure to call that number. Do not forget. It will tell you what you need to know.

Hopefully, I'll get to see you again this week. Sorry for keeping you over. Hope you have a good rest of the afternoon. You are free to go.

(Jury exits at approximately 2:14 p.m.)

THE COURT: We will be in recess until 3:30.

(The Court goes off the record at approximately 2:17 p.m.)

(The Court goes on the record at approximately 3:41 p.m.)

(Jury enters at approximately 3:41 p.m.)

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

It's my understanding, Mr. Smithdeal, you have been elected as foreperson of the jury. Was it because of the tiger paw on your shirt?

All right. Madam Clerk, would you swear the trial jury in, please.

THE CLERK: Yes, sir. Please stand and raise your right hand. Do you solemnly swear or affirm that you shall well and truly try the issues before this court, a true deliverance make and true verdict render, according to the evidence and law presented, so help you God? Do you?

(Each juror responds.)

THE COURT: Thank you.

Ladies and Gentlemen, I'm going to give you

some preliminary instructions for you to keep in mind, as we start and proceed through this trial. It is very, very important that you be very attentive and alert throughout this trial. Don't let your thoughts and your mind wander. Certainly, don't dose off. That's the worst thing that could happen for a juror. Be sure to get a good night's rest so that you can be alert and attentive.

You are not permitted to take notes. Consequently, you have to have a good memory of what is taking place during that this trial when you go to begin your deliberations. You're not going to remember everything but, hopefully, collectively, you'll have a really good memory of what has been presented to you.

Remember that you and I share, kind of, different roles in this trial. You are the sole judge of the facts. You determine what the facts are based upon the testimony and evidence presented to you.

That same law that makes you the sole judge of the facts makes me the sole judge of the law. I make a determination of what law applies to this case. I will instruct you on the law at the

conclusion of the case. There may be times during the trial that I will give you a certain instruction that relates to something that's happening at the moment. But for the most part, your instruction on the law will be given to you at the conclusion of the case.

Again, I want to emphasize, and I told you this before you were selected as jurors, this indictment that I read to you is just an indictment. It is not proof of anything. It contains allegations. It is up to the State to prove this case to you.

When a person, such as the defendant in this case, exercises his or her right to plead not guilty, which Mr. Smith has done, that plea of not guilty puts the burden on the State to prove this case to you beyond a reasonable doubt. At the conclusion of the case, I will explain to you more in detail what all of that means.

But as Mr. Smith sits here now, and as we go through this trial, and as he is when you go back to deliberate, he is presumed innocent. That's a constitutional right that we all have, to be presumed innocent. That presumption of

innocence remains with him, unless you are satisfied that the State has met their burden of proof and has proven to you that Mr. Smith is guilty beyond a reasonable doubt. Again, I'll explain all of that to you at the end.

There may be times when one of the lawyers will say, "Judge, I have an objection," or "Judge, I have a matter of law," and it may require me to send you back to the jury room. We'll do our best to resolve the issues -- we call it a sidebar conference, where the lawyers will come up, either here or maybe over in the corner, and we'll talk about it. We try to resolve issues in that fashion. But if we have to send you to the jury room, it is just something necessary that we have to do.

As I told you before you break for lunch, the prohibition against any discussion among yourselves about anything related to this case, prohibition against you talking with anyone outside this courtroom during break, either for lunch or when you go home in the evening, and the prohibition against doing some independent research.

And, again as I told you, we have a wealth

of information right at our fingertips, given we have social media and the like. The reason why we have this prohibition is if you obtain information that has anything to do with this case, while it may be wrong information, incorrect information, it is information that you have received outside of this courtroom. It's information you received that the others have not had the benefit of seeing.

Because your verdict in this case has to be based 100 percent on what is brought out in this courtroom by way of testimony from witnesses. There may be some exhibits, documents, pictures, things of that nature. And your verdict cannot be based on anything else. That is why, during the course of this trial, don't do any research.

I don't know if there's gonna be any account of this trial in the newspaper, on the radio. If there is, do not look or listen to that.

Lastly, Ladies and Gentlemen, it is so very important is that you keep an open mind in this case. Basically the process, in just a moment, the lawyers are going to make their opening arguments to you. The opening arguments are not

evidence in this case. It's just what the lawyers believe this case is about and what they think the evidence will or will not show.

Once the opening arguments are done, the State will put their case up first. The reason why they go first is because, again, they have this burden of proof.

If the defendant opts to or decides to, the defendant can put up their case. They don't have to because they have no -- they have no burden of proof. It's on the State. They may or may not. I don't know. I don't know what their plans are.

After all the evidence is in to you, then the lawyers will make their closing arguments to you. And then, I will instruct you on the law that is applicable to this case.

So until everything has been presented to you, Ladies and Gentlemen, keep an open mind. Do not make any rash decisions or judgments until everything is presented to you and you are given the "go ahead" to begin your deliberations.

I'm not sure exactly how long this case will take. It may finish tomorrow. It could possibly go into Wednesday. We don't know yet.

We'll just have to see how that comes about.

Does the State have any objections to the Court's opening remarks?

MR. BROWN: No, Your Honor.

THE COURT: And the defense?

MR. HENDERSON: No, sir, Your Honor.

THE COURT: Thank you very much. All right. The State is ready to make its opening argument to the jury?

MR. BLACK: Yes, Your Honor.

THE COURT: All right. You may proceed, Solicitor Black.

MR. BLACK: Thank you, Your Honor.

Good afternoon. February 18th, 2016, Gail Sinclair's life changed. Started out like a normal day for Ms. Sinclair. She got up, got ready for work, and went to her job at South State Bank here in Greenwood right across from Ballentine Ford -- over there where New Springs is now -- went to the bank to work as a teller. Everything seemed normal. Everything seemed to be going like it usually does.

But at 2:30 that afternoon, everything changed. 2:30 p.m. that day -- approximately 2:30 p.m. that day, Thomas Smith, the defendant,

walked into the bank, not looking like he is now, but wearing a disguise, wearing overalls, a hoodie, sunglasses pulled down over his face.

As Ms. Sinclair, Gail Sinclair, took her position behind the bank, called the next customer to come forward. The gentleman standing in front, Mr. Hill, was cut off by the defendant. The defendant went up to the counter, handed her a note that said, "Load me up with money. I have got a bomb." Handed her the bank bag that he was carrying, and also reiterated to her, telling her, "I've got a bomb. Give me your money."

At that point, Ms. Sinclair followed protocol -- followed bank protocol. She handed him the money that she had, $2330. This face-to-face encounter lasted 20 to 30 seconds. After she loaded him up with this money, Mr. Smith took off out the front door and got away.

Ms. Sinclair continued to follow her protocols. She, immediately, went to the front door and locked up the door, pressed the panic button, waiting for law enforcement to arrive. You're going to hear from a lot of those law

enforcement officers who arrived within five minutes of this encounter. At that point, about 2:35 that afternoon, they began their investigation.

I'm not going to spoil what you're going to hear. You're going to hear -- you're going to see a bunch of evidence and you're going to hear testimony from many different folks, law enforcement officers, lay witnesses throughout the community. You going to hear about what unfolded over the next four days, as they tried to track down the defendant, Thomas Smith.

Pay close attention. You're going to see a video of the bank robbery, a short clip. You're going to see it. You're going to see surveillance video from Ballentine Ford, just across the street, of Mr. Smith driving away. You're going to see -- like I said, you're going to see items that were recovered from Mr. Smith's own house, the house that's on his driver's license, his residence.

Pay attention to what's on the video. Pay attention to what's recovered. Listen carefully. All of those things are very important in this case. It's the evidence.

As the Judge stated just a minute ago, we are the State, we're the prosecutors, we have the burden to prove the case beyond a reasonable doubt. If you're familiar with any kind of -- if you've ever watched any criminal show, *Law and Order*, read any kind of book, you know this is the standard of proof, not just in South Carolina, but in all criminal courts in America. We have the burden to prove the case beyond a reasonable doubt.

In this case, you've heard that Mr. Smith is charged with armed robbery. I'm just going to go ahead and read you what armed robbery is. You're going to hear this at the end. But armed robbery is basically a person who commits a robbery while armed with a pistol, a dirk, which is a dagger, slingshot, metal knuckles, razor or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to have been a deadly weapon, that person is guilty of this crime. That's what we have to prove. You're going to hear that again. Mr. Brown, in his

closing, will explain that to you guys again, but that's what we have to prove. We have to prove that beyond a reasonable doubt.

Beyond a reasonable doubt, when you think of that, like I said, you guys have probably heard that before, but it's not beyond all doubt. It's not beyond a shadow of a doubt. It's proving it beyond a reasonable doubt. Think of being firmly convinced of something. After you see the evidence, after you hear the testimony, you hear witnesses talk, are you firmly convinced that Thomas Smith committed this crime on February the 18th of 2016? That's what you've got to consider in the back of your head. That's what you've got to keep in mind over these next couple of days.

We're confident that after the close of the case, after we get done, that you will find Mr. Smith guilty. We ask you that you pay close attention, like I stated. We appreciate your time in this matter.

THE COURT: Solicitor, thank you.

Mr. Henderson, you ready, sir?

MR. HENDERSON: Yes, sir. Your Honor, if it pleases the Court.

Ladies and Gentlemen, thank you for your time. It's been a long day already. I'm not going to speak that long to you. Keep in mind, as the Judge said, as even the solicitor agrees, the government has the sole burden of proof in this matter. Mr. Smith, over there, doesn't have to prove anything. He doesn't have to disprove anything. He doesn't have to testify. He doesn't have to call witnesses. He doesn't have to do anything at all. The burden is on the government to prove his guilt beyond all and any reasonable doubt.

Keep in mind -- I think the evidence is going to show that there are two issues in this case. Two issues sum up this whole case. The first one is, identity, who somebody is. Can the government prove beyond all and any reasonable doubt that this bank was robbed by Mr. Smith?

Nobody is contesting that there was a bank robbery. You're going to be able to see a video. Horrible quality. Folks, if this is all of the technology that a bank can come up with, they ought to be ashamed. Horrible quality video. You're going to be able to see it.

The next issue is whether or not an actual

armed robbery occurred. You heard the solicitor read what the definition of an armed robbery is. Obviously, you can come in with a gun to the bank or go into a convenience store with a gun and point it at somebody, "Give me your money," that's an armed robbery. No doubt about that.

Here, in this case, Mr. Smith or any -- Mr. Smith's not accused of coming in with a gun or anything like that. The government's accused him of coming in with a bomb. I think the evidence is going to show -- I have comfort that the evidence will show that Ms. Sinclair, the teller, the victim in this matter, somebody comes up to her and tells her, "There's a gun -- there's a bomb."

She actually looks in the bag. You're going to see it on the video. Again, it's not great quality, but you can see it. She actually looks in the bag, puts her hand in the bag, after somebody has allegedly told her that there is a bomb in the bag. She puts her hands in the bag. It looks like the person on the video robbing the bank puts their hands in the bag.

Again, you heard the solicitor say what an armed robbery is. One of the ways they can do it

is if someone comes into a bank or any other entity and shows a weapon that the victim reasonably believes is a dangerous item, be it a gun, be it a bomb, whatever.

Now, I have reason to believe that Ms. Sinclair is going to testify that when she actually looked in the bag and puts her hands in the bag, what was in the bag was a bunch of cassette tapes wrapped with red rubber band. Clearly, not a bomb. She put her hand in there. The person who robbed her had her [verbatim] hands in there.

Now folks, people who reasonably believed that this item was a bomb, wouldn't have their hands in there. I guess, use your good common sense on that. I just want you to observe the evidence. This video is going to be crucial.

Let me step back to the identity issue a little bit. You're going to see on the video, and I think law enforcement will admit it too, whoever robs this bank doesn't wear any gloves. What does that mean? If there's no gloves, there's going to be fingerprints. There's going to be DNA. There's going to be all this stuff.

The government actually goes in there and

tests all of this stuff, tests for fingerprints, tests for DNA. And guess what? None of it comes back to Mr. Smith.

I think you're going to hear evidence that Mr. Smith and his mother were frequent customers at this bank and actually were waited on very often by Ms. Sinclair. Ms. Sinclair knew my client by name, knew his mother by name, and yet she didn't recognize the person who robbed her as Mr. Smith. She's waited on him for ages. Again, identity.

No money was found at all. Keep in mind, there was bait money given out, basically, you know, dyes, that explode. Stuff like that. None of that was found on Mr. Smith. Found at his house or exploded on him. Keep in mind, the government has got to prove beyond all and any reasonable doubt that Mr. Smith committed this armed robbery, as they say.

Again, I want you to listen closely to the evidence. I think you will know what to do once you see all of the evidence. We appreciate you, Ladies and Gentlemen.

(State's Exhibits 1 through 64 are marked for identification.)

THE COURT: Thank you, Mr. Henderson.

Is the State ready to call the its first witness?

MR. BROWN: We are, Your Honor. The State calls Mark Perry.

MARK PERRY

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon. Mr. Perry, state your full name.

A Richard Mark Perry.

Q Where do you work?

A South State Bank.

Q How long have you been there?

A About five and half years.

Q What is your job title at South State Bank?

A Corporate security manager.

Q Were you the corporate security manager for this region or district back in 2016?

A Yes, sir, I was.

Q As part of being corporate security, are you familiar with how records are kept, specifically, video surveillance of banks?

A Yes, sir.

Q Back on February 18th of 2016, did you have an opportunity to actually respond to a bank robbery?

A That's right.

Q You're actually out of what county?

A My office is in Easley.

Q In reviewing this case file -- I'm going to show you what's been marked previously as State's Exhibit Number 1. Do you recognize this disc?

A Yes, sir.

Q What is that?

A That's my initials on there and that's the video that my boss would've burned from the security department.

Q This would have been kept on file as the video that took place on February 18th, 2016?

A It is stored on a DVR. The disc is burned at the time that it's needed.

Q The location of this bank is where?

A 1224 Bypass 72 NE.

Q That's in what county?

A Greenwood.

Q Greenwood city?

A That's right.

Q What time did this take place?

A This was exactly 14:32 hours. 2:32 p.m.,

I'm sorry.

Q How much money -- being corporate security, do you go back and check and see how much money was actually taken?

A That's right.

Q And how much --

A $2330.

Q Ms. Gail Sinclair, she was the bank teller, at that time?

A Yes, sir.

Q Is she still employed with South State Bank?

A Yes, sir.

MR. BROWN: Your Honor, at this time, the State would move in State's Exhibit 1.

MR. HENDERSON: Without objection, Your Honor.

THE COURT: All right. Without objection, number 1 into evidence for the State.

(State's Exhibit 1 is admitted into the record.)

MR. BROWN: No further questions for Mr. Perry.

THE COURT: Mr. Henderson, any cross?

MR. HENDERSON: Very briefly.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Mr. Perry, thank you for being here. Have you watched the video?

A Yes, sir.

Q It seems not good quality. Is that fair to say?

A I guess it depends on what you are comparing it to. The video does vary in quality from one video, I guess, surveillance system than another other. That is our average. As far as quality goes, that would be average, I would say, for the bank --

Q Okay.

A -- for our system.

Q Okay. Is it fair to say, too, from watching the video that the perpetrator wasn't wearing any gloves? Did you notice that?

A I'm trying to think of his hands, off-hand.

Q Well, I'll represent to you he wasn't wearing any gloves.

A Okay.

Q I just want to know, have you watched the video to see that?

A Yes.

Q Is it fair to say, too, that none of this money has been recovered?

A That's right.
Q None of it was recovered from Mr. Smith?
A That's right.
Q Okay. And I understand there was some bait money given out by Ms. Sinclair?
A Right.
Q Can you tell the jury what bait money is?
A That would be a group of four serial number bills that we recorded the serial number on, that would be part of the dye pack. When the dye pack is given out, so we know what serial numbers -- we know four serial numbers of four $20 bills that are recorded.
Q What is a "dye pack"? I hear that term thrown around. Actually, I see it in the police report. Tell the jury what a dye pack is.
A That would be a pack that is disguised as some bills, that when it walks -- when it goes out the front door, a sensor is supposed to activate it and supposed to make it smoke. The pack is supposed to melt down, a chemical reaction, and the pack is supposed to smoke.
Q Is that kind like blowing up or it just burns up?
A I would say more of a meltdown. It doesn't

blow up. I guess it -- a chemical reaction causes smoke to emit.

Q Okay. Again, you haven't heard anybody say that any smoke emitted around Mr. Smith?

A No.

Q Have you?

A No.

Q Okay.

MR. HENDERSON: Nothing else, Your Honor.

THE COURT: Anything in redirect?

MR. BROWN: A few follow-up questions.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Perry, you said that the dye pack has a sensor in it; is that correct?

A That's correct.

Q That sensor, after that pack actually leaves the front door of the bank, it is supposed to go off?

A That's right.

Q Was there -- did it malfunction, obviously?

A What we found out when we went back and looked at the door, because we wanted to test the power, test the system and make sure it's working, because from what the branch could tell me when they

did the test, the test reported fine. We were trying to figure out why nobody noticed any smoke.

It turns out, somebody had taped over a -- let me back up. The system should be hardwired so that you can't flip a switch and turn it on or off. What we determined is that someone must have wired it to a wall switch, and they had a piece of tape on the wall switch. We discovered after the fact was someone must've had the wall switch turned off, which means the power to the system was turned off. We did not know that, at the time.

Q Hence, the dye pack wouldn't go off?

A We do not believe -- based on that, we do not believe the dye pack would've went off.

Q Because if it did, it would've gone off right outside the door?

A It should have went off as the robber is going across the parking lot, is the way the system is set up, technically.

MR. BROWN: No further questions.

RECROSS-EXAMINATION

BY MR. HENDERSON:

Q If it goes off, it starts smoking. I mean, is it a big cloud of smoke, I mean, flames? What is it?

A If it was sitting right here in the middle on a desk, it would be a cloud of -- a plume of smoke would go up. It would not -- maybe six feet, depending on how fast the air is moving. That kind of thing, maybe. Yeah, like, are you familiar with smoke bombs ---

Q Yes.

A --- when we were kids? Nowhere near that much smoke. I, maybe, a half a dose of a standard little -- those cheap, little, round smoke bombs.

Q But it would have been obvious. People in the public could've seen this, though, if smoke was going off?

A You definitely could see it.

Q Okay. And you say somebody at the bank, it sounds like, deliberately turned off the system?

A We don't think it was intentional. We think it's the way it was wired -- we think it was wired to the wrong circuit. It should have been -- it should not have been wired to the one on the switch. We just think it was wired to the wrong one.

Q Did you talk to the electrician about this? I mean, have you gotten to the bottom of that?

A It was not determined when the wiring took place or anything like that.

Q I mean, that sounds almost like something inside. I mean, if someone deliberately's sabotaging your -- your -- your smoke signal, so to speak?

A No one would've known, when they wired it, that whoever came along and wired the dye pack system, whether they wired it to that wire or not. You know what I'm saying? There was probably other things on that circuit. So, no, it was not our belief that it was intentional.

MR. HENDERSON: I don't have anything further, Your Honor.

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

MR. BROWN: The State calls Gail Sinclair.

GAIL SINCLAIR

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon, Ms. Sinclair.

A Good afternoon.

Q You work at South State Bank?

A Yes, sir.

Q And do you currently work there?

A Yes, sir.

Q Which branch do you work at?

A I'm at Westwood now.
Q Back in February 18th of 2016, were you at South State Bank?
A Yes, sir, but on the Bypass.
Q Across from Ballentine?
A Yes, sir.
Q And do you know that address?
A I'm pretty sure it was 1224 Bypass.
Q Here in Greenwood city?
A Yes, sir.
Q Do you remember that day pretty well?
A As best I can, yes, sir. I have to have my little notes, because it's been over two years since this happened.
Q Yes, ma'am. On that day, do you remember what happened around 2:30, 2:32 that day?
A Yes, sir. I had been in the break room. When I came back out, I saw two customers, one I was familiar with, Cecil Hill, and another gentleman that was very close to him, but I thought maybe they had been talking. When I come around to the back of the teller line, Cecil Hill, I told him to come to my window. But Cecil didn't come, the other man did.
When he came up, he set a bag that was not a South State bag, he set it up on top of my counter.

And I thought, "Oh, he has a business deposit," because it was sort of full. Instead, he gave me a note and informed me that this was a robbery.

Q What did the note say?

A Basically, that this was a robbery, that he had a bomb, and I think he told me that he wanted my money, but he didn't want any of my bank money or my dye money.

Q And with him placing that bag on the counter, did you look inside?

A Later, I did. To be honest with you, I'm not sure if I did at the beginning. But I know later I did because that's where he wanted me to put the money, was in that bag.

Q Did -- was there something in there?

A Yes, sir. We had trouble trying to get the money in there. I assumed that that's what he was saying was the bomb. Later on, I thought about it, it looked like maybe some CD cases put together with rubber bands or wires or something. But I didn't know what a bomb looked like, so I'm not sure.

Q What color was the wires or those bands?

A Seems like they were red, if I'm not mistaken, from what I can remember. I think I put that.

Q At the time he came in and showed that to you, did you have any reason to doubt that it was a bomb?

A No, sir. I did not.

Q Had you ever been encountered with a bomb before?

A No, sir. Been with the bank 11 years and hadn't been robbed before. This is my first robbery, too.

Q When he passed you that note and showed you what was inside that bag, you didn't want to test him; did you?

A No, sir, I did not. I wanted -- I wanted him in and out, without anybody getting hurt.

Q Did you give him the money?

A Yes, sir. I gave him -- started -- cause I had been in the break room, my drawer was locked. Whenever you leave your teller window, you have to lock it. I had to unlock it and then, I had to decide, at that split second, if I was giving him the bait money or the dye money.

You have to push a button and all this different stuff. But I wasn't moving fast enough for him, so he told me to hurry up. Then he finally just said give me what you got. That's when he opened the

bag and I saw that in there. And that's when I put the money there.

Q So he had a representation or it could have been a bomb, a bomb or a representation of a bomb?

A Yes, sir.

Q You didn't try to deactivate it or push any buttons or anything like that?

A No, sir.

Q The man that came in, what was he wearing?

A He had a dark jacket with a hoodie and, I think, coveralls. I thought he was a light-skinned black man or had maybe some dirt or something on his face.

Q A light-skinned black man or a man that had dirt -- a white man that had dirt on his face?

A Yes, sir.

Q Did he have facial hair?

A I believe he did. But I really was more intent on looking at the drawer and giving it to him, instead of just sort of focusing on him.

Q Let me show you what has already been moved into evidence as State's Exhibit Number 1. (Pause.)

I believe, at the bottom, it starts at 2:30, February 18th, 2016; is that correct?

A Yes, sir.

(State's Exhibit 1 is played.)

BY MR. BROWN:

Q Ms. Sinclair, is the first gentleman that came into the room or in the bank, is that Mr. Cecil, the one you were talking about?

A Yes, sir.

Q And then the man with the overalls and hoodie with the glasses, that's the man that robbed you?

A Yes, sir.

Q Pretty well disguised?

A Yes, sir.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q He's pulling out his pocket the blue bag right there. Is that the blue bag that you were referring to?

A Yes, sir.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q I believe you are just now getting back to your teller --

A Yes. I just walked across. That's him putting it up on the counter right there.

Q And he's giving you a note also, at that

time?

A Yes, sir.

Q And in that blue bag is where he had what you believe would be a bomb or what he is representing as a bomb?

A Yes, sir. When he first set it up there, I thought it was a business deposit that had coin in it, because we get it like that, sometimes.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q What's he doing now?

A I think that's when he set it up there and just told me, "Give me what you got." And then he also grabbed the note that he gave me, too. When he turned around, I just turned around and told them I had been robbed. And we're supposed to lock the doors.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q Is that you walking to the front door?

A Yes, sir.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q At this time, are you waiting just for law enforcement to get there?

A Yes, sir.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q And again, when this takes place, you are, essentially, on lockdown until the law enforcement arrives?

A Yes, sir.

(State's Exhibit 1 is continued.)

BY MR. BROWN:

Q Once law enforcement got there, the sheriff's office arrived and then the city police detective arrived?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q The time when officers first arrived was 2:38. Does that sound right?

A I believe so. I'm not really sure.

(State's Exhibit 1 is stopped.)

BY MR. BROWN:

Q Ms. Sinclair, how long had you been working at South State Bank prior to this?

A I've been there 11 years. It was two years ago, so around nine years.

Q And this has never happened before?

A Not with me, no, sir.
Q How did it make you feel?
A Scared, nervous, for a long time.
Q Had you seen Mr. Smith prior to that?
A Yes, sir, I worked -- waited on him for years. I used to be at Montague. I waited on him and his mother. Then, at the Bypass, I waited on him a few times also.
Q Mr. Smith today, does he look like he did when you waited on him?
A No, sir.
Q What's different?
A His hair is different.
Q Was he clean-shaven when he came into the bank?
A Not all of the time, no, sir. Most of the time, he was not.
Q Did the man that came into the bank that day look like he had dark on his face?
A He was light-skinned or had dirt or something on his face. He looked dirty.
Q Along with glasses and a hoodie?
A Yes, sir. You can see from there. He was very well disguised.
Q You, in fact, when he put the blue bank bag

on the counter, you did see what you believed, at the time, was a bomb or could have been a bomb?

A Yes, sir.

MR. BROWN: No further questions.

THE COURT: Cross-examination?

MR. HENDERSON: Yes, sir, Your Honor, if it pleases the Court.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Ms. Sinclair, how are you today?

A I've been better.

Q I understand. Everybody's nervous when they come to the courtroom. It's not an unusual feeling. I'm glad you admitted to the solicitor and this trial jury over here that you've known Thomas and his family for years.

A I wouldn't say know, but I've waited on them.

Q Waited on them. Known them, from a bank perspective ---

A Yes, sir.

Q --- as a customer teller. His late mother is deceased now, if I'm not mistaken?

A Yes, sir.

Q You've had a chance to talk to Thomas ---

A Yes, sir.
Q --- through the years?
A Briefly, yes.
Q Briefly. I mean, just during transactions. And I've read the very extensive report that law enforcement prepared in this matter. There's no mention in there of you identifying the person that robbed you as Thomas Smith; is that correct?
A No, sir. I haven't.
Q Okay.
A He was disguised, so I didn't know who it was.
Q I have watched this video, and the person who came in here and robbed you, it looks like they put the bag on the counter; is that correct?
A Yes, sir.
Q I want to make sure I'm accurately depicting what's going on in the video.
A Yes, sir.
Q And then they actually put the bag down, I guess, on the lower level of the counter ---
A Yes.
Q --- for want of a better term.
A Yes.
Q So at that point in time, you would have

had a bird's-eye view of it?

A Of the bag?

Q Of the bag, correct.

A Yes, sir.

Q I mean, you're right there at it.

A Yes, sir.

Q Is that when you were putting the money in the bag?

A No, he, first, put it over. It wasn't until later that I put the money in the bag. I had to unlock my drawer.

Q Okay.

A I had to unlock my drawer and then get the money out.

Q But you got the money out and put it in the bag, correct?

A Yes, sir.

Q Was the bag on that lower counter? Was that the bird's-eye view? Cause that's what it looks like on the video.

A As far as I could remember. I would have to see it again. I'm sorry. I don't remember. It's been too long ago. I know you just showed it again, but I'm nervous. I'm sorry.

Q Oh, no, no, no. I understand you being

nervous. I mean, it was a traumatic experience. I understand that. But it looks like, regardless, you put your hands in that bag. Is that fair to say?

A Yes -- well, I wouldn't say that I put it in there, but I put the money in the bag.

Q Right in there.

A Yes, sir.

Q And the person who was robbing you had their hands, it looks like, in the bag, at least partially?

A If that's what -- I don't remember. I really don't.

Q Again, cause I know the video is not the best quality.

A Yes, sir.

Q Let me ask you, was this item ticking?

A Not that I heard.

Q I mean, it wasn't making any noises?

A Not that I heard. No, sir.

Q And it's my understanding that you said -- and I know you testified, a while ago, it looked like a bunch of CD cases?

A Later on, when I look back at it, it was like a bunch of CD cases, possibly, put together.

Q Was it CD cases? Or I think you told my

investigator, perhaps cassette cases or something.

A Is that not the same thing? I'm sorry.

Q No, cassette tapes would be like, I guess, the small little cassette tapes. The CD is --

A No, CDs. Yes, sir. CDs.

Q It would be like a CD ---

A Yes.

Q --- like a compact disc, I guess?

A Yes, sir.

Q But you said it was rubber-banded together?

A Rubber band or some kind of wire. I believe it was red.

Q Okay. Not ticking?

A No, sir, not that I remember.

Q Okay. And while this all was going on, you had the ability, I guess, to unlock your drawer?

A Yes, sir.

Q And get out this bait money?

A Yes, sir.

Q You said this person said, "Don't give me any bait money"?

A Yes, sir.

Q Okay. I think you said -- did the person say, "I have a bomb," or did this note say, "I have a bomb"?

A From what I have written on my notes -- I'm sorry because it's been so long ago -- so a note that said, in effect, that this was a robbery, give me all of your money in your drawer. He said something like, do not give me any dye or bait money and that there was a bomb.

Q You gave the person bait money?

A Yes, sir.

Q You gave the person the dye pack?

A Yes, sir.

Q What is bait money? Tell the jury what bait money is.

A They have bait money that we keep in the drawer that has sequential numbers, serial numbers that they write them down so that when they do catch the person with the money, hopefully, they can go back and say yeah, this is the money that they took from the bank. The dye money, when it goes past a certain point, it's supposed to explode and get dye over -- all over everything.

Q You understand -- or maybe you don't understand, but I will represent to you that none of this bait money was ever found on or with Mr. Smith, are you aware of that?

A No, sir. I do not know that.

Q You don't know that. I will represent to you that's the case. Now, this dye pack, is it supposed to -- what does it do? Does it explode? Does it catch on fire? What does it do?

A I'll be honest with you. That's not what I do. There's a teller there that's over that, but my understanding is that when it gets to a certain point, it's supposed to explode. That's my understanding.

Q At what point? outside the bank's doors? a football field?

A Outside a certain point of the bank, yes, sir.

Q Do you know how far away that was?

A I do not. No, sir.

Q Did anybody ever describe to you about whether or not there was an explosion or dye explosion here?

A I don't know.

Q You just don't know?

A I don't know.

Q Okay. You didn't talk to Detective Moore or somebody about the --

A I don't remember him telling me that anything exploded.

Q Okay. Okay. You're just not sure?

A No, sir.

Q Once the person that robbed you walked out the door, did you see anything else from there?

A Just what was going on in the bank, cause we couldn't go out.

Q Right. I mean, you were kind of pinned in there?

A Yes, sir.

Q Let me ask you, when the robber left, I guess the emergency had ended. Is that fair to say? I mean, you were locked inside?

A Yes, sir. I felt like there was no threat to anyone inside now.

Q Bingo. I mean, whatever happened, it's gone, it's away. Is that fair to say?

A Yes, sir.

Q And I don't think anybody needed any EMS treatment; did they?

A No, sir.

Q Did EMS even show up?

A Not that I remember.

Q Okay. Now, it looks like, again, watching that video, that the person who robbed you, doesn't look like they're wearing gloves. Do you remember

that?

A I don't remember. No, sir. I don't think he did.

Q Okay.

A I think they did -- I think they tried to do fingerprints, but there was too many, but I'm not sure of that either.

Q Watching the video, it looks like the person's got his hands on the bag. Looks like they put their hands on the counter. Actually, it looks like, reaches down. Looks like there's a lot of opportunity for fingerprints or palm prints or DNA. Is that fair to say?

A You're talking over my head.

Q Okay.

A I don't have any idea. I'm not an expert on that.

Q Right, right, right. Did anybody ever tell you they found Mr. Smith's fingerprints on your counter?

A Not that I can remember.

Q Anybody ever tell you they found Mr. Smith's DNA on your counter?

A Not that I can remember.

Q Or anywhere in the bank, for that matter?

A Not that I can remember.
Q Have you had any follow-up with law enforcement after the day of the robbery?
A I just remember them talking to me about there might be a trial and just different things like that.
Q Okay. Okay. And again, I think you said you're not a bomb expert; are you?
A No, sir.
Q But, again, you didn't hear this thing ticking?
A No, sir. I just saw an object.
Q Right. An object -- sounds like you said somebody wrapped up some CD cases?
A That's what I thought later ---
Q Right.
A --- when I got to thinking about it.
Q Right.
A You're sort of scared, and you believe whatever they're telling you.
Q I understand, but you put your hands right there at that bag, correct?
A Yes, sir.
Q And during this ordeal, and I agree, it's an ordeal, I mean, you kept your wits about you and

gave this person bait money?

A Yes, sir.

MR. HENDERSON: Okay. If I may have one minute, Your Honor.

THE COURT: Sure, take your time.

(There is a pause.)

BY MR. HENDERSON:

Q Again, you -- sounds like you -- again, I see you used the word "know" Mr. Smith. I'm not implying y'all are friends, but y'all have had interactions at the bank for years with he and his family. Is that fair to say?

A Yes, sir.

Q And have you noticed, too, he has a tattoo on his hand? Have you ever noticed that?

A No, sir.

Q I represent to you he does have a tattoo on his hand. Have you looked on any of these videos to see a tattoo on anybody's hand?

A No, sir.

Q Okay. Has anybody ever -- else pointed that out to you?

A No, sir.

Q Okay. Do you recall whether or not the person who robbed you that day had a tattoo?

A No, sir.

Q Okay. Let me ask you, again, I've just been thinking, standing here, if a person tells you that they had a bomb, did you have to -- could you not have given them some money without unlocking that drawer? Or you just had to --

A No, sir.

Q -- you had to unlock the drawer anyway?

A I had to unlock -- when you step away from the teller station ---

Q Okay.

A --- to go, like, to the bathroom, you lock your drawer. It's something a teller has to do.

Q Okay.

A They lock the drawer. They are supposed to put their coin up. Everything is supposed be locked up until you get back.

Q When you came back and unlocked it, I guess, you unlocked it after the person told you they had a bomb; is that right?

A Yes, sir. Probably -- I mean, I'm having to think. More than likely, what I normally do is when I come back and I've got a customer that I think I'm waiting -- because I asked Cecil to come up.

Q Right.

A I'm usually getting ready to unlock the drawer because I'm waiting on a customer.

Q Okay. So you think you probably already unlocked it?

A I was in the process of unlocking it.

Q And was the bait money free in that drawer or did you have to unlock something else?

A It's in your top drawer.

Q Okay. It's in the top drawer.

A Yes, sir.

Q And you put that in. Did you put in any non-bait money?

A Yes, sir.

Q Okay. I'll represent to you that none of that money that you gave has been found on or with Mr. Smith. Were you aware of that?

A I have no idea.

Q Okay. Nobody's told you that?

A My understanding was they had something. I don't know what I'm supposed to say. My understanding is there were some things that were found on him.

Q Okay. Okay. And then, I think you said reading the report, in your testimony previously, you thought the person who robbed you was either a Hispanic male or a light-skinned black male?

A I don't remember saying Hispanic. They said I did. I just remember that it was a -- I thought it was a light-skinned black man because they looked dirty.

Q The person who robbed you looked dirty?

A Their skin didn't look clean. It looked dirty. So I thought it was maybe a light-skinned black man.

Q Okay. And I think you've said -- again, I'm reading the police report. Looks like you said the person who robbed you was approximately five feet eight inches?

A I don't remember saying that either.

Q Again, that's just what I'm reading that you said in the police report.

A It's possible.

Q Okay.

A We're talking two and a half years ago. I can't remember.

Q I understand. I wasn't there so, I mean, I'm just going by what the police reported that you said.

A Yes, sir.

Q Are you aware of how tall Mr. Smith is?

A No, sir.

Q Let me ask you, Ms. Sinclair, I know you got your notes with you. Have you shared a copy of your notes with law enforcement or the solicitor?

A Not that I remember.

Q Okay.

A I mean, I did this the day the robbery came about, or the next day.

Q Okay.

A I don't remember giving anybody anything, but I possibly could have.

Q You got your notes with you?

A Yes, sir.

Q You mind if I take a look at them?

A No, sir.

Q So it's just one page?

A Yes, sir.

Q It looks like it was typed out?

A Yes, sir.

Q Okay. Did you type it out?

A Yes, sir.

Q There at the bank?

A Yes, sir.

Q I just want to kind of go over this right quick. (Reviewing.)

How quickly did you write or type these

notes, as it relates to after the robbery? Was it 30 minutes after? A day after?

A I really don't remember. That's what I said. I either did it that day or the next day. I remember Mr. Perry, Mark, that was here earlier, had told me a trial could be a while, so you need to write down what you think you can remember. You need to type it up.

Q Again, I'm just reading verbatim from what you typed.

A Yes, sir.

Q It says, "It reminded me of black CD cases held together by either colored wire or colored rubber bands." So pretty quickly there, you thought this looked like CD cases?

A I think I thought of it later. I guess, I'm a MacGyver watcher. I see things that he puts together and makes things. I guess I had that on my mind. I'm not sure.

Q When is the last time you met a real life MacGyver?

A Never, unfortunately.

Q I understand. This isn't TV land; isn't it?

A Yes, sir.

Q I'm going to give your notes back.

A Thank you.

Q Ms. Sinclair, something, too, I think you testified that the dye pack would explode? Maybe that's --

A That's my understanding. When it gets so far from the point that it's supposed to explode, that's my understanding.

Q Right. Okay. Have you ever seen one explode?

A No, sir.

Q Okay. But it's your understanding they do explode?

A Yes, sir. They're supposed to.

Q Now, if whoever had a bomb, it just seems kind of odd that if you believed it was a bomb, why would you give them something that would blow up or explode?

A At that time, you're not thinking about -- you're just trying to do what he wants to get him out the door.

Q It just seems, thinking about it, why -- if you're actually worried that it's a bomb, why would you want to try to blow the bomb up?

A All I can tell you is, all I was thinking was try to get the man in and out without anyone

getting hurt. You're not thinking clearly. You don't think about all those things until later, about what you should or shouldn't do. I wish I had looked at it more than what I did, but I didn't.

Q Right.

A Because I was more intent on trying to -- like I said, get him in and out.

Q I understand.

MR. HENDERSON: I don't have anything further, Your Honor.

THE COURT: Before we engage in redirect, let me see the lawyers for just a minute right over here.

Everybody be at ease for just a moment.

(Bench conference is held off the record.)

THE COURT: All right. Solicitor, we are in your redirect of Ms. Sinclair.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Ms. Sinclair, when the armed robber came in and stuck the bag -- the bank bag on the counter, did you -- when did you see the contents of that bag? When he stuck it on top of the counter?

A I noticed it was bulging out. That's when I thought it was a business deposit and that maybe he

had some coins or something in there. But the man zipped open the bag and he had a note, in fact, saying it was a robbery. I imagine when he zipped it open, that's when I saw it.

Q And at that point, you believed what was in the bag -- you didn't have any reason to doubt what he said was in the bag was a bomb?

A Yes, sir. That's what I assumed that it was.

Q That was before even you got the cash register open to put the money in it?

A It was before I got the money in there, yes, sir. I had to get money out first before I put it in the bag.

Q You saw the contents of it before you --

A Yes, sir.

Q Now, Mr. Henderson was asking, when you put the money in the bag, did you hear any ticking? Are you a bomb expert?

A No, sir.

Q Do you know if only bombs come ticking?

A No, sir.

Q Bombs can come in many shapes and sizes, correct?

A Yes, sir.

Q It does not have to be ticking?
A That's my understanding.
Q Was it being wrapped -- what you described wrapped around with a red wire or rubber band, he could've had a trigger on it; couldn't it? Maybe?
A Possibly, yes, sir.
Q It could've had a detonator?
A I guess. I'm not in that field -- I didn't even think anything like that. Like I just keep saying, I just wanted him in and out. I did not even think about me putting my hand in there.
Q You didn't want to call his bluff, if it wasn't?
A No, sir.
Q We have the video playing, once again.
(State's Exhibit 1 is resumed.)
BY MR. BROWN:
Q Is it right then that he's showing you the contents of that bag?
A I'm assuming.
THE COURT: What is your answer, ma'am?
THE WITNESS: I'm assuming that that's when.
BY MR. BROWN:
Q Now, this photograph here, Mr. Henderson

says he's got a tattoo on his hand. What's covering his hand?

A His left hand, his sleeve is covering it. He is sort of covering the other one a little bit with this sleeve and his chin.

Q So if you're looking down at a bomb in a bag or trying to get your key to unlock the register, you're not really looking at him; are you?

A No, sir. That's what I've been trying to say. I wish I had focused more on him, but I didn't. I was focused more on getting money, getting him what he wanted, and getting him out.

Q Ms. Sinclair, how many people frequent your bank during the day?

A Depends on what day, what time, I mean, if it was the first of the month, payday. I mean, we've had them when they are lined up out the door.

Q So a lot of people, potentially, come to that window?

A Yes, sir.

Q And he's got that bank bag opened up where you can see it?

A Yes, sir.

Q What you saw, the contents -- just to be clear, the contents of that bag, you saw what you

believed was a bomb or a representation of a bomb before you even got the money out of the drawer?

A Yes, sir.

Q Again, when Mr. Smith was coming into your bank with his mom, did he look like that?

A No, sir.

MR. BROWN: No further questions.

THE COURT: Recross?

MR. HENDERSON: Yes, sir.

RECROSS-EXAMINATION

BY MR. HENDERSON:

Q Ms. Sinclair, I think you testified to this. I just want to make clear that you -- it was hard for you to put the money in the bag?

A Yes, sir.

Q Okay. Because of the item in the bag?

A Yes, sir.

Q Again, I want this to be real clear. I want our record to be crystal clear, as best as we can. I'm looking at this video right here, and it looks like the robber puts the bag on the -- when I say the counter, the customer counter, so to speak, the high counter.

A Yes, sir.

Q And you said he unzipped the bag.

A Yes, sir.
Q And I'm looking at this bag, it looks like -- again, it's not great quality, but it looks like there's something red sticking out of the bag. Is that an accurate description?
A From here, that's sort of what it looks like. That's why I said I think it was just wrapped in something that was red or rubber bands or something.
Q And what I'm looking at, it shows on the video at 14:33.04 is what I'm looking at and asking you this question on. But it's up on the upper counter, he opens it up. You see it looks like red, or something is wrapped in red. And you come to be believe it may be CD cases?
A That's what I thought later.
Q Okay. And then after that, you actually -- or he actually pulls the bag down to this lower level, actually closer to you; is that correct?
A That's what I saw in the video. I don't really recall.
Q Okay. And that's on a lower counter. That's not the customer's counter. That's your working --
A Yes, sir. We count our money.
Q Right. That's your --

A Yes, sir.
Q -- your working counter.
A Yes, sir.
Q Whereas, the person walking in the bank, the high counter would be their transaction counter?
A Yes, sir.
Q Actually, when it's down there on your work counter, you actually got a bird's-eye view of this bag?
A Yes, sir.
Q It's open; is that correct?
A Yes, sir.
Q Okay. And you said you had a hard time putting money into it?
A Yes, sir.
Q Because whatever is in there is taking up most of the bag?
A Yes, sir.
Q Again, I think you said you're no bomb expert, at all. Is that fair to say?
A No, sir, I'm not.
Q Again, no -- no ticking, nothing like that?
A Not that I recall.
MR. HENDERSON: Okay. (Pause.) Nothing else, Your Honor.

THE COURT: Let me see the lawyers one more time please.

(Bench conference is held off the record.)

THE COURT: All right, Solicitor.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Ms. Sinclair, just to be absolutely clear, when Mr. -- when the armed robbery -- armed robber comes in and he's on your counter and opens up the bank bag, when you see the contents of that bank bag, is that before you get the cash out of the drawer?

A Yes, sir.

Q You see the contents of it. And the contents, is that what you believed was a bomb?

A Yes, sir.

Q When did you come back -- or when -- you said later on, I believe it may have been CD cases wrapped in red wire or red BAND-AIDS, when did you come to --

A When I was typing my notes, you know, just trying to see what it looked like, sort of tell somebody what it looked like. That's what it looked like to me. That was sort of the -- trying to tell you that when I say there was an object in there, that's just what it looked like.

Q At any time, you weren't able to analyze the object?

A No, sir.

Q You weren't able to open it up and see what was inside, possibly, the CD cases; were you?

A No, sir. I wasn't given the bag for me to take stuff out and look at it and put it back in. No, sir.

Q But to be perfectly clear, you saw the contents of what he said, "I have a bomb," the contents of that blue bag is what you believed to be a bomb?

A Yes, sir, that's what I thought.

Q Before you put the cash in there?

A Yes.

MR. BROWN: No further questions.

THE COURT: Mr. Henderson, anything further?

MR. HENDERSON: Very briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. HENDERSON:

Q Again, Ms. Sinclair, thank you. We're just trying to make sure that everybody has got a good answer to our question, so to speak. I think the solicitor just asked you that you actually saw the

contents of the bag on the customer counter before you actually bent down to get the money out? Did I hear that correct?

A I didn't have to bend to get the money out.

Q Oh.

A My drawer is right --

Q Okay.

A -- it's level, where I just stand there. I don't have bend. I bend when I have to get my coin out, but not my money.

Q Okay. But you actually -- again, I want to make sure your testimony, that I understand your testimony, that you actually saw the inside of the bag, the contents before you opened the drawer to get the money?

A As far as I can remember. Two and half years ago ---

Q I understand.

A --- that's as far as -- as far as I could remember. I remember seeing in the bag. Now, whether it was before the money, after the money, I don't know, but I saw that there was an object in the bag. When I tried to put the money in the bag, I even got a better look at what the object was.

Q Okay. So again, you're not sure when you

first -- I mean, did I hear you correctly? -- you're not sure when you first saw there was an object in the bag. I mean, again, I'm not trying to put words in your mouth, but the details matter.

A I just got on here, "The man zipped open the bag, had a note that said to the effect that this was a robbery, give me all your money, don't get me the dye or the bait money and that there was a bomb." I mean, that part, I've written down, so that's what happened. But now, I'm not sure what you're trying to get at. Are you trying to say did I see that before I got money out of my drawer?

Q Correct. I mean, that's what we're trying to figure out, kind of, what order this happened. I'm looking at the video again, the same video --

A He opened the bag before I put any money in there.

Q Have you looked in the bag at this point in time?

A As far as I know. I don't really remember.

Q Okay.

A Two and half years ago, I don't remember.

Q Okay. So you're not really sure. Is that fair to say?

A Yes, sir.

Q I'm not trying to put words in your mouth.
A Yes, sir.
Q I know it's been a long time again. Again, it comes down -- the bag comes down to your lower work counter, your teller counter. And then the robber leaves, correct?
A Not after he takes the bag.
Q Right. Takes the bag, correct?
A Okay.
Q And again, you keep using -- and, I think, the solicitor pointed this out, too -- using the word "later." I think I asked you this a little while ago. How much later did it -- are you picturing this being CD cases? Again, you think it may have been that afternoon? that evening? the next day?
A I'll be honest with you. I do not remember if I did this that afternoon or if I did it the next day. I'm almost positive, almost, that I did it that same afternoon, but it was a while after the robbery. The police all come in, got up to my counter where I couldn't even get back up into it for a while.
Q Okay.
A Then Mr. Perry came. It was even a while before our manager could get back in. She was at lunch, so it was a while before I could even get back

and type these notes.

Q Okay.

A Is that what you're asking?

Q Yeah, I'm just trying to figure out -- you've used the phrase "later" several times. Again, just trying to put that in context with the day's events. I guess how much later is your later?

A This happened at 2:30.

Q Okay.

A I probably didn't get out of there until 6:30.

Q Okay.

A So sometime, I would say, between, probably, 5:00 and 6:30.

Q That's kind of a guess. I understand.

A Yes, sir.

MR. HENDERSON: Okay. (Pause.) I don't have anything further, Your Honor.

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

Okay. Solicitor, you've got another witness?

MR. BROWN: Yes, Your Honor. The State calls James Adams.

MR. HENDERSON: Your Honor, I think I may

have a matter to take up outside the presence of the jury.

THE COURT: Okay. All right.

Ladies and Gentlemen, I'm going to ask that you go back to the jury room for a few minutes. Again, I remind you not to have any discussion about anything about this case, or what you have heard thus far. I'll get you back out here shortly.

(Jury exits at approximately 5:05 p.m.)

THE COURT: Okay, Mr. Henderson.

MR. HENDERSON: And again, Your Honor, as I told Solicitor, I'm not objecting to the search warrant, per se. This isn't a search warrant issue, per se. But the only reason they learned about Mr. Adams is through this search warrant. Again, they're just, kind of, jumping the gun.

You've got the issue of what's found in the search warrant and you also have the issue of the government linking that stuff up to my client. I think they are just, kind of, jumping the gun on calling Mr. Adams. I just think it's --

THE COURT: Are you objecting -- are you

objecting to Mr. Adams being called at all or are you objecting to Mr. Adams as being called at this point because the search warrant has not been fleshed out?

MR. HENDERSON: At this point, Your Honor. At this point. That's my concern. It's out of whack. I'm afraid if he testifies now, that may undercut potential arguments or defenses. By me conceding that he -- allowing him to testify now.

THE COURT: All right.

MR. HENDERSON: Cause, again, I don't think they linked it up yet, in order to get to Mr. Adams.

THE COURT: Okay.

MR. HENDERSON: That's my concern, not the fact that he's testifying.

THE COURT: Right.

MR. HENDERSON: I mean, we've talked to Mr. Adams. That's not the concern. It's the order.

THE COURT: All right. Basically, the summary of Mr. Adams' involvement in this case, what do you intend to elicit?

MR. BROWN: Your Honor, Mr. Adams employed

Mr. Smith. Mr. Smith did odd-and-end jobs for him over a couple of years. He's very familiar with Mr. Smith. He actually -- law enforcement learned Mr. Smith -- it says we learned -- then learned that we had somebody that knew Mr. Smith, and located [redacted]. Mr. Adams was able to look at the photograph and say, "Yeah, that's Mr. Smith that worked for me. He was actually at my house, 11 o'clock earlier in the day."

MR. BROWN: Your Honor, Mr. Adams, the reason we're taking him now is he's got an appointment at the VA all day tomorrow. He's got appointments -- multiple appointments tomorrow.

Just to give you the background on the search warrant -- this is one thing I wish we could've fleshed out before we called Mr. Adams up here -- the search warrant -- law enforcement, after they get the photograph on the screen, there is also a -- it comes in that one of the other sheriff's deputies, Josh Hood, passes a vehicle leaving that area.

They get that picture of the video over local media. Ballentine Ford calls in and says, "Yeah, we sold a car to Tom Smith, the same type

of car we saw riding down the road."

They also have multiple calls coming in that that car was going back over to [redacted] where Mr. Smith lived. A search warrant was, ultimately, sought and granted. They went to the house. They did find that Mr. Smith worked for Mr. Adams. It leads to --

THE COURT: What was found as a result of the search that disclosed -- I mean, I'm taking, from what Mr. Henderson is saying, is that without the search warrant or without the search of the home, no one would know about Mr. Adams. How does this search uncover Mr. Adams' identity or involvement with Mr. Smith?

MR. BROWN: Speaking with Mr. Moore, I believe, it was -- I can't -- it says either an address book or some type of information they gave him that he had connection with [redacted], and they contacted Mr. Adams from the search warrant of the house.

THE COURT: All right. [redacted] is Mr. Adams?

MR. BROWN: That's correct. And that is after they got a search warrant for Mr. Smith's house on [redacted].

THE COURT: All right. They -- there's something in the defendant's house that has Mr. Adams' name and address on there?

MR. BROWN: Yes, sir, that links him up to knowing Mr. Smith.

THE COURT: Right.

MR. HENDERSON: Again, that's why I'm going back. I'm not so much concerned with Mr. Adam's testifying. We've basically already jumped past the search warrant. They haven't linked up -- there's a lot linking to do before they ever get to Mr. Adams. That's not the validity of the search warrant issue.

THE COURT: Right. So if you're not contesting the search warrant, then where's the harm with Mr. Adams testifying now? If you don't see an issue with the search warrant, that we've got a good search warrant, then where's the harm for him, to your case or the prejudice to your client, for Mr. Adams to testify now?

MR. HENDERSON: It's linking all of -- it's linking this whole transaction up with Mr. Smith. Again, there's a long process of how this search warrant came into being. Again, you know, you heard that he is going to -- again,

I'm not quite sure what Mr. Adam's is going to say.

THE COURT: Right.

MR. HENDERSON: I've got a good idea what he's going to say, even though I haven't talked to him, in reading discovery. But again, he's going to be telling stuff about my client that he never would've known about, but for the fact of going through the search warrant.

THE COURT: But if you're not contesting the search, then where's the harm? If you're not contesting the search -- if you're conceding that it was a good search warrant, good search and they uncovered Mr. Adams' identity, where's the harm or prejudice to your client, if you're not contesting the search warrant, for him to testify now?

MR. HENDERSON: My concern is the linking up of all of this evidence with Mr. Smith. And again, I know it sounds like I am splitting hairs. I don't have a problem with the search warrant. I have a major problem with the government's case in chief linking stuff up prior to the search warrant, to get the search warrant.

Again, it's not a search issue, it's almost a foundational issue. It's the order that this stuff ought to be laid out in front of the jury.

THE COURT: All right. Would you have a problem if -- if -- if the solicitor, for the limited purpose, calls the police officer who got the search and say:

"Did you get a search warrant?

"Yeah.

"As a result of the search of the house, did you uncover Mr. Adams' identity?

"Yes."

Sit him down and then put Mr. Adams up. Would you have a problem there?

MR. HENDERSON: Absolutely, I would. I still got a foundational problem.

THE COURT: Well, Mr. Henderson --

MR. HENDERSON: A linkage problem, Your Honor.

THE COURT: Well, you know, if you were contesting the search warrant, then I would have to agree with you because evidence would be coming in that maybe, otherwise, would be inadmissible if the search warrant was found to be, for some reason, invalid. But the fact that

you're not contesting the search warrant, then I'm going to overrule your objection to Mr. Adams testifying, at this time.

MR. HENDERSON: Okay. Just note my exception.

THE COURT: You got it.

MR. HENDERSON: Okay.

THE COURT: So noted for the record.

MR. BROWN: Well, Judge, we'll link it all up.

THE COURT: Okay. All right. Let's do this, let's take a five-minute break since we've got the jury out, and then we'll start with Mr. Adams.

(The Court goes off the record at approximately 5:15 p.m.)

(The Court goes on the record at approximately 5:18 p.m.)

THE COURT: Solicitor, you ready?

MR. HENDERSON: I'm going to have to make my entire argument on the record. I've just got to protect myself.

THE COURT: Okay.

MR. HENDERSON: I'm just afraid that if Mr. Adams testifies, I've abandoned my argument.

Let me go into some detail about what that is.

THE COURT: Okay.

MR. HENDERSON: I'm just not going to run the risk of ineffective counsel for Mr. Smith. After this reported robbery, after the robbery, the police show up. You know, they talk to everybody in the bank and make sure everybody's okay, everything's done, they actually go out and talk to a purported eyewitness to this crime or the aftermath of this crime, a fellow by the name of Andrew Holmes. I notice he was on the witness list, but I don't think he's here to testify.

THE COURT: Okay.

MR. HENDERSON: Mr. Holmes is out there, and says, "Hey, I saw somebody running from the bank." He worked at Badcock Furniture, which was next door. He said, "I saw them run outside of the back, back behind Badcock, around the bin." In Badcock, you can see all of this through the windows.

THE COURT: Okay.

MR. HENDERSON: "And I see somebody -- I see this fellow get in a white car." That was his testimony. The police were out there

questioning him about that. Needless to say, the whole idea behind the white car came from Andrew Holmes.

THE COURT: Okay.

MR. HENDERSON: I mean, there's no other evidence of a white car, at that point in time, but for Mr. Andrew Holmes' testimony. Once Mr. Andrew Holmes says, "I saw him get into a white car" -- actually, he gave us the wrong make of the car -- but "I saw him get into a white car," law enforcement broadcast that out on -- over the radio waves.

And this is where Deputy Josh Hood, you've heard him say that he's coming down the road and when he gets to the scene of the crime, he says, "I think I just passed a white car."

So they actually bring this Andrew Holmes back up there to look at Josh Hood's video to confirm whether or not that was the car he saw the alleged robber get into. From there, that's when the post starts -- that's when the photo starts going viral and that leads to other stuff happening. That leads to the search warrant, Your Honor.

And -- and -- and again, the issue isn't

probable cause for the search warrant, it's the government getting into the evidence to link up my client with the stuff found pursuant to the search warrant, two different issues. Not -- one is the validity of this search. One is the other tying in, linking in the items found, to my client. Again, they've got to tie all of that in.

The only way they tie that in is Andrew Holmes. He's the only person in the universe that has alleged that my client or anybody else was in a white car, period. Once you go through all of this, that's the only way you ever get to Mr. Adams.

THE COURT: I didn't hear you say that Mr. Holmes IDs your client. Just says a man is running, I guess, presumably, from the bank or wherever and gets in a white car. I didn't hear you say Mr. Holmes IDs your guy.

MR. HENDERSON: No, I don't think Mr. Holmes knew my client at all.

THE COURT: Right.

MR. HENDERSON: I don't think they knew each other. Period.

THE COURT: Right.

MR. HENDERSON: That's not the issue. The issue is the white car. What got the white car rolling here, so to speak, is Andrew Holmes', basically, testimony, for want of a better term, to the police, upon being interviewed. Again, it's a *Crawford* issue. It's a confrontation issue. It's a hearsay issue. The only way we ever get to this stuff is out of the mouth of Andrew Holmes. Period.

I mean, again, we've done extensive investigation. They've provided us extensive discovery. The only way you ever get to Mr. Adams is through Andrew Holmes. Period.

Again, that's the concern is now, letting Mr. Adams testify. Again, it's not -- I'm not arguing about the validity of the search. It's the linking the stuff up before you get there to say, hey, this stuff can be linked up with my client. The only way it can be linked up with my client is through Andrew Holmes. Period. I mean, that is it.

THE COURT: Okay. For information, what's your plan as far as Andrew Holmes?

MR. BROWN: We weren't actually planning on calling Andrew Holmes. We were going to call

Ballentine Ford who was right across the street who has a video of the white car parked there, next to Badcock.

THE COURT: All right.

MR. BROWN: That's a stretch saying that's the only person in the universe that could say that that white car was there.

THE COURT: Right.

MR. BROWN: Ballentine Ford has a camera that looks right over there to that parking lot. You see the car parked there.

THE COURT: Yeah.

MR. BROWN: The man gets out, goes up to the bank, come back behind Badcock, get in his car, pull forward, stop, back up, and then leave. You also had concerned citizens who came forward to police to say there was a guy driving recklessly going down Haltiwanger, which also was the same place that Josh Hood, the sheriff's deputy, passes this vehicle, who gets the white car description and have an actual picture of it.

And then, Johnny McCalla, at Ballentine Ford, also comes forward and says we sold that car to Thomas Smith a couple of months ago. This

is his address. That's where it goes to Mr. Smith's house, and Mr. Adams.

THE COURT: Okay.

MR. HENDERSON: If I may, very briefly, Your Honor.

THE COURT: Okay.

MR. HENDERSON: They're talking about this Ballentine's video, and they have produced a Ballentine's video in discovery, but it was produced in June of that year. He might -- I'm talk -- I mean, this robbery happened in February of that year. Again, I'm talking about stuff that was available at that point in time linking my client up with the items found pursuant to that search warrant. I don't think anybody knew that Ballentine's video existed. I mean, it's irrelevant for my analysis, because it was produced after the fact.

I'm looking at stuff at that point in time that leads up -- links my client to that stuff found pursuant to the search warrant. That Ballentine's video is not even an ingredient in the probable cause for the search warrant. Nobody knew it existed. The only person, at that point in time, that could link anybody in the

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universe up to that white car in the parking lot is Andrew Holmes, period.

THE COURT: Well, even though the video from Ballentine comes six months later, it links up a white car, which is later learned to be ---

MR. BROWN: That's correct.

THE COURT: --- so.

MR. BROWN: Your Honor, he said it was not produced at the time. Actually, the video was produced contemporaneous, right there, when the armed robbery was taking place. It's actually better evidence than Badcock and Mr. Holmes. It has the evidence of the person getting out of the vehicle.

To say it would not be discovered just because of Andrew Holmes, I think, is a far cry. Word gets out that a bank robbery takes place at the South State Bank. Ballentine, I think, would be able to say they're willing to help with any of these things that happen. They have a camera that's directly shooting across that parking lot.

MR. HENDERSON: But over and beyond that, Your Honor, once this -- once Josh Hood, the deputy, films this -- what he believes is a

white car and the only reason he knows to be looking for a white car is not Ballentine, it's Andrew Holmes. Once he actually says, "Oh, I just passed a white car," brings Mr. Holmes back. And Mr. Holmes allegedly says -- looks at the video and says, "Yes, this is the guy that I saw getting into the car. This is the car that I saw." And again, Ballentine is not even in the equation.

Based upon that, the government -- the police department, actually, put out, for want of a better term, an APB of a picture of this car. The picture of the car is taken from Josh Hood's in-car video system. Again, Ballentine's not even in the equation, at all. I mean, the fact that they've got a video that's produced some months later -- agree -- I agree it was found at that point in time. I don't have any reason to doubt it was found at that point in time. I'm looking at the immediate point in time, what does law enforcement know and how are they linking that up with my client.

Once they post this picture of a car out here, and this is the picture that came from Josh Hood's video, but only after Andrew Holmes

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has allegedly confirmed that that's the car he saw the robber get into. Once that was posted out here on social media, then Ballentine calls in, and it says, "Hey, we think we sold that car a couple of months ago." That is how they tie the car in to my client.

Again, I don't think you look at the Ballentine video in this analysis. Nobody knows it's in existence. Obviously, I know it's been filming, but law enforcement doesn't have it, the police doesn't have it. That's not what they post out here on social media. What they post out here on social media is something that's been confirmed by Andrew Holmes.

THE COURT: Well, not that I'm suggesting that I'm going to require the State to call Andrew Holmes, what's the possibility of having Andrew Holmes up here? Again, I'm not suggesting that I am -- would require the State --

MR. BROWN: I would need -- I would need to talk with Mr. Wilkie.

THE COURT: Okay.

MR. BROWN: Cause he's been in contact with our different witnesses.

THE COURT: Okay. Go ahead, Solicitor

Black. You want to chime in?

MR. BLACK: Yeah, and I just want to put this on the record. I mean, I get Mr. Henderson's argument. Basically, what he's doing is he is making a *Crawford* motion. *Crawford* just says that a defendant has a right to confront their accusers. It doesn't have any -- it doesn't say -- it doesn't mention anything about timing, when they have the opportunity, just that they have the right to.

And here, Mr. Henderson is trying to get us to call witnesses a certain way. That's not what *Crawford* said. *Crawford* just says he's got the right to confront them. He will have the absolute right to ask questions of him in cross-examination. I think he's reading a little too much into *Crawford*.

THE COURT: Yeah, I don't find it's a *Crawford* issue, Mr. Henderson, when you use the word confrontation. That's the substance of the *Crawford* argument. I don't find that to be the case.

Here's what we are going to do, let's -- talk to Mr. Wilkie. Let's take just another real short break and just see -- again, I'm not

suggesting I would require Mr. Holmes to be present. But if he's available, then, you know, apart from the timing of when witnesses are called in the State's case, that might kind of cure things a little bit. Take a minute to talk with Mr. Wilkie.

Everybody be at ease for just a few moments.

(The Court goes off the record at approximately 5:30 p.m.)

(The Court goes on the record at approximately 5:31 p.m.)

THE COURT: What about this Andrew Holmes?

MR. BROWN: Say that again, sir.

THE COURT: What about Andrew Holmes?

MR. BROWN: He's going to try to get in touch with him. I don't know where he is right now.

THE COURT: I understand. I understand. Well, I'm still going to allow Mr. Adams to testify. We can see what happens with Mr. Holmes.

MR. HENDERSON: Your Honor, I just want to be very clear, and if you will reflect on the record, I'm not abandoning my argument ---

THE COURT: Oh, I know you're not.

MR. HENDERSON: --- by Mr. Adams testifying, right now, my concern is.

THE COURT: You're not abandoning your argument at all. You've already made it. It's on the record. You've objected to Mr. Adams testifying at this stage. Short of you going over there and holding him back from the witness stand, I think you're fully protected, Mr. Henderson.

MR. HENDERSON: All right. And again, just for the record, it's basically on the *Crawford* issue, and the state corollary to the Sixth Amendment, and due process issues, and hearsay. The only way we're getting here is through Andrew Holmes.

THE COURT: Right. But I'm confident that no one is going to quote anything that Mr. Holmes may have said during the course of the police investigation. I don't think we necessarily have hearsay. All right.

Let's -- we'll bring the jury out. Then we will put up Mr. Adams.

MR. BROWN: Yes, sir.

THE COURT: Then we'll adjourn for the

day. All right.

(Jury enters at approximately 5:33 p.m.)

THE COURT: Let the record reflect the jury is back in. It may be a good idea to bring jackets tomorrow because sometimes it can get pretty -- pretty chilly in this courtroom. We have one witness before we adjourn for the -- for the afternoon.

Solicitor?

MR. BROWN: Thank you, Your Honor. The State calls James Adams.

THE COURT: Okay. Come around Mr. Adams to the front, to be sworn in.

JAMES ADAMS

having first been duly sworn, testifies as follows:

THE COURT: Come right up here, sir. Can you make this step?

(There is a pause.)

THE BAILIFF: Can he sit right there?

THE COURT: That will be fine, unless he thinks he can get up there.

THE BAILIFF: Be careful now.

THE WITNESS: I done fell a couple of times. I'm not going to fall again.

THE BAILIFF: I don't want you falling.

THE COURT: These two strong men will catch you, if you do.

THE BAILIFF: We hope.

THE WITNESS: Wait a minute. I'm not that heavy.

THE BAILIFF: We might get these younger folks to do it.

THE COURT: You may proceed, Solicitor.

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Adams -- are you James Adams?

A (Nods head.)

Q Is that a "yes"? There was a cough. Are you James Adams?

A (Nods head.)

THE COURT: Verbally respond.

THE WITNESS: Oh. Yes.

BY MR. BROWN:

Q Mr. Adams, where do you live?

A [redacted] in Greenwood, South Carolina.

Q Mr. Adams, what were the -- before February 18, 2016, had you had dealings with Thomas Smith?

A I'd have to think about those dates. All I

can tell you is -- and I have been knowing him for about a year, a year and a half, that he's been over to my house, helping me do some minor jobs and this and that, over the months and years.

Q Prior to the armed robbery?

A Yes.

Q And during the investigation from the armed robbery on February 18th, 2016 that took place at South State Bank, did you have the opportunity to look at a picture from a video inside of South State Bank?

A Yes.

Q I actually have a copy of the video on the screen -- on the TV screen over here to your right, my left. Who is that man?

A That's Thomas.

Q Thomas Smith?

A Yes. And the day -- can I add something?

Q Well --

A The day that this happened, he was over at my house about 11 o'clock in the morning. We were washing and cleaning up the van. He come by and wanted to help us, make a little bit of money. I told him we were just about through. The wheels were being done. He hung around for a little while.

Then later that afternoon or that night, we -- he had six detectives -- I forget their names -- that was looking for me. I had six of them in my yard and in my garage -- the patio and garage, and they asked me about Mr. Smith. I said he was over here, you know, at 11 o'clock today.

So I tried to -- I said, "Let me call him on the phone. Maybe he'll answer me." But he didn't answer his phone. The little white car was in my yard that day.

Q When he came to your house at 11:00 a.m. that day, he drove a little white car?

A Yes. Well, he had it over there a couple of days before all of that. He told me about trading with Ballentine. I looked at the car. It was just a white -- you know, didn't make any difference to me what manufacture it was.

Q Yes, sir. Does Mr. Smith look like he did when he worked for you?

A No.

Q What's different?

A His hair was longer and darker.

Q Did he have --

A Sometimes he would go for days without shaving.

Q He's cleaned up a little bit?

A Yeah, he don't look like the same young man.

Q Look at this. That's Thomas Smith though, right?

A Yes.

Q Looking at that picture on that video screen, do you have any doubt in your mind who that is?

A No, his facial features, his nose and his eyes.

Q What stands out in that picture?

A Pardon?

Q What stands out to you in that picture?

A His eyes and his nose.

MR. BROWN: No further questions.

THE COURT: Mr. Henderson.

MR. HENDERSON: Yes, sir, Your Honor.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Mr. Adams, his eyes stand out to you behind sunglasses?

A No, his eyes don't, the shape of his eyes and the shape of his nose.

Q How can you -- I'm just curious how you are

seeing the shape of his eyes behind sunglasses?

A Well, I guess just the way they were, because I seen him with sunglasses on.

Q Okay. I mean, you just got me -- you just kind of got me fuddled there, Mr. Adams. But you know Thomas, no doubt about that?

A Yeah.

Q And I think your wife is in the real estate business; isn't she?

A Yes, she is.

Q I think Thomas was living in his parents' house; is that correct?

A That's correct.

Q I think you were wanting to get that listing -- I think both of his parents passed away; didn't they?

A Yes.

Q I think you were wanting to get your wife that listing to sell that house; is that correct?

A My wife ain't got nothing to do with this, young man.

Q I understand. I understand.

A You're not going to bring her in on it.

Q Okay.

A So you can shut up about talking to her.

THE COURT: Mr. Adams, just answer the question please, sir.

BY MR. HENDERSON:

Q Is it fair to say, again, that your wife is a real estate agent?

A That's correct.

Q I think she was wanting to get the listing?

A It didn't make any difference to me whether we got the listing or not.

Q Okay, but you were contacting Mr. Smith about it; weren't you?

A He called, yes, to get us to come and look at it.

Q Right. I think he -- I mean, it was somewhat mutual. I'm not saying it's just your wife trying to sell the house. He was trying to sell the house. Was that fair to say?

A Well, yes, he needed somebody to help him.

Q Yes, he needed somebody to help him. And your wife was somebody that could help him. Is that fair to say?

A Yes.

Q Your wife has a real estate license, I suppose.

A Well, she wouldn't be in the business, if

she didn't have a license, sir.

Q Okay. So she can sell houses?

A Yes.

Q And she can sell them for Mr. Smith or other people?

A Or anyone else.

Q Or anyone else. And sooner or later -- and Mr. Smith was helping you some -- during this time, I think you testified he did odd jobs for you?

A That's right. He'd come over and help me once in a while, while I worked around the house, and do some odd jobs.

Q Right, right. I suppose you paid him?

A Yes.

Q I suppose he did the work that you paid him for?

A Yes.

Q And again, I guess there came a point in time where he didn't want your wife or didn't select your wife to sell the house; is that correct?

A I don't remember that.

Q Okay. Let me ask you, did your wife ever list the house for sale?

A Yes, she has signs out. She's got a listing on it.

Q Okay. Okay. Did Mr. Smith sign that contract, or who signed that contract?
A He signed the contract.
Q So everybody signed the contract to put the house up for sale?
A Yes.
Q Has it sold?
A Yes.
Q Okay. When did it sell?
A A year ago.
Q A year ago. And your wife got some money off of that?
A No, they ain't closed on it yet ---
Q Okay.
A --- because they can't get a clear title on it, on account of taxes.
Q Okay. Okay. And I think you -- you remember talking to my investigator here? You remember Ms. Lumley here?
A Do I remember who?
Q Ms. Lumley here. Do you rememer talking to Ms. Lumley?
A I don't remember her.
Q You don't remember her. You don't remember her coming to your house?

Stand up, Christy. Do you remember her coming to your house?

A Vaguely.

Q Okay. Let me ask you this, Mr. Adams, how old are you?

A How old are you?

Q I'm 45. How old are you?

A I'm 78.

Q I understand you've got some medical treatment tomorrow.

A I'm going to the heart doctor tomorrow.

Q The heart doctor. Okay. You're going out of town?

A The VA in Augusta, Georgia.

Q In Augusta. Okay. Okay. Do you remember telling Ms. Lumley that you thought Thomas here was driving a little Ford car of some type?

A I did not say a Ford or any other kind. I said a white car.

Q Okay. You didn't know the model ---

A No, I did not.

Q --- or the make? And then, I think, you remember saying that you heard there was some allegations of a gun during this robbery? Do you remember that?

A A what?

Q A gun being involved in this robbery? Do you remember that?

A No, I don't. But I knew he had one because he shot it up in the air one night. And he come over to my house, scared to go to his house. I drove him over. There were three or four sheriffs over there waiting on him.

Q Okay. Let me move on from there, Mr. Adams. I appreciate y'all's past adventures, but again, we're talking about this day when this bank got robbed. You understand that?

A All right. Let's do that.

Q I mean, is it your understanding -- I mean, it's your belief -- again, do you believe that somebody had a gun, robbing this bank?

A I didn't see one.

Q You didn't see one. You didn't see this robbery at all; did you?

A I seen his face. I wasn't in the bank when he robbed it.

Q Okay. But you believe he had a gun? That's what I'm trying --

A I wouldn't put it past him.

Q Okay. You just don't know?

A No, I don't know. I'm telling you I don't know. How many times am I'm going to have to tell you?

Q I'm just trying to -- and -- and what picture did the police show you?

A That one over there and the one standing up at the teller.

Q Okay. That's the only pictures they showed you?

A That's all I seen, yes.

Q Okay. And again, you said a whole bunch of detectives ---

A Do what?

Q --- showed up at your house?

A Do what?

Q You said a whole lot of detectives -- I think you said six detectives?

A Six of them come looking for me to ask where he was at and did I know anything about him.

Q How did they -- where did they tell you that they got your name from?

A They got my name?

Q Right. I mean, how did they know to come to your house?

A I couldn't tell you. They just showed up.

Q Okay. They didn't call you and tell you they were coming?

A They were scattered over the neighborhood looking for where I -- where I live, and they couldn't find me.

Q Okay.

A When one found me, the rest of them come calling.

Q I got you. But they never told you --

A You got the detectives in here today.

Q I'm sorry?

A Are they here today?

THE COURT: Just answer the questions, Mr. Adams.

BY MR. HENDERSON:

Q I mean, you -- they -- they found you, but the police didn't tell you how they found you? I mean, that's what I'm trying to get at.

A I couldn't tell you how they found me.

Q Okay. Don't know. Okay. Can I have one minute?

THE COURT: Sure.

(There is a pause.)

MR. HENDERSON: Nothing else right now, Your Honor.

THE COURT: Redirect, Solicitor?

MR. BROWN: No further questions.

THE COURT: Okay. Mr. Adams, you can step down. And let them help you down. Okay?

THE WITNESS: Okay.

(There is a pause.)

THE COURT: Mr. Foreman, Ladies and Gentlemen of the jury, we're going to go ahead and break for the evening. Again, I remind you, no discussion among yourselves, anybody that you come into contact with about the case, also remind you about doing any research into this case. We'll start back at 10 o'clock in the morning. Allow yourself -- yourselves enough time to get here and we'll start back at 10:00. Have a good evening.

(Jury exits at approximately 5:47 p.m.)

THE COURT: Okay. We will be in recess until 10 o'clock. Have a good evening.

(The Court adjourns for the day at approximately 5:47 p.m.)

CERTIFICATE

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, Day 1 of 4, all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood, South Carolina, on this 15th day of September, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD	EIGHTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, -VS- Thomas Allen Smith, Defendant.	Case No(s).:2016GS2400795
	TRANSCRIPT OF RECORD
	Volume 2 of 4

June 11 - 14, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

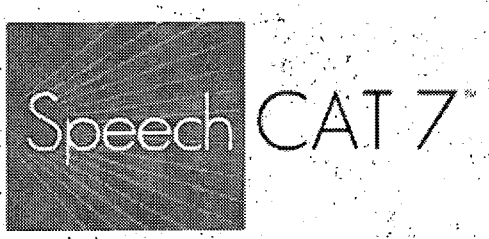
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P R O C E E D I N G S

(The Court resumes on the 12th day of June, 2018 at approximately 10:04 a.m.)

(State's Exhibits 65 and 66 are marked for identification.)

THE COURT: Have a seat. All right. We ready for the jury?

MR. BROWN: Yes, sir.

MR. HENDERSON: We will bring up Andrew Holmes again. Did y'all find him?

MR. BROWN: We tried to find Andrew Holmes. Couldn't find him. We went down -- actually, Mr. Wilkie went down to Saluda last night to his last known address and couldn't find him.

Judge, on this, if there's a -- I'm not quite certain how that would go into the search warrant. All of this is sworn affidavit to a judge, a magistrate judge, who issued it. Information in a search warrant can be hearsay at that time. I believe our witness, our next witness coming up will talk about the white car. Actually, that white car was learned before anything after talk -- before talking to Badcock ---

THE COURT: Right.

MR. BROWN: --- and which would link it all up. So I don't see how that would affect -- it's not a -- it's not like a chain -- a chain witness or anything like that for fundamental items. This is the evidence we had and presented, so I don't think Mr. Holmes is even a necessary witness in this case.

THE COURT: Well, as I indicated yesterday, I was not necessarily suggesting that I was going to require the State to call Mr. Holmes, but I thought if he could be located, that may resolve some of the concerns that Mr. Henderson's had.

MR. BROWN: Our investigator did -- he went down to Saluda last night after we got out of court, spoke with Mr. Holmes' mother.

THE COURT: Right.

MR. BROWN: What was relayed to Mr. Wilkie is that he does not live there, hasn't been there for a couple of months, and she hasn't talked to him.

THE COURT: Right.

MR. BROWN: We even talked with law enforcement and they were trying to locate him

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last night, as well. So, as in a lot of our cases, sometimes you find the witnesses, and sometimes you don't.

THE COURT: Okay.

MR. HENDERSON: If I may be heard, I would like to get some Court's exhibits marked. I think I need to further flesh out my argument.

(Court's Exhibits 1 through 4 are marked for identification.)

MR. HENDERSON: Judge, if I may hand these up to you.

THE COURT: Okay.

(Mr. Henderson approaches the bench.)

MR. HENDERSON: These four items are actually stuff I got from the solicitor.

THE COURT: Through discovery?

MR. HENDERSON: Yes, sir. Your Honor, I want to renew my objection from yesterday about the government's failure to link the items found pursuant to the search warrant with my client. Again, it is two different issues. Just because something is found pursuant to a search warrant that a magistrate said there was probable cause does not automatically make those items admissible at trial.

Again, it is two totally separate issues. You've got the stuff that was found at the search warrant, but you've also got to link those items up through my client. Again, that's why I was objecting to Mr. Adams' testimony yesterday.

Your Honor, the stuff that I passed up to you, Court's Exhibit Number 1 is actually a photo of the contents of a CD that was produced to me in discovery by the State. The reason that's important is there's two videos on the discovery disc that they gave me. There's a bank video, and you see that it's marked February 18th of '16, which is the date of the bank robbery.

THE COURT: That's what has been shown?

MR. HENDERSON: That's State's Number 1, if I'm not mistaken. That's already into evidence. And what -- the second video on there is the Ballentine Ford video. If you notice, it's got a date of June the 30th of '16. Did I say the wrong date?

MR. BROWN: No, sir.

MR. HENDERSON: I want to make sure I don't tell the wrong year. Again, the

Ballentine video of June 30th, '16, that shows when it was actually copied. Keep in mind, as best I can tell, that video wasn't even copied to be provided to the government until June the 30th of '16, four-plus months after the robbery.

THE COURT: Yeah.

MR. HENDERSON: Again, that just goes back to my saying that the George Ballentine video had no relevance and no bearing on the government's ability to get a search warrant, two totally different events going on. Number two, the supplemental incident report I provided is actually 16 pages. I've numbered it with a Sharpie so it's easy to keep up with.

The first two pages are actually emails showing where I got it. I just wanted to put that there. If you look on pages 8 and 9 of that incident report, Your Honor, and actually I've got it marked on the incident report, it shows Detective Moore's -- Blake Moore's interview with Andrew Holmes at Badcock Furniture. Lays it out in great detail what they learned from interviewing Mr. Holmes there.

That's where they learned about the white car. That is the only evidence of a white car that's been produced to the government or was told to the government prior to them obtaining a search warrant. Everything stems from Andrew Holmes.

If you look on Page 13 of the incident report, and again, it looks like Detective Jeremy Adams with the city interviewed Andrew Holmes also. Mr. Holmes was shown Josh Hood's video from his patrol car, confirming a white car, showing a white car. Again, the only way Detective Hood knows about a white car is that the police had interviewed Andrew Holmes who told them the robber got into a white car. And then, reportedly, Andrew Holmes confirms that the car that is on Deputy Hood's video is the car that he saw the robber get into. They actually interviewed Holmes twice that same day after the robbery.

Then, we go to -- Court's Exhibit Number 3 is the first search warrant to my client's home, Your Honor. I've numbered that pages 1 to 4. But before we go into that, if you look at Page 9 of Court's Exhibit Number 2, where the

State talks about all the evidence it had in getting the search warrant and quoting Detective Moore verbatim in his report, after obtaining all of this information, we obtained a search warrant.

THE COURT: Again, the search warrant, as you maintained yesterday and I assume you're maintaining today, that you are not challenging the search warrant itself. That's what you indicated yesterday.

MR. HENDERSON: Your Honor, to the extent I'm challenging anything, it is the -- how we got there.

THE COURT: Just answer my question. Are you challenging the search warrant or are you not? Because yesterday, you indicated you are not challenging the validity of the search warrant.

MR. HENDERSON: Your Honor --

THE COURT: Nope. Answer my question.

MR. HENDERSON: Right now, the answer would be yes, and for this reason --

THE COURT: No. So you're taking a different position than you did yesterday. Because you were very clear and emphatic that

the search warrant was not being challenged.

MR. HENDERSON: Your Honor, the only reason I would challenge the search warrant, if I may be heard on the matter, is because the government's trying to get into evidence procured, or gotten, pursuant to that search warrant without putting up the eyewitness who led them -- who started the search warrant rolling. So to speak again, I think it all goes back to a linking it up. In my mind's eye, you can't link it up. The search warrant -- the stuff on the search warrant doesn't come in.

THE COURT: Well, if you're challenging the search warrant, then what we're going to have to do then is we're going to have to put up the officers who obtained the search warrant, who executed the affidavit in support of the request for the search warrant, and then, if any oral testimony was given to the magistrate who actually issued the search warrant, we're going to have to put all of that up. Because now, you are telling me, contrary to what you told me yesterday, you're telling me today that you're challenging the search warrant. So we're going to have to put all of

that up?

MR. BROWN: Judge, just to clarify with the car, and our next witness, Josh Hood, who is here in the room, as he's responding, the call comes out that South State Bank has been robbed and the man is on foot. As he's driving down Sample Road, which is behind -- kind of behind the old Lowe's and where this car would have pulled out, he sees a white vehicle driving very, very fast passing him.

As he would testify -- and I will let him testify, if you want to hear from him, but I will submit to you that it strikes, in his eyes, saying something is not right about this guy. He's staring me -- he's looking at me funny, and he drives on by.

Later on, there are reckless driving calls that are reported from people on Haltiwanger Road here in Greenwood City, which is very close to Sample Road, but it also says a white vehicle was driving as a reckless driver. Josh Hood, as he approaches the bank -- to make it clear, the photograph on his in-car camera is February 18th, 2016 at 2:36, so roughly a minute or two after this happens. Josh Hood --

it strikes him as something very odd.

He goes to the bank, and immediately, as he told us, lets the other investigators know exactly that if this guy's not on foot, he's in a white car. The white car, as Mr. Henderson actually said just during his recitation of the facts, this car -- this picture was actually shown to Badcock, to Mr. Holmes. This was already brought to the attention of the investigators as a likely suspect and a likely getaway vehicle.

Mr. Holmes is not the linchpin in this whole thing. It actually -- it adds to it, but Officer Hood sees this a minute after he leaves that bank robbery, right behind the bank. He will be able to testify that. The totality of all of this with Mr. Hood, with Ballentine who is here today, Mr. McCalla, the vice president of Ballentine that also talks about the car being sold, this is the picture that was sent out over media. That's when they called regarding this car. That's what links him up to, actually, Thomas Smith's address was after this picture coming from Josh Hood's vehicle was put out over the media.

THE COURT: Right.

MR. BROWN: Badcock just -- just enhances this, actually corroborates it. But it was Josh Hood that recognized it, and also calls that come in to local law enforcement as a reckless driver.

THE COURT: Right.

MR. BROWN: Which it doesn't take putting the two together that, more than likely, it's this white car leaving the crime scene ---

THE COURT: Right.

MR. BROWN: --- at that time.

THE COURT: And I understand what you're saying, and I'm not convinced with Mr. Henderson's argument about the failure to link up. But what I'm hearing Mr. Henderson tell me now is that he's challenging the search warrant.

MR. BROWN: Yes, sir.

THE COURT: That's what -- contrary to what he said yesterday, that's what I'm hearing him say today. If the search warrant is being challenged, then we're going to have to put up In camera testimony for me to make a determination of whether or not the search

warrant was valid or not. I mean, what else am I to do?

MR. BROWN: Yes, sir.

THE COURT: Okay.

MR. HENDERSON: Your Honor, let me continue with my initial argument before we come into the search warrant issue. Just for the record, Your Honor, today is the first time that's ever been provided to us or told to us listening that the robber or whoever in this white car was driving very, very fast, and that raised Deputy Hood's suspicions. None of that's ever been produced to us, at all, before today.

If you read the incident report, all it basically says is that, "Hey. I noticed a white car turning -- passing me while I was coming to the scene." Again, the only way he knows about this white car was through Badcock, Mr. Andrew Holmes. Again, that is the linchpin of how we are here.

Again, Your Honor, going back to Exhibit Number 3, Court's Exhibit Number 3, this search warrant, again, even Detective Moore talks about the evidence that he had to get the search warrant. It starts off with the

identification from the Badcock employee, Mr. Andrew Holmes. It doesn't start off with anything about Josh Hood having suspicions. Again, this is the first time we've heard of that. It starts off with Andrew Holmes.

Again, the search warrant that they went to the magistrate and got probable cause on, it starts off with that the gentleman got into a white-in-color vehicle. They actually acknowledged that's their initial starting point to the probable cause to go search Mr. Smith's home.

Then, on Court's Exhibit Number 4, which is the second home search warrant -- there's actually two home search warrants. Again, the probable cause, the additional starting point for the probable cause is that Badcock employee or somebody saw the robber get into a white-in-color vehicle.

The government's whole case goes back to Andrew Holmes. There's just no other way to get around that, Your Honor. The government, obviously, did not have him under subpoena to be here. You know, we don't have to call witnesses. I don't have to put up any defense.

But the government, obviously, did not subpoena this guy. Again, they were looking for him at the last minute and haven't been able to put their hands on him. And again, that's not our problem. But again, it still goes back to being able to link up.

And, Your Honor, as I raised yesterday, again, after the robber left the bank, you know, all the information and evidence obtained through and including the search warrant and stuff stemming from the search warrant, it all stems from the interview -- the two interviews of Andrew Holmes. Again, that denies our right to confront Mr. Holmes by them trying to get in stuff that stems from his testimony. They are just trying to jump a witness. They're jumping the eyewitness. That is what the Sixth Amendment -- that's what *Crawford* talks about, we have the right to confront these witnesses who have offered testimony. The US Supreme Court has said basically --

THE COURT: Wait a minute. Where has Andrew Holmes offered testimony?

MR. HENDERSON: Offered to Detective Moore.

THE COURT: Testimony?

MR. HENDERSON: If you read *Crawford*, responses to police questioning -- and that's exactly what it was -- is testimony. U.S. Supreme Court has said that.

THE COURT: Give me a case, Mr. Henderson, that when a police officer interviews a person ---

MR. HENDERSON: Uh-huh.

THE COURT: --- in the course of their investigation that what that person tells the police officer, that is considered testimony. Give me a case.

MR. HENDERSON: *Crawford.*

THE COURT: No. We're going to stop this proceeding right now. Give me a case.

MR. HENDERSON: *Crawford*, United States Supreme Court.

THE COURT: All right. Give me a copy of *Crawford.*

MR. HENDERSON: Your Honor, I can give you the site to it.

THE COURT: Well, I don't have my computer with me today.

MR. HENDERSON: I have got my notes

around, Judge. (Pause.)

Your Honor, it would be *Crawford versus Washington*, 541 US -- I'm not sure of the first page yet, Your Honor, at -- but all of this language is from *Crawford*.

THE COURT: All right. I want to read *Crawford*. I've read *Crawford* many times before. I don't recall *Crawford* saying that what a person tells a police officer outside of court that that is considered testimony. I want to read *Crawford*.

Solicitor, can you give me a copy?

MR. BROWN: Yes, sir.

THE COURT: Now, if the police officer gets on the witness stand and says that Mr. Witness told me X, Y and Z, yeah, that would be testimony on the nature, and prohibited by *Crawford*. I agree with that. But I don't think the police officer is going to get up here and quote on the stand what Mr. Holmes may have said.

Everybody be at ease for just a little bit and see if we can get a copy of *Crawford*.

(The Court goes off the record at approximately 10:25 a.m.)

(The Court goes on the record at approximately 10:28 a.m.)

MR. HENDERSON: Your Honor, I would call your attention to Page 52.

THE COURT: Okay. (Reviewing.)

Mr. Henderson, you referred to Page 52. My copy of the *Crawford* case does not have page numbers so what -- maybe a section number you wanted me --

MR. HENDERSON: Your Honor, I am citing from another case. But I guess it would be the Supreme Court numbering, Page 51. It probably would be buried in the text some place. I think the lawyers could probably help you find it.

THE COURT: I wanted to look at the portion that you wanted me to look at.

MR. HENDERSON: I will read it verbatim, Your Honor. Again, I'm quoting from another case, but citing *Crawford*.

THE COURT: We are concentrating on *Crawford* right now. Is there a portion of *Crawford* that you want me to pay particular attention to?

MR. HENDERSON: Right, Supreme Court, Page 52 -- probably 52, 53, that neck of the

woods.

THE COURT: Right. My copy does not have page numbers.

MR. HENDERSON: Okay.

THE COURT: I can't find Page 52 or 53.

MR. HENDERSON: Your Honor, can we borrow your copy, the lawyers?

THE COURT: Yes. Take my copy ---

MR. HENDERSON: Okay.

THE COURT: --- and find it for me, if you would.

MR. BROWN: Your Honor, while he is looking at that, the State would pass forward *State v. Thompson*, cite 352 S.C. 552. This case -- and I would direct you to Page 4, Law/Analysis, Hearsay/Bystander Statement.

THE COURT: But under *Crawford*, it all hinges on the State attempting to admit -- in *Crawford*, it was the State's admission of the wife's statement to police, and the Supreme Court found that it was an error for the Court to allow admission of her statement to police into evidence. I mean, that's clear from *Crawford*, and that's why *Crawford* found that it was testimonial in nature and, therefore,

violated the confrontation clause.

The part -- whether or not this is hearsay as it relates to Andrew Holmes, I don't think, under *Crawford*, that the State would be able to put up a witness to say, "Andrew Holmes told me X, Y, and Z," because I think that would violate *Crawford*.

Again, a statement made to police that's not offered into evidence does not violate *Crawford*. I think *Crawford* is very clear on that.

MR. BROWN: Judge, I would also -- the case I pulled up, *State v. Thompson*, a South Carolina case, it says, additionally, an out-of-court statement is not hearsay if it's offered for the limited purpose of explaining why a government investigation was undertaken.

This would just be -- Mr. Holmes can't identify Mr. Smith. He didn't know -- he just said a guy ran behind the house -- or ran behind Badcock and got in a white car. He doesn't know what. He just says a white car.

Again, what *Thompson* goes into saying, "Here, these statements were not entered for their truth but rather to explain why officers

began, in this case, their surveillance. These statements are not hearsay and, therefore, the trial judge committed no error in allowing these statements into evidence."

We're not offering these statements into evidence. We would, actually, just go to Josh Hood passing this vehicle, a white car, which then, during their investigation, they ultimately uncovered through Ballentine, the owner of that car and the location of where the search warrant was executed.

THE COURT: As I understand, Mr. Henderson, your argument is that the State would be required to have Andrew Holmes to testify because the police used that information as a basis for securing the search warrant. That's where you are challenging the search is that you're saying the State is required to have Andrew Holmes here to testify.

MR. HENDERSON: Absolutely. That's it, in a nutshell.

THE COURT: Okay. Under *Crawford versus Washington*. Okay. Anything else you want to put on the record related to this argument?

MR. HENDERSON: Yes, sir, Your Honor. If I

may just quote directly from *Crawford*, just a couple of paragraphs, "Statements taken by police officers in the course of interrogations are considered testimonial." Again, the Supreme Court said interrogation isn't used in the legal sense, it's in the colloquial sense.

THE COURT: Only if -- only if, though, the interrogation statements are offered into evidence at trial.

MR. HENDERSON: The only way they can get this stuff into evidence is through Mr. Holmes' statements. Again, going back to this *Thompson* case that the Solicitor shared with me, it is a pre-*Crawford* case. If you look at it, it's in 2003. *Crawford*, I think, is from 2004. That's why I'm making the constitutional Sixth Amendment state corollary arguments.

Again, Your Honor, my complaint is -- you summed it up. That is why I think the search warrant is -- I'm using -- putting in quotes -- defective because it can't produce Andrew Holmes to link it all up.

THE COURT: Okay. And your objection is noted and overruled. Again, I think we would have a *Crawford* issue -- if, in fact, they

intended to offer what Andrew Holmes said, there may very well be a *Crawford* issue. But if they don't offer what Andrew Holmes said, then I don't think we have a *Crawford* problem, at all. You are noted and protected on the record. Anything else, Mr. Henderson?

MR. HENDERSON: Again, Your Honor, the primary purpose of this interview or interviews with Mr. Crawford -- with Mr. Holmes was to get evidence of past criminal conduct that could be used at trial. This is a classic confrontation issue. And again, I think is a due process issue that the government basically just let the jury assume stuff and that they haven't laid the foundation to get it in.

THE COURT: Okay. All right. So protected on the record, Mr. Henderson.

Anything further from either side before we bring the jury out?

MR. BROWN: Not from the State, Your Honor.

MR. HENDERSON: I would like to, if I may, put on the stand Detective Moore, for a couple of questions.

THE COURT: Related to?

MR. HENDERSON: To the search warrant.

THE COURT: Okay. All right. That will be fine.

Come around.

BLAKE MOORE

having first been duly sworn, testifies as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. HENDERSON:

Q Detective, just for the record, introduce yourself, please.

A Blake Moore, Greenwood City Police Department.

Q And Detective Moore, you were the chief investigative officer on this matter?

A Correct.

Q Okay. And you may have to look back through some notes, but when did the police department first receive the George Ballentine video?

A I don't recall cause I don't think I picked that video up.

Q Who would've picked it up?

A There were several of us that worked this case. I don't remember who exactly picked it up from Ballentine.

Q Was it after the date of the robbery that you picked it up?

A I don't recall.

Q Okay. Who would know the answer to that?

A I'm not 100 percent sure. Maybe Captain McCallister. I don't know who they called to actually pick up that video.

MR. HENDERSON: Your Honor, with the Court's permission, I would like to let Detective Moore call Detective McCallister to figure out when it was picked it up, when the State took possession of it.

MR. BROWN: I think something that would also be helpful is when did they find out that Ballentine sold the white car, which, I believe, would be that day, if I'm not mistaken from Mr. McCalla. I'm not sure -- I could ask Mr. Moore, did y'all learn of the video that day? Or was it later on? Or do you know the answer to that?

THE WITNESS: We learned information of the white car that day of the armed robbery.

MR. BROWN: From Ballentine?

THE WITNESS: Correct. It was from the media. That's why they -- Ballentine actually

reached out to us.

BY MR. HENDERSON:

Q But Ballentine did not reach out to you until you had actually posted the picture from Deputy Hood's car; is that correct?

A The way I understand it, correct.

Q I mean, you're just the chief investigative officer. I'm just trying to confirm that.

A Correct.

Q And let me ask you -- I've read your search warrant applications. I've read your incident reports. Did you rely on the George Ballentine video, at all, to get your search warrant?

A Through -- I remember through talking with them. I can't remember if I relied directly on the video. But what they advised us was key to that search warrant.

Q What they advised you -- correct. I understand you talked to Ballentine on the 18th. I don't dispute that. When did you learn about the Ballentine video?

A I can't recall because I'm not the one that went to Ballentine the day of the armed robbery.

Q But you're the one that got the search warrant; weren't you?

A I don't think I typed up that search warrant. If you had a copy of it, I'll be glad advise you of who typed it up.

Q Look at Court's Exhibits 3 and 4.

A The person who typed the search warrant would have been Lieutenant Michael Dixon.

Q Okay. And do you see anything in there at all about there being a George Ballentine Ford video?

A (Reviewing.)

This search warrant states --

THE COURT: Which number? There's a 3 and 4.

THE WITNESS: Exhibit Number 3.

THE COURT: Okay.

THE WITNESS: This search warrant states, approximately four hours after the incident occurred, the call came in that Subject recently purchased the vehicle used in the armed robbery from the Ford dealership. The name of the person was Thomas Allen Smith who bought the vehicle. We learned his address. That's when we went to that location.

BY MR. HENDERSON:

Q Again, my question is, I understand what the conversation was with Ballentine --

A The search warrant does not say anything about the video.

Q The video. Okay. So is it fair to say that the Police Department didn't know about the video or didn't rely on that video to get the search warrant?

A I can't recall.

Q Okay. Just don't know. Let me ask you, is it fair to say, you are the person that interviewed Andrew Holmes, aren't you, the Badcock employer?

A Correct.

Q Okay. And he's the one that told you that the robber got into a white car?

A If that's what the incident report says, then yes.

Q Right. You were there. I don't want to put words in your mouth.

THE COURT: You want to look at the incident report?

THE WITNESS: Yes, sir.

MR. HENDERSON: That would be Court's Exhibit Number 2, I believe.

THE WITNESS: (Reviewing.)

Yes, Mr. Holmes stated he got into a white-in-color vehicle.

BY MR. HENDERSON:

Q You questioned more -- I mean, you had conversations with more than one person that day. Is that fair to say?

A Correct.

Q At the crime scene, I mean.

A Correct.

Q Did anybody else at the crime scene tell you that the robber got into a white vehicle?

A No, because the car was on the other side of Badcock, it could not be seen from the bank.

Q Did you talk to any other Badcock employees? Did anybody else in the universe tell you that the robber got into a white vehicle?

A Negative. No.

Q That's a no. Okay. I suppose you then radioed or put out on dispatch that the robber got into a white vehicle?

A I don't recall if I radioed that out.

Q I mean, how would it have gotten out? You're the law enforcement officer that knows this critical piece of evidence. How would it have gotten --

A There were several -- we had several different things that led up to this white vehicle. Before I talked with Mr. Holmes, we were aware of a

white vehicle, based off Deputy Hood's patrol vehicle. He arrived at the location within seconds or minutes after he passed the vehicle. That was one way we knew of the white vehicle.

Q That hasn't -- you know, this is the first time I'm hearing about this, that Deputy Hood knew about this white car before the eyewitness told you about the white car.

A I mean, I can't advise you if I put that over the radio or not. I could have. I may not. But that was two years ago, I just can't remember.

Q How did you learn that Deputy Hood had seen a white car?

A That white car was put over the media -- the picture that was put out to the media was from his patrol car.

Q Right, but it was based upon Andrew Holmes' identification?

A I don't remember.

Q I'm looking at the incident report. This is your incident report.

A Could you tell me where that is in the incident report?

Q It would be -- it would be the fourth page from the back.

A (Reviewing.)

Is it the supplemental, written by Detective Kay?

Q It is. It is.

A Okay.

Q Starting with the paragraph that says, "We later spoke with Deputy Hood."

A (Reviewing.)

When I spoke with Mr. Holmes, I did not have that picture in my possession. I never showed Mr. Holmes a picture.

Q Right. I mean, you had the information, white car, because you didn't have a picture at that point in time. Is that fair to say?

A I don't recall. All I did was just speak to him. I didn't show him a picture.

Q Right. Probably that picture wasn't in existence or you didn't have it one way or the other?

A I don't know.

Q So you talked with Mr. Holmes, then later some of your colleagues talked with Mr. Holmes. Again, you're looking at this incident report.

A Correct.

Q And again, Mr. Holmes confirmed to them that it was a white car. Then, they talk about later

speaking with Deputy Hood and then having Mr. Holmes look at his video. Is that correct? I won't put words in your mouth.

MR. BROWN: Judge, I just want to be clear. This is reading off Detective Kay's write-up and not our witness here, so it is putting words in his mouth.

MR. HENDERSON: He's the chief investigating officer. He's responsible for his investigation.

THE COURT: He can answer if he knows or he doesn't know as far as what is in Officer Kay's supplemental incident report. You may proceed. You may want to repeat the question.

BY MR. HENDERSON:

Q Yes, sir. It looks like, again, you talked with Andrew Holmes. He told you there was a white car. Then it looks like, again, that -- looks like Detective Adams then spoke with Mr. Holmes. Mr. Holmes, it looks like, confirms the story that he told you about this white car driving away from Badcock. Then, it looks like Mr. Holmes was then showed Deputy Hood's video, once they learned that Deputy Hood had passed a similar car. That's when Mr. Holmes ID'd the video or ID'd the picture.

A Correct. It says in the incident report -- I don't know. I wasn't there when Detective Adams or Detective Kay showed them the photograph. I don't know how far in advance "later" means. I don't know if it was a few minutes. I don't if it's a few hours. Because I wasn't there at that time when they showed him the picture. I don't know -- I'm not sure how late "later" is.

Q Just to be clear, your first confirmation of a white car being involved in this robbery came from Andrew Holmes?

A I can't remember if it was Andrew Holmes or radio traffic, but it was shortly after I arrived on the scene.

Q How did somebody on radio traffic know that a white car had been involved in an armed robbery?

A There were calls coming in of a reckless driver.

Q What does that mean? How does that show that somebody is involved in an armed robbery?

A When it says a white car and a reckless driver, and it all adds up that he lives on [redacted]. The car is headed that way. Deputy Hood passed a white vehicle and got it on his dash cam headed to the scene of the crime.

Q I understand that this car is reportedly on the video. That's not my question. The issue is that when the car got caught on Deputy Hood's video, did law enforcement know about a white car being involved in the robbery? Had you talked to Andrew Holmes at that time?

A I don't know.

Q You don't know. Again, it's fair to say that the only -- the first definite evidence you had of a white car being involved in this robbery is Andrew Holmes?

A I can't confirm that. I don't know if I was already passed that information from Deputy Hood or from another investigator or if I learned of the white car when I spoke with Holmes. I don't remember. I just know Deputy Hood arrived on-scene shortly after the call came out. I mean, cause he passed the white car shortly after the bank was robbed, I think within seconds or minutes.

I don't know what was relayed to me at first. If Mr. Holmes' information was relayed to me at first, probably not. If I recall, the first four people I talked to were bank employees. So -- and those -- I was probably in there a little bit before I even talked to Mr. Holmes. Then we had to wait on

the dog team to arrive, because they arrived and I think I spoke with Mr. Holmes after I followed the dog team. I don't remember exactly at what point I talked to Mr. Holmes or what point I got the information from Deputy Hood.

Q Is it fair to say then, next, that this picture that got put out on social media from Deputy Hood's video, that came after Andrew Holmes confirmed that that's the car?

A I don't remember, because I didn't post that picture.

Q Well, who posted it?

A All I remember -- I believe it was Captain McCallister that went -- I'm not allowed to talk to the media. I am sure it's the super -- I'm pretty positive it was a supervisor who posted that picture.

Q Afterwards, you think Andrew Holmes ID'd the car?

A I don't recall.

Q Okay.

MR. HENDERSON: Your Honor, I don't think I have anything further. I'm just renewing all of my --

THE COURT: You are protected on the record, Mr. Henderson. Thank you.

MR. BROWN: Judge ---

THE COURT: Solicitor, do you have any questions ---

MR. BROWN: --- just to --

THE COURT: --- on this issue with Officer Moore?

MR. BROWN: -- just to clear it up.

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. BROWN:

Q Officer Moore, you got to the bank shortly after the panic button or the alarm went off, right?

A Correct.

Q And around the same time, Officer Hood came to the bank, as well?

A Correct.

Q During that time, did you learn about Officer Hood passing a white vehicle, a suspicious white vehicle?

A At some point in the investigation, I did.

Q And then, later on, Ballentine, after the picture from Josh Hood's vehicle came out, Ballentine contacted with the name that this car is registered to and the address?

A Correct.

Q You also mentioned you talked to a lot of bank employees before even going inside of the bank to talk to anybody; is that correct?

A Correct, cause I was one of the first investigators on the scene and, actually, one of the first officers. My job was to make sure, A, everybody was okay, the crime scene was secure, and to get as much information from the bank employees as possible.

Q You did mention something about a dog tracking team came out?

A Correct.

Q Where did that dog tracking team run?

A According to my report, I wrote -- this is after speaking with all the bank employees -- I wrote I followed the dog to see if I could find possibly evidence of where a dye pack had busted. Those results were negative. The dog team did track behind Badcock Furniture but I believe the scent was lost.

Q Where was the scent lost?

A It was somewhere behind or beside Badcock. I can't tell you exactly where. I'm not trained in dog, so I can't give you an exact location. I was just advised by the handlers that they lost scent.

MR. BROWN: Your Honor, this argument is a totality of all of the tips coming with Josh

Hood's tip, the bank tellers. Ballentine -- Ballentine is the one that actually gave the name and address.

We're also jumping to the conclusion. Mr. Henderson is saying the robber, at that time, got into the vehicle. This employee at Badcock says he sees a guy getting in there, in this white car. Again, it's all -- all of it grouped together is the basis of the search warrant.

It's actually, Ballentine, based off of a picture of Josh Hood, who he will -- my understanding, will testify that when he passed this vehicle, he -- it seemed odd. In addition to that, law enforcement did receive a number of calls in about a reckless driver in that area, which alerted to a white vehicle or raised a suspicion on that.

THE COURT: Well, that was going to be my question, not that it's necessarily that important, but did Andrew Holmes ever refer to this guy in the white car as a robber, bank robber?

THE WITNESS: He never advised me. I think he put two and two together.

THE COURT: Right.

THE WITNESS: But he never advised me, hey, I seen him rob the bank. He told me -- I call it the front part of the store, but in the main area of the store, behind Badcock, is a loading dock. He seen the guy running from the bank's location. He came out the back and seen him run and get into a white car. He said I don't know who he is or what he did, but he kind of figured the bank was robbed once he seen law enforcement.

THE COURT: I understand.

You can step down, sir.

All right. The argument that Andrew Holmes' in-court testimony is necessary in order to find the search warrant valid and, consequently, the fruits of the search warrant, I find that Andrew Holmes' testimony is not necessary and, therefore, I deny the objection offered by the defense.

All right. Let's take a real short break, and then let's get the jury out and let's proceed forward.

MR. BROWN: Yes, sir.

(The Court goes off the record at approximately

11:07 a.m.)

(The Court goes on the record at approximately 11:13 a.m.)

THE COURT: All right. We're back on the record. Anything further before we bring the jury out?

MR. BROWN: Not from the State.

THE COURT: Defense?

MR. HENDERSON: No, sir.

THE COURT: Okay. Thank you. Let's bring the jury out.

MR. HENDERSON: Judge, just for the record, I'm going to object to this witness' testimony ---

THE COURT: Sure.

MR. HENDERSON: --- based upon our prior --

(Jury enters at approximately 11:13 a.m.)

THE COURT: That's fine. Y'all can have a seat. We've got one in the restroom? Okay.

(Missing juror enters at approximately 11:14 a.m.)

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

Good morning, Ladies and Gentlemen. Let me

assure you that since 10 o'clock, the last hour and 15 minutes, we've been working. When you have good lawyers, like we've got in this case, they'll raise some issues. I'm happy to deal with some legal issues. But that is why, unfortunately, we've kept you back there. I can assure you, we have been working. Thank you for your patience.

The State's ready to call its next witness.

MR. BROWN: The State calls Josh Hood.

MR. HENDERSON: I think I'm just going to note my objection for the record, Your Honor.

THE COURT: So noted, Mr. Henderson. Thank you.

JOSH HOOD

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Hood, where do you work?

A Greenwood County Sheriff's Office.

Q How long have you been with the Sheriff's Office?

A I've been here in Greenwood since 2007.

Q What are your current duties at the Sheriff's Office?

A Currently, I'm a lieutenant assigned to uniform patrol.

Q Back in February of 2016, were you part of uniform patrol then, as well?

A I was part of uniform patrol. I was either still assisting a team on uniform patrol or I would have been on shift as a sergeant or lieutenant, at the time. I can't -- it was around that time when I was promoted.

Q On February the 18th of 2016, did you, over the radio, receive a call that South State Bank, located at 1224 Bypass 72, had just been robbed?

A I did.

Q Where were you located?

A At the time that the call initially came out, I was in the area of the Bypass and Laurel Avenue, somewhere there in front of the Food Lion, that general area right there.

Q And as you were making your way to South State Bank, what did you encounter?

A As I cleared the light at Laurel Avenue, I turned left to go the back way towards South State. I expected the other responding units would be coming from the front. As I turned onto Laurel and was getting ready to make a right turn onto Sample, I

encountered a white vehicle traveling at a high rate of speed on Sample toward me, away -- which would be directly away from the bank, within about, if I had to guess, I'd say a mile to a half a mile of the bank.

Q And you being uniform patrol, did you have an in-car camera in your vehicle?

A I did.

Q Did this vehicle register in your mind, or did you file that away?

A It did, because of the speed it was traveling on that road. I believe it was probably a 30- to 35-mile-per-hour road. It appeared to be traveling well in excess of that. As I passed the vehicle, the person kind of had a stunned look on their face. Unfortunately, at the time, I had been given information that the suspect was on foot so that's why I just, kind of, logged it in my mind and continued on to the bank.

Q Once you got to the bank, did you let other investigators there know of what you passed?

A I did -- on the way to the bank or as soon as I arrived at the bank, I had received a call through dispatch that they were receiving several calls on Haltiwanger Road.

MR. HENDERSON: I'm going to object to that, Your Honor.

THE COURT: Okay. Just as a result of the information that you received, you did whatever. Try not to repeat what was told to you.

BY MR. BROWN:

Q As a result of the information over the radio, did you let other detectives know what you saw?

A Yes, I did.

Q As a result of what you saw of this white vehicle, did you go back and take a still shot from your in-car camera?

A Yes.

MR. HENDERSON: Your Honor, same objection.

THE COURT: Sure. So noted.

BY MR. BROWN:

Q Deputy Hood, I want to show you what has been marked as State's Exhibit 35. Do you recognize that photo?

A Yes, I do.

Q Does it have a timestamp on there of when you passed that vehicle?

A It does. It says February 18th, 2016 at

what appeared to be 14:36 or 2:36 in the afternoon, 2:36, yeah.

MR. BROWN: Your Honor, the State would publish or move into evidence State's Exhibit 35.

THE COURT: Subject to the objection that's been made by the defense, Number 35 will be in evidence for the State.

(State's Exhibit 35 is admitted into the record.)

BY MR. BROWN:

Q Is that the vehicle that passed you, going at a high rate of speed?

A Yes, it is.

Q And again, where is Sample Road in relation to South State Bank?

A If you came out of the rear exit of the bank, it would be one short turn and Sample Road is basically the road that parallels the Bypass and goes back behind. I mean, that's about the best I can explain it, I guess. It parallels the Bypass from South State to Laurel.

Q It goes behind Ollie's?

A Yes.

Q Old Lowe's?

A Yeah, old Lowe's, NewSpring Church, that area?

Q And to be clear, down at the bottom, is the date and time, 2/18/2016, 14:36?

A That's correct.

Q Which would be 2:36 p.m.?

A Uh-huh.

Q You, being a road officer, how far away is Northside Drive from Sample?

A From that location, maybe -- I mean, it wouldn't be more than one -- maybe another mile -- one mile, at the most, to Northside.

Q And again, once you got to South State Bank, after shortly thereafter passing this vehicle, you let other officers know about this?

A I did.

MR. BROWN: No further questions, Your Honor.

THE COURT: Okay. Mr. Henderson, any cross?

MR. HENDERSON: Yes, sir, Your Honor.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Deputy, how are you today?

A I'm doing all right.

Q I just want to walk you through this to make sure I heard your testimony correctly, okay? I think you said you're coming down the Bypass and you take a left on Laurel; is that correct?

A That's correct.

Q Okay. You take a left there at the Food Lion. I think there's what, the Dodge dealership right there?

A That's right.

Q You took the left?

A Uh-huh.

Q Did you have your blue lights on?

A I'm sure I probably did. That would have been why the camera would have been activated.

Q Okay. So when you take a left on Laurel there, I guess you go up the hill a little bit?

A That's correct.

Q Not a steep hill, a little bit of a hill. And Sample Road is the first road to your right?

A That's correct.

Q Did you use your turn signal?

A I have no idea.

Q Okay. But you think your blue lights were on?

A Right.

Q You take a right?
A That's correct.
Q Then, I'm just looking at this. Again, the video doesn't exist; does it?
A To my -- to my knowledge, it was purged after a certain timeframe of it not being saved or whatnot. After a certain length of time, it goes away.
Q Right. So the only evidence from your video was this still shot?
A That's what I'm being told.
Q Okay. Did you try to save a copy of the video?
A I did not personally save a copy of the video, no.
Q Okay. Do you know if anybody asked to save a copy of the video?
A If they did, I don't remember it.
Q Okay. I'm looking -- let me put this back up on the screen again. I am looking at this. It looks like the visor is down?
A Yeah, it appears that way.
Q Okay. And again, it looks almost like the driver's side window is down. I know it's hard to tell, but just looking at it, it looks down.

A Okay. Are you asking a question?

Q Right. Can you tell?

A Not from the picture.

Q Right. But I think you can tell that the visor is down?

A It's probably fair to say, yeah.

Q You are pretty familiar with Sample Road, I suppose. It's probably a heavily trafficked road?

A I wouldn't say heavily trafficked, but it was -- yeah, I'm familiar with it, yes.

Q Where that car is, as that car would come toward us, it would come to Laurel Avenue; wouldn't it?

A That's correct.

Q There's a stop sign at Laurel Avenue?

A Yes.

Q From looking at where that car is on Laurel, it looks like it's darn close to that stop sign?

A Yeah. That part right there is pretty close to the stop sign.

Q He would be gearing down or breaking to stop?

A At that point, yes.

Q And again, at that point in time, looking

at this point in time where this is coming from, he's prepared to stop; is that your testimony?

A Preparing to make a turn, yes.

Q Okay.

A I don't know if he's stopped or not. I highly doubt it. I --

Q How do you know that? Did you look in your rearview mirror?

A Because of the speed he was going at the time. He was going faster than any normal person would be going that was getting ready to stop.

Q Okay. Did you look in your rearview mirror and see that he stopped?

A No, I was paying attention to driving.

Q Okay. You don't know whether that car stopped or not?

A I do not.

Q You don't know whether or not that car went right or left?

A I don't.

Q But we're right there at the stop sign?

A That's pretty close to the stop sign at the point that we actually passed, yes.

Q I'm trying to think. I looked at the report. Did you do a report about this?

A I do not know if I have a report or not.

Q I haven't seen one, if you do. That's why I'm asking if you produced one?

A I don't know, at this point or not, that I did.

Q Okay. Now, I understand that the city produced a report?

A Okay.

Q Is that fair to say? And who did you tell that you saw a white car that was driving at an excessive rate of speed?

A When I first arrived on scene, I talked to one of the officers that would've been uniform patrol and told them about it. They said that I probably needed to speak to an investigator. And which investigator I told? I do not know.

Q Who was the first officer that you told?

A I don't know.

Q You just don't know.

A I pulled up and said, hey, look, if we have a vehicle, y'all probably need to look at this vehicle.

Q Okay. And you didn't --

A I was under the impression that the person was on foot.

Q Right. The person was on foot?

A Right.

Q Okay. So you told that to somebody?

A I couldn't tell you who it was though.

Q Don't have a clue?

A There were several -- it was a very hectic scene. There was a lot of officers on the scene out there. I can't tell you who it was.

MR. HENDERSON: Your Honor, may I have one moment?

THE COURT: Sure. Take your time.

(There is a pause.)

BY MR. HENDERSON:

Q I'm just looking at this photograph again. And it's still on the scene, Deputy. It looks like the car was within its lines?

A Yes.

Q It's in its proper course of travel?

A Yes.

Q Okay. And coming up to a stop sign?

A Yes.

Q It's your testimony that you don't know what happened after it reached the stop sign?

A That's correct.

Q Okay. And I think your testimony was, on

direct, that he had a stunned look in his eye?

A Yeah. As he was going past me, he was just...(Demonstrating).

You can just tell, a lot of times when people are -- I mean, if they just look very shocked or surprised.

Q You had your blue lights on?

A I did.

Q Okay. You kind of heard of black-and-white fever; haven't you?

A No.

Q Okay. Where people -- how they react when they see blue lights?

A Oh, right. Yeah.

Q Right. And then, again, you say you had your blue lights on?

A That's correct.

Q I'm supposing that you're going at a fairly high rate of speed?

A Well, I would have just made a right turn. So I couldn't have been going too fast. But yes, I would have been trying to speed up, at that point.

Q Right. And again, it looks like this visor is down?

A Yes.

MR. HENDERSON: Okay. Nothing further right now, Your Honor.

THE COURT: Thank you.

Any redirect, Solicitor?

MR. BROWN: No, sir.

THE COURT: You can step down, sir. Thank you. Officer Hood, you are free to leave or you are welcome to remain with us, either way.

MR. BLACK: The State calls Johnny McCalla.

MR. HENDERSON: Your Honor, we may have a matter to take up outside of the presence of the jury.

THE COURT: Okay. Well, come up here and just kind of give me the heads-up.

(Bench conference is held off the record.)

THE COURT: Mr. Foreman, Ladies and Gentlemen of the jury, I need to discuss a legal matter with the lawyers. I, again, ask you for your patience and understanding. If you will go back to the jury room, hopefully, we can get you back out shortly.

(Jury exits at approximately 11:33 a.m.)

THE COURT: Madam clerk, go ahead and swear the witness in and we will take some of

his testimony outside of the presence of the jury.

THE CLERK: Yes, sir.

JOHNNY MCCALLA

having first been duly sworn, testifies as follows:

THE COURT: Solicitor, just examine him. Certainly, you don't have to go through everything, but what you maybe anticipate what Mr. Henderson's concerns are.

MR. BLACK: Yes, sir.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. BLACK:

Q Mr. McCalla, can you just spell your name for the court reporter?

A John McCalla ---

Q McCalla.

A --- M-c-c-a-l-l-a.

Q Okay. And you work at Ballentine?

A Yes, sir.

Q What's your position at Ballentine?

A Sales manager, used car manager, do a little bit of everything.

Q Okay. And you work at Ballentine that's across from South State Bank, NewSpring; is that

right?

A That's correct.

Q How long have you been there?

A 25 years.

Q As a part of your job, you typically have meetings periodically --

A Yes, sir.

Q -- or daily?

A Daily.

Q What time are these meetings?

A 9 o'clock.

Q You eventually called law enforcement concerning this particular case; is that right?

A That's correct.

Q What information did you pass on to law enforcement?

A That I thought that we had sold the car that was on the Internet.

Q You saw a picture? Where did you see it at?

A *Greenwood Today*.

Q It was posted -- do you know when it was posted?

A Not exactly sure.

Q Okay. Who did you call first?

A I called Sheriff Davis. He told me that I needed to talk with the City, so I called Chief Brooks.

Q Okay. And you eventually got in contact with Captain Mitch McCallister?

A That's correct. He came down to see us.

Q Okay. And did you provide the information to Captain McCallister?

A Yes, sir.

Q What information did you provide?

A I just told him that I thought that we had sold the car that was in reference -- that was on the Internet that was supposedly involved in the robbery.

Q I'm going to show you State's 35. Is that the picture that you saw on the Internet, *Greenwood Today*?

A It appears to be, yes, sir.

Q Okay. And you recognize that car?

A Yes, sir.

Q I'm going to show you what has been marked as State's 66. Can you identify that?

A It's the bill of sale that -- where we sold that car.

Q Who did it -- who was it sold to?

A Thomas Allen Smith.

Q Is there an address on there?

A Yes, sir. It is. It appears to be [redacted].

Q Is that Greenwood?

A Greenwood, South Carolina.

Q And you said you had these -- did you actually sell the car to Mr. Smith?

A No.

Q Who actually sold the car?

A I think it was in reference to Ms. Donna Hill, or Harrison, at that time.

Q Okay. But you're the one that called law enforcement?

A That's correct.

Q How did you remember Mr. Smith or how did you remember this transaction?

A I wasn't involved in the transaction, at all.

Q Okay.

A I just remember the name being brought up in the meetings because we were needing stuff for the deal. The deal was still not complete. We tried to keep all of our records, you know, together. We were missing some stuff on that day and it kept coming up and coming up.

Q Okay. And how long do you think you talked -- how long his name came up in these meetings?

A At least a month, month and a half.

MR. BLACK: Your Honor, I think that's all the questions I was going to ask.

THE COURT: Mr. Henderson, of course, I'll give you the right to cross-examine him In camera. But what he has testified to thus far, do you still have an objection?

MR. HENDERSON: Your Honor, if I may ask one question.

THE COURT: Sure.

MR. HENDERSON: That may allay some of my concerns.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Mr. McCalla, prior to calling law enforcement, had you, yourself, actually seen the photograph posted in *Greenwood Today*?

A Yes, sir.

Q Okay. No doubt about that?

A No, sir.

Q You weren't calling based upon somebody else looking at the video and then telling you to call, and you called the police?

A No, but it was brought to my attention it was on the Internet. And I went and looked at it.

Q Okay. So no doubt that you looked at it?

A Yes, sir.

Q You say you called the police. You weren't involved in the transaction for Mr. Smith?

A No, sir.

Q At all?

A No, sir.

Q So you don't know anything about what was going on at the time of the transaction or what happened there?

A During the transaction?

Q Right.

A No, sir.

Q Okay. None whatsoever?

A No, sir.

MR. HENDERSON: Okay. Your Honor, my concern -- I think his testimony was limited to, this looked like a car we sold based upon a photo that he saw.

THE COURT: Right.

MR. HENDERSON: I think that's admissible and that's for the jury to do with it what it wants to.

THE COURT: Sure.

MR. HENDERSON: But this about problems with Mr. Smith and his name standing out, I just think that's more prejudicial than probative, and him not having a driver's license.

THE COURT: I don't think that was -- he did not testify to that. Certainly, it was not asked and I would not allow that as far as during the time of the sale that it was discussed about him not having a driver's license. I would not allow that, even though he did not testify to that.

MR. BLACK: I think the way you phrased, that there was still needed information from him for the sale to be completed.

THE COURT: Without giving details as far as the needed information, I don't have a problem with that.

MR. HENDERSON: I just don't want it to come in for the jury to infer there's something surreptitious ---

THE COURT: Right.

MR. HENDERSON: --- or something.

THE COURT: Don't give that impression from this witness. Just the fact that he needed

more information from time to time to complete the transaction.

THE WITNESS: Okay.

THE COURT: Anything further on this point?

MR. HENDERSON: No, I just wanted to confirm. I mean, based upon our investigation, I was just concerned there might be some hearsay mixed in.

THE COURT: It certainly appears that there's not, from what I understand him to say. All right. Thank you very much. All right.

What you will need to do is -- cause you're going to need to offer your testimony in the presence of the jury. If you will, just go back and just have a seat. The State will call you. You will have to be sworn again in the presence of the jury. Okay.

THE WITNESS: Yes, sir. Yes, sir.

THE COURT: Okay. Let's bring the jury --

MR. HENDERSON: And again, Your Honor, I'm going to object to his testimony again. Basically, my Andrew Holmes argument.

THE COURT: Right.

MR. HENDERSON: All this came through, in

our position, through Andrew Holmes.

THE COURT: Very good.

Bring the jury out, please.

(Jury enters at approximately 11:41 a.m.)

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

Solicitor, you want to call your next witness?

MR. BLACK: The State calls John McCalla.

THE COURT: Okay.

JOHNNY MCCALLA

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Can you introduce yourself to the jury, please, Mr. McCalla?

A My name is John McCalla from Ballentine Ford in Greenwood, South Carolina.

Q And how long have you been there?

A 25 years.

Q And what's your job at Ballentine?

A Sales manager, used car manager, whatever they need me to do.

Q Okay. You said you been there 25 years?

A Yes, sir.

Q So you were working there in February of 2016?
A That's correct.
Q Did you have the same job in 2016 that you do now?
A No, sir.
Q What was your job then?
A At that time, I was sales manager.
Q Okay.
A Just sales manager.
Q All right. Did you call law enforcement on February the 18th of 2016?
A Is that the day of the -- I don't recall the date.
Q Okay. You remember it being in February, though?
A Yes.
Q Who did you call?
A I, first, called Sheriff Davis.
Q Why did you eventually call law enforcement that day?
A Why?
Q Yes, sir.
A I just felt like that I was doing my duty to try to help apprehend the person that robbed the

bank across the street.

Q I'm going to show you what's been marked as State's Number 35. Do you recognize this photograph?

A Yes, sir. I do.

Q Okay. Can you tell the jury where you first saw this photograph?

A On *Greenwood Today*.

Q All right. And what was -- what was the nature of what you saw on *Greenwood Today*?

A How'd that happen?

Q Or why did you see that particular photo on *Greenwood Today*?

A Well, the -- one of the sales associates at Toyota said something about that car was on the Internet.

THE COURT: Don't repeat whatever the sales associate told you. As a result of talking with someone, you did whatever.

THE WITNESS: Okay.

BY MR. BLACK:

Q Did you eventually look on the Internet and look at that article?

A Yes, absolutely.

Q Okay. Did you see that photo on the Internet?

A Yes, sir.
Q Did you recognize it?
A I recognized the car.
Q How did you recognize it?
A We sold the car, I think, back in December.
Q Okay. Did you remember who you sold it to?
A At that point, no.
Q I guess you had to look that information up?
A That's correct.
Q I'm going to show you what's been marked as State's Exhibit 66. Can you just identify this item for us?
A That's the bill of sale from where we sold the vehicle on December the 14th.
Q Who -- does it say who the vehicle was sold to?
A Thomas Allen Smith.
Q Now, did you actually sell this vehicle to Mr. Smith?
A No, sir.
Q Okay. Who sold it to him?
A Harrison.
Q But you said you -- what was your job title, again, at that time?

A I was the sales manager.
Q You were aware of the transactions that were occurring?
A This actually occurred down at Toyota. I'm at the Ford store.
Q But you were still -- were you still aware?
A Absolutely.
Q Okay. And did you -- had you previously talked to other people about this particular transaction? You were aware of this transaction; is that right?
A Yes, sir.
Q How were you aware of the transaction?
A We had some issues trying to get some information from the customer ---
Q Okay.
A --- for title purposes and tags and stuff like that.
Q Okay. So -- so the sale wasn't complete on that particular day, you needed some more information?
A That's correct.
Q And so, I guess, your job title, y'all have meetings; is that right?
A That's correct.

Q How often?
A Every day.
Q This was something that came up in the meetings?
A Pretty much every day.
Q So you are aware of the type of vehicle that the transaction involved?
A That's correct.
Q The vehicle that was sold, what kind of vehicle was it?
A It was a Volkswagen Passat.
Q Okay. Looking at that vehicle, is that what you see --
A Yes, sir.
Q -- is a Volkswagen Passat?
A Yes, sir.
Q Okay. And who was it sold to again?
A Thomas Allen Smith.
Q Does it have his address on the -- that sheet?
A [redacted], Greenwood, South Carolina.
Q All right. You said you eventually talked to -- you said you called the sheriff's department first; is that right?

A That's correct.

Q But you got in contact with the City?

A Yes, sir. The sheriff told me to call the chief.

Q Okay. You eventually -- who did you talk to? You talked to Detective McCallister?

A That's correct.

Q And you passed this information along to him?

A That's correct.

Q I think that's all the questions I have right now. Please answer any questions that Mr. Henderson might have for you.

THE COURT: Is 66 into evidence?

MR. BLACK: I did not move it in with him. I'm going to do it with the next witness.

THE COURT: Okay. All right. Just wanted to be clear.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Is that the only picture you saw of the car, Mr. McCalla?

A Yes, sir.

Q Just looking at the front of that, did you tell law enforcement that's definitely the car we

sold?

A Not 100 percent.

Q What did you tell him?

A That it appears to be the car that we sold.

Q Okay. At that point in time, you weren't sure?

A No, sir.

Q Okay. Cause there's no tag on this car -- or no tag in the photo.

A (Shakes head.)

Q Is that a "no"?

A That's correct.

Q Okay. And there's no -- looks like there isn't any dealer logos on there; are they?

A No, sir.

Q I can't tell. Okay. And again, you saw this picture through social media?

A That's correct. Well, actually, it was on *Greenwood Today*.

Q Okay. *Greenwood Today*. At that point in time that you saw it on *Greenwood Today*, did you know -- before you saw it, did you know a robbery had even occurred?

A I did.

Q You did? Okay.

A It happened right behind us.
Q Okay. I guess you saw the police or something?
A That's correct.
Q Okay. But this was the first time you saw anything allegedly associated with the robber?
A That's correct.
Q Okay. Let me ask you, Mr. McCalla, just looking at the front there, looking at this picture only, how do you know that's a Volkswagen Passat?
A Just from being in the car business and recognize vehicles.
Q I'm sure some of the jurors, probably, don't have that luxury.
A That's correct.
Q Looking at the picture, again, tell us.
A I can look by the grill and the headlights and the way the car looks, that it's a Volkswagen Passat.
Q You're comfortable with that?
A Uh-huh.
Q But again, there's no emblems on it. You didn't see the tag?
A No, just 30 years of experience.
Q Can you see the driver's face in that

video?

A No, sir.

Q Can you tell if it's a male or a female?

A No, sir.

Q Let me ask you this, does it look like the visor is down?

A It appears to be.

Q It does to me, too. I just -- I'm not sure. Does it look like the driver's side window is down or up?

A I can't really tell.

Q Okay. And are you familiar with Sample Road?

A I've heard the name. I probably know where it's at. I can't take you to it right now.

Q Right across the street from you guys is a street that runs behind Ollie's?

A I know exactly where you're talking about.

Q Okay. I'm sure you probably cut down the street?

A Absolutely.

Q Okay. Looking at this picture here, it looks like -- the picture where that car is taken, it looks like it's right there near the stop sign at Laurel. Do you agree with that? Are you familiar with

the houses through there?

A Yes, sir. I am.

Q That looks like it's coming right up on the stop sign?

A It does. You're right.

Q How far would you estimate that's from the stop sign?

A You're talking about where Laurel is?

Q Yeah. It is darn near Laurel. I mean, I think you would agree with me there.

A It appears it's just right near the stop sign.

Q Okay. Okay. Coming right up on it?

A Uh-huh.

Q Okay. Any chance that vehicle was a Volvo?

A No, sir.

Q Any chance it's a Kia?

A No, sir.

MR. HENDERSON: Nothing further, Your Honor.

THE COURT: Redirect, Solicitor?

MR. BLACK: No, sir, Your Honor.

THE COURT: Okay. You can step down. You're free to leave the courthouse or you are welcome to remain with us.

THE WITNESS: Thank you, sir.

THE COURT: Solicitor, next witness.

MR. BLACK: The State calls Wells Ballentine.

MR. HENDERSON: I have the same objection, Your Honor, for this witness, as well.

THE COURT: So noted.

WELLS BALLENTINE

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Mr. Ballentine, can you introduce yourself to the jury, please.

A George Ballentine, the third.

Q Where do you work at, Mr. Ballentine?

A Ballentine Ford Toyota.

Q What's your title?

A Vice President.

Q All right. I'm going to show you what's been marked as State's 66. Do you recognize this item?

A I do.

Q And what is it?

A It is a confirmation of sale.

Q Do y'all keep those in the regular course

of business?

A Yes, sir.

Q And who was -- what vehicle was sold in this particular case?

A A Volkswagen Passat.

Q And who was it sold to?

A Thomas Allen Smith.

Q Does it give an address that Mr. Smith resided at?

A Yes, sir.

Q And what is that address?

A [redacted], Greenwood, South Carolina 29649.

MR. BLACK: Your Honor, at this point, the State moves the confirmation of sale into evidence. I believe that's 66.

THE COURT: Okay.

MR. HENDERSON: Same objection, Your Honor.

THE COURT: Subject to prior objection, 66 into evidence, for the State.

(State's Exhibit 66 is admitted into the record.)

BY MR. BLACK:

Q Is there a serial number or a VIN number

that's located on that confirmation of sale?

A Yes, sir.

Q Can you read that number for us?

A WVWAK73CX6E052597.

Q And what is -- is that a VIN number?

A That's a VIN number.

Q Can you explain to the jury what a VIN number is?

A It's only attached to a certain car.

Q Okay.

A It's not multiple VIN numbers.

Q So it, basically, identifies a particular car?

A That's correct.

Q Do all vehicles have them?

A Yes, sir.

Q All right. I'm also showing you what's marked as State's Number 65. Do you recognize this?

A Yes, sir.

Q What is it?

A It's a surveillance tape at our dealership.

Q And did you -- have you had a chance to review this?

A Yes, sir.

Q Have you initialed it?

A Yes, sir.

Q Okay. Is this a true and accurate copy of your surveillance video of February the 18th of 2016?

A Yes, sir.

Q Generally speaking, y'all have surveillance videos at your place, right?

A Yes, sir.

Q Do you have access to those cameras?

A Yes, sir.

Q Okay. I guess only a certain number of people have access to them, correct?

A That's correct.

Q But y'all keep those particular surveillance videos for a certain number of days?

A Yes, sir.

Q How long?

A I believe two weeks.

Q Okay. But you do have access to view them; is that right?

A Yes, sir.

MR. BLACK: Your Honor, at this point, the State moves Number 65 into evidence. We ask to publish to the jury.

THE COURT: Okay.

MR. HENDERSON: Same objection.

THE COURT: Subject to previous objection, Number 65 into evidence for the State.

(State's Exhibit 65 is admitted into the record.)

(State's Exhibit 65 is played.)

BY MR. BLACK:

Q Can you just explain -- you are familiar -- this is your place of business, right?

A That's correct.

Q Can you just describe for the jury where we are looking at? And, kind of, what's across the road? What road is that? Just kind of, generally, describe what we're looking at.

A You are looking at the new Ford lot. Lincoln is located at the bottom. Ford, new trucks, new cars. To the right top corner is Badcock Furniture. Directly across is NewSpring Church parking lot.

Q Okay. And the bank that was -- South State Bank, I guess, is no longer there; is that right?

A That's correct. It is located to the right of Badcock, when you're looking at the video.

Q So that would be the top right corner.

A Top right corner.

Q Okay. And Badcock is just to the left of

that, still kind of at the top right corner?

A Yes, sir.

Q And this is a -- is this Badcock Furniture up here?

A Yes, sir.

Q This is a white car that pulled up in this location?

A Yes, sir.

Q This is 72, right, Bypass?

A That's correct.

(State's Exhibit 65 continues.)

BY MR. BLACK:

Q Can you see -- can you see the video, Mr. Ballentine?

A Yes, sir.

Q Does it appear somebody's getting out of the car at this particular moment?

A (No audible response.)

Q You may want to step down and look. It's at 2:29:45.

A Let me step down and look.

Q I think it's already gone. He's under the Badcock sign?

A I see somebody walking in front of that white car, yeah, right in front of the Badcock sign.

Q Which direction is he going?
A Towards South State Bank.
(State's Exhibit 65 continues.)
BY MR. BLACK:
Q There is no sound for your surveillance video; is that right?
A That's correct.
(State's Exhibit 65 continues.)
BY MR. BLACK:
Q I'm going to direct your attention to the side of Badcock. Do you see somebody approaching the vehicle?
A Yes, sir.
Q What's he doing?
A Opening up the door. He goes around to the back of the vehicle. Now, he's going back to the front, the driver's side. Now, he got into the car.
Q Did he close the door, at this point?
A That's correct.
Q That was at 2:34 about :50 -- is that p.m.?
A Yes, sir.
Q The car is in motion, at this point?
A Yes, sir.
Q That is at 2:35:17. Which direction is it going?

A Going towards the south of Badcock out on the road.

Q Looks like there was a McDonald's over there.

A Yeah, going towards the McDonald's, heading that way.

Q All right. All right. I think I have just a couple of more questions, Mr. Ballentine. I appreciate you being here. When y'all sell a vehicle, do y'all put something on your vehicles that identify it coming from your dealership?

A We either put Ballentine Toyota or Ballentine Ford Lincoln.

Q Is that standard?

A Yes, sir.

Q All vehicles that are sold from your lot, they have some kind of identification?

A 99 percent of them, yes, sir.

MR. BLACK: Okay. I think that's all the questions I have. Your Honor, just to be clear, 65 and 66 have been admitted into evidence.

THE COURT: They have been, over the objection of the defense.

MR. BLACK: Thank you, Your Honor.

THE COURT: All right. Mr. Henderson, do

you have some cross?

MR. HENDERSON: I do, Your Honor.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Mr. Ballentine, how are you today?

A Doing well.

Q Obviously, looking at that video, it was recorded on February the 18th of 2016?

A Yes, sir.

Q When did you turn it over to law enforcement?

A I didn't turn it over to law enforcement. I'm not exactly sure.

Q Okay. You're Vice President ---

A Yes, sir.

Q --- of your company?

A Uh-huh.

Q You said -- and they've gotten to hear you testify, and you've looked at the video?

A Yes, sir.

Q You don't have any idea when you turned it over to law enforcement?

A I'm not aware.

Q Okay. So you just don't know?

A That's correct.

Q Would anybody in your company know?
A I'm not exactly sure.
Q Okay. But it's probably fair to say it wasn't turned over on February the 18th?
A I'm not aware. I'm not sure.
Q You just don't know?
A Yeah, I don't know.
Q Okay. Looking at the video again, and the solicitor took it down from the screen, but you've watched it. Can you tell the make of the car just by looking at the video?
A It definitely looks like a VW.
Q You can just tell that with your naked eye?
A Yes, sir, I -- yes, sir. I deal with all the used cars, as well.
Q And a white car. Does it look white to you?
A Yes, sir. A white or a tannish color, white, in particular.
Q Possibly silver, tannish, something -- a lighter color?
A Possibly, but it looks white to me.
Q Okay. It looks white to you and you think it's a Volkswagen?
A Yes, sir.
Q Just by looking at the video?

A Yes, sir.
Q Okay. And then -- you weren't watching this video when it was being recorded?
A No, sir.
Q I don't guess anybody was watching it while it's being recorded. Is that fair to say?
A No, sir.
Q After the car comes off the scene or drives left and goes off the screen, you have any idea where it went?
A No, sir.
Q You don't have a clue; do you?
A No, sir.
Q Okay. Do you wear glasses, like I do, Mr. Ballentine?
A I used to, but I had LASIK surgery.
Q Okay. So you think your eyesight's good then?
A Yes, sir.
Q Okay. I just want to make sure of that. Let me ask you -- yeah, good point -- you said you initialed that video as being a copy of the original?
A Yes, sir.
Q When did you initial it?
A Earlier today.

Q Okay. You didn't just turn it over earlier today; did you?

A No, sir.

Q Okay. But you watched it before you initialed it?

A Yes, sir.

Q You just don't have a clue when it got into law enforcement's hands?

A No, sir.

Q Do you know if y'all volunteered to law enforcement or did law enforcement come looking for it?

A I believe Johnny, you spoke to earlier, called and contacted somebody, the police, or somewhere.

Q About there being a video?

A Just about recognizing the vehicle.

Q Okay. I'm talking about the video in and of itself. When was the video turned over?

A Oh, I do not know.

Q You just don't know?

A I do not know.

MR. HENDERSON: Okay. Nothing further, Your Honor.

THE COURT: Anything on redirect?

MR. BLACK: No, sir, Your Honor.

THE COURT: You can step down, sir.

Does the State have any further witnesses that need to be called prior to lunch?

MR. BLACK: No, sir, Your Honor. I think the next one might be a little bit.

THE COURT: Okay. All right. Mr. Foreman, Ladies and Gentlemen of the jury, I think this would be a good time to break for lunch. We're not going to go as late as we did yesterday before I allowed you to get something to eat. So let's try to be back here at, let's say, 1:45.

And again, I remind you about no discussion among yourselves, or anybody that you come into contact with, concerning anything related to this case. And also, again, if you go to a public restaurant, just be sure you have your juror badge on. I appreciate that. Have a good lunch and we'll see you back at 1:45. If you have anything in the jury room you need to get out, feel free to do that.

(Jury exits at approximately 12:10 p.m.)

THE COURT: Is that it?

THE BAILIFF: I think that's it. Yes, sir.

THE COURT: All right. We'll be in recess

until 1:45.

MR. BROWN: Judge, we have one more.

THE COURT: I have got a draft charge -- draft. I'm going to get Amber to make a copy for y'all.

MR. HENDERSON: That sounds good. I appreciate that.

THE COURT: Yeah.

If you will make three copies for me, please.

(The Court goes off the record at approximately 12:12 p.m.)

(The Court goes on the record at approximately 1:55 p.m.)

THE COURT: Everybody ready for the jury?

MR. BROWN: Yes, sir.

MR. HENDERSON: Yes, sir.

THE COURT: Let's bring the jury out please.

(Jury enters at approximately 1:55 p.m.)

(State's Exhibit 67 is marked for identification.)

THE COURT: Let's let record reflect that the jury is back in.

Solicitor, call your next witness.

MR. BLACK: The State calls Captain Mitch McCallister.

MITCH MCCALLISTER

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Could you introduce yourself to the jury, please, Captain McCallister?

A Yes, sir. I'm Mitch McCallister, Captain of the Greenwood City Police Department.

Q How long have you worked with Greenwood City?

A A little over 16 years, now.

Q And your title is captain. Can you explain to the jury what that means?

A I currently serve as a captain of the investigations division, so I'm over the detectives' office and most of the investigation for the City.

Q How long have you had that title, that position?

A I've been in the current position as captain of investigations for just over four years.

Q February 18th of 2016, were you working that day?

A Yes, sir. I was.

Q You were the captain of investigations at that time; is that correct?
A Yes, sir. That's correct.
Q Did you respond to a bank robbery at South State Bank up near Ballentine Ford?
A Yes, sir.
Q About what time did you get there?
A It would be about five minutes of the call. I don't know the exact time. Two, three, somewhere around there. I'd need to see the incident report to know the exact time.
Q Okay. But you think about 2 or 3 o'clock?
A Yes.
Q Was anyone else with you?
A Blake Moore, Detective Moore, arrived pretty much right the same time I did.
Q So y'all weren't together, y'all were in separate vehicles?
A I don't remember. I remember us being there when we got there, but I don't remember if we drove separately or if we were in the same car together.
Q Y'all were -- y'all were a couple of the first officers that were there; is that right?
A That's correct.
Q Were there a lot of officers on the scene

at that time after you did show up?

A I remember a sheriff's deputy being there. Then, we showed up. Then, there were several uniform patrol officers that naturally showed up.

Q How did y'all get the call? How did you get the call to show up?

A We heard the call on the radio that basically said there had been a robbery at the bank.

Q And then you showed up, at that point?

A Correct.

Q And that is in the city limits. That's why you guys were involved, right?

A Yes, sir. That's correct.

Q When you showed up, what was your role? What was your responsibility?

A At that point, information gathering, gathering all the information we could. Officer -- Detective Blakemore went inside and began speaking with some of the people inside of the bank. I then collected as much information from him as I could from the original officer who had showed up on the scene and began to try to decide what information needed to be put out in order to assist us with the investigation.

Q Okay. And, I guess, Blake showed up first

and it became his case, I guess?

A Yeah, that's normally -- that would normally be what happened. The primary investigator would be the first person who arrived.

Q Is it fair to say, though, that a lot of your other investigators were involved in this case, as well?

A Oh, yeah. Without a doubt. I mean, we would work it all together.

Q And you were involved, as well?

A That's correct.

Q Did you assist in talking to some of the bank employees and the witnesses at the scene?

A I did not speak with the bank employees.

Q You left that to Detective --

A Detective Moore, yes.

Q All right. Did you -- did you call in Kenya Griffin, as well?

A Yes, I believe we called in Kenya to process the actual bank itself in hopes of gathering some evidence there.

Q And I know you haven't been in here, but did the bank -- I guess the bank -- when you got there, was the bank on lockdown, or I guess there was another officer there?

A Yes, it was. The bank -- actually, the doors were locked. We had to get them to unlock the door for us to go in.

Q Did y'all speak with security from the bank?

A I honestly don't remember what person we spoke with when we first got there, which employer -- I don't remember meeting a security officer, at the bank.

Q You eventually saw the surveillance video?

A Yes, we did obtain a copy of the surveillance video and watched it there and actually obtained a copy of the video.

Q Okay. Eventually Josh Hood also showed up at the bank, as well; is that right?

A Correct.

Q Do you remember talking to him?

A Yeah, Officer Hood --

MR. HENDERSON: I'm going to object to anything he told him. Again, we may not be there, but --

MR. BLACK: I was just asking if he talked to him.

THE COURT: Okay.

THE WITNESS: Yes, sir. I absolutely

talked to him.

BY MR. BLACK:

Q Do you know when he showed up?

A It wasn't long after we got there. We started getting some other calls on the radio and he arrived in the parking lot. I went over and spoke with him.

Q Did you view a video that he had?

A I did. I viewed the video that he had in his vehicle -- excuse me again -- in his in-car video camera, there was a white-colored car flying past him, on a road directly behind where the bank is. That's the picture that I obtained.

Q I'm going to show you State's 35. I'm going to put it up on the screen. Is this the screenshot you were talking about?

A Yes, sir, that's it.

Q You obtained that from Josh Hood?

A Yeah, from his in-car camera. Yes, sir.

Q I'm going to show you this picture, as well. It has not been marked. Let me get the court reporter to mark it for us.

(State's Exhibit 68 is marked for identification.)

BY MR. BLACK:

Q I'm showing you what's been marked as State's 68. You recognize that photo?

A Yes, sir. That's a photo of the suspect from the inside the bank.

Q Okay. And that's another screenshot?

A Yes, it is.

Q Did you get a copy of that, as well?

A Yes, sir. We did.

Q And based -- what did you do with those two pictures?

A Based on the evidence we had at that time and the information that was coming at the rate it was coming in, we actually contacted the media, *Index Journal* and *Greenwood Today*. We released both of these pictures, the picture I hold in my hand and the picture of the dash cam video that you see in the vehicle. We released those to the media, in hopes that somebody in the public might recognize it.

MR. BLACK: Your Honor, I wish to publish State's 68 at this point and move it into evidence.

THE COURT: Okay. And defense?

MR. HENDERSON: Let me see it, Your Honor.

THE COURT: Yes, show it to Mr. Henderson.

MR. HENDERSON: Your Honor, I think this

was taken -- a screenshot from the bank video. No objection.

THE COURT: Okay. Without objection, 68 into evidence for the State.

(State's Exhibit 68 is admitted into the record.)

BY MR. BLACK:

Q I apologize. This is a black-and-white photo. The one that you released to the media, was it black and white or was it in color?

A No, it was in color.

Q Okay. Those two items were released to the media, you said?

A Yes, sir. That's correct.

Q At that point, did y'all -- when you released it to the media, did you guys leave your phone number for people to contact you?

A Yeah, we left a normal number we would leave for someone to call us or we would put on there to contact 911 with any information that they have about that.

Q Did you ever receive any calls from folks at Ballentine Ford?

A I received information that someone at Ballentine Ford might have information. So I

contacted Ballentine Ford and spoke with Mr. McCalla, I believe is how it's pronounced. I spoke with him. He was extremely confident --

MR. HENDERSON: And again, Your Honor, I'm just going to renew my objection.

THE COURT: Okay. Based upon your previous objection, not a new objection, previous objection.

MR. HENDERSON: Yes, the Holmes objection.

THE COURT: Right. Very good. So noted for the record.

You may proceed.

BY MR. BLACK:

Q You called Mr. McCalla?

A Yes, sir, that's correct.

Q Did you eventually go over to Ballentine and speak with him?

A I did. As soon as I got done talking with Mr. McCalla, he had told me he felt that he was pretty sure he knew where that car came from. Obviously, that's an interesting fact that we want to go talk to somebody about. So we went -- I went straight over to the Ford place and spoke to Mr. McCalla. At that time, he advised me of the information.

Q Okay. He told you that they had sold a car previously that looked similar to that?
A He told me he was pretty confident that that vehicle in a picture was one that had been sold at the Ford place prior to the incident. I don't remember if it was a month or two months prior or somewhere in there. He was pretty confident that that was the vehicle and he proceeded to give us information of the person who bought that vehicle.
Q Okay. That information was basically the address of where that person lived?
A Correct.
Q And their name?
A Correct.
Q Okay. Based on that information that you got, you know about what time this was that you received this information?
A The information from ---
Q The information --
A --- from Mr. McCalla.
Q Yes, sir.
A 5:00, 6:00, maybe.
Q Some time that afternoon?
A Yeah, that afternoon, that same day.
Q Okay. Did y'all -- did you and did the City

ever go out to that address and conduct any surveillance at that address?

A Actually, what we did was, based on the information we got from the Ford place, we had also got some information about maybe there was some reckless driving in that area --

MR. HENDERSON: Objection.

THE COURT: Okay. All right. Don't quote what somebody's told you. Just, as a result of obtaining information, you did what.

BY MR. BLACK:

Q Did you do any surveillance at the [redacted] address?

A We did. The address that was given to us by the Ford place.

Q Where was that address again?

A [redacted], I believe. The number escapes me now.

Q I'm going hand you what has been marked as State's Number 68, the bill of sale.

A [redacted].

Q And that's in --

A That's the address that we went to.

Q That's in Greenwood?

A It is.

Q Can you describe for the jury exactly where that is?

A If you are familiar with Haltiwanger Road and Northside Drive -- excuse me -- the direction towards the -- I think it's Voc Rehab for Greenwood High, where they do automotive, or restore stuff. There's a gas station at the corner of Haltiwanger and Northside Drive. If you take a left at that gas station, the house was maybe a tenth of a mile up on the right. So it's right there on Northside Drive, close to that gas station.

Q Did y'all -- did y'all do any surveillance at that scene?

A We did. We also spoke with the neighbors.

Q Okay. Did y'all eventually going into that residence via a search warrant?

A We did.

Q All right. And do you know what time that search warrant was executed?

A I honestly -- you'll have to show me a copy. I don't remember exactly what time it was. It was that evening.

MR. BLACK: May I approach -- may I approach the witness, Your Honor?

THE COURT: Sure.

BY MR. BLACK:

Q This is not marked. It's just a copy. Maybe you can look at that and refresh your memory.

A Point of return, we would have served the search warrant at 7:03 p.m.

Q Okay. And this was in February; is that right?

A That's correct, February the 18th.

Q So would it have been daylight at 7:03 p.m.?

A It was getting dark and it was getting dark fast, actually.

Q Who went with you on that search warrant?

A This isn't the copy that's got the name on it, but I can tell you ---

Q Yeah, if you would.

A --- a few of the people that were there. Myself, Detective Moore, Detective William Kay, I believe there was a county deputy with us. I'm trying to remember exactly who all. Maybe Lieutenant Scott Rust might have been with us because it was in the county.

Q So it was a couple -- a couple of you guys?

A Yeah, it was a decent size group of us.

Q When y'all executed, you said it was almost

dark; is that right?

A That's correct.

Q What did y'all search? The house? Was there a garage that y'all searched?

A Correct, there's a house. Immediately to the right of the house, if you're looking -- if you're standing on Northside Drive looking at the house, there is a house. Immediately to the right of it is a detached enclosed carport.

Q Okay. I guess you had -- was there anything of note about the house? Was there power on?

A There was no power at the house, at all.

Q What about -- was there running water at the house?

A It did not appear that there was running water.

Q So I guess y'all had to use your flashlights to kind of look around?

A That's correct.

Q I'm going to show you what's been marked as State's 2 through 34, in addition to 67.

THE COURT: 67?

MR. BLACK: 67.

BY MR. BLACK:

Q Can you take a look at those and -- just

peruse those. And then once you've had a chance to look at them, just let me know.

A (Reviewing.)

Q Do you recognize those photos, Captain?

A Yes, sir. These are the photos we took in the course of serving that search warrant.

Q That was the night of the 18th?

A Yes, that would be correct.

Q And primarily, what are those photos of? Are those the car in the garage?

A Yes, sir. The detached garage, there was a white Volkswagen there.

MR. BLACK: Your Honor, at this point, the State moves 2 through 34 into evidence, and 67, and ask to publish those to the jury.

THE COURT: Defense?

MR. HENDERSON: Your Honor, I would renew my Holmes objection as to how we got here.

THE COURT: Okay. Very good. So noted. Two through 34 and 67 are into evidence for the State.

(State's Exhibits 2 thru 34, and 67, are admitted into the record.)

BY MR. BLACK:

Q I'm not going to put all of these up here,

Captain McCallister, but I am going to get you -- I'm going to put a couple of them. And I'm going to get you to explain kind of what we're looking at. Can you do that for us?

A Yes, sir.

Q All right. Showing you State's Number 2. Can you see that from where you are?

A Yes, sir. I can.

Q All right. Just tell us what that is and where it's located.

A That is a white Volkswagen that was located in the detached garage that I was speaking of earlier.

Q Let me try to work this technology. That was located in the garage, you said?

A Yes, sir.

Q That's the front of the car?

A That's correct.

Q All right. I'm going to show you what has been marked as State's Number 4. Is that the back side of the vehicle?

A It is.

Q How big is this garage?

A Well, you can see from the picture. There is enough room to skirt by on both sides of the

vehicle. There's just enough room to -- probably four feet or so, I think, between the back of that car and the wall that would be behind it. Maybe a foot or so between the front of the car and the door. To the right, I think it opens up a little bit, but it was full of stuff.

Q All right. Is there a tag on that vehicle?

A No, sir. There is not.

Q I'm going to show you Number 67. I'm jumping to 67. That looks like a closeup; is that right?

A Yes, sir.

Q Still no tag on that vehicle?

A Yes, sir. That's correct.

Q I'm going to direct your attention to the left side of the car. You can see, maybe, it's cut off a little bit. This part right here, do you know what that is?

A Yes, sir. During the process of identifying the vehicle, taking pictures of the vehicle, we found this small piece of paper covering up a Ballentine Ford logo.

Q I'm going to show you what has been marked State's Number 6. Is that a close-up picture of that?

A It is.

Q All right. Was that -- was that piece of paper and tape, was that over it when you got there?
A Yes, sir. It was exactly like you see it there.
Q I'm going to show you what's been marked as State's Number 7. I guess y'all pulled the tape up, at that point?
A Correct. We pulled it up to see if there was a logo on the car.
Q And the logo, we can all read it, but what does it say?
A Ballentine Ford Lincoln.
Q That's State's Number 7. Y'all continued to search inside the vehicle; is that right?
A Yes, sir.
Q I'm going to show you what's marked as State's Number 8: It's like a pawn ticket. Can you see that from where you are?
A Not very well, but I'm familiar with the ticket.
Q Okay. Whose name appears on that ticket?
A Thomas Allen. His name, I can't see it from here.
Q I'm going to show it to you.
A Smith, Thomas Allen Smith. Yeah, Thomas

Allen Smith.

Q Where did y'all find that at?

A That was inside the vehicle.

Q Just -- I'm going to show you State's Number 9. It looks like a picture from inside the vehicle; is that right?

A Yes, sir.

Q I'm showing you State's Number 11. Can you identify the object in this particular picture?

A It's the back seat interior of the vehicle.

Q Okay.

A It looks like some boots and a welder's mask.

Q That's a welder's mask?

A It looks like it, yes.

Q You said it was in the back seat of that vehicle?

A Yes, sir, I believe so.

Q State's Number 12, this is another angle of that. Do you see the boots again at the bottom left side of the screen?

A I do, yes, sir.

Q Okay. Number 13, a close-up?

A Yes, sir.

Q State's Number 19, some items in the seat?

Is that what that is?

A A brush and -- I can't make out exactly. It kind of looks like our parking tickets, but I'm not 100 percent positive about that. I don't know what it is.

Q Okay. I'm going to show you State's Number 20. Was that also -- was that note also in the vehicle?

A Yes, sir.

Q Was there anything else written on that piece of paper?

A I don't remember, other than that word that I can read today.

Q I'm showing you what's marked as State's 22. That looks like in the trunk of the vehicle; is that right?

A That's correct, sir.

Q What's in that bed?

A It bag of QUIKRETE and a crowbar.

Q This is State's Number 23. Is that a close-up picture of the crowbar?

A Yes, it is.

Q Number 24, it looks like a file. There's a little bit of a glare on that. Can you see the name on that file?

A I can't read from here.
Q I'm going to show it to you. Just make it a little bit easier.
A Thomas Smith.
Q State's Number 27?
A Those would be the keys to the car.
Q To that vehicle?
A Yes, sir.
Q State's Number 28?
A Those are items -- excuse me -- that are actually inside the house, items on top of a hot water heater -- water heater.
Q Do you know what those items are?
A Cleaner, a SIM card -- I believe is what that little white thing is there -- a hammer and I'm not 100 percent certain what the other things are.
Q Okay. But that was inside of the house, you said?
A Correct.
Q Before we get into inside of the house ---
A Okay.
Q --- going back to the garage, was the garage closed or open?
A It was closed.
Q Okay. Was there anything of note that kind

of stood out to you, as well, when you were kind of going around the outside the garage?

A Yes, sir. As we were looking inside -- or looking at the house, when we determined there was no one inside, we began to search the residence for evidence. Of extreme note, to -- I think, to every officer there, was the area directly in front of the enclosed carport where the Volkswagen -- we found the Volkswagen parked.

The reason it was of such note to everyone was, it looked like -- as though it had been freshly raked. The only thing I can compare it to is you see things like, you know, it's got kind of, like, lines in it. Just very well manicured, like it had not been touched, nothing had driven over it. It was a rake, I believe, on the side of the building. It was really, really clean. Everybody noted it. That was awful strange for a used carport.

Q So there wasn't concrete directly leading into the garage?

A No, there was not.

Q Okay. But y'all didn't take a picture of that?

A I don't think we did. No, sir.

Q All right. Now, moving inside the house,

you said there was no power? no running water inside the house?

A That's correct.

Q I'm going to show you what has been marked as State's 29. Do you recognize this item?

A That's the sink. Of note in that picture, what we were looking at specifically was, it seemed to be stubble from someone who shaves.

Q Okay. And y'all took a couple pictures of these?

MR. HENDERSON: Solicitor, what picture was that?

MR. BLACK: 29.

THE COURT: 29.

BY MR. BLACK:

Q 30, is another picture of -- is that the same thing?

A Yes, sir. It is. I'm sorry. Yes, sir.

Q 31, as well?

A Yes, sir. It is the same thing, the stubble.

Q And 33, just another picture?

A Yes, sir. Stubble and kind of, like, an electric razor or something.

Q Same sink, correct?

A Yes, same sink.

MR. BLACK: Your Honor, just to be sure, State's 2 through 34, as well as 67, I believe, have been moved into evidence.

THE COURT: It has been moved into evidence over the objection of the defense.

BY MR. BLACK:

Q Going back to the car, did y'all search the glove box, as well?

A We did.

(State's Exhibit 69 is marked for identification.)

MR. HENDERSON: It's subject to my same objection, Your Honor.

THE COURT: Okay.

BY MR. BLACK:

Q I'm going to show you what has been marked as State's 69. Do you know what that is?

A It appears to be a sales receipt or a receipt of some sort.

Q And where did -- did y'all find that in this --

A It was found in that red envelope in the glove box.

Q In the glove box?

MR. BLACK: Your Honor, the State moves 69 into evidence.

THE COURT: Okay. Over the objection of the defense, 69 into evidence.

(State's Exhibit 69 is admitted into the record.)

BY MR. BLACK:

Q What's the item that was sold?

A A 2006 Volkswagen Passat.

Q Is there a VIN number on that?

A There is. Would you like me to read it?

Q If you don't mind.

A WVWAK73CX6E052597.

Q You said a Volkswagen Passat?

A Yes, sir.

Q All right. How long do you reckon you guys were out there at that house that night?

A A couple of hours. Not for a tremendous amount of time because the night kind of hindered us from being able to get everything we would like to have looked for.

Q Was Mr. Smith at the residence that night?

A No, sir. There was no one there.

Q I think that's all the questions I have. Please answer any questions that Mr. Henderson might

have for you.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Hey, Captain. How are you doing today?

A I am fine, sir.

Q I want to go back to -- do you recall what time you arrived? Maybe you testified about that. I just want to make sure.

A I can't recall an exact time, Counselor. It would have been roughly about five or six minutes after the call came out from dispatch.

Q You think you and Detective Moore arrived about the same time?

A Yes, sir.

Q Okay. And your testimony was -- let me ask you this, when y'all got the call, did y'all turn on your blue lights? You had a squad car or --

A No, I was in an unmarked vehicle.

Q But it had blue lights?

A Yeah.

Q Did you turn them on?

A Yes, sir.

Q Okay. I mean, you think this would be high priority to get to the crime scene?

A Correct.
Q And you just don't remember whether or not Detective Moore was with you?
A That would be correct.
Q If he was in a separate car, would it have been logical for him to have turned on his blue lights?
A Depending on conditions, yes, sir. It could have been.
Q Okay. I mean, y'all -- y'all take armed robberies seriously, is what I'm getting at?
A We do.
Q I mean, so y'all are trying to get to the crime scene as safely as you can?
A Yes, sir. That's correct.
Q Let me ask you, as you are driving to this crime scene, you are paying attention to the road, I guess, what's in front of you?
A Yes, sir.
Q I mean, so you don't run over people or people don't pull out in front of you?
A Okay.
Q Is that a fair -- I mean, is that a fair assessment?
A Sure. Yes, sir.

Q Okay. So y'all get to this crime scene. I think your testimony was that you talked with Deputy Hood, Josh Hood. You said --

A Not when I first arrived, no, sir.

Q Okay.

A But yes, I did talk to him.

Q How long after you arrived did you speak with Deputy Hood? Again, don't talk about what y'all said. I'm just trying to get the timeframe.

A After we arrived, I -- it would be hard for me to pinpoint exactly how long. I would probably say, probably, not -- 10 minutes at most.

Q So it was a while then? I mean, again --

A It depends on your definition of a while. Probably, like, 10 minutes maybe. That would be probably max.

Q But you said you talked to Deputy Hood?

A Correct.

Q You said you looked at a video that Deputy Hood had?

A Correct.

Q What procedure or what steps do you take to get a copy of that video?

A At that time, I actually took no steps, other than taking an immediate picture of the vehicle

so that I could get that information out to where we needed to get it out. We were trying to take steps to secure it.

Q So you actually took a photo that the jury has seen ---

A Correct.

Q --- of a car that was taken from your cell phone, I guess?

A It was taken from a phone. I don't remember whether it was my work phone, or not, camera. I just remember taking a picture of his in-car camera in his patrol vehicle.

Q Okay. And you say you watched the video?

A That's correct.

Q The picture that was taken, I'm assuming that's where that white car and Deputy Hood's car passes?

A That's correct.

Q I mean, that's what it looks like.

A Sample Road.

Q On Sample Road?

A Yes, sir.

Q Is it fair to say that where they pass is kind of right there at the stop sign at Laurel?

A Honestly, I don't remember. I don't think

you can tell from that photo exactly where it's at. It's on Sample Road. I would have been working off of what Officer Hood advised me.

Q Okay. You need to see the picture again? I can put it up for you.

A If you want me to say that's definitely what it says, yes, sir.

Q No, no, no. I'm just basically saying -- obviously, I know it's on Sample Road?

A Yes, sir.

Q We're not disputing that?

A Yeah.

Q But it looks like where they pass is real close to the stop sign ---

A Okay.

Q --- at Laurel. I mean, do you dispute that, or do you know?

A I can tell you I don't remember. I can put the picture up and you can tell me. I mean, I can try to guess. I can tell you it's on Sample Road.

Q I don't want you to guess.

A Okay.

Q But I think your testimony was that you saw that car speeding on the video?

A No, sir. That's not what I testified to.

Q I thought you said you saw it speeding on the video. Did I mishear you?

A I think you might have.

Q Okay.

A I said it was passing Hood. Hood advised me, but we won't go into what Hood advised me.

Q Okay. I thought you said you watched the video and you saw it speeding. Again, that might be -- that might be my misunderstanding. I apologize. But, again, did you take any steps to get the video?

A At that moment, the only thing I can remember is asking Hood to make sure we could have -- get a copy of it. He said he would try ---

Q Okay.

A --- to get a copy of it.

Q I mean, he doesn't have to try; does he? I mean, it's his car. He can get a video tape.

A I would imagine. I don't know their process and their procedure.

Q Okay. When --

A You'd have to ask the Sheriff's Office that question.

Q When did you take possession of his video that he got for you?

A I, personally, never took possession of the

video he got me.

Q Okay. Again, you're the head of the detectives?

A That's correct.

Q I think Detective Moore, here, was the\head investigator or lead investigator?

A That's correct.

Q What steps did he go through to get the video?

A I don't know. You'd have to ask him that question.

Q I mean, you're his boss?

A That's correct.

Q I mean, did any of y'all get this video?

A I don't have it. I never got it.

Q Okay. So you -- you don't know where it's at?

A No.

Q Do you know if Detective Moore knows where it's at?

A I have no idea.

Q Okay. Do you know if anybody knows where it's at?

A I don't believe it was in the case file.

Q Okay.

A No, sir.
Q Did you follow up to try to get it?
A We did, later, and it was gone.
Q Okay. Okay. Again, I'd been hearing people talk about what's on a video that y'all have failed to provide.
A Okay.
Q I mean, again, I'm just making an observation. But you're not disputing that you failed to provide it?
A We provided a picture of the video. That's all.
Q At one point in time?
A That's correct.
Q Again I --
A A picture of the video.
Q -- I want to clarify again. I thought I heard you say that the car was speeding by Deputy Hood. But, again, you're telling me I misheard that?
A Okay.
Q I mean, is that right?
A I don't believe I said that. But if I did, then I said it. I don't remember saying that.
Q Can you tell the speed of that --
A Not from a still picture, no, sir.

Q I mean, I'm talking about from watching the video. Could you tell the speed of that white car?

A I wouldn't venture a guess. It's been two and half years.

Q Okay.

A I don't remember.

Q Okay. And it was probably -- it's pretty hard to tell the speed of a car, anyway, in watching a video?

A I mean, it would be difficult, I would guess.

Q Right, right. When you said you got to the house, you got to this house on Northside Drive, the power, you said, was not on? not working?

A There was no power.

Q There was no power.

A We flipped the switches. No power came through them.

Q You said, obviously, no one was living there. Is that what I heard?

A No, sir. I told you there was no power.

Q Okay. I mean, did you ever ascertain whether or not anyone was living in the house?

A We did, actually. We spoke with a neighbor.

MR. HENDERSON: I'm going to object to

what anybody says.

THE COURT: You asked the question on cross. You have to live with what you asked ---

MR. HENDERSON: Right.

THE COURT: --- so I'll allow it.

MR. HENDERSON: Okay. That's --

THE WITNESS: We spoke with a neighbor. The neighbor advised us that shortly before the incident, she had seen him leave in a white vehicle.

BY MR. HENDERSON:

Q Is that what she actually told you?

A I believe that's exactly what she told us.

Q Now, if I'm not mistaken, there's a great big old fence between these two properties.

A Okay.

Q Again, I'm representing to you what I have seen.

A Yes, sir.

Q There's a big six-foot fence, privacy fence between my client's property and the neighbor's property.

A Okay.

Q You recollect that?

A I don't remember how big the fence was.

Q Okay.
A I know there's a separation between the two properties, yes, sir.
Q Right. There is. Have you tried to look -- stand and look through the fence?
A Not in two and a half years, no, sir.
Q Did you at that point in time?
A No, sir.
Q Okay.
A I don't believe I did.
Q Did the neighbor actually tell you that she saw my client there or she saw --
A She said she saw her neighbor.
Q -- or she said she saw a car there.
A She said she saw her neighbor leave in a white car.
Q Okay. What time did she say the neighbor came back?
A She didn't say he came back. She never saw him come back.
Q She never saw him come back; did she?
A Correct.
Q Okay. Did she tell you that he was living there?
A I don't recollect that.

Q Okay. But again, you said there was no power there?

A It did not appear there was, sir. The switches didn't work.

Q Did you say no water?

A I don't believe there was any water, as well.

Q Okay. Okay. And you said some of the yard looked like it had been freshly raked?

A Not the yard.

Q Okay.

A The rocky area directly in front of the separated carport.

Q Okay. You didn't take any photographs?

A No, sir. We didn't.

Q Okay. Y'all got photographs of a whole lot of other stuff.

A Yes, sir, like the car inside.

Q Why didn't you take pictures of this ground or --

A The gravel?

Q The gravel. I mean, if you thought it was interesting or unusual?

A We just didn't. We were more interested in the car that was inside.

Q Okay. And again, we've gone through the stuff that you've seen in the car?

A Yes, sir.

Q And again, I've been taking notes on stuff that the solicitor talked about with you. I see a couple of pictures of boots.

A Okay.

Q You're not suggesting those boots are what's in that bank video; are you?

A I don't know.

Q I mean, and again, you can't tell from watching the bank video, can you, what type of shoes or footware, shoeware, or whatever you want to call it?

A I'd have to see the bank video again. I don't remember footwear.

Q Right.

A That's not a thing that sticks out in my mind.

Q I'll represent to you that footwear is not obvious. Is that fair to say?

A I'm not going to say it's fair to say. I haven't seen it recently, so...

Q I notice you put up a picture of a brush in some of those photographs. What on earth are y'all

alleging that has to do with an armed robbery?

A I don't know. There were other things in that picture, I believe.

Q I'm looking at a welder's mask?

A Okay.

Q You're not saying there was a welder's mask in this bank robbery video?

A No, sir. I believe that was just in the picture with the rest of the backseat.

Q Okay.

A We photographed the entire car.

Q And a crowbar?

A Yes, sir.

Q There's no allegations of a crowbar being used in the robbery; was there?

A Not that I know of.

Q Okay. Let me ask you again since you are -- you might not have been the lead investigator, but you're the boss of the detectives.

A Yes, sir.

Q I think you would be in a good position to answer these questions. Now, it's my understanding that based upon the investigation done by the police department that no fingerprints were found at the crime scene of this bank linking up to Thomas Smith;

is that correct?

A I believe that would be a correct assessment. Yes, sir.

Q Again, I just want to make sure that I've gone over the evidence properly. It's my understanding, too, that Greenwood Police Department took DNA samples there at the crime scene and that none of those link up to Thomas Smith?

A I believe that would be accurate, nothing DNA-wise.

Q Right. I hear you say "thinking." I mean, y'all gave me documents indicating none of this can be confirmed to be Thomas Smith?

A Okay.

Q Again, you're not disputing the documents you gave me; are you?

A I didn't give you the documents. I'm not going to say I did or didn't.

Q Okay. And in looking at the video, this bank video, again, it looked like there were no gloves. The person wasn't wearing any gloves.

A It appears as though his hands were tucked into his shirt.

Q Right. But it didn't look like there were any gloves.

A No, sir. They were tucked into a shirt, it looked like.

Q Okay. It's fair to say no bank bags have ever been recovered; has there? I mean, there's all this talk about blue bank bags.

A Yes, sir.

Q I don't think one was ever recovered; was it?

A No, sir. I don't believe we recovered a bank bag.

Q And it's my understanding that nothing alleged to have been a bomb has been recovered; has it?

A Not to my knowledge.

Q Okay. It's my understanding that no note -- again, I hear all this talk about a note being produced, but there's no note that has been discovered; has it?

A Not to my knowledge.

Q Okay. And again, there's been testimony that money was stolen from the bank, has any of that money been found with Mr. Smith?

A Not found on his person. No, sir, I don't believe so.

Q Has it been found anywhere?

A I don't believe so.
Q Okay. And again, it's my understanding that there's been no evidence found of any type of bank bag explosion or bank money explosion or bait money explosion found on Mr. Smith; has there?
A Not to my knowledge.
Q Okay. You're not saying that there was any found in this car you're talking about?
A Not to my knowledge.
Q Okay. And again, you were there?
A Yes, sir.
Q Okay. I mean, I just want to make sure that -- you're saying not to my knowledge, I just want to make sure you feel comfortable with your answer.
A I feel very comfortable with not to my knowledge.
Q Okay. And again, just looking through the file, there's been some allegations that this crime was committed by some other people; wasn't there?
A Well, after we had arrested Mr. Smith, yes, sir, I believe there was at least one I followed up on.
Q Actually, you followed up on one. A tipster called in and they said they believed it was a Martin Gonzalez?

A Yes, sir.

Q Okay. And I think you actually had given us a report and actually said that you went out and talked with Mr. Gonzalez?

A That's correct.

Q Okay. And also it's my understanding that it came back -- and Mr. Gonzalez is Hispanic, right?

A That's correct.

Q And you recollect -- or I will represent to you that some of the witnesses believe that the robber was Hispanic?

A Okay.

Q Do you recall that?

A I don't really remember that. I would have to read that part of the report again.

Q I will represent to you that's been some of the testimony.

A Okay.

Q And also there's been a name of a José McDaniel as being the perpetrator or being the robber. Do you remember that? the ladies at Nu-Way?

A I think I believe the name came out, yes, sir.

Q And again, the report says that we just determined it wasn't Mr. McDaniel?

A Okay.

Q What did y'all do to determine it wasn't Mr. McDaniel?

A I don't know. I didn't follow that investigative lead.

Q And again, I'm not trying to stereotype, but José McDaniel sounds, potentially, Hispanic?

A I couldn't assume that, sir.

Q Well, I mean, and again, I'm not assuming either. I'm just trying to -- José is, typically, a Hispanic name?

A Again, I'm not in a position to assume that, sir.

Q Okay. And then, looking on some of the reports, too, there seems to be a gentleman by the name of Isaiah Glover. It actually looks like law enforcement actually stopped him and got him out and questioned him. Are you familiar with that?

A I'm not.

Q Okay. You weren't involved in stopping Mr. Glover?

A No, sir, not to my knowledge.

Q Okay. I'll represent to you in the records, it shows that he is a black male.

A Okay.

Q And again, I will represent to you that some of the witnesses thought it was a black male that robbed the bank.
A Okay.
Q So did you follow up on Mr. Glover?
A No, sir.
Q Did you follow up on Mr. McDaniel?
A No, sir.
Q Do you know if any of your underlings or your employees did?
A I would assume yes, sir, they did. They would have a written supplemental says to that, I would imagine.
Q Okay. But you're just not aware of what they've done?
A No, sir, not fully.
Q Okay. Have you stayed on them about it?
A Have I stayed on them about what?
Q About following --
A Following those leads?
Q -- about following those leads?
A Yes, sir.
Q Okay. But you just don't know what your staff did?
A Yeah. I mean, I know that they followed up

the leads. Basically, some of them said the leads didn't pan out.

Q Okay. And I know you testified you talked to Mr. Gonzalez yourself?

A I did, personally.

Q Okay. And -- and -- and again, looking at -- when is the last time you looked at the bank video?

A It's been a little bit.

Q You didn't watch it in preparation for your testimony today?

A No, sir, I didn't.

Q Okay. Do you recall watching the video whether or not you could see a tattoo on the robber's hands?

A That's not what stood out to me, no, sir.

Q I didn't know if you remember seeing one?

A No, sir -- not -- no.

Q Okay. I don't -- I just didn't know if you did or not. Okay.

And one thing that's curious to me, Captain, and again, you may can shed some light on this, I know you said you went out there and talked to Mr. Gonzalez, you know, because a tipster came in. Is that a "yes"?

A That's correct.
Q Okay. And it's my understanding by reading your report that actually this tipster actually sent in a photo of Mr. Gonzalez.
A Okay.
Q Your incident report references that photo.
A I don't believe my incident report referenced that.
Q Well, one of your underlings did?
A Okay.
Q Are you responsible for what your employees do?
A I guess any supervisor would ultimately be responsible for what people do.
Q But isn't that --
A I try not to interfere with their investigations, as long as they are on track.
Q But in the report, it talks about that this tipster actually sent in a photo of this Mr. Gonzalez.
A Okay.
Q And again, it references -- it's my understanding that you haven't been able to find that photo or don't know what they're talking about?
A I have no recollection of an actual,

physical photo being sent to us, no.

Q Okay. So you just don't know whether it was or not?

A Well, according to the supplemental that Detective Moore wrote ---

Q Right.

A -- he said that -- basically, that information didn't come from me. I was told that information came from a new source and that he was provided a picture. I don't remember getting a picture. I do remember getting the tip, which is the tip that I followed up on.

Q Have you looked to see whether or not you had the picture?

A I have. I've actually done an email search of our entire server to see if I received it from a new source. I have not been able to find it.

Q You just don't -- haven't been able to find it or not even sure it exists?

A Exactly. I have no idea if it even exists.

Q Okay.

A I don't remember that. I do remember getting a tip ---

Q Right.

A --- with that name. That's why I followed

it up.

MR. HENDERSON: Okay. One minute, Your Honor?

THE COURT: Sure. Take your time.

(There is a pause.)

BY MR. HENDERSON:

Q Let me ask you this, to -- did you get any information from a Jessica Blackman that someone else was involved in this matter, or do you remember that?

A I didn't. No, sir. I don't know that.

Q The name, does that mean anything to you?

A I mean, I know that name. Yes, sir.

Q Right, but do you remember talking to Ms. Blackman about this case?

A Me?

Q Right.

A I don't.

Q Okay. And again, I haven't seen her name in any reports.

A Right.

Q I'm just trying to figure -- Okay. I think it is in one of the reports.

A That I spoke with Jessica?

Q No, that somebody in your department spoke with her.

A Okay.

Q She said that somebody else was responsible?

A Okay.

Q Do you remember that?

A No.

Q You haven't followed up on that?

A No.

MR. HENDERSON: Okay. Nothing further, Your Honor.

THE COURT: Redirect, Solicitor?

MR. BLACK: Just briefly.

REDIRECT EXAMINATION

BY MR. BLACK:

Q There was mention of a Martin Gonzalez. You actually went out and talked to him; is that right?

A That's correct.

Q And he's a Hispanic gentleman?

A He is.

Q You have had a chance to look at the surveillance video; is that right?

A Yes, sir.

Q And you can see the hands of the gentleman clearly?

A Correct.

Q It's from a white guy; is that right?
A Yeah, he looks white.
Q But he was also trying to conceal hands, as well?
A His hands were tucked up under his shirt, kind of like this. (Demonstrating.)
Q Okay. You were able to rule Mr. Gonzalez out; is that right?
A I was.
Q Explain how you were able to rule him out.
A Upon speaking with Mr. Gonzalez, it was several things. One, he was not even close to the height requirement that it would have been. Two, the person who had called in the tip was an extremely disgruntled wife. They were going through a very nasty divorce and basically called it in. She had done it, actually, before, trying to call in and try to get him in trouble to help her out with the proceeding. There had been a proceeding just prior to where she wants custody of the kids. She was -- that's why she had called his name in.
Q Custody of kids, nasty divorce ---
A Correct.
Q --- that something that's not really unusual that your department has to deal with; is

that right?

A No, sir. It's not, unfortunately.

Q Okay. Mr. Henderson mentioned several other names; is that right?

A Yes, sir. He did.

Q You didn't, necessarily, have anything to do with that?

A I did not.

Q But your people did follow up on all of those witnesses?

A Yes, sir.

Q Okay. Talk a little bit about -- Mr. Henderson mentioned fingerprints and DNA that was sent off to SLED. You're talking about that?

A Yes, sir.

Q He said that they were inconclusive; is that right?

A That's what he said, yes.

Q Have you reviewed those reports?

A No, I have not personally. No, sir.

Q Okay. Is that something that's typical in these types of cases?

A If we can get that information, yeah. We would send it off and if something comes back, we'll utilize it.

Q Kenya Griffin, she was the one that collected that stuff?

A Right. She would be the one -- I'd call her first to process the actual scene because she's trained in that area.

Q She sent those items off to SLED?

A Correct.

Q And it all came back inconclusive?

A As far as I know, yes, sir.

Q Finally, I showed you a picture of a welding mask. Do you remember that?

A Yes, sir.

Q What's the purpose of the welding mask?

A To protect eyesight while somebody is welding.

Q Welding or possibly fusing something together?

A Yes, sir.

Q Something you can probably protect yourself while making a bomb?

A Sure.

MR. BLACK: That's all the questions I have.

THE COURT: Recross?

MR. HENDERSON: One moment.

THE COURT: Sure. Take your time.

RECROSS EXAMINATION

BY MR. HENDERSON:

Q Yeah, just one follow-up question, Captain. Going back to the Nu-Way ladies, the one that talked about José McDaniel, did y'all ever view any videos there?

A I don't believe so, no, sir.

Q Or --

A Video from the Nu-Way.

Q Right. Did you ever review any videos from the Nu-Way?

A In reference to McDaniel?

Q Right. These two ladies there are saying, "Hey. It's one of our customers that robbed the bank" --

A Yeah.

Q -- "José McDaniel."

A Yeah.

Q Did you view --

A I personally never viewed any footage from Nu-Way showing Mr. McDaniel.

Q Did you view any video footage?

A No, we went there looking to see if the car had gone through the parking lot and if there was a

video outside. That was the extent of my looking for a video.

Q Okay. You didn't go inside to look for any internal video inside the store?

A We asked them if the cameras covered outside. They showed us that the cameras didn't. That was my extent of the video at the Nu-Way.

Q Okay. So you looked for stuff outside and there wasn't any cameras?

A That's correct. There wasn't any video footage from outside.

Q So you actually conducted that investigation?

A Yeah. I was there. There was actually a group of us there.

Q Okay.

A I went there. Once I found out there was no video outside, I moved on to the next item. You'd have to speak with the investigator who talked with the girls.

Q Do you know if anybody looked at any video inside of the store?

A I don't know. Not right off the top of my head, no.

Q Again, if you don't know, you don't know.

But you think somebody looked at some video?

A I would imagine we probably tried to find whatever we could.

Q Okay. But you don't think they made any copies of it?

A I would doubt it.

Q Okay. (Pause.)

One thing, Captain, when y'all went out there and executed the search warrant on the house ---

A Yes, sir.

Q --- and went to the garage ---

A Okay.

Q --- did y'all touch the engine?

A The engine to the car?

Q Yeah. Was it warm? cold? neutral?

A I don't remember exactly. I don't remember whether we did that or not.

Q It's not reflected in y'all's incident reports.

A I would hesitate to say whether we did then.

Q Okay. Did you see any recent car tracks? I know you said you saw some stuff raked, but were there any car tracks?

A No, sir. There were not. That's in the -- it was freshly raked.

Q Okay. And how did you determine whether or not it was fresh?

A It didn't appear that anyone had walked across it since it had been raked and nothing had driven across it since it had been raked.

Q Okay. But that did not mean it's fresh?

A Just meant nothing had disturbed it since it had been raked.

Q Bingo. That's what I'm getting at.

A Right.

MR. HENDERSON: Your Honor, I don't have anything further.

THE COURT: Okay. Step down, sir. Thank you.

Who's your next witness, Solicitor?

MR. BROWN: Officer Kay.

THE COURT: Is he going to be very long?

MR. BROWN: Probably.

THE COURT: All right. Let's take an afternoon break, Ladies and Gentlemen. If you will, go back to the jury room again. I'm going to remind you don't begin any discussions about this case. We'll get you back out shortly.

(Jury exits at approximately 2:46 p.m.)

(The Court goes off the record at approximately 2:47 p.m.)

(State's Exhibits 70 through 74 are marked for identification.)

(The Court goes on the record at approximately 3:03 p.m.)

THE COURT: Let's bring the -- bring the jury out please.

(Jury enters at approximately 3:03 p.m.)

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

Solicitor, call your next witness, please.

MR. BROWN: The State calls William Kay.

THE COURT: Okay. Come around please, sir, and be sworn in.

WILLIAM KAY

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Kay, where do you work?

MR. HENDERSON: I'm just renewing all of my objections, Your Honor.

THE COURT: Certainly.

THE WITNESS: Greenwood Police Department.

BY MR. BROWN:

Q And currently, what is your position there?

A I'm in the investigations division.

Q Back on February the 18th, 2016, were you also in investigations?

A Yes, sir. I was.

Q How long have you been with Greenwood City Police Department?

A Last month was 11 years.

Q Back on February 18th, 2016 and the days after that date, were you involved in an investigation with an armed robbery at South State Bank located on the Bypass?

A Yes, sir. I was.

Q And jumping forward, were you also involved in the execution of search warrants that took place at [redacted]?

A Yes, I was.

Q At a house listed under the name of Thomas Allen Smith?

A Yes, sir.

Q Were you there for the first search warrant that took place on February 6 -- February 18th?

A Yes, sir. I was.

Q There have already been pictures

introduced, and I'm not going to go through all of those with you. At that time, did y'all locate a vehicle?

A We did.

Q A Volkswagen Passat?

A Yes, sir.

Q Did you notice anything unusual outside of the garage where the Volkswagen was parked?

A The gravel in front of the garage looked as if it had been raked to cover tire tracks.

Q Now, after that first search warrant, when you got there that night on February the 18th, was it light outside? dark?

A I believe it was dark by the time the search warrant was actually served at the house.

Q Was the power on in the house?

A No, sir. It wasn't.

Q Was the water running, to your knowledge?

A I don't believe it was.

Q The next day, February 19th, 2016, did you and other officers go back out to [redacted]?

A We did.

Q What was the purpose of going back out?

A After the original search warrant, we went

back to the office -- we went back to the office and was discussing -- the following morning when we came in, we were discussing the search warrant and what was located at the search warrant the night before. Somebody mentioned that they seen a grill that looked like it had some stuff burnt inside of the grill. We thought that there may have been evidence that had been burnt inside of the grill. So we obtained a search warrant to go back to the residence to get the contents of the grill that was outside.

Q And you were one of the officers that went back the following day, on February 19th?

A Yes, sir. I was.

Q This would have been executed in the morning time?

A Yes, sir. I believe it was.

Q Let me show you what's been marked previously as State's Exhibit 36 through 48. Excuse me. Put my gloves on right now. We'll get into what you found, shortly. Take a look at those photos and see if you recognize it.

A The first three look like the contents of the grill, just burnt ashes and it looks like paper that had been burned. This was some sort of paint thinner or something. Then, there's clothing that was

located outside underneath a tarp. It looks like the rest of them may be the clothing.

Q I'll take that back.

A There was a clipboard with some yellow paper and then more clothing in another picture of the can of stuff. I believe it was some sort of paint thinner.

Q Flammable?

A Yes, sir.

MR. BROWN: Your Honor, at this time, the State would move State's Exhibit 38 through -- 36 through 38 -- through 48 -- let me just say that again -- State's Exhibit 36 through State's 48 into evidence.

THE COURT: All right. Defense?

MR. HENDERSON: Your Honor, I object with my Holmes objections.

THE COURT: Okay. So noted. 36 to 48, over objection of the defense, it's admitted into evidence for the State.

MR. BROWN: Thank you, Your Honor.

(State's Exhibits 36 through 48 are admitted into the record.)

BY MR. BROWN:

Q Detective Kay, again, this is at [redacted]

[redacted]. You already executed one search warrant the night before and located information with Thomas Allen Smith's name on it in the car, correct?

A Yes, sir.

Q Now, State's Exhibit 36, what is that?

A That would be the contents of the grill, burnt ashes.

Q By looking at this and sifting through the ashes, could you tell what was burned up?

A I couldn't tell what was burned up in it.

Q State's 37, this is just another picture of the ashes?

A Yes, sir.

Q State's 39?

A That was the can of paint thinner. Some sort -- I think it's some sort of paint thinner.

Q That was located next to the grill?

A It was in the same general area.

Q Now, to the clothes, State's Exhibit 43, what is that?

A A pile of clothes, overalls, T-shirt. It looks like they are laying where they would've been found, where the tarp was. They were actually covered by the tarp when we got there.

Q State's 41?

A It's more clothing in the same area. It looks like a jacket.
Q State's 42? Now, is that the tarp? Is that how you originally saw it covered up?
A Yes, sir. It was.
Q Obviously, those clothes didn't get there by themselves?
A No, sir.
Q State's 43, what is that?
A It looks like a jacket, a winter jacket, kind of like a puffy jacket, maybe.
Q State's 44, is this just another picture of that puffy jacket?
A It is. I guess it's actually a vest, a puffy, sleeveless jacket or vest.
Q State's 45?
A Overalls, a black hooded sweatshirt. It looks like the vest or jacket, puffy vest or jacket.
Q State's 47?
A The clothing underneath the tarp. That's after the tarp had been removed. Just a better picture of the surroundings.
Q And again, State's 48?
A That's the paint thinner again, just showing the surroundings of where it was actually

found.

Q I'm going to show you what has been marked as State's Exhibit Number 70. Is this the puffy vest that you found out at the location of [redacted]?

A It is.

Q When you located this, was it dry?

A It was wet.

Q Did it have any kind of odor?

A It smelled similar to the paint thinner, or the bottle of stuff I assume is paint thinner.

Q And again, there next to all of this, there was already a burned pile?

A Yes, sir.

Q This is marked State's Exhibit 71. What is this?

A Black hooded sweatshirt located at the house the following morning.

Q Black hooded sweatshirt with a long silver zipper?

A Yes, sir.

Q Long tassels?

A Yes, sir.

MR. BROWN: Judge, I -- after getting these other two in, I'll move all four of them

in.

THE COURT: Okay.

BY MR. BROWN:

Q State's Exhibit 72, what is this?

A A pair of overalls.

Q Green in the overalls? (Indicating.)

A Yes, sir.

Q Slits ---

A That's correct.

Q --- at the bottom to go over boots. State's Exhibit 73, what are these?

A A pair of sunglasses.

MR. BROWN: Your Honor, at this time, the State moves item 70, 71, 72 and 73 into evidence.

THE COURT: Subject to your previous objection.

MR. HENDERSON: I renew my Holmes objection.

THE COURT: Certainly. All right. Over the objection of the defense, 70 through 73 into evidence for the State.

(State's Exhibits 70 through 73 are admitted into the record.)

BY MR. BROWN:

Q Now, Detective Kay, you've looked at this video ---

A Yes, sir. I have.

Q --- the video the bank robber was in? These were all located at the house belonging to Thomas Allen Smith?

A They were.

Q Located at the house the vehicle was located?

A They were.

Q These sunglasses appear to match up with the video?

A They do.

Q Black hoodie?

A It appears to be the same.

Q Now, that picture with the black hoodie over the overalls, is there a black line?

A I can't see.

THE COURT: Do you want to step down?

THE WITNESS: Yes, sir.

THE COURT: Just be sure to speak up loud since you're away from the microphone.

THE WITNESS: Yes, sir.

Yes, sir. I see it.

BY MR. BROWN:

Q Would the zipper zipped around his neck -- do you see a silver zipper?

A I can.

Q On the overalls, the green markings?

A Yes, sir.

Q The photo now appears zoomed in with the armed robber standing there. Can you see the slits in those jeans over his boots?

A Yes, sir. I do.

Q Detective Kay, I'm going to show you what's been marked as State's Exhibit 74. Is that the can you found out there?

A Yes, sir. It is.

Q What does the warning label say on that can?

A Warning, flammable liquid and vapor spray is harmful, if inhaled.

Q So it's flammable?

A Yes, sir.

MR. BROWN: Your Honor, the State would move State's Exhibit 74 into evidence.

THE COURT: Subject to your previous objection.

MR. HENDERSON: Absolutely, Your Honor. Thank you.

THE COURT: All right, 74 into evidence for the State.

(State's Exhibit 74 is admitted into the record.)

BY MR. BROWN:

Q Detective Kay, during the course of your investigation, did you also have the opportunity to speak with James Adams?

A Yes, sir. I did.

Q Mr. Adams is the man that was able to identify Thomas Smith?

A Yes, sir. He was.

Q You actually were one of the guys that went over to his house?

A I was.

Q You also -- in this investigation, did you get tips coming in from potential other leads?

A We did.

Q Did you explore those?

A Yes, sir. We did.

Q Why did you explore them?

A We try to look into every lead that we get until we deem that either it is a dead-end lead or it's the correct lead.

Q On those other leads you got, did you

investigate them and been able to, ultimately, rule them out?

A Yes, sir.

Q Again, all of these items located here on this rail, from what you could tell match up with the video, were found at [redacted]?

A Yes, sir. They were.

Q No further questions. Please answer anything that Mr. Henderson might have.

THE COURT: All right. Mr. Henderson, cross-examination?

CROSS-EXAMINATION

BY MR. HENDERSON:

Q How are you doing, Detective? How are you doing, sir?

A I'm good, sir. How are you?

Q Good. You were talking about following up on other leads?

A Yes, sir.

Q And if I'm not mistaken, you got the name José McDaniel?

A Yes, sir. I did.

Q I think you got the name from, I think, two employees or two employees at the Nu-Way convenience store.

A One of them worked at the convenience store; the other one worked at the liquor store that was right beside it.

Q Kind of side by side?

A That's right.

Q And I think both of those ladies told you that they thought it was José McDaniel?

A That's correct. The picture that had been listed on social media sites, they said they believed it was him.

Q Okay. And you were able to look at any videos that Nu-Way or the liquor store had?

A We were looking at video for the liquor store and the Nu-Way for the outside parking lot to see if we saw the car drive through.

Q Right.

A But they didn't have any on the outside of the store.

Q Okay. No outside -- no outside videos at all or recordings?

A No.

Q Did you look at any of the inside recordings to see if you could see Mr. McDaniel in there?

A I'm not 100 percent sure. I definitely

don't recall seeing him on video.

Q Did the ladies say that Mr. McDaniel, they believe, had just been in the store?

A Yes, sir.

Q So if -- he'd just been in the store, and you didn't see him on the video?

A No, sir.

Q Okay. Did you make copies of those videos, by any chance?

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

Q Okay. Did you ever go try to track down Mr. José McDaniel?

A One of the ladies from the store, the Ms. Nichols --

Q Right.

A -- Angie Nichols, who actually worked at the liquor store, she pulled a picture of him up on her phone. She was friends with him on Facebook. To me, it didn't look like the same person from the bank surveillance. And then as I was getting the information from her, when I made it back to the office, the other investigators had the information about the vehicle being sold at Ballentine Ford. So we pursued that lead since it was a more -- since it was a better lead.

Q So you never followed up and tried to find José McDaniel?
A No, sir. I did not.
Q Sounds like again -- I'm not trying to stereotype, but it sounds like José McDaniel, perhaps, is Hispanic?
A He could be.
Q Okay. And again, it seems like some of the witnesses at the bank said that they were robbed by a Hispanic male, that they believed they were robbed by a Hispanic male.
A That, I'm not sure. I didn't talk with anybody from the bank.
Q You weren't involved in that part of the investigation?
A I was outside ---
Q Okay.
A --- riding the area. I didn't go inside and speak with anybody.
Q Let me ask you, looking at the sunglasses in the video -- I know that's a weird picture right there, but you saw it -- can you see somebody's eyes through those sunglasses?
A I wouldn't think so.
Q It just doesn't make sense that you see

somebody's eyes through a pair of sunglasses?

A No, sir.

Q Okay. And let me ask you, I think your answer when the solicitor asked you that, you couldn't tell what had been burned? Did I hear that right?

A Inside the grill?

Q Right.

A It looked like it had been paper or something. I couldn't tell what was.

Q Did y'all run any type of an analysis on it?

A You know, I believe it was sent down to SLED.

Q Okay.

A I'm not 100 percent sure.

Q Could you tell when the most recent time something was burned in the grill?

A I couldn't tell.

Q So it's kind of like you don't know what was burned or when it was burned?

A Correct.

Q Is that fair to say? Now, let me ask you, all of these other items of clothing that you say you're finding out there, now, they aren't burned;

are they?

A No, sir. I don't believe they are.

Q Now, I mean, I've looked at all of this stuff. I don't see anything burned there?

A Right.

Q I know I think you said it smelled like paint thinner?

A That's correct.

Q But wasn't paint thinner around? I mean, didn't you see the jug, or the container, was sitting around?

A It was sitting fairly close.

Q Okay. But no evidence that anything there had been burned?

A None of it appeared to be burned, no, sir.

Q Basically, hadn't tried to have been destroyed; is that a fair assessment?

A Correct.

Q Okay. You didn't take any -- did you take any pictures of this -- of the raked gravel?

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

Q Did you take any pictures?

A I don't think so.

Q Okay. Let me ask you, who handled the clothes out there that night? I mean, it looks like

somebody moved the tarp, I'm guessing. Who all was out there? I assuming you. Was Captain McCallister there?

A Are we talking about the night with the original search warrant?

Q Say, the second night -- the day, talk about the clothes?

A Off the top of my head, I'm not 100 percent sure who all was out there. I'm fairly confident Captain McCallister was there. Lieutenant Dixon, more than likely, was there.

Q Do you think Detective Moore was there?

A You know, I don't believe he was there for that.

Q Okay.

A I think -- I don't know if he stayed late and hadn't made it in yet or if he was working on something else, but I do not believe he was out there.

Q Who do you think moved the tarp? Who do you think first handled the clothing?

A That, I couldn't tell you. I don't know.

Q Was it you, or do you know?

A Honestly, I don't know if I did first, or not.

Q Okay. Who was responsible for bagging up the clothing?

A You know, I don't know who actually put them into the bag. I would have to look at the evidence sheet and see who put it into evidence. I assume that would be the person that bagged it up.

Q Let me ask you, looking at the video there, I mean, just the screen we're looking at right there -- if you could take a look at the screen, Detective -- can you tell the footwear that the robber is wearing?

A I may have to step down.

Q Yeah. Step down. Please do. I want you to...

A I can't. I really just see the back of his leg with his pants hanging down over whatever type of footwear it is.

Q Right. So you can't tell what the footwear is; is that a fair assessment?

A Not from that particular angle.

Q I mean, any angle that you saw, could you tell what the footwear is?

A Honestly, I wasn't paying attention to the feet a whole lot.

Q Okay. When is the last time that you looked

at the video?

A It would have been around the time of the incident.

Q Okay. So it had been a while?

A Yes, sir.

Q Again, were there ever any complaints -- while y'all were at the house, were there ever any complaints about anybody -- about any burnings or anything there at the house, Mr. Smith's house?

A Not that I know of, but the house is in the County.

Q Okay.

A They would've gotten those complaints, if there were any.

Q Right.

A But none that I know of.

Q If I'm not mistaken, isn't there a privacy fence here on the property line of the Smith residence?

A You know, I know there's a chain-link fence on one side. There may actually be a wooden fence on ---

Q The other side?

A -- the right side, if you're looking, but I'm not 100 percent sure.

Q Okay. It wouldn't surprise you if there was?

A That's fair to say.

Q Okay. (Pause.)

Nothing further, Your Honor.

THE COURT: Redirect?

MR. BROWN: Just a few things.

REDIRECT EXAMINATION

BY MR. HENDERSON:

Q Mr. Kay, Mr. Henderson asked you -- he asked if you could see his eyes. Were you familiar with -- well, you didn't know Thomas Smith?

A No, sir.

Q But if you had a friend that wore sunglasses, could you identify him in a photo?

A I could.

Q If you're acquainted with him and know him pretty well, it makes it easy for you to identify him, right?

A That's correct.

Q Now, when you found those clothes, again, you said they smelled like the contents of that can?

A They did.

Q Mr. Henderson was asking you about the footwear, if you could tell what kind of footwear he

was wearing. Did you have any indent -- any problem identifying the clothes he was wearing with what you found?

A No, sir.

MR. BROWN: No further questions.

THE COURT: Recross?

MR. HENDERSON: Very briefly.

RECROSS EXAMINATION

BY MR. HENDERSON:

Q Detective, let me -- I just want to make sure I'm clear on the question. You said the clothing smelled like this paint thinner?

A Yes, sir.

Q Did it smell like it because it was in proximity of it or did it smell like it because the thinner had been poured on the clothing, or could you tell?

A I felt like it smelled like it because the thinner had been poured on the clothes. They were damp, at the time that we located them.

Q Did you run any testing on the clothing?

A No, sir, not that I know of.

Q Okay. So you're just not -- can you 100 percent say why it smelled like paint thinner?

A I can't 100 percent say.

Q Okay. But no doubt that it had not been burned?

A No, sir. They don't have any burn marks on them.

Q None whatsoever?

A No, sir.

Q Okay. I don't have anything further.

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

MR. BROWN: Your Honor, the State will call Jamie Lovett.

THE COURT: Okay.

JAMIE LOVETT

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon, Officer Lovett.

A How are you?

Q Good. Tell me where you work.

A I work for the Greenwood City Police Department.

Q How long have you worked with Greenwood City?

A Almost 12 years now.

Q What are your duties at the Greenwood

Police Department?

A I'm currently the lieutenant of the Drug Enforcement Unit.

Q Now, did you happen -- back on February 18th, 2016, did you have an opportunity to help investigate an armed robbery that took place at South State Bank on Bypass 72?

A I did not take part in the actual investigation itself. I just assisted when we located an individual.

Q Okay. Now, February 20th of 2016, did you, along with other officers, I believe, Detective McClinton, Detective Brooks, did y'all receive an anonymous call?

A Yes, sir.

Q And an anonymous call that maybe the bank robber was at the Little Cricket at 1208 Bypass 72 Northeast?

A I think shift received the call. The shift captain called and spoke with Detective McClinton, who was part of the investigations division at the time. He passed the telephone number on to us. I think that Detective McClinton called the individual and we met him at NewSpring, I believe it was, to speak to him.

Q Before saying what they actually told you, based on the information, did y'all actually go to the gas station, the Little Cricket gas station?

A Yes, sir. Yes, sir.

Q And when you went to the gas station, did you look at the surveillance video or the video they had in the Little Cricket?

A Yes, sir.

MR. HENDERSON: Your Honor, may we approach?

THE COURT: (No audible response.)

MR. HENDERSON: May we approach?

THE COURT: Sure.

(Bench conference is held off the record.)

BY MR. BROWN:

Q Now, Detective Lovett, based off the information from this anonymous caller, you, along with Detective McClinton and Agent Brooks went to the Little Cricket?

A Yes, sir.

Q And once you got to Little Cricket, you all observed some video footage or you observed what you believe could be the next lead; is that correct?

A Yes, sir.

Q Based off of information gathered there,

you and the other agents then proceeded to where?

A The motel directly across the street, which I believe is America's Best Value.

Q America's Best Value?

A Yes, sir.

Q The Little Cricket I'm referring to and the America's Best Value, where, in location, is that to South State Bank?

A I think there are two buildings in between the Little Cricket and the bank itself. There's a Burger King and then it's a jewelry store or something there, and then there's the bank. America's Best is directly across the street.

Q Once you got to America's Best Inn, did you learn that somebody of the description that had come in Little Cricket was staying at that hotel?

A I'm not sure exactly how the conversation took place with the clerk at the motel.

MR. HENDERSON: Your Honor, I'm going to object to any testimony about what the clerk might have said.

THE COURT: Don't repeat -- I'm not sure if you were trying to, but don't repeat anything the clerk may have told you.

BY MR. BROWN:

Q Based on the -- based on going to the hotel, did you learn the name of the person or the name who was associated with a particular room?

A Yes, sir.

Q And you learned about the subject who looked familiar was in Room 213?

A Yes, sir.

Q But the name that person was checked in under was Jeffrey Johnson?

A Yes, sir.

Q After you learned that particular person or suspect was in Room 213, what did you do with the other agents?

A We went to Room 213 to try to make contact --

Q 13 or 213?

A 213 -- to try to make contact with the individual in the room. We knocked on the door numerous times and was unable to get anybody to the door. We heard a male voice inside just saying that he was going to sleep and, basically, he hadn't done anything wrong. He kept repeating his name was Jeffrey Johnson.

Q Later on, after you initially went to Room 213, you weren't able to verify who, actually, the

person was behind the door?

A No, sir.

Q Later on that night, did you and the other agents actually meet Jeffrey Johnson?

A I did not, particularly, meet him. I made a phone call to him -- to a Jeffrey Johnson --

MR. HENDERSON: Your Honor, I'm going to object to anything that this gentleman may have said. Again, I don't know if it was going there.

THE COURT: Right. Right.

THE WITNESS: I made a phone call to Jeffrey Johnson.

BY MR. BROWN:

Q Later on, did you ever meet with Jeffrey Johnson or one of the other agents?

A It was one of the other agents. I never met with him.

Q At the time you went to the hotel, there was a suspect y'all had gotten down to the point, was in Room 213?

A Yes, sir.

Q Later on, after -- this is jumping ahead, did you have any other dealings with this particular case and the actual apprehension of Mr. Thomas Smith?

A I was present.

Q You were present? Later on -- after fleshing out Jeffrey Johnson and then room 213, later on, you were able to make the arrest, or you were part of the arrest of Thomas Smith?

A No, sir. I was present when it happened. I didn't actually --

Q Did that happen in Room 213?

A Yes.

MR. BROWN: No further questions at this time.

THE COURT: All right, Mr. Henderson.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Hey Officer Lovett, how are you doing today, sir?

A I'm good, sir. How are you?

Q Good, good, good. Now, when Mr. Smith was arrested at America's Best, was money from the bank robbery recovered from that room?

A I don't know.

Q Who would know the answer to that?

A Whoever served the search warrant.

Q Okay. So you just don't know?

A No, sir.

Q You think if any had been recovered, would

you have heard about it?

A No, sir.

Q Okay. Do you know if any bank bag was recovered in Room 213?

A No, sir.

Q Okay.

A I'm not aware.

Q Are you aware of anything that was recovered in 213, other than Mr. Smith's body?

A No, sir.

Q Okay. So all you know is he was arrested there?

A Yes, sir.

Q Okay. Did you go out to look at any other hotels to look for Mr. Smith?

A No, sir.

Q Okay. So you didn't go to the Ideal Motel?

A Not that I can recall.

Q Okay. Do you know if any of your colleagues went to the Ideal Hotel looking for him?

A No, sir. I can't recall.

Q Okay. (Pause.)

One moment, Your Honor.

THE COURT: Sure.

(There is a pause.)

BY MR. HENDERSON:

Q Let me ask you, did you check it to see -- did you examine the money or any money that may have been paid by Mr. Smith for this hotel room?

A No, sir. I did not.

Q Do you know if any of your colleagues asked the clerk to show them any cash money or, in fact, paid in cash?

A No, sir. I don't know if they did.

Q You just don't know if they did or not?

A No, sir. I don't.

Q You have any evidence that any bank money was found here at the America's Best Hotel?

A No, sir.

MR. HENDERSON: Okay. Nothing further Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. BROWN:

Q Just to finalize with you, your role in this was getting the lead from the anonymous caller and going through the process of going to Little Cricket and then to the hotel, America's Best Value?

A Yes, sir.

Q Where y'all, ultimately, located Mr. Smith?

A Yes, sir.

MR. BROWN: No further questions.

THE COURT: You can step down, sir.

MR. BROWN: Judge, beg the Court's indulgence.

THE COURT: Take your time.

(There is a pause.)

MR. BROWN: Judge, may we approach?

THE COURT: Sure.

(Bench conference is held off the record.)

THE COURT: The witness you just mentioned to me, is that your next witness?

MR. BROWN: Yes, sir.

THE COURT: So we'll need to take a -- take a recess?

MR. BROWN: Yes, sir.

THE COURT: Okay. All right.

MR. BROWN: He should be here in the next few minutes.

THE COURT: Okay. All right.

All right. Mr. Foreman, Ladies and Gentlemen of the jury, we're waiting on the next witness for the State. He'll be here shortly. As soon as that witness gets here, then we'll start back. Okay.

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(Jury exits at approximately 3:48 p.m.)

(The Court goes off the record at approximately 3:48 p.m.)

(The Court goes on the record at approximately 4:06 p.m.)

(Jury enters at approximately 4:06 p.m.)

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

Solicitor, next witness?

MR. BLACK: The State calls Jeffrey Johnson.

THE COURT: Come around, please, sir.

JEFFREY JOHNSON

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BLACK:

Q Can you state your name for the record please, sir?

A My name is Jeffrey Johnson.

Q You live in Greenwood?

A Yes, sir.

Q Mr. Johnson, I'm going to take you back two and a half years ago to February the 20th of 2016. Do you remember -- does that day ring a bell?

A A little bit, not all the way.

Q Did you pick a individual up at some particular point and take them to a hotel and check them into a hotel?

A I did.

Q Where did this happen at? Where did you meet this individual?

A At the intersection close to the Urgent Care.

Q To the Urgent Care. We're talking kind of near the high school, below the high school, Greenwood High School?

A Yes, sir.

Q So the Bypass and that intersection right there?

A Uh-huh.

Q What hotel did you take them to?

A America Best Inn -- Value, whatever it is.

MR. HENDERSON: Your Honor, I've got a matter.

THE COURT: Okay. Can we talk about it first at the sidebar?

MR. HENDERSON: Yes.

THE COURT: Okay.

(Bench conference is held off the record.)

THE COURT: You may proceed.

MR. BLACK: Thank you, Your Honor.

BY MR. BLACK:

Q All right. So where did you pick this individual up?

A Toward the Urgent Care, right there on the Bypass.

Q Okay. And this particular person, did you know this person?

A I knew of him, I did.

Q And do you know this person's name?

A I can't remember his name, no, sir.

Q Is he here in the courtroom today?

A It's the guy right there in the red shirt.

Q The way he looks today, is that how he looked February of 2016?

A No, he didn't. It been two years ago, so he didn't look like that.

THE COURT: Let the record reflect that the witness identified the defendant.

You may proceed.

MR. BLACK: Thank you, Your Honor.

BY MR. BLACK:

Q You say you took him to the America's Best Hotel?

A Yeah.

Q Where is that at?
A It's right on the Bypass going toward -- right across from -- right behind O'Reilly's.
Q Okay. And that's like, if you're going towards -- say, on the Bypass, you're going to Clinton, right before you get to the Bojangles' off to the right?
A Yes, sir.
Q Okay. And when you picked him up and you took him to the hotel, what did you do?
A Well, when I dropped him off, I went in the room with him. We talked for a few minutes and I left right out.
Q Did you check this individual into the hotel?
A Yes, I did. I did that.
Q Did Mr. Smith go into the waiting area to be checked in, as well, or was it just you?
A We both went -- no, I went in. That was it, yeah.
Q Did he give you anything to check him in?
A He gave me some money, yeah.
Q Do you know how much that was?
A I can't remember. It been two years ago. I think it cost, like, $65 to get in the place. He gave

me 65 or $70. I don't know.

Q How did you pay?

A Cash.

Q Did he give you that cash?

A Yes.

Q You did -- you did say you went up to the room with him?

A I did.

Q And you probably have no idea, but you remember that room number?

A No, it been two years. I know I don't remember that.

Q How long do you reckon you were there?

A Five minutes, maybe.

Q All right. Did you -- did you get a call from law enforcement sometime thereafter about you staying at that hotel?

A Yes.

Q Do you know -- you remember who you spoke to?

A I guess it was the chief. I'm not for sure. But he called at 3:30, 4:00 in the morning.

Q Did he identify himself?

A Yes, he did.

Q And what was he asking you?

A He wanted to know who was in the room and did I know anything about it.
Q Did you tell him that -- were you at the hotel at that point?
A No, I wasn't. I left like five minutes after I got there. I didn't stay there, period.
Q And what time do you think that was?
A 10:00, 10:30 maybe.
Q P.M. or A.M.?
A P.M.
Q So it was at night. And then you said you got a call at about 3:00 in the morning?
A Yeah.
Q Okay.
A 3:30, 4:00, something like that.
Q Where were you when you got the call?
A I was in the bed.
Q At your house or somewhere?
A At my girlfriend's house.
Q And where does she live?
A Off East Cambridge Avenue.
Q At a house or apartment?
A Apartment.
Q Okay. And the officer -- I guess, did they ask you if you were at the hotel?

A He asked, but he wanted to know who was in there.

Q Okay.

A Before I knew it, some commotion went on, and I found that he had got locked up.

Q Okay. Were you there when Mr. Smith got -- when he was locked up?

A No, I wasn't.

Q You talked to law enforcement a couple of different times about this particular incident; is that right?

A Correct.

Q You know how many times you talked to them?

A Twice, afterwards. I think it was like two months after that, I talked to them twice.

Q And you originally -- did you originally tell them that you didn't know who you picked up?

A Not that I can remember, no, I didn't.

Q Okay.

A Cause I talked to them twice that day. We talked for, like, hours. Before I left, they were satisfied with my story. I know nothing about none of this.

Q You talking about the law enforcement officers?

A Yes.
Q Okay. When was that? That was after the arrest, though; is that right?
A Yes. Yes, it was.
Q Okay. But before that, you'd only spoke to them, initially, on the telephone; is that right?
A Uh-huh.
Q And you told them you were not at the hotel?
A No, I wasn't.
Q Did you know -- did you know Mr. Smith's name or did you just know him as an acquaintance?
A Really, as an acquaintance through a female that I knew of that knew him.
Q So you -- once you saw him, you just, Good Samaritan, drove him over to the hotel?
A Well, he gave me a call. I picked him up. We rode. I took him to the motel. I took him to a store, first, up by Dairy Queen. It's a store right across the street. I cannot think the name of it.
Q The Stop-a-Minit?
A No, not the Stop-a-Minit. Everyone keeps saying the Stop-a-Minit. It's the place right across the street from the Dairy Queen.
Q Mr. Chip?

A I guess that's the name of it. I don't know.
Q I know where you're talking about. Right across from Dairy Queen.
A Right across from Dairy Queen.
Q So he -- he called you?
A Yes, he did.
Q You know what time that was?
A About 9:00, something like that.
Q P.M?
A Uh-huh.
Q So did you meet him -- you met him off the road, not at the gas station?
A No, I didn't.
Q Took him to the gas station, then to the hotel after that?
A Yes, I did.
Q And he gave you about 65 bucks, you said?
A Yeah.
Q And you said -- just to be clear, you said he did not go into the waiting area to be checked in?
A No, he didn't.
Q Where was he at?
A I think he was in the car. I really can't say for sure. It's been two years ago. I don't know

exactly whether he was in the car. I think he was in the car. I believe he was. I remember paying cause it was late at night. I went to the night window. I wrote the stuff down. I gave him a card. Went to the room for five minutes. I left.

Q Whose name did you check him under?

A My name.

Q Your name, again, is what?

A Jeffrey Johnson.

Q I think that's all the questions I have. Please answer any questions Mr. Henderson might have.

MR. HENDERSON: I don't have any questions, Your Honor.

THE COURT: Okay. You can step down, sir. If there's no objection, you're free to leave the courthouse. However, you are welcome to remain with us.

MR. BROWN: The State calls Wes McClinton.

THE COURT: You need a break?

MR. HENDERSON: No.

WESLEY MCCLINTON

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon.

A Good afternoon.
Q Detective McClinton, state your full name.
A Wesley McClinton.
Q Where do you work?
A Greenwood City Police Department.
Q What's your title there?
A Currently, I'm a narcotics agent for the Drug Enforcement Unit.
Q Back in February of 2016, what role were you in then?
A I was a detective, following up on cases.
Q Before you joined the police force, what did you do?
A Served in the military. I'm currently still in the military for 18 years now, in the Army.
Q Part of being in the Army, are you familiar with explosives and able to identify IEDs?
A Yes, I am. I've been on several deployments for the military overseas and, prior to each deployment, given several months of training on how to identify IEDs and what to look for and the shapes and forms they could take -- shapes and forms you could find that may be IEDs.
Q You said you been in -- how long have you been at the police department?

A I believe it's going on seven years, next month.

Q In this particular case, did you have the opportunity to help investigate a bank robbery or do follow-up on a bank robbery that took place at South State Bank on Highway 72?

A Yes, sir. I did.

Q On February the 20th, 2016, were you with Agent Lovett and Agent Brooks?

A Yes, sir.

Q Did you -- you and the other agents, did y'all receive an anonymous call that maybe the suspect, armed robbery suspect, was seen at the Little Cricket?

A Yes, sir. We did.

Q That would have been at 1208 Bypass 72?

A Yes, sir.

Q Did you and the other agents do a follow-up there?

A Yes, sir.

Q After that follow-up, did you learn that that particular suspect -- had knowledge that he could be at America's Best Value hotel?

A Yes, sir. We did.

Q Did you proceed to America's Best?

A Yes, sir.

Q Once there, did you locate a person inside of Room 213?

A We attempted to locate a person. Initially, attempted to make contact several times. But the end result, yes, sir, we did.

Q Did the person not want to come to the door?

A No, sir.

Q There was, obviously, a person inside?

A Yes, sir.

Q After finding out it was Room 213, was there a name associated with that room?

A Yes, sir. It was. It was Jeffrey Johnson, is what we were told by the clerk who rented the room.

Q Did you, ultimately, you or one of the other agents, contact Jeffrey Johnson?

A Yes, sir. We did. We were able to locate a phone number for him and did contact him on the phone.

Q Was Jeffrey Johnson at the hotel?

A No, sir.

Q After learning that Jeffrey Johnson was not at the hotel and learning, as Mr. Johnson testified,

that he dropped off or actually checked in a white male with the description of Thomas Smith, did you and the other officers get a search warrant for Room 213 at America's Best Inn?

A Yes, sir. We did.

Q Did y'all execute that search warrant at that time?

A Yes, sir.

Q You, being with the City Police Department. Were you also on the SWAT team?

A (Nods head.)

Q After receiving that search warrant, how did you and the other officers go about trying to enter the room? Did you knock on the door again?

A We knocked on the door for quite a while. We attempted to breach the door with a ram. It was unsuccessful. The door had, I guess, the top latch locked and it was bolt-locked. We had a hard time. We, basically, gave up on beating the door in. We ended up having to break the big glass window right outside the door.

Q After you broke the glass, what did you observe and what did you and the other SWAT team members do, initially, when you entered the room?

A As a precautionary measure, due to the fact

that we had been outside the room for so long and, by this time, the suspect could have devised a plan or come up with some kind of countermeasures, we had to pull out distraction devices, flash bang grenades. Two of them were just thrown into the room through the window that we busted, in order to distract the suspect inside. Then, SWAT agents started making their entry into the window.

Once inside, we observed Mr. Smith. He was on the furthest bed. It was a two-bed hotel room. He was on the furthest one away from the window, completely nude and threw his hands up in the air and started screaming, just really rambling. I don't know if he was making any sense at the time, but he was screaming.

Q After you -- after y'all made entry into the room, was Mr. Smith placed under arrest?

A Yes, he was.

Q Y'all, obviously, had to put clothes on him?

A Yes, sir.

Q And walked down to the vehicles?

A Yes, sir.

Q At that time, was the room searched?

A Yes, sir. It was.

Q During your investigation of America's Best Inn, did you locate any of the money that was taken from the bank?

A I would have to refer to my --

Q Was any of the money ever recovered?

A No, sir. It was not.

Q The bank bag wasn't in there?

A No, sir. It was not.

Q I want to show you what's been marked State's 53 through 64. (Pause.)

Again, I want to show you what's been marked as State's 53 through 64. Tell me if you recognize these photographs.

A Yes, sir. (Reviewing.)

Yes, sir. I do.

Q That was inside of Room 213 at America's Best Inn?

A Yes, sir.

MR. BROWN: Your Honor, at this time, I move State's 53 through 64 into evidence.

MR. HENDERSON: Without objection.

THE COURT: Without objection, 53 through 64 into evidence for the State.

(State's Exhibits 53 through 64 are admitted into the record.)

BY MR. BROWN:

Q Let me show you first what's been marked as State's Exhibit Number 53. What is this?

A That's the inside of an electronic door lock where you slide your card. It had been disassembled, I believe.

Q Obviously, Mr. Smith didn't want anybody to come in that room?

A Correct.

Q Again, State's 50 -- State's 54, is this another photograph of that lock?

A Same thing, yes, sir.

Q State's 55?

A That's the cover that goes over that particular lock that you just saw broken.

Q State's 56?

A Mr. Smith's wallet, bank card and money that was found in his wallet, I believe.

Q Again, that money was not --

A We checked the numbers -- compared the numbers to what the bank was missing, and it was not the same numbers.

Q Again -- or this is State's 57?

A That's Mr. Smith's ID.

Q Now this photograph of Mr. Smith, that

photograph was issued, I believe, 5/27/2015. Did Mr. Smith in that photograph look like Mr. Smith in the courtroom here today?

A No, sir.

Q Hair is different?

A Yes, sir.

Q Got facial hair?

A It's hard to see from the glare.

Q I can bring it to you. State's 57.

A He appears to have a mustache, maybe.

Q Yes, sir. State's 58?

A Mad Dog bottle.

Q State's 59?

A Screwdriver that was lying on the floor, Phillips-head.

Q And again, the Mad Dog bottle?

A Sir?

Q The Mad Dog bottle?

A Oh, yes, sir.

Q State's 60?

A Cell phone with the battery removed. It looks like the top.

Q State's 61?

A I'm not sure what that was, some kind of quilted or crocheted bag or shirt.

Q Or blanket?

A Blanket.

Q State's 62?

A Black jeans that was found in the corner.

Q State 63, is that a hoodie or a toboggan?

A Yes, sir. It was in the bathroom.

Q And then State's 64?

A That was on the nightstand.

(State's Exhibit 75 is marked for identification.)

BY MR. BROWN:

Q Detective McClinton, I'm going to show you what has been marked as State's Exhibit 75. Can you tell me what that is a picture of?

A Mr. Smith.

Q Was this Mr. Smith the night -- or the early morning hours that you made the arrest?

A That's Mr. Smith when we went into the bedroom -- into the motel room, yes, sir.

Q That's the way he looked?

A Yes, sir.

MR. BROWN: Your Honor, the State moves State's Exhibit 75 into evidence

THE COURT: Without objection, 75 for the State into evidence.

(State's Exhibit 75 is admitted into the record.)

BY MR. BROWN:

Q Is that how Mr. Smith looked when you made the arrest?

A Yes, sir. It is.

Q Today, in the courtroom, does he look a little different?

A Absolutely, yes, sir.

Q Would you say he has somewhat of a widow's peak?

A Yes, sir, at the time.

Q Detective McClinton, when you came to the door -- going back a little bit, backtracking -- when you came to the door of Room 213, did Mr. Smith say he was Mr. Smith behind the door?

A No, sir. We knocked on the door 30 to 45 minutes trying to get a conversation going with somebody. We would hear stuff like "Go away" or "I didn't have nothing to do with it," real random stuff. Finally, got him to say a name. He said he was Jeffrey Johnson in the room, and for us to go away, he hadn't done anything wrong.

Q Obviously, he's not Jeffrey Johnson?

A No, sir.

Q Going back to one of the first questions I asked you when you took the stand, you being trained in the Army, in the military, the testimony was brought out this bomb wasn't ticking. Do bombs have to tick?

A No, sir, not at all.

Q What shapes and forms and sizes can bombs be?

A For anybody who's ever heard of the term C4, C4 is like Play-Doh. As long as there is an igniter in there, you can mold it into a bird or flat surface or a round ball, whatever you want it to be. As long as it has an igniter, it's still going to detonate. It could be as flat as a pancake or it could be anything.

Q Flat as being placed into a CD case?

A It can be as flat as a piece of paper.

Q And different igniting or detonating devices, would somebody try to fuse wires together?

A Yes, sir. All it takes is a charge. I'm no expert for sure, but I got some good understanding of it. If you have a spark, it will detonate the C4. It would just take a small amount to do it once it is plugged into it, if that makes any sense.

Q If somebody -- but again, it can come in

any shape, size?

A Yes, sir.

Q Again, you've been in the Army for how many years?

A A little under 18.

Q You've been trained in IEDs?

A Yes, sir.

Q Tell me what IED means.

A It's an Improvised Explosive Device.

Q Is that one of these pretty little bombs that you see on TV?

A No, sir. It could be in the form of anything.

Q No further questions.

THE COURT: Cross-examination?

MR. HENDERSON: Absolutely.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Detective, how are you today?

A Fine, sir. How are you?

Q Good. Let me just ask you, if somebody told you they had a bomb or if somebody walked up to you with a bag and said, "I've a bomb," would you reach your hands in there and touch the bomb?

A It would depend on the situation. If I had

nowhere else to go and I'm going to try to, I guess, stop it.

Q You think an average person right here would reach their arms in?

MR. BROWN: Judge, that calls for speculation.

MR. HENDERSON: If he doesn't know, I mean...

THE COURT: Well, I think it calls for a little speculation.

MR. HENDERSON: Okay.

THE COURT: Move on to something else, please.

MR. HENDERSON: Okay.

BY MR. HENDERSON:

Q Okay. You talked to the clerk at the hotel. Did y'all examine any of the money that was paid by Mr. Smith?

A No, I don't believe we did at that time, no, sir. We were trying to locate the suspect and see if he was on the premises.

Q Did anybody ever go back to see if the clerks there had received any of the bank's money?

A Not that I can recall. I didn't.

Q You didn't?

A I can't remember.

Q To the best of your recollection, nothing from this armed robbery, the bank robbery, was found in Mr. Smith's hotel room, to the best of your knowledge?

A Not that I can say right now, no, sir.

Q Okay. Did you have any dealings, at all, with the investigation? Obviously, I know you testified you were involved in the arrest, but were you involved in interviewing people at the bank after the robbery?

A No, sir. I didn't interview anybody at the bank.

Q You weren't involved in the front end of it?

A No, sir.

Q Okay. So you didn't talk to Ms. Sinclair at the bank?

A I did go to the bank. I don't recall the lady's name that I spoke with.

Q Okay.

A I'm not sure about that. It was a lot of confusion at the time. I'm not sure what her name was, or if I talked to a lady at all.

Q You think you were there when the call came

of the robbery?

A I wasn't there, initially. I was all the way across town. It took me a minute to get there. There were quite a few other officers there before I got there.

MR. HENDERSON: Nothing further, Your Honor.

THE COURT: Any redirect?

MR. BROWN: No redirect.

THE COURT: Okay. Step down, sir. You're free to leave, but you're more than welcome to remain with us.

THE WITNESS: Thank you.

THE COURT: Let me see the lawyers for just a minute please.

(Bench conference is held off the record.)

THE COURT: Okay. Mr. Foreman, Ladies and Gentlemen of the jury, we're going to go ahead and break for the evening. I understand from the State that they have one more witness to call. But we're going to go ahead and break for the evening.

Now, in the morning, I've got a prior commitment. Consequently, we're not going to start back until 12 o'clock. So get you a little

early lunch or a real late breakfast, either way. We'll try to get started back at 12 o'clock.

Again, all of my instructions about talking about this case among yourselves or with other folks, the research instruction, all of that still applies. Keep that in mind. Have a good evening. Get some rest and we'll see you around 12:00 tomorrow.

(Jury exits at approximately 4:37 p.m.)

THE COURT: Okay. We'll be in recess until 12 o'clock tomorrow.

MR. BROWN: Judge?

THE COURT: You need this on the record?

MR. BROWN: Well, I do want to put something on the record.

THE COURT: Okay.

MR. BROWN: What's kind of taken this case a long time to get on the trial docket was because Mr. Smith needed an evaluation to be done. Mr. Henderson wanted an evaluation to be done, competency. That evaluation was done about a week and a half ago. And the Department of Mental Health did say indeed he is competent to stand trial. I can make a copy of that. I don't

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have it out here with me, but make a Court's Exhibit tomorrow on that.

THE COURT: Sure.

MR. BROWN: Also, with regard to the jury charge, I'm looking at Page 13 that talked about what the State must prove for robbery. Some of the language in the actual charge and what the statute says differs, I was just going to ask that we have language from the statute that says -- I know, obviously, the pistol, dirk, slingshot do not apply to this case --

THE COURT: Right.

MR. BROWN: -- or while alleging, either by actions or words, that he was armed while using the representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon.

THE COURT: Right. Give that to me, just for my convenience.

MR. BROWN: Yes, sir.

THE COURT: Once I took it out of the charge book and then when I looked at it, I realized it did not mimic the statute as it needs to be. Sometimes that happens as far as

what we got in the charge book. So if you will just give that to me, and we can fix that.

We still need to discuss, at some point in time, whether or not lesser included robbery. I'm not going either way with it, but I think that's probably something Mr. Henderson may want to discuss. We can do that tomorrow.

MR. HENDERSON: That's absolutely right, Your Honor. I do believe there is, as the case law says, any evidence that would support a common law robbery charge. I think there's been evidence presented --

THE COURT: We can -- we can take a little look at that a little further tomorrow.

MR. BROWN: I'll pass that up.

THE COURT: I noticed that after I looked at what I put in there. Thank you.

MR. BROWN: Yes, sir.

THE COURT: Let me just ask you, since there is no evidence of a pistol, dirk, slingshot, et cetera, et cetera, do you want that to be taken out and just a person who commits robbery, deadly weapon or alleging? Just take those different types of deadly weapons out because there's no evidence of that

in this case?

MR. HENDERSON: Your Honor, I think that would be appropriate. The jury -- hope nobody heard the word "gun" would start thinking because you said the word "gun," there must have been evidence of a gun.

THE COURT: I think we might need to tweak that a little bit.

MR. BROWN: Judge, I think it might be a person who commits a robbery --

THE COURT: While armed with a deadly weapon or representing, et cetera, et cetera, a deadly weapon.

MR. BROWN: Yes, sir, while armed with a deadly weapon or while alleging, either by action or words ---

THE COURT: Right.

MR. BROWN: --- with a deadly weapon. And I do believe that the last part you do have on there, a bomb may be ---

THE COURT: Right.

MR. BROWN: --- considered a deadly weapon or may be a deadly weapon. I do have other -- I don't know if we need to get -- I think as law says a bomb is deadly weapon, then we wouldn't

have to go into the statute that actually talks about bomb and defining that.

THE COURT: Right.

MR. BROWN: Because that is in another section, but it does refer to a bomb as any destructive device capable of being detonated, triggered or set off to release any substance or material that is destructive, irritating, or otherwise harmful. Now, that -- I don't know if you want to put that in there too, but it does define bomb.

THE COURT: Right.

MR. HENDERSON: Your Honor, that's very close to a charge on the facts, too.

THE COURT: I think common knowledge, you know --

MR. BROWN: Bomb sounds different.

THE COURT: Right.

MR. BROWN: I would agree with that.

THE COURT: I'll work on that a little bit and, certainly, y'all will see exactly what I intend to charge, and we can discuss it further.

MR. BROWN: Yes, sir.

THE COURT: Okay. All right. Right now, Mr. Henderson, other than the lesser included

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that we need to discuss further, do you anticipate anything else that you want added to the charge?

MR. HENDERSON: No, Your Honor. I like the identification language in there.

THE COURT: Okay.

MR. HENDERSON: And I agree with the solicitor about the tweaks that need to be made to the robbery charge.

THE COURT: Okay.

MR. HENDERSON: But again, like I said, when you say a bomb may be a deadly weapon, again, you are veering close to giving a charge on the facts.

THE COURT: I've gone -- I've gone either way as far as the -- what the State alleges as far as what the weapon is, I've gone both ways and said such and such may be considered to be a deadly weapon and I've taken that completely.

MR. BROWN: Well, I think in the armed robbery statute, a pistol and dirk and slingshot, that's all labeled out. And that's fine with the statute that says other deadly weapons. And the statute -- or other -- the other statute related to bomb does specifically

say, could cause death and great bodily injury, which would be a deadly weapon. So I think it'd be --

THE COURT: You've got a copy of that part, too?

MR. BROWN: I can print it out.

THE COURT: If you can, give that to me.

MR. BROWN: Yes, sir. I can print this out.

THE COURT: Okay. Anything else before we adjourn for the day?

MR. HENDERSON: No, sir.

THE COURT: Okay. Very good.

(The Court adjourns for the day at approximately 4:44 p.m.)

(Court Exhibits 5 and 6 are marked for identification purposes.)

CERTIFICATE

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, Day 2 of 4, all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood, South Carolina, on this 15th day of September, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENWOOD	) EIGHTH JUDICIAL CIRCUIT
	)
State of South Carolina,	) Case No(s).:2016GS2400795
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Thomas Allen Smith,	) Volume 3 of 4
	)
Defendant.	)
	)

June 11 - 14, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

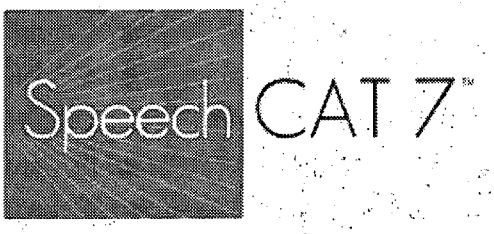
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P R O C E E D I N G S

(The Court resumes on the 13th day of June, 2018 at approximately 12:01 p.m.)

THE COURT: Thank you very much. Have a seat. (Pause.)

Okay. We're on the record. Mr. Henderson, you had indicated that you needed to put something on the record.

MR. HENDERSON: Very briefly, Your Honor. I know we discussed yesterday we've introduced as Court's Number 5, my client's competency evaluation.

THE COURT: Right. Did that get in?

MR. BROWN: Yes, Your Honor. I did provide a copy, I think, and marked and put it in the record.

THE COURT: Both sides stipulate that the results of the evaluation was that Mr. Smith is competent to stand trial?

MR. BROWN: Yes, sir.

MR. HENDERSON: Yes, sir, Your Honor.

THE COURT: Very good.

MR. HENDERSON: I've also had marked as Court's Exhibit Number 6, just a newspaper article, the *Greenwood Today* article that we

keep hearing about.

Your Honor, I just keep thinking more and more about the State's -- at least in my mind's eye -- failure to link up my client with the items obtained pursuant to the search warrant. My mind is still running on different arguments. There are ways the State could have tried this case where confrontation never would have been an issue. That's up for the State to determine what those are. If they thought about it long enough, they'll understand what I'm talking about.

But listening to the testimony yesterday, you've got -- Detective Hood said that he gets this call that there is an armed robbery, that he's on the Bypass, he takes a left on Laurel, right there at the Taco Bell, goes up the slight hill, takes a right on Sample. His video is running. We know it is because there was a video. Why they lost it, that's a different issue, but we know there was a video. He turns right there on Sample. He said he's going the back way to the bank. He says, at that point in time, there's a BOLO for somebody on foot who has robbed the bank.

So he takes a right on Sample. He comes in here and gives this testimony about, hey, I noticed a suspicious-looking white car. The guy looked stunned. I mean, that's not any evidence of anything. Most of the people you see out here walking around -- or driving around, looks stunned for one reason or another. Said he was possibly speeding, it sounds like. Again, that's not any evidence of anything about speeding.

My concern is if Deputy Hood actually had any true suspicion about that white car when he passed it, he could have done a couple of things, none of which he did. He could have BOLO'd in, I just passed a suspicious-looking white car -- keep in mind, at this point in time, Deputy Hood has no knowledge of a white car -- or he could have turned around on this white car if he thought they were speeding, if he thought they were doing something else.

What I'm getting at is the State seems to be suggesting that Deputy Hood's observation of this white car, assuming he actually had any detailed observation of it, is an independent source. They're trying to use that to get

around their failure to allow me to confront Mr. Andrew Holmes. That's exactly what they're doing. They're trying to turn him into an independent source. They're trying to get around the search warrant problems or the linking it up to the search warrant problems.

Now, I agree, if Deputy Hood turned around on this car, if he had reasonable suspicion, possibly probable cause, to stop this white car from anything, say he turned him around and followed this car, pulled the car over, not knowing that a white car is being looked for -- Detective Moore knows a white car should be looked for at this point in time. Deputy Hood doesn't know that. If he turns around and stops this car, you don't have the confrontation problems. You've got an independent source as to how they came across the bank robbery. But no, Detective Hood did none of that. He said he just kept going because he's looking for somebody on foot. At least, that's what the BOLO is.

I think his testimony was he doesn't know whether or not that white car took a right on Laurel or left on Laurel. He has no idea.

He goes to the bank. Obviously, there's some sort of conversation at the bank about a white car. I think the white car conversation probably came from -- well, I know it came from Andrew Holmes, Badcock employee. That's the only person it could have come from. Because again, that's the only person in the universe that can put the bank robber in that car, at all. Detective Hood can't put the person on foot in that car. Nobody else can.

The way we know that's how it went down is that when Detective Hood pulls up this video, they actually bring the Badcock employee over there to look at it. Again, Detective Hood's got no independent information. He did no independent investigation, nothing that would take him outside this line of evidence. By the line of evidence, I mean the line of evidence that started with the Badcock employee.

And again, that's my problem. It all stems back to -- the way the State's opted to try their case, they've made the Badcock employee crucial. He's the starting point. Again, that's the only person that can put the robber in the car. Nobody else can do it. And again, that's

where my confrontation argument is.

The reason I put in Court's Exhibit Number 6 is, this was -- this is the *Greenwood Today* article where these photographs actually get published. Actually, it's my understanding that Captain McCallister, who testified yesterday, he's actually the one that contacted media to publish these photographs. He testified he took a picture of the car from Detective Hood's video. That's how that got published out here.

But looking at it, McCallister says that the person fled in a white car. How do we know that? Number 1, it's an article. But how did Detective McCallister know that? The Badcock employee. That's the only person again, in the universe, that can put this robber in the white car. Hood can't do it. Nobody else can do it.

Again, I just wanted to get on record that I see what the government's trying to do, and I commend them. They're trying to get around the confrontation problem by trying to turn Detective Hood into an independent source, but he is not. If anything, he brings -- he gets subsumed in the Badcock employee line of

evidence because he brings the Badcock employee over to look at his car, look at his video. Again, that's my concern. Again, I just wanted -- in case there was any doubt what my argument's been.

THE COURT: You've been very clear with your argument.

MR. HENDERSON: I just want to put this on the record and get it in for any potential appellate review or anything that may be here. I think that my client has an absolute right to confront the Badcock employee.

THE COURT: Well, you know, as we discussed yesterday, if we rely on *Crawford versus Washington* as the basis for giving you a confrontation issue, again, *Crawford* is abundantly clear that it deals with testimonial evidence that is actually offered at trial. Again, if the State had tried to get, in some fashion, Andrew Holmes said X, Y, Z, then *Crawford* is going to prevent them from doing that, as I read *Crawford*. They haven't even mentioned Holmes, as far as anything at trial. If we rely on *Crawford* as being the foundation for giving defendants confrontation arguments,

then *Crawford* doesn't -- as I read *Crawford*, *Crawford* doesn't help you.

Solicitor?

MR. BROWN: Judge, I just go back to again where we cited *State versus Thompson*, that an out-of-court statement is not hearsay if it's offered for the limited purpose of explaining why a government investigation was overtaken.

THE COURT: So that --

MR. BROWN: That's --

THE COURT: -- even though you have not attempted to offer anything from Holmes, the State's position is, well, even if we tried to, that case -- that's the State versus -- what is that site?

MR. BROWN: *State versus Thompson*, 352 S.C. 552.

THE COURT: 552.

MR. HENDERSON: If I'm not mistaken, Judge, that was a pre-*Crawford* state court decision.

MR. BROWN: Mr. Henderson is also jumping to conclusions. He said the only person that can say the armed robber got into the car is Mr. Holmes. Mr. Holmes was not in that bank. He

doesn't know if that was the armed robber or not. He just saw a guy running behind the store, getting into a car. So that's also jumping to conclusions as Mr. Henderson -- with him saying he's the only person that links up the armed robber with the white car. That's not accurately reflected in the facts of this case. I just want to make that perfectly clear as we go forward.

In addition, as we go further into this case, law enforcement learned other information from other witnesses. And again, that just shows where the investigation lead. We didn't ask any hearsay questions or what they said, just based on their information, we then got a search warrant at the hotel. It all falls in the same case of why law enforcement looked in a certain position or looked in a certain area.

THE COURT: Well, my ruling remains. You're protected on the record, Mr. Henderson.

MR. HENDERSON: Thank you. I will pass the Court's exhibit back up.

THE COURT: The State has one more witness; is that correct?

MR. BROWN: That's correct.

THE COURT: Let's bring the jury out please.

(Jury enters at approximately 12:17 p.m.)

THE COURT: I think we're missing one.

THE JUROR: He's in the restroom.

THE COURT: Oh, y'all can have a seat.

(Pause.)

Let the record reflect the jury is back in.

Good morning, Ladies and Gentlemen. I believe the State has one more witness in their case in chief.

Solicitor, you may proceed.

MR. BROWN: Thank you, Your Honor, the State calls Blake Moore.

BLAKE MOORE

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good afternoon, Officer Moore.

A Good afternoon.

Q Where do you work?

A Greenwood City Police Department.

Q How long have you been with Greenwood City?

A Just a little over eight years.

Q What is your job description at Greenwood

City Police Department?

A Detective.

Q How long have you been a detective?

A Five and a half years.

Q Back on February 18th, 2016, you were an investigator with the detective unit?

A I was.

Q Jumping forward, February 18th, 2016, did you respond to a bank robbery at 1224 Bypass 72?

A I did.

Q South State Bank?

A I did.

Q A call come out, approximately 2:35 p.m.

A Correct.

Q How shortly after that call came out did you get to the bank?

A Within a couple of minutes.

Q Once you got to the bank, were other officers already there?

A I believe Captain McCallister pulled up right around the same time I did. I think a sheriff's deputy or two was already there.

Q Once you got there, what did you begin to do?

A I made sure the scene was secure, that

nobody was going in and out of the bank. One of the very first things I did after that, I went into the bank to make sure nobody was hurt, nobody needed any medical assistance, and to start talking with bank employees to try to gather as much information as I could.

Q Get a description of what the armed robber was wearing?

A Correct.

Q In your report, you were told that it was a light or Hispanic male?

A Correct.

Q After -- after talking with the bank, getting other information, did law enforcement then learn of Thomas Smith?

MR. HENDERSON: Your Honor, I'm going to object and raise my Holmes objections.

THE COURT: Okay. So noted for the record.

THE WITNESS: Correct. Through this investigation, we learned about Thomas Smith.

BY MR. BROWN:

Q Learned of his home on [redacted]?

A Correct.

Q [redacted]: Did -- with the first search warrant, were you actually involved with the

first search of the house?

A I was there when it was executed, yes.

Q We're not going to go back through all the pictures right now. The white Volkswagen Passat was located in the garage?

A It was.

Q I believe it has already been testified to, the rocks outside of the garage had looked like they had been raked?

A They were.

Q You took other photographs of stubble in the sink and whatnot?

A That's correct.

Q In this investigation, you have been deemed lead investigator, correct?

A Correct.

Q Explain you, as the lead investigator, in this case.

A Basically, in this case, it happened in the middle of the day, so it was not a call out for one specific investigator to respond. The call came out as a bank robbery. Therefore, everybody who was at work responded. I just happened to be one of the first ones on the scene. Usually one of the things we go by in our office is if you're the first one on the

scene, you start gathering most of the information. You, basically, become the lead investigator.

So, therefore, as you have heard numerous people testify, everybody that day had an assignment. My assignment, that particular day, because I was first on the scene, was to talk to the bank employees and get as much information out as I possibly could. The other officer and investigators that you've heard testify, that was their assignment or part in the case. Also, one of the tasks of a lead investigator is to keep up with the case file, keep up with the paperwork, things that come in.

Q To bring it all together?

A To bring it all together.

Q Now, after meeting at the bank and speaking with loss prevention and security, Mr. Perry, was it found out that the bank was robbed of $2330?

A That's correct.

Q And out of that $2330, there was bank bills or bait money that was part of that?

A From what we were advised, yes.

Q Only a few number of $20 bills; is that correct?

A Correct.

Q During your investigation were any of the

city units, police detectives or sheriff's department deputies, was any of that bait money recovered?

A The bait money was not recovered.

Q Now, the other money out of that $2330, can you say for certain was money that was located at the hotel room was or was not part of the money taken from the bank?

A Through the investigation and information we received from the bank, they only document what they call bait money. It's either four or five, I think, $20 bills. They actually write down the serial numbers. They have it on a piece of paper or logged somewhere in the bank. They are trained to give that money away.

The rest of the money is not logged. They don't write down the serial number to every bill that comes through the bank. Out of the $2330 in cash that was taken, four or five of those bills were logged with -- and deemed as bait money. So I can't say for sure -- for certain if the money from the hotel room came from the bank, or if it didn't.

Q Also, during this investigation, the blue bag that we see in the photograph, the bank bag, that wasn't recovered?

A It was not.

Q The bomb that was shown to Ms. Sinclair, that was not recovered either?
A It was not.
Q However, when the search warrant was executed at [redacted], were y'all able to find a burn pile of items burned?
A Correct.
Q Along with other clothes that were clearly seen in the bank surveillance camera?
A Correct.
Q Detective Moore, after -- not going back into all the searches at the house -- were you at the hotel at Room 213 when Mr. Smith was taken into custody?
A Yes, sir, I was.
Q Mr. Smith, at the time he was taken into custody, appear the same as he does today?
A No, not at all.
Q Again, I'm showing you what's been marked State's Exhibit 75. Do you recognize that photograph?
A Correct. That was taken when he was dropped off at the detention center.
Q When he was arrested?
A Correct.
Q Again, that's what he looked like when

y'all arrested him?

A Correct.

Q Detective Moore, as part of being the lead investigator -- I know it's been said that other tips came in about potentially other suspects in this case. As part of the lead investigator and one of the detectives, y'all fully looked into or looked into these leads, correct?

A Correct.

Q And during your investigation, you were able to rule those other tips out, is that right?

A We were.

MR. BROWN: Beg the Court's indulgence.

(Pause.)

BY MR. BROWN:

Q And Detective Moore, going back to when you responded to the bank, you spoke with Ms. Sinclair?

A I did.

Q Based on your observation, was she shook up?

A She was.

Q Did she appear fearful?

A She did.

MR. BROWN: No further questions.

THE COURT: Mr. Henderson,

cross-examination.

MR. HENDERSON: Yes, sir, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. HENDERSON:

Q Detective, good morning, again.

A Good morning.

Q As lead investigator, you are responsible for accumulating the evidence, I guess, gathering up all the evidence?

A Correct. For instance, the people who have testified already in the case, they write a supplemental, they gather something, it is their responsibility to give it to me. I put it in a notebook in file.

Q Well, whose responsibility was it to get Detective Hood's video that we heard about yesterday? There seemed to be a lot of finger-pointing and not sure what happened to it. Whose responsibility was it to get the video of a white car allegedly speeding?

A Well, as you heard, Lieutenant Hood advised, you know, he did have a video. I don't know if the video was not saved or we just didn't go back and get it. But as Captain McCallister stated, he did take a picture of the video, because that's all we

had at the time, on scene. It was just a mistake by us by not getting the video at that time. Later on, once we realize the video -- once I needed the video for the case, it had already been purged off the system.

Q Okay. I mean, so you're taking responsibility for that?

A I'm chief investigator, yes.

Q But you, personally, didn't go out and look and get the video?

A I may have. As you can see, there's a lot that went into this case, a lot that we had to put together. You know, as time went on, I'll just be honest, I probably went to get it or I forgot to go get it. And once I realized it, it was purged off the system.

Q I got you. And I keep hearing about these rocks being raked in front of the garage. I think several -- you and several other officers have testified to that. Where are the pictures of that?

A I'm not sure if the pictures were taken of that. There were numerous pictures taken at the scene of the house that night during the first execution of the search warrant. But if there's no pictures, I guess they were not taken.

Q Now, all of you guys, y'all take pictures on phones or cameras?

A We're not supposed to. We have one camera for all of us. I can't remember if the evidence technician showed up that night and she took pictures, but obviously somebody did. But we're not supposed to take one with our phone, just an investigation division camera.

Q Okay. Okay. But there are no photographs, as far as you know?

A As far as I remember, no.

Q Again, I think you said the bank bag has not been recovered?

A No, sir.

Q Okay. How many -- I heard you talk about this bait money. How much of this money was bait? How many bills? Do you have a clue?

A The exact number, I don't. I know it's in the case file, a bank log that they have marked as bait money. They give us a copy of that so that if we do recover it, we can match the bills up to the serial number. I don't know exactly how many. You may have it. I don't know.

Q And none of that was ever --

A No, no bait money was recovered.

Q Again, and if I'm not mistaken, y'all searched Mr. Smith's house and you didn't find any bait money?

A Correct.

Q Searched his hotel room and didn't find any bait money?

A Correct.

Q Is it my understanding that y'all actually went to another hotel, the Ideal Hotel and looked for some bait money? You remember that?

A I didn't go to the Ideal Hotel.

Q Okay. You just don't know?

A If it's in the report, then we went. But me, personally, I did not go.

Q Okay. And if any bait money had been found there, would you have heard about it?

A Right. We'd match up the serial numbers.

Q Right. So as far as you know, no bait money has been recovered?

A No bait money has been recovered.

Q And again, no fingerprints that link up Mr. Smith?

A Correct.

Q No DNA?

A Correct.

Q No blood evidence or saliva evidence or ---

A Correct.

Q --- any of this other forensic evidence you hear about on TV?

A Correct.

Q It's pretty obvious, too, that the fellow in the video is not wearing gloves?

A Correct.

Q The bank video ---

A Correct.

Q --- to be clear, I keep looking at this photograph. I think it was photo Number 75 that the solicitor just showed you, the picture of my client on the night he was arrested. You just saw that video --

A Correct.

Q -- photo, I'm sorry. He had short hair then?

A He did.

Q Has short hair now?

A It's a lot longer than it was then.

Q But it's shorter hair, it's not hanging down over his ears, not hanging down his back, not hanging down his collar?

A It's not real long, but it's not real short

either.

Q And he does not have a mustache here?

A He does not.

Q And he had a mustache there?

A Correct.

Q Otherwise, he looked clean-shaven in that photograph?

A That photograph's a little distorted. He had some stubble on his face, but the mustache was a little longer.

Q Keep in mind -- so it was a little bit distorted. Let me ask you, looking at some of these other videos that seem to be kind of distorted. The bank video, I mean, it's not great quality. You would agree?

A It's a lot better than I've seen in most places.

Q Did you try to do anything to clean that video up?

A I did not.

Q You didn't do it. Did anybody on your staff try to do anything to clean that video up?

A If they did, I wasn't advised.

Q Okay. You're lead investigator?

A Right.

Q And going back to -- you say you follow up on leads. You've been in the courtroom the whole trial; haven't you?

A I have.

Q Okay. And it's my understanding yesterday that Detective Kay testified that he learned about José McDaniel as a potential witness, actually, a suspect, and, actually, two women had pointed out that they thought it was José McDaniel. Do you remember that testimony?

A I do.

Q And somebody else said maybe it was you or another detective let them know that, hey, we're up at Thomas Smith's house, we think we've got the guy so Kay said he stopped looking. Did I hear that testimony right?

A I remember Detective Kay saying that he learned that it was not José McDaniel. I don't think that I, necessarily, called him off, stop, or don't pursue José McDaniel. I believe Detective Kay stated that he learned that it was not him. I didn't say, hey, stop looking into José McDaniel. I think, you know -- and I trust Detective Kay when he tells me that, hey, I did everything I could do. All the evidence came back to Thomas Smith.

Q Again, I don't recollect Detective Kay actually saying that he actually went out and found José McDaniel. Maybe I missed something?

A I don't think he did, but I think he was shown a picture.

Q It does sound like José McDaniel is a Hispanic name. Again, I'm not trying to stereotype.

A May be, may not be.

Q I understand. I don't know. Y'all didn't go find the guy. I don't know whether or not he is, either. But again, a lot of the -- Ms. Sinclair, the lady robbed, thought it was a Hispanic male that robbed her?

A She said white or Hispanic.

Q And actually, she testified to that it was a light-skinned black male. Do you remember that?

A That's what she said.

Q Okay.

A Correct.

MR. HENDERSON: I don't have anything further, Your Honor.

THE COURT: Thank you.

Any redirect, Solicitor?

MR. BROWN: Just one follow-up.

REDIRECT EXAMINATION

BY MR. BROWN:

Q There's been much ado about Josh Hood's video of his car. Y'all were able to get a big piece of that video, right?

A Correct.

Q It was a white car that he passed?

A At the time -- that's all we had at the time. When we're on the scene and rushing and trying to get information, we don't have time to burn DVDs or make copies. That's the best we could do at the time to figure out what we had.

Q A white car on Sample Road on February 18th, 2016 at 2:36 in the afternoon?

A Correct. And the call came out at 14:35.

MR. BROWN: No further questions.

THE COURT: Any recross?

MR. HENDERSON: No, Your Honor.

THE COURT: All right. You can step down, sir.

MR. BROWN: Your Honor, at this time, the State rests.

THE COURT: Okay. Very good. Thank you.

All right. Mr. Foreman, Ladies and Gentlemen of the jury, I'm going to need to send you back to your jury room for just a few

minutes. Let me deal with a couple matters with the lawyers and we'll get you back out shortly. Thank you.

(Jury exits at approximately 12:39 p.m.)

THE COURT: Mr. Henderson, any motions you need to put on the record at this time?

MR. HENDERSON: Absolutely, Your Honor. I'm making a directed verdict motion. Again, it's based upon all my Holmes arguments that we never would have gotten here, but for the fact of Andrew Holmes. Again, the govern -- the government, in my mind's eye and the way they tried the case, it shouldn't have come into evidence. Again, they never would have been able to link this stuff up, linking it up to Mr. Smith.

And again, I just want to renew all my past motions and incorporate them into my directed verdict motions or motion that we never should've got this far. They never should've been able to get this evidence in. That way, it's basically that they -- in my mind's eye, the way I see the evidence is laid out that I think should not have been allowed to come in, they can't link up my client with an armed

robbery. They can prove an armed robbery, but the issue -- they can prove a robbery happened. We don't dispute that a robbery happened. You can see it on the video. The issue is linking it up to my client.

And again, I want to incorporate all of my prior arguments, confrontation arguments, due process arguments, hearsay arguments. Basically, they just failed to link it up. They haven't laid the foundation, for want of a better term.

THE COURT: Okay.

MR. HENDERSON: And again, I just want to incorporate that into my directed verdict motion.

THE COURT: Very good. Thank you. Viewing the evidence in the light most favorable to the State, the Court finds that there's sufficient evidence to justify this case going to the jury.

Even though, Mr. Henderson, you had previously indicated -- you may have changed your mind -- but previous indication that the defense was not going to put up a case. Let me advise your client concerning testifying and then you can inform me exactly what you plan to do. Just a second.

Madam clerk, would you swear Mr. Smith in, please?

THE CLERK: Yes, sir.

Raise your right hand.

(Mr. Smith is first duly sworn.)

THE COURT: Mr. Smith, at this time, I'm going to explain to you certain of your rights. If you do not understand anything I say, please let me know that.

MR. SMITH: Yes, sir.

THE COURT: If ---

MR. SMITH: Yes, Your Honor.

THE COURT: --- you want me to explain anything in more detail, please let me know that, as well. Do you understand, sir?

MR. SMITH: Yes, Your Honor.

THE COURT: You have now reached the stage of the trial where you may present your defense. You have a right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This amendment states, in part, no person shall be compelled in any criminal case to be a witness against themselves. This means that you cannot be required to testify in this case. You have a

right to testify on your own behalf. However, no one can make you testify. This is a personal right and no one can waive this right, except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statements or for crimes punishable by imprisonment for more than one year and this court determines that probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor would be able to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be freely, voluntarily and intelligently made by you with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

If you decide not to testify, that decision must also be freely, voluntarily and intelligently made. If you decide not to

testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever, and that there is to be absolutely no prejudice to you because you did not testify. It's left entirely up to you whether or not you testify. I'm sure you've talked with Mr. Henderson and other individuals concerning this decision. Have you understood what I've explained to you?

MR. SMITH: Yes, Your Honor. I do.

THE COURT: Do you have any questions?

MR. SMITH: No, Your Honor.

THE COURT: Are you prepared to tell me at this time whether or not you will testify?

MR. SMITH: I exercise my Fifth Amendment.

THE COURT: And will not testify?

MR. SMITH: Will not testify.

THE COURT: Is your decision not to testify freely, voluntarily and intelligently made?

MR. SMITH: Yes, Your Honor.

THE COURT: Okay. All right. Thank you very much. You can have a seat.

Mr. Henderson, do you plan to put up any case?

MR. HENDERSON: No, sir, Your Honor.

THE COURT: All right. Very good. All right. Let's take a short little recess and let's go back in chambers and have an informal charge conference. Then, we can put on the record anything we need to do.

Everybody be at ease for just a little bit.

(The Court goes off the record at approximately 12:44 p.m.)

(The Court goes on the record at approximately 1:04 p.m.)

THE COURT: Okay. We're back on the record. We had an informal charge conference in chambers on the proposed jury charge.

The State is fine with that?

MR. BROWN: Yes, Your Honor.

THE COURT: And the defense?

MR. HENDERSON: Yes, sir, Your Honor.

THE COURT: Certainly, you have every right, if something clicks in your mind as I am charging, to certainly raise any objection or exception at the end, and I'll certainly ask both sides again if there are any objections or exceptions to the charge.

When the jury comes out, Mr. Henderson,

I'll just turn it over to you and you can indicate that the defense rests and we'll start into closing. All right.

Bring the jury out please.

(Jury enters at approximately 1:06 p.m.)

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

Mr. Henderson?

MR. HENDERSON: Your Honor, the defense rests.

THE COURT: Okay. Very good.

The evidentiary record in this case is now closed. Ladies and Gentlemen, what we have left to do in this case is, the lawyers will make their closing arguments to you -- the State will go first, and then the defense -- and then I will charge you on the law applicable to this case. After that, I will give you an instruction, at the appropriate time, to begin your deliberations. This is the last opportunity these lawyers have to advocate for their respective sides, so please give them your undivided and very close attention.

Solicitor, you may proceed.

MR. BROWN: Thank you, Your Honor. May it

please the Court.

Ladies and Gentlemen, thank you again for being here this week. It's gone a little longer than I anticipated, but we appreciate your attention.

As you heard starting Monday and yesterday and today, this is a straightforward case. You see the armed robbery on the TV on the screen. The question is not about, was the bank robbed. It was an armed robbery. You see it. She was clearly robbed.

I imagine what Mr. Henderson will argue is identity. Can we prove it was Thomas Smith? And then, was he, in fact, armed? Looking through this video, what did you hear Gail Sinclair say? She's at the bank. She's working. She's been working 11 years. Nothing like that happened before.

She's in the back in the break room. Before she comes out, she sees a regular come in, Mr. Warren. He's coming on the screen right now. Right behind him, armed robber, Thomas Lee Smith.

This photograph, you can clearly see what he's wearing. You see, in the bottom left, his

overalls. You see the slits in the overalls. We have the overalls here. You see him in the bottom right-hand. He just pulled out his bank bag. Blue overalls. Green. (Indicating.)

Black hoodie with strings. If you look closely, a metal zipper. Why does he look a little bigger in that video? I submit to you he's also got a puffy vest on under there. It is part of his disguise. Lastly, fancy sunglasses. All part of his disguise. All right there. (Indicating.)

Gail Sinclair, then, walks behind the customers and calls for the next customer to come in, which would have been Mr. Warren. As you can see, Sinclair, the bottom left of the picture, is coming back to the window. There goes Mr. Smith.

Pause right there.

Mr. Smith, today, has got his hair down, clean-shaven. You heard Ms. Sinclair say, even when Mr. Smith was coming into the bank with his mom, he didn't look like that. He had scruff. He didn't have his hair like that.

There is an identifying characteristic in that picture. Look at that widow's peak coming

out from under that hood. The day he was arrested and this picture was taken, look at that widow's peak.

Going further in Ms. Sinclair's testimony, she said when he got up to the counter she passed a note -- or he passed a note to her that says, "I've got a bomb. Give me all the money." He then verbally said, "I have a bomb."

What did Ms. Sinclair say? He put that blue bank bag up there. She saw what she believed to be a bomb. It had red wiring with rubber bands around it. She said, later on, "It looked like it could've been CD cases, but it looked like what I believe was a bomb." She said that, "what I believe was a bomb."

A woman that had been working there 11 years, a bank teller, sat up there. She reasonably believed it was a bomb. She didn't want to call a bluff. She didn't want to get blown up or hurt. She gave him the money. You see the bag is bulging. Ms. Sinclair said it was a bomb because he said it was a bomb. He represented it and she saw it.

Going to this video, in addition, our next witness was James Adams. Remember James Adams?

He kind of got a little feisty when his wife was brought up. He's kind of old-school. He tells it like it is. He don't want his wife brought into it.

Mr. Adams, without hesitation, when he was shown that picture:

"That's Thomas Smith. That's Thomas Smith.

"Thomas Smith looked like Thomas Smith when you saw him back on this day?

"No.

"What about when he worked for you?

"No, he's kind of changed his appearance over there."

Without hesitation, he identified him as Thomas Smith. Why? Because he worked for him over a year. He employed him. He recognized the big feature on Mr. Smith. He said look at his nose. That tells me that looks like Mr. Smith. He also has sunglasses, but he could still tell it was Mr. Smith. He's been around him a lot. He's been around him, even though he's seen him wear sunglasses, he said I could tell that was Mr. Smith. He's identified him.

The second witness in this case. That was the armed robber. (Indicating.) And he

identified him as Thomas Smith. What else is there in the case? Just packing it on.

Let's be absolutely clear it's Thomas Smith. What does law enforcement do? Josh Hood, deputy with Greenwood County, as he's responding, he passes a car. It brings attention to him. He said this car was driving very fast at 2:36, a minute after this call had gone over the radio, and this guy is stunned as he's walking -- as he's driving by. Josh Hood makes a mental note of this white car.

What does he do? Within 10 minutes of being at the bank, he gets Mr. McCallister, the captain, and Mr. McCallister takes a picture of this. Within an hour and a half of this happening, this is broadcast out over social media, *Greenwood Today*.

Johnny McCalla -- remember Johnny McCalla? -- stood up there and said, "I know that car. We sold it. We sold that car about two months ago. I know that's a Volkswagen Passat because I've been doing this for 25 to 30 years. I can see a car and I can tell exactly what it is."

Same thing with Wells Ballentine, "I know exactly what kind of car that is." What did he

do? This isn't just happenstance. He didn't just go pull this thing out from the sky. He said, "We sold that thing to Thomas Allen Smith. Here's our sales receipt. Thomas Allen Smith, [redacted]. That's the car."

One clue leads to the other. Law enforcement gets the search warrant, goes to the house. And lo and behold, what do they find? They find a car. A car with no license plate that Mr. Smith's taken off to conceal his identity, in addition to his sunglasses, his hoodie, the extra stubble on his face, screwdriver in the back of that car where he's taken the plate off. Another way to conceal his identity was put a piece of tape over the Ballentine sticker on the back. He did his best to conceal his identity. He just didn't do a good enough job.

They, then, go through the car. They search the car. Search the house. What matches up, the Passat, his receipt matches the receipt for Ballentine. You'll have this. You can go look at the VIN number. It's the same car. All of this just did not happen. We just didn't get lucky on this.

In addition to the car that night and the first search warrant, what did you also find? We found the shaven stubble in the sink. Trying to get rid of that. Makes him look a little rough on the video. He shaves and then he leaves.

You also see the welder's mask in the car. You heard the testimony. What is a welder's mask for? Somebody to weld and fuse things together. Why would he have a welder's mask? Maybe because he's making a bomb.

Identity is not an issue in this case. We know who it is. The next day, law enforcement comes back, Deputy McCallister, William Kay, the other officers. What did he see? They remember the burn pile. They remember the grill. What were they burning? the blue bank bag? perhaps the bomb that he had? or whatever he had in there that he represented as a bomb? Got rid of it?

Got flammable liquid. You'll have that. It's here in this bag. More importantly, we found the clothes at his house, his car, his paperwork. Identity is not an issue.

Just to add to it, they don't find him at the house. The question was asked of

Mr. McCallister, during Mr. Henderson's cross, did anybody ever see him living there? Was he living there? Actually, yeah. Neighbor saw him leave earlier that day in his white car. Then he comes back and tries to conceal his tire tracks by raking it. Yeah, he was at the house. The neighbor said so. Mr. McCallister, through his investigation, heard that.

One clue leads to the next. A tip comes in. This is where Jamie Lovett comes in. He gets a tip that Mr. Smith was seen at a gas station, Little Cricket. He goes to the Little Cricket. He gathers information there that leads him to America's Best Value Hotel across from the Little Cricket on the Bypass, essentially across the street from the South State Bank that he robbed.

What did they find out? Well, a guy that matches that description is in Room 213 under the name of Jeffrey Johnson. They go to that door. Knock on it. Go away. I'm Jeffrey Johnson. Go away. I've done nothing wrong.

You heard from Jeffrey Johnson. He's not Jeffrey Johnson. Jeffrey Johnson tells you that he went to pick him up. They actually knew each

other. They were acquaintances. He knew him well enough to give him a call. Mr. Smith called him and asked him, "Can you put your name on the hotel ledger? I'll give you cash to put me in there." He does it. Mr. Smith is in there, again, disguised as Jeffrey Johnson.

Law enforcement gets a search warrant, comes back, knocks on the door. He won't do anything. Won't open it up. They, finally, go in and find him. It's Thomas Allen Smith. Here is his ID inside that hotel room.

He didn't want anybody to come in. He dismantled the lock. Again, folks, identity is not an issue in this case. The bomb or being armed is not an issue in this case. A man that has nothing to do with the armed robbery, has all the clothes, glasses, car, not staying at his house but he's hiding in a hotel room under a different name. Took the lock off the back of it. That's your guy. That's your armed robber. You can go through these pictures. You'll have them back there, every one of them.

What does the State -- what do we have to prove to you in order to show that he should be guilty of armed robbery? We have to prove to you

beyond a reasonable doubt that Mr. Smith did that. Proof beyond a reasonable doubt is proof that leaves you firmly convinced. You will hear the judge give you the law in a few minutes. It is our burden to prove to you beyond a reasonable doubt, leave you firmly convinced. It's not beyond all doubt. It's not beyond every doubt, not beyond any doubt. Leaves you firmly convinced. There's your convincing.

What is armed robbery? The judge will also give you the law on this. A person who commits robbery, armed with a deadly weapon or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, he is guilty of armed robbery.

What you've heard and what you've seen, that's armed robbery. Gail Sinclair, "He said it was a bomb. I believed it was a bomb. He took the money that was in my possession." Another part of armed robbery is larceny, is that he took possession of personal goods that were in possession of Gail Sinclair or in her immediate

possession, within arm's reach of her. She also worked at South State Bank. He robbed her of those personal goods, US currency, the money, took it from her and carried it away.

He left out of that bank with $2330 in cash. He didn't bring it back. He had not planned on bringing it back. That satisfies larceny. That satisfies the armed robbery.

Bomb. He said he had a bomb and he made a representation. Gail Sinclair believed it was a bomb. That's what I have to prove. Proof beyond a reasonable doubt that leaves you firmly convinced. I believe after you look through this and you've heard it, it was definitely there for you to be firmly convinced of Mr. Thomas Smith's guilt. The man sitting over here.

He looked one way when he used to come in the bank. He changed his appearance when he came into the bank. He changed his appearance once he left the bank. He looks different all day -- all this week. Find him guilty for what he did.

THE COURT: All right. Thank you, Solicitor.

Mr. Henderson, are you ready, sir?

MR. HENDERSON: Yes, sir, Your Honor, if

it pleases the Court.

THE COURT: Sure.

MR. HENDERSON: Ladies and Gentlemen, thank you. As I suggested at the opening of this trial, I still believe there are two issues in this case. Number 1, is this an armed robbery; or a common-law robbery, or a word that's sometimes known as strong arm robbery; or just simple robbery, basically a robbery not being armed? That is the first issue in this case. I do submit to you, Ladies and Gentlemen, that second issue in this matter is still identification. I want to talk to you about these matters in that order.

Keep in mind, His Honor is going to explain to you what an armed robbery is. The solicitor quoted a little bit of that language, but His Honor is going to read it in greater detail, a common-law robbery, or a simple robbery, is an armed robbery just minus nobody being armed. The issue here, Ladies and Gentlemen, I submit to you, is Ms. Sinclair -- no one is disputing -- looking at that video, looks like she got robbed. The issue is, did she have a reasonable belief that she was being robbed with a deadly

weapon.

Ladies and Gentlemen, y'all have seen that video. I just want to run down a couple of things with you. Of course, the gentleman on the video, according to Ms. Sinclair, says, "I have a bomb." According to her, he gave her a note. This bag gets opened there on the screen, and that's what's showing to you right now. Looking at it, it looks like there is some sort of red on the tip there cause you don't have a good angle as to what's actually in the bag.

Ladies and Gentlemen, talk about reasonable belief. If somebody is bringing a, quote/unquote, bomb into the bank, why on earth would they ask you to put money in the bag with your bomb? That's not a reasonable belief on Ms. Sinclair's part, Ladies and Gentlemen. This guy is not -- there's been no indication, according to Ms. Sinclair, that this was a suicide bomber, somebody who does want to blow himself or herself up. No, she says this is a person that's robbing me that says he has a bomb.

He opens up this bag and, according to Ms. Sinclair, looks like it's a stack of CDs

wrapped up with rubber bands, red rubber bands or red wire. She actually got to be physically close to it. She said she had bird's-eye view of it. She is looking in the open bag when it's down there.

She said she put bait money in this bag that supposedly had a bomb in it. What did she say bait money does? Says it explodes. Ladies and Gentlemen, is it reasonable to put something that explodes in a bag with something that explodes? No. I will just submit to you that Ms. Sinclair has been around the block, there wasn't a reasonable belief that this was actually a bomb.

Now, is there reasonable belief that she's being robbed? Absolutely. But does she have a reasonable belief that she's being robbed with a bomb? I submit to you, Ladies and Gentlemen, that the answer to that question is no.

The State hasn't put up any evidence. Again, Ms. Sinclair didn't suggest that this person wanted to blow himself up. That just makes no sense, Ladies and Gentlemen. And then, if Ms. Sinclair reasonably believed it was a bomb, why on earth will you put your hands in a

bag with a bomb? Think about that, Ladies and Gentlemen. That's not a reasonable belief. If somebody says they have a bomb, you're not reaching into the bag, putting your hands on it and touching it. That's just not a reasonable belief.

Again, as she mentioned, no ticking. There's nothing here to suggest this is a bomb, other than some guy saying it's a bomb. Just because somebody says it's a bomb doesn't make it a bomb or doesn't make it reasonable for you to believe that it's a bomb. Ladies and Gentlemen, I just want you to -- to -- to remember that.

Ms. Sinclair said she doesn't know any MacGyvers. Sounds like she watched the *MacGyver* TV show, because I don't know any MacGyvers. You can infer from that that this gentleman here is not gonna be a MacGyver either. Ladies and Gentlemen, if she was scared, if she had a reasonable belief of that, she wouldn't have taken extra time to put the bait money in the bag.

Again, Ladies and Gentlemen, what happened on that screen is a common-law robbery. It's a

strong arm robbery. That's not an armed robbery. His Honor is going to go into greater detail about what that means. He's going to give you a lot longer definition. He's going to actually quote to you what the law is.

Let me talk about some identification. Again, you heard Ms. Sinclair say that she didn't recognize this gentleman in the video as being Thomas Smith, even though she had waited on he and his mother for years there at the bank as their teller. She said, I did not have a clue it was Thomas Smith. It didn't look like Thomas Smith.

Then, next, we heard from Mr. Adams. Again, I think Mr. Adams must have just been having a bad day. Y'all remember his attitude. He said that he could recognize Mr. Smith in that picture by looking at his eyes. Ladies and Gentlemen, that's not reasonable to believe. I'll just submit to you that's not reasonable to believe.

He also said, when I asked my investigator to stand up -- I mean, I talked to him -- Ms. Lumley is a six-foot blonde and he says he doesn't remember talking to her. Ladies and

Gentlemen, he said he's 78 years old, having some heart problems. He might be having some memory problems. Keep that in mind.

Again, it sounded like there was some disgruntlement between he and my client about the sale of his parents' house. I could not quite get all the details about that. I'm not sure how good of an identification that is, how much stock you put into that.

What really concerns me, Ladies and Gentlemen, and I think ought to concern you, about identification, now I've listened to all of the evidence this week with you, too. I've heard the same evidence y'all have heard. I'll submit to you that the evidence was that when the robber comes out of the bank, he's on foot. The State presented no evidence, or at least I didn't hear any evidence about the robber getting into a vehicle, being picked up on a vehicle -- by a vehicle, anything like that. I haven't heard any of that. Don't you think if the State had some evidence to that effect, they would have presented it to you? I didn't hear anything, didn't hear any of that.

The next thing the State puts up, and I

just want you to think about this, talking about identity. You heard from Detective Hood, the deputy, that he gets the call that there's an armed robbery, there's a suspect on foot. Be on the lookout for an armed robber on foot.

You heard Detective Hood say, "Hey. I'm on the Bypass. I take a left on Laurel, right there at the Taco Bell. Go up, you know, a quarter of a mile and take a right on Sample." We know he's got his video -- we know he's got his blue lights on because of the video. What they have done with the video, who knows? But there's a picture taken from that video, so we know his blue lights were on. Well, he takes a right on Sample right there, and there's a white car right there.

Keep in mind, Deputy Hood, his story is kind of incredulous, but that is for y'all to determine. He says when he takes a right there, that the person in the car looks stunned and that they're speeding. Ladies and Gentlemen, you've seen that picture, the sun visor is down. He didn't identify anybody in the car as being male, female, anything along those lines.

Ladies and Gentlemen, if a cop is hauling

tail with his blue lights and passing you, I dare say all of you would look stunned just a little bit. But a picture is taken right there, real close to where the stop sign is there at Sample and Laurel. Nobody's speeding. I'm sure people speed on that road, like people speed on most roads. Y'all know that from your everyday experience. But nobody is going to be hauling tail, like Detective Hood said, right there at the stop sign.

Keep in mind, if it caught his attention, why on earth didn't he, number one, call it in and say, "Hey. I just passed a suspicious-looking car"? He didn't do that. He could've turned around on that car. He didn't do that. You know why he didn't do that? Because that white car meant nothing to him at that point in time. He's looking for somebody on foot. Then, the next thing we hear is we've got a video from Detective Hood's car. Where on earth did that come from?

It sounds like the government's trying to hide something from you, Ladies and Gentlemen. I don't know. Link it up in your mind. Maybe I'm the only one in the courtroom that's speaking

about that. Literally, we got somebody running out of the bank. Next thing we know, we have got -- looking at Detective Hood's video in his car, a video that no longer exists. What happened to it?

I think I heard the chief investigator, a little bit ago, say something along the lines of we didn't have time to go get it. Maybe I misunderstood what he said. Maybe I'm taking the wrong connotation from it. But then you've got the chief investigator on the crime saying something along the lines of, "I didn't have time to get the video." Ladies and Gentlemen, this happened 28 months ago, two and half years ago, there would've been some time in there, I dare say. I want you to think about that.

Identity is an issue here. Who has put that person there in the car that was recovered at Mr. Smith's house? Nobody has. Nobody has. Again, I want you to think back through all the testimony that's been given.

Then, we've seen this Ballentine video. Y'all saw that got introduced into evidence. Not a great quality video either. Again, all it shows is white, it looks like. Again, you can't

confirm it's white. I know the young man says it's white, but look at the video yourselves again, if you need to. Again, no great quality. All you see is a white car or some colored car, a light-colored car, leaving Badcock furniture. That's all you see. I don't know.

I haven't heard anything about Badcock Furniture during the trial. They're trying to show a video of something at a different location. I don't know. Again, I think there is definitely an identity issue. Keep that in mind.

And then, Detective Kay, yesterday. You know, talking about the leads that detectives don't follow up on. And again, I'm going to harp on it. It bothers me, especially when you have the lead investigator up here, Detective Moore, saying we don't have time to go look for evidence.

Folks, they knew it existed on February the 18th of 2016. They're looking at it. What do you mean you don't have the time? I mean, this is somebody's life, liberty and pursuit of happiness. If you go out here and accuse people of serious stuff, that means business, folks. That's why you go get videos. That video would

have shown whether or not a white car was speeding, Ladies and Gentlemen. Ladies and Gentlemen, I don't know what it would have shown, but use your good common sense. I think the story that was given by Deputy Hood just isn't a reasonable story, folks.

This José McDaniel, you heard Detective Kay talk about it yesterday. And again, I don't want to mis -- if I misquote somebody's testimony, Ladies and Gentlemen, you heard the testimony, you can say, hey, Mr. Henderson misquoted his testimony. I tried to take notes, and I'm positive that Detective Kay said he stopped looking for José McDaniel when somebody else said, "We think Mr. Smith did it."

And again, this is somebody that two ladies have identified, this José McDaniel, a Hispanic male, presumably, as being the person in that video right there. Well, they didn't follow up on it. They just didn't do it. I don't think I'm misquoting that.

And again, the State keeps suggesting that Mr. Smith here is trying to alter his identity. Folks, y'all have got his driver's license or ID card that the government has issued him. Y'all

have got his booking photo from the date of arrest and you see him right here. In all of these pictures, he's got he has got short hair. He doesn't have long hair, at all. Some of them say he's got a mustache; some of them, he doesn't have a mustache. That's not hiding appearance. Mr. Smith is somebody who's typically clean-shaven and has short hair. Again, the government is just trying to point fingers.

And again, it goes back to, the person in that video, Ladies and Gentlemen -- you can't see it on this screen. It's on the video -- but I declare that it looks like the person in that video is not wearing any gloves. Folks, if you're not wearing gloves and you're touching stuff, that person is touching stuff, on the counter, touched the door, maybe even touched Ms. Sinclair. I don't know. But they run extensive analyses on fingerprints, DNA. None of that matches Mr. Smith. Folks, you can't hide your DNA. You can't hide your fingerprints, especially when you're not wearing any gloves. None of that matches up to Mr. Smith.

And again, this bait money that they keep

talking about, nobody's ever been real clear about how much bait money it was. But one thing everybody has been clear about is none of that bait money was found on Mr. Smith, wasn't found at his house, wasn't found at the America's Best Hotel where he was arrested. Seems like they might've actually looked at another hotel, this Ideal motel, and there wasn't any bait money found.

And again, the government has no idea. He got caught -- I mean, when he was found in the hotel room, he had a few dollars. I mean, it's laid out on one of these pictures. Y'all will be able to see it. And again, the government can't link up any of that money with the robbery. I mean, that's just pure speculation to try to do that. So again, identity is an issue.

His Honor is going to go into what reasonable doubt is. Basically, it's -- you've got to be firmly convinced. That's basically what reasonable doubt is, firmly convinced about something. What's a reasonable doubt? If you can give a reason for the doubt, that doubt is reasonable. Every last one of you have to be firmly convinced beyond all and any reasonable

doubt. One of you may have a reasonable doubt that another one doesn't have and another juror may have a reasonable doubt that another juror doesn't have. But again, a reasonable doubt is a doubt that you can give a reason for. In your mind's eye, the reason makes sense, that's a reasonable doubt.

Keep in mind, in this country, we don't convict people on speculation, innuendo, it looks fishy, it smells fishy, by golly, we think he did it. No, that's not what we do in this country. It's beyond all and any reasonable doubt. If all you can come up with is we think Mr. Smith probably did, cut him loose. He's not guilty. "Probably did it" is not the standard. It's beyond all and any reasonable doubt. That's the highest standard of proof that we have in our judicial system. There's a reason for that. Because again, somebody's life, liberty and pursuit of happiness is on the line here.

If I may have one minute, Your Honor.

THE COURT: Sure. Take your time.

(There is a pause.)

MR. HENDERSON: I have nothing further Your Honor.

THE COURT: Okay. Thank you very much.

Mr. Foreman, Ladies and Gentlemen of the jury, I now will charge you the law applicable to this case. You must consider the charge as a whole and not focus on some portions to the exclusion of other portions. Once again, the indictment charges the defendant with armed robbery. I remind you that the fact that the defendant has been arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or innocence of guilt. This document is simply the formal written instrument which contains the charge made against the defendant. It is the formal document by which this case is brought into this courtroom.

The defendant has pled not guilty to the indictment, and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of law that the defendant in a criminal trial,

no matter what the seriousness of the charge may be, will always be presumed innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. Now, this presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial, unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant which remains with the defendant, unless it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

Now, this presumption of innocence is not mere legal theory. It's not just a legal phrase that we use. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Now some of you may have served as jurors in civil cases where you were told that it is

only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there's a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Now, I remind you also that during this trial, you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I also had the duty to rule on the admissibility of evidence offered during this

trial. You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge you the law applicable in this case. As the presiding judge, I am the sole judge in this case. It is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in the case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in

this case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value and weight of the evidence presented during this trial.

Mr. Foreman, Ladies and Gentlemen of the jury, there are two types of evidence which are generally presented during a trial, that being, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct

or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant as suspicious, the proof has failed.

Once again, the State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State, regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Necessarily, you must, as jurors, determine the credibility of the witnesses who have testified in this case and the evidence presented. Credibility simply means believability. It becomes your duty as jurors to analyze and evaluate the witnesses and the evidence and determine the credibility of the witnesses and the evidence.

In determining the credibility of witnesses who have testified in this case, you may believe one witness over several witnesses, several

witnesses over one witness, you may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of the witness while on the witness stand.

Ladies and Gentlemen, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence.

Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There's no way to prove intent to a matter of medical certainty. There's no way medical science can dissect a person's brain and

determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct or positive evidence, but intent may be established by inference, the same way as any other fact, by taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do, based upon the circumstances shown to have existed.

An issue in this case is the identification of the defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict the defendant.

Identification testimony is an expression of belief or impression by witness. You must

determine the accuracy of the identification of the defendant. You consider the believability of each identification witness in the same way as any other witness.

You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like, how long or short time was available, how far or close, lighting conditions, whether the witness had a chance to see another person in the past. Once again, I instruct you the burden of proof on the State extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime. If, after examining the testimony and evidence, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Now, the defendant in this case elected not to testify. I instruct you, and emphasize, that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration

on the question of the guilt or the innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations.

Mr. Foreman, Ladies and Gentlemen of the jury, I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. If it is, I need to know that immediately. The burden of proof, as I've stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, as you know, the defendant has been charged with a crime of armed robbery, and let me explain that to you. A person who commits robbery while armed with a deadly weapon or while alleging, either by action or words, he is armed, while using the representation of a deadly weapon or any object which a person present during the commission of a robbery

reasonably believed to be a deadly weapon, is guilty of armed robbery.

A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of the case. All of the above, the State must prove beyond a reasonable doubt.

In addition, the State must first prove beyond a reasonable doubt that the defendant took personal property from the person or presence of another person. Property is in the presence of person if it is within the person's reach, inspection, observation, or control, so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.

The State must also prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the defendant's own use. The slightest removal of the property or the complete possession of the property, even for an

instant, by the defendant is sufficient to show a taking and carrying away of the property. Taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Ladies and Gentlemen, if you find that the State has failed to prove beyond a reasonable doubt that the defendant committed armed robbery, you may then consider whether the State has proved beyond a reasonable doubt that the defendant committed robbery. In order to prove robbery, the State must prove beyond a reasonable doubt all of the elements I had just explained to you, except that the defendant was armed with a deadly weapon or represented that he was armed with a deadly weapon.

In order to prove robbery, the State must prove beyond a reasonable doubt that the defendant took the personal property from the person or presence of another person without the person's consent and carried it away. Property is in the presence of the person if it is within the person's reach, inspection, observation or control so that person could, if not overcome with violence or prevented by fear, retain

possession of the property.

The State must also prove that the defendant carried the property away with the intent to permanently deprive the owner of the property and to convert the property to the defendant's own use. Slightest removal of the property or complete possession of the property, even for an instant by the defendant, is sufficient to show a taking and a carrying away of property. Taking and carrying away of the property must have be done with violence or by putting the owner of the property in fear of violence.

Ladies and Gentlemen, I realize that what I just read to you over the last 15 to 20 minutes have been a lot. Therefore, I will provide you a copy of what I have just read to you for your use in whatever manner you want to use it, if at all, in your deliberations.

Now, the verdict that you reach in this case must be unanimous among the 12 of you. When you have reached a verdict, you will knock on the door to inform the bailiff that a verdict has been reached.

Now, I'm going to come down Mr. Foreman,

and show you this verdict form that you will complete. It is very simple, but let me give you an explanation.

This is the verdict form in the State of South Carolina versus Thomas Allen Smith. Question 1, we, the jury, on indictment -- that's the number of the indictment -- charging the defendant with armed robbery, find the defendant not guilty or guilty. Whatever your verdict is, you will put your initials on the appropriate line. If you find him guilty, you will stop, sign it, and put today's date.

If -- on the other hand, if you find him not guilty of armed robbery, then you are at liberty to consider what we call the lesser included offense of robbery, which I have explained to you. We, the jury, find on the lesser included offense of robbery and find the defendant either not guilty or guilty. You'll put your initials on the appropriate line and sign it and date it. The order of not guilty and guilty is of no significance. One just has to go above the other.

Now, what I want you to do is, I want all 14 of you to go back into the jury room. Do not

begin your deliberations. Do not begin your discussions in this case. I need to discuss with the lawyers if I need to make any additions or corrections to the Court's charge. If I do not and we are all in agreement -- if the lawyers are in agreement with the Court, then what will happen is that the verdict form, a copy of the charge I just read to you, and all of the exhibits in this case will be delivered to you in the jury room by the bailiffs. That will be your cue for two things to happen, one, is that I'll need the two alternates to exit the jury room and come back for further instructions. Okay. And secondly, you will begin your deliberations at that time, but don't start yet.

Now if I have to charge you, make a correction or addition to the charge, of course, we will bring all 14 of you out here and I will do that. Okay. All of you, go back to the jury room. Don't start the discussion yet.

(Jury exits at approximately 1:59 p.m.)

THE COURT: The State have any exceptions or objections to the charge?

MR. BROWN: No, Your Honor.

THE COURT: Defense?

MR. HENDERSON: No, sir.

THE COURT: Okay. Thank you very much. We're off the record.

(The Court goes off the record at approximately 2:00 p.m.)

(Jury deliberation begins at approximately 2:05 p.m.)

(The Court goes on the record at approximately 2:22 p.m.)

THE COURT: All right. Gentlemen, it's my understanding from the bailiff that the jury has indicated they've reached a verdict. Anything we need to put on the record before we bring them out to receive the verdict?

MR. BROWN: Not from the State.

MR. HENDERSON: No, sir.

THE COURT: All right. Bring the jury out, please.

(Jury enters at approximately 2:23 p.m.)

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

Mr. Foreman, without telling me what the verdict is, have you reached a unanimous verdict in this case?

JURY FOREPERSON: We have, Your Honor.

THE COURT: Okay. Would you hand the verdict form to the bailiff please.

Madam clerk, will you publish the verdict please.

THE CLERK: Yes, sir.

State of South Carolina versus Thomas Ellen Smith, Indictment Number 2016-GS-24-795, we, the jury, on Indictment Number 2016-GS-24-795 charging the defendant with armed robbery, find the defendant guilty. Signed June 13, 2018.

THE COURT: Mr. Foreman, Ladies and Gentlemen of the jury, if this is your verdict guilty as to armed robbery, would raise your right hands please.

(Each juror responds.)

THE COURT: Let the record reflect that all 12 hands were raised.

Let me express to you my appreciation for the jury service. Your verdict that you've reached in this case, as any verdict reached by any jury, does not matter to the Court. What matters to the Court is that the jury performs its duties conscientiously, efficiently, that you pay attention. We impressed, at the beginning, that is very important that you pay

attention throughout this trial.

I'm confident that you did that. I keep an eye on the jury pretty regular. You all paid attention and very alert and I appreciate that. Service on a jury is a very high civic responsibility that we have. Some people consider it the second-highest civic responsibility, second to only serving in the military, so what you've done this week is extremely important. Juries play a vital role in our system. We, fortunately, have the best and greatest justice system anywhere in the world.

What I'm planning to tell you may not be pleasing to some of you, but I need for y'all to come back. We're starting another trial in the morning, so I need to 12 of you along with the two alternates to be put back into the panel to make sure that we have an adequate supply of potential jurors in order to serve. So I need you back.

Solicitor Tunstall, have you had an opportunity to discuss with the Solicitor Dowtin?

MR. TUNSTALL: I have not, Your Honor.

THE COURT: Okay. All right. What I'm

going to do, I told the alternates 9 o'clock, we're going to change that to 10 o'clock. If y'all will be back here and be part of the jury panel at 10 o'clock, not 9:00, as I informed the -- as I informed the two alternates. But we're finished for the day. I look forward to seeing all 14 of you back bright and early at 10 o'clock in the morning. Have a great afternoon and evening.

(Jury exits at approximately 2:27 p.m.)

(The Court goes off the record at approximately 2:28 p.m.)

(The Court goes on the record at approximately 2:31 p.m.)

THE COURT: We're back on the record in the State of South Carolina versus Thomas Smith. Before we go into the sentencing phase, let me -- Mr. Henderson, certainly, you're entitled to 10 days to file any post-trial motions that you feel are appropriate. I'm giving you that opportunity. I'm not instructing you to. I'm giving you the opportunity to have 10 days, if you wish to do that.

MR. HENDERSON: Thank you.

THE COURT: All right. I'm going to allow

the State to make any comments on the record concerning sentencing. I do want to hear if Mr. Smith has a prior record, which I have no way of knowing that, but if he does, I need to hear that. Solicitor Brown, I'll be glad to turn over to you, sir.

MR. BROWN: Judge -- thank you, Your Honor. Mr. Smith, start off with that, he does have a prior conviction dating back to 1984. It was a burglary or other forced entry, is what the charge is out of Michigan. It says he was found guilty by a jury or a judge. I'm not exactly sure -- actually, it says he was confined for a year and had 85 days credit, but he did have the conviction for that charge up in Michigan. Since that time, he has traffic violations here in South Carolina. But that -- that's the extent of his record.

THE COURT: All right.

MR. BROWN: Also, Judge, as part of this -- as part of this trial, the State opted not to go forward with the threatening bomb threat indictment. The statute is kind of drafted funny, so we decided not to go with that.

THE COURT: Okay.

MR. BROWN: That will be dismissed after this guilty.

THE COURT: Okay. Anything else concerning sentencing?

MR. BROWN: Judge, you've heard all the facts of this case. I trust you will make the right sentence on it.

THE COURT: Thank you very much.

Mr. Henderson, I'll be glad to hear from you or anything your client may want to say or anybody else on your side?

MR. HENDERSON: Your Honor, you've heard the testimony. My client was arrested on February the 21st of '16 and has been incarcerated continuously, so that's knocking on 28 months or close to 28 months.

THE COURT: Do we have an agreement as far as the number? I'd like to show it as days as opposed to months.

MR. BROWN: Judge, I believe he's been incarcerated since he was arrested.

MR. HENDERSON: On 2/21. Can you put on the sentencing sheet credit since or would you like us to calculate days?

THE COURT: I'd like to have an agreement

as to number of days.

MR. HENDERSON: Okay.

MR. BROWN: We can calculate days. It will be 2/21 of '16 up until today.

THE COURT: Maybe Solicitor Black can be working on that as we proceed.

MR. HENDERSON: Your Honor, Thomas is 53 years old. He's not married. He has one child up in Michigan. What bought him down here, his parents lived here in Greenwood on [redacted]. Both of them were in ailing and failing health. Since he moved down to be their caretakers, they have since passed away. In the last three to four years, both of them have passed away. Thomas had been living in the family home.

He worked some down here. You heard he worked for Mr. Adams who testified. He's worked some at Eaton. He's done some other pickup work.

Your Honor, I had him evaluated. I'm sure His Honor has possibly already looked at the -- at the --

THE COURT: I took -- I had not looked at it. I'll be glad to look at it, if you feel I need to for purposes of sentencing. For purposes

of proceeding with trial, I took the stipulation between the State and defense that he was found competent, so I did not look at it. However, I'll be glad to if you think it's important concerning sentencing.

MR. HENDERSON: I think it would be, Your Honor. I think it would make my client feel better.

THE COURT: Sure. I'll be glad to. Can you get me a copy?

MR. BROWN: I can, Your Honor. And based on that, I would like to be heard again.

THE COURT: Probably what I would do is take some time to read that and then maybe defer sentencing until tomorrow possibly or whenever we can work it in, if you're available. Because I do -- these things are usually about 10 pages roughly. So, anyways, you may proceed.

MR. HENDERSON: Your Honor, it looks like somebody -- 846 days?

MR. BROWN: 844.

MR. HENDERSON: Okay.

THE COURT: Okay. Everybody agree with that?

MR. BROWN: Yes, sir.

MR. HENDERSON: It's right there between 844 and 846, Your Honor, so...

THE COURT: You may proceed, Mr. Henderson.

MR. HENDERSON: The solicitor had previously offered straight up on a burglary -- I'm sorry -- armed robbery with a cap of 20, zero -- no, 10 to 20, so to speak. I explained that to my client. Again, we've done a lot of work preparing for trial.

Again, we ran across what we thought were a lot of holes in the State's case, and I'm still convinced are a lot of holes in the State's case. I conveyed the offer to my client. He was not interested. Judge Addy said he would give him 10 on an armed robbery. Couldn't get the State to come off of an armed robbery, not even to an attempted, so that made it pretty easy to let us to go to trial.

We basically laid out this case -- or the solicitor laid out this case to Judge Addy. Judge Addy said, "Hey, if it came in front of me, I'd give him 10 years." Basically, at least from the State's perspective, I think they think it's an inept crime, so to speak, for want of a

better term.

MR. BROWN: I will address that later on.

THE COURT: Sure.

MR. HENDERSON: Here, we don't have any -- like I said, we've done extensive investigation. There's nobody complaining. At least, if they have, they haven't been complaining to us. Obviously, Ms. Sinclair is not happy she's being robbed, but nobody's out here with pitchforks, is what I'm getting at. I know Your Honor has seen in some cases where people were actually here with pitchforks, I mean, raising Cain about being having -- about being the victims of crime. In this case, Your Honor, at least from my investigation in talking to people, that's not the case.

Now, do people like bank robberies? No. But again, is this something that people are out here picketing and with pitchforks about? No. Your Honor, I think taking all of this into consideration, we would ask that you come back in with the minimum of 10 years, give him credit for his time served. And, I think, once he is out, through his community supervision, I think he plans -- I think Thomas plans to go back up

to Michigan.

He's still got plenty of family up there in Michigan, actually still has plenty of extended family here in Greenwood, second cousins type stuff. But as far his siblings and whatnot, he would have to be going back up -- and his child, would have to be going back up to Michigan.

THE COURT: Thank you very much.

MR. BROWN: Judge, just to respond ---

THE COURT: Sure.

MR. BROWN: --- to some of that, this is not the 1700s and 1800s where somebody's out with pitchforks or want to string him up on the lawn. Ms. Sinclair was shaken by this. She'd never been robbed before and hasn't been robbed since. And I hope she never has been. But she's been shaken up by this. She had somebody come into her bank and say they had a bomb. As you heard from the officer, it clearly shook her up.

Talking about the plea negotiations leading up to this, yeah, we gave a cap of 20. He declined it. Plea negotiations leading up to it, I don't think even if -- he's mentioned Judge Addy, what he might give on a plea, Judge Addy did not have all of the facts. He did not listen

to all the testimony here in court. Your Honor, I trust that you can make -- after seeing the facts and being the trial judge, make an appropriate sentence with Mr. Smith.

For Mr. Henderson to say that nobody's shaken up by this, this is a violent and most serious offense. Armed robbery is taken serious in this circuit. I do -- as all these law enforcement officers -- you can see we have over 10 in here. They find it very serious. I would ask that the Court sentence accordingly.

THE COURT: Okay. Thank you very much. Let me just make one comment and then I'm going to defer sentencing until tomorrow or Friday, whenever we can get to it. This is really directed to -- to Mr. Smith.

When a jury comes back with a verdict of guilty in any case, then I make the determination that the person is 100 percent guilty of the crime that the jury has found him guilty of, regardless of whatever thoughts I may have about the case or anything presented. If the jury says guilty, I find that -- in this case, find that you are 100 percent guilty of the crime charged. I just want you to understand

that.

MR. SMITH: Yes, Your Honor.

THE COURT: I'm going to read the competency evaluation ---

MR. SMITH: Yes, Your Honor.

THE COURT: --- and certainly take into account the fact that you have a very nominal prior record. Certainly, that weighs in your favor. But we'll get back to this either tomorrow or Friday, whenever we can put this together. Okay.

MR. SMITH: Yes, Your Honor.

THE COURT: Thank you very much.

MR. SMITH: Thank you, Your Honor.

THE COURT: I do want to commend the three lawyers involved in this case for the excellent representation of your respective sides. Certainly, I expected nothing less.

MR. HENDERSON: Thank you, Your Honor.

(The Court adjourns for the day at approximately 2:40 p.m.)

CERTIFICATE

463

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, Day 3 of 4, all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood, South Carolina, on this 15th day of September, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENWOOD	) EIGHTH JUDICIAL CIRCUIT
	)
State of South Carolina,	) Case No(s).:2016GS2400795
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Thomas Allen Smith,	) Volume 4 of 4
	)
Defendant.	)
	)

June 11 - 14, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

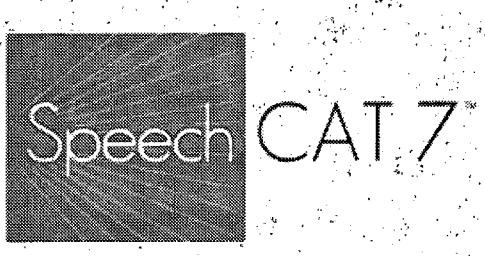
A P P E A R A N C E S:

YATES BROWN, Esquire
MICAH BLACK, Esquire
Attorneys for the Plaintiff

CARSON HENDERSON, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M-CM,
Circuit Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are taken and produced via



I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
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EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

467

P R O C E E D I N G S

(The Court resumes on the 14th day of June, 2018 at approximately 10:58 a.m.)

THE COURT: Okay. We are back in the record in the sentencing phase of the State of South Carolina versus Thomas Allen Smith. The trial concluded yesterday, a guilty verdict on the charge of armed robbery. I heard from both the State and the defense. I certainly will give both sides an opportunity to tell me anything else that they want to tell me as it relates to sentencing. I deferred sentencing in order to give me a chance to review the competency evaluation that was recently done on Mr. Smith, and I have thoroughly reviewed that.

Solicitor Brown, anything further as it relates to sentencing?

MR. BROWN: Judge, just to touch on the severity of this case again, I mentioned it yesterday, being a violent and most serious crime, I know it was alluded to that nobody is jumping up and down. Your Honor, you can look around the room. The officers are back in here again.

In apprehending Mr. Smith, they used SWAT

to go to his house the night of the armed robbery. They used flash bangs to go in. They then go to the hotel later on and SWAT, again, is called. So that just shows what law enforcement did, the resources they use to apprehend somebody, because that is a dangerous person that goes into a bank armed with a bomb and not only puts Ms. Sinclair in danger, but everybody else in that bank. In addition, the people that, when he's leaving the bank, going back to his house, puts other people in danger, as well. So this is a violent offense and the State believes he needs to be sentenced accordingly.

THE COURT: Okay. Thank you.

Mr. Henderson, anything further as it relates to sentencing?

MR. HENDERSON: Your Honor, I just wanted to reiterate, you've looked at the report.

THE COURT: I have.

MR. HENDERSON: You've studied it closely. Somebody with basically no adult criminal record, at all. It seems like this charge out of Michigan was 18 years old, possibly 19 years old, depending when -- it looks like he's lived

a fairly simple life since getting arrested for this offense, Your Honor.

THE COURT: Mr. Smith, I place a lot of weight when someone is before me, whether it's on a guilty plea, or as this case, you were found guilty by a jury, I place a lot of weight into whether or not the person has a prior record. I think that's very important. For all intents and purposes, you really don't have one. I do recognize back in '84, there was ---

MR. SMITH: Yes, Your Honor.

THE COURT: --- some difficulty in Michigan, but for the most part, you don't have a prior record.

MR. SMITH: Yes, Your Honor.

THE COURT: So that weighs into your favor. Also, I've reviewed the competency evaluation. It looks like you had pretty much a crappy ---

MR. SMITH: Yes, Your Honor.

THE COURT: --- upbringing.

MR. SMITH: I sure have.

THE COURT: So I think that has weighed in your favor. However, what weighs against you or goes against you is the fact that this was a

very serious violent offense that you've committed back in 2016. So what I've done -- I've tried to consider and put all those things into fashioning a sentence, understanding that armed robbery carries up to 30 years ---

MR. SMITH: Yes, Your Honor.

THE COURT: --- in prison. So I've tried, to some extent, kind of go in the middle on this. The sentence of the Court is, Mr. Smith, that you be committed to the State Department of Corrections for a period of 18 years. I'll give you credit for 844 days that you have been incarcerated. Good luck to you, sir.

MR. BROWN: Thank you, Judge.

MR. SMITH: Yes, Your Honor.

MR. HENDERSON: Just to preserve the record ---

THE COURT: Sure.

MR. HENDERSON: I would like to renew all of my prior motions and ask for a new trial. I'm sure you're going to deny that. I just want to put it on the record.

THE COURT: Okay. And I indicated yesterday on the record, Mr. Henderson, that I was allowing you, if you so chose to, to take 10

days to file a motion for a new trial. If you're making it now and not going to use the 10 days, that's perfectly fine. The new trial is denied.

MR. HENDERSON: Right. I'm going to do it now, Your Honor, because I don't think I can add to the extensive arguments I've already made.

THE COURT: I understand. So noted for the record and denied.

MR. HENDERSON: Thank you.

MR. BROWN: Thank you, Judge.

(The Court adjourns for the day at approximately 11:04 a.m.)

CERTIFICATE

472

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, Day 4 of 4, all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood, South Carolina, on this 15th day of September, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter



Carson Henderson <carson@carsonhendersonlawfirm.com>

FW: Thomas Smith - South Stated Bank

2 messages

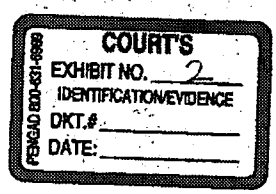
Courtney Smith <csmith@greenwoodsc.gov> Thu, Jan 12, 2017 at 3:12 PM
To: Yates Brown <ybrown@greenwoodsc.gov>
Cc: carson@carsonhendersonlawfirm.com

Guys-

Attached is a supplemental report for Mitch McAllister in regards to the Smith case.

Courtney-

From: Mitch McAllister [mailto:mitch.mcallister@gwdcity.com]
Sent: Thursday, January 12, 2017 3:14 PM
To: Courtney Smith <csmith@greenwoodsc.gov>
Subject: Thomas Smith - South Stated Bank



Courtney,

I have attached a new copy of the incident report that includes my supplemental from the Crime Stoppers tip on 01/03/2017. It is also in the case file so it can be given to carson. Its under: Blake Moore/Thomas Allen Smith – South State Bank/16003432 – Complete.

McAllister

Find Greenwood County on social media:

NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

16003432 - Complete.pdf
58K

Carson Henderson <carson@carsonhendersonlawfirm.com> Thu, Jan 12, 2017 at 4:48 PM
To: Courtney Smith <csmith@greenwoodsc.gov>
Cc: Yates Brown <ybrown@greenwoodsc.gov>

Got it. Thanks.
[Quoted text hidden]



Carson M. Henderson
The Henderson Law Firm, P.C.

864-649-0384 (office)

109-B Oak Avenue
Greenwood S.C. 29646

www.carsonhendersonlawfirm.com

AGENCY I.D. SC0240100

INCIDENT REPORT

CASE NUMBER: 16003432 | NCIC INQ. | NCIC ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. ARMED BANK ROBBERY 120	☑ YES ☐ NO	☐ YES ☑ NO	BANK/SAVINGS AND LOAN	
2. POSSESSION OF WEAPON DURING VIOLENT CRIME 520	☑ YES ☐ NO	☐ YES ☑ NO	BANK/SAVINGS AND LOAN	
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgs. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): SOUTH STATE BANK 1224 BYPASS 72 NE | GREENWOOD | SC | ZIP CODE: 29649 | WEAPON TYPE: OTHER

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
02/18/2016	14:30		02/18/2016	14:35	02/18/2016	14:35	14:37	16:19	ZONE 2

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): SOUTH STATE BANK, | RELATIONSHIP TO SUBJECT #1 #2 #3 | RESIDENT * J S O U | RACE | SEX | AGE | ETH. | DAYTIME PHONE H B | EVENING PHONE H B

ADDRESS: 1224 NE BYPASS 72 | CITY: GREENWOOD | STATE: SC | ZIP CODE: 29646 | LOCATION NO.:

VICTIM NO. 1

VICTIM'S NAME (LAST, FIRST, MIDDLE): SOUTH STATE BANK, | RELATIONSHIP TO SUBJECT #1 #2 #3 | RESIDENT * J (S) O U | RACE | SEX | AGE: 00 | ETH. | DAYTIME PHONE H B | EVENING PHONE H B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.

ADDRESS: 1224 NE BYPASS 72 | CITY: GREENWOOD | STATE: SC | ZIP CODE: 29646 | LOCATION NO.:

VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO EXPLAIN - | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☑ NO

VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK DRUGS: ☐ YES ☐ NO ☐ UNK TYPE:

TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPL.ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ | * J - This Jurisdiction, S - State, O - Out of State, U - Unknown

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☑ ARREST 0 ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
SMITH, THOMAS ALLEN	W	M	51	N	[redacted]	511	145	BLK	BRO

FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.: GOATEE & MUSTACHE

ADDRESS: [redacted] | CITY: GREENWOOD | STATE: SC | ZIP CODE: 29649 | LOCATION NO.: CENTRAL

SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☐ UNK DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK | ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO | TOTAL # ARRESTED 1 | DATE/TIME OF OFFENSE | DATE/TIME OF ARREST: 2/22/2016

NARRATIVE

On today's date city units responded to the South State Bank located at 1224 Bypass 72 NE in reference to an Armed Robbery in progress. While in route to the armed robbery officers were informed by dispatch the suspect was on foot running through the parking lot of New Spring Church.

Officers set up a perimeter to try and locate the suspect, and for the Sheriff's Office dog team. Capt. McAllister and Det. Moore were the first officers on scene at the bank. They entered the bank to make sure no one was hurt, and to speak with employees and any customers located in the bank. Officers were directed by a supervisor to set up crime scene tape around the bank to prevent anyone from entering the scene of the crime. While speaking with a majority of the employees at the bank, they stated a male subject approximatly 6'0 entered the bank wearing blue jean coveralls, a dark in color hooded sweat shirt

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY EST.

TYPE (GROUP)	MONEY							TOTAL VALUE
STOLEN	$1.00							$1.00
DAMAGED								
BURNED								
RECOVERED								
SEIZED								

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☑ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	02/18/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

3

AGENCY I.D. SC0240100

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER: 16003432 | NCIC INQ. | NCIC ENTD.

☑ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☑ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE 2 OF 3 PAGES

VICT./SUBJ./LD./OVERFLOW

COMPLAINANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.
VICTIM # 2	SINCLAIR, GAIL	#1 STRANGE R #2 #3	J S O U	W	F	59	[redacted]	N

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.
506	150			

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE
[redacted]	GREENWOOD	SC	29646		[redacted] H/B	[redacted] H/B

☑ VICTIM NO. 2 VISIBLE INJURY ☑ NO ☐ YES | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☑ NO ☐ YES | VICTIM USING: ALCOHOL ☐ NO ☐ YES ☐ UNK; DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK | ☐ TWO-MAN VEH. ☐ ONE-MAN VEH. | ☐ DETECTIVE / SPLASMT. ☐ OTHER | ☐ ALONE ☐ ASSISTED
EXPLAIN:

☐ SUBJECT NO. ___ USING: ALCOHOL ☐ NO ☐ YES
USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK

VICT./SUBJ./LD./OVERFLOW

COMPLAINANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.
VICTIM # 3	CITY OF GREENWOOD,	#1 #2 #3	J S O U			00		

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE
PO BOX 40	GREENWOOD	SC	29646		864-942-8405 H/B	864-942-8405 H/B

☑ VICTIM NO. 3 VISIBLE INJURY ☐ NO ☐ YES | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☑ NO ☐ YES | VICTIM USING: ALCOHOL ☐ NO ☐ YES ☐ UNK; DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK | ☐ TWO-MAN VEH. ☐ ONE-MAN VEH. | ☐ DETECTIVE / SPLASMT. ☐ OTHER | ☐ ALONE ☐ ASSISTED
EXPLAIN:

☐ SUBJECT NO. ___ USING ALCOHOL: ☐ NO ☐ YES
USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK

NARRATIVE

and sunglasses. They stated he was a white or hispanic male. They stated he entered the bank waited behind another customer. When the bank employee asked for the next person in line, the suspect cut the next customer in line and handed a note to the employee. The suspect was also carrying a blue in color old bank bag. The employee placed money in the bag and they subject exited the bank and took off running toward Badcock Furniture. The employee stated the note stated, he had a bomb and to give him all the money. To see more of a detailed statement from employees see supplemental reports.

While on scene Capt. McAllister did contact the county dog team to respond. The dog started at the front door of the bank, and trailed the scent to the western side of Badcock Furniture and lost scent, which was consistent with a witnesses.

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1

STATUS	TYPE
☐ STOLEN	☐ VEHICLE
☐ RECOVERED	☐ GUN
☐ FOUND	☐ BOAT
☐ SEIZED	☐ VEHICLE PARTS & ACCESSORIES
☐ SUSPECT	☐ SECURITIES / BOND, STOCKS
☐ VICTIM	☐ ARTICLE

VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.			
SERIAL AND/OR OWNER APPLIED NO.			STATE	
YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE	TYPE
MODEL	STYLE	COLOR	BRAND NAME	CALIBER
NIC NO.	DENOMINATION	ISSUER	SECURITIES DATE	
MISCELLANEOUS				

PROPERTY EST.

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☑ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	02/18/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

4

AGENCY I.D.
SC0240100

SUPPLEMENTARY REPORT

CASE NUMBER
16003432

NCIC
INQ. | ENTD.

☑ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

NARRATIVE

statement.

Sgt. Griffin was also contacted to process the crime scene see supplemental.

Investigation to continue:

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☑ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	02/18/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

5

Incident Property Report

Property Category	MONEY			**Loss Type**	STOLEN
Description	AMOUNT OF US CURRENCY				
Make		**Model**		**Style**	
Serial No / VIN				**Color**	
Vehicle Year	0	**Plate No/ State/ Type**			
Loss Date	02/16/2016	**Loss Quantity**	1	**Loss Value**	1
Rec Date		**Rec Quantity**	0	**Rec Value**	0
Drug Type		**Drug Quantity**	0	**Drug UOM**	

Property Category			**Loss Type**
Description			
Make	**Model**		**Style**
Serial No / VIN			**Color**
Vehicle Year	**Plate No/ State/ Type**		
Loss Date	**Loss Quantity**		**Loss Value**
Rec Date	**Rec Quantity**		**Rec Value**
Drug Type	**Drug Quantity**		**Drug UOM**

Property Category			**Loss Type**
Description			
Make	**Model**		**Style**
Serial No / VIN			**Color**
Vehicle Year	**Plate No/ State/ Type**		
Loss Date	**Loss Quantity**		**Loss Value**
Rec Date	**Rec Quantity**		**Rec Value**
Drug Type	**Drug Quantity**		**Drug UOM**

Property Category			**Loss Type**
Description			
Make	**Model**		**Style**
Serial No / VIN			**Color**
Vehicle Year	**Plate No/ State/ Type**		
Loss Date	**Loss Quantity**		**Loss Value**
Rec Date	**Rec Quantity**		**Rec Value**
Drug Type	**Drug Quantity**		**Drug UOM**

Property Category			**Loss Type**
Description			
Make	**Model**		**Style**
Serial No / VIN			**Color**
Vehicle Year	**Plate No/ State/ Type**		
Loss Date	**Loss Quantity**		**Loss Value**
Rec Date	**Rec Quantity**		**Rec Value**
Drug Type	**Drug Quantity**		**Drug UOM**

6

AGENCY I.D. SC0240100

SUPPLEMENTARY REPORT

CASE NUMBER: 16003432

NCIC INQ. | ENTD.

☐ ORIGINAL REPORT ☑ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

NARRATIVE

2016-02-18 14:46:21 - slsummeyCHECKING HOUSE ON MCDOWELL2016-02-18 14:49:01 - jgbolandNOTIFIED SCHP2016-02-18 14:36:01 - rbgilchristCALLER KNOWS NOTHING ELSE; W/M; OVERALLS AND A BLACK HOODIE; RAN TWD BADCOCK; KEETA DELL IS THE CALLER2016-02-18 14:49:23 - slsummeyPER 352 OUT WITH 2 SUBJS2016-02-18 14:50:10 - rbgilchristEDDIE 864-396-09582016-02-18 14:36:06 - rntalbertGAVE A NOTE AND SAID GIVE ALL THE MONEY2016-02-18 15:14:26 - slsummeyPER 330 DOGS ON THE GROUND2016-02-18 14:35:17 - rntalbertHISPANIC OR LIGHT SKINNED MALE2016-02-18 14:48:34 - rntalbertNOTIFIED CHAD COX2016-02-18 15:04:39 - slsummey364 100 10-172016-02-18 14:35:23 - rntalbertTWD BADCOCK2016-02-18 14:36:27 - rntalbertSOMETHING WAS INSIDE A THE BAG2016-02-18 14:35:45 - rntalbertHE SAID HE HAD A BOMB AND WAS CARRYING A CASH BAG2016-02-18 14:50:52 - jwnormanBLOODHOUNDS 10-172016-02-18 14:52:27 - rntalbertURBAN MITCHELL 10172016-02-18 14:43:29 - slsummeyPER 352 ON SAMPLE2016-02-18 14:39:02 - slsummeyPER 362 W/M RAN TWD NEW SPRING2016-02-18 14:35:26 - rntalbertON FOOT2016-02-18 14:50:32 - slsummeyPER 330 BLOODHOUNDS 10-172016-02-18 14:42:15 - jgboland330 PULLING IN DOG KENNEL NOW TO GET DOGS2016-02-18 15:40:40 - jgbolandPER 330 BLOODHOUNDS 10-17 BACK TO KENNEL2016-02-18 15:01:17 - slsummey349 100 10-172016-02-18 14:41:45 - rbgilchristWHITE KIA WHITE DRIVER AT HALTIWANGER AND LAUREL; TURNING DOWN N S IDE DRIVE2016-02-18 14:44:25 - slsummeyPER 310 IS OUT WITH 352 ON SAMPLE RD2016-02-18 14:37:26 - rntalbertBLUE OVERALLS, HOODIE WITH HOOD PULLED UP OVER HIS HEAD2016-02-18 14:40:44 - jwnorman106 REQUEST DOG TEAM2016-02-18 15:18:27 - rntalbert2000 ILB839 VALIDATION ILB839 TAG EXP 08/2016 DECAL EXP 08/20162004 VOLV 4S S60 VIN YV1RS59V942338112 EMPT WGT 003 GVW 000000GLOVER,ISAIAH [redacted] GOOSE CREEK SC 294457139 BERK CNTYALTERNATE TAG YEAR TTL: 772060252144680 B TTL ISSUE DT: 08/17/2012 SALES PRICE: $0.002016-02-18 14:34:58 - rntalbertWEARING DENIM OVERALL HOODIE OVER HIS2016-02-18 14:36:31 - rntalbertDIDN"T SEE A GUN2016-02-18 14:40:02 - slsummeyBLUE JEAN OVERALL WORK BOATS BLK HOODIE

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
DIXON, M	02/18/2016	1359			
			FOLLOW - UP INVESTIGATION ☑ YES ☐ NO — OFFICER MOORE, B	2/18/2016	

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SC0240100		16003432		

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NARRATIVE

On February 18, 2016 I (Det. Moore) responded to a Bank Robbery at South State Bank. Capt. McAllister and I were the first to arrive at the scene of the bank. We entered the bank and made sure everyone located inside the bank were ok, and did not need assistance from EMS and everyone stated they were ok just shaken by the incident.

While inside the bank the first person I spoke with was the bank employee, who the suspect actually robbed. he employee's name was Gail Sinclair. Sinclair was working the far left bank station, when you walk into the front door. Sinclair stated while she was working, she observed a black male customer standing in line, and white or hispanic male standing behind him. She stated she asked for the next customer, which would have been the black male by the name of Warren Hill. Sinclair advised when she asked for the next cusotmer, hill was cut in line by the white or hispanic male. She advised the white or hispanic male was wearing a dark in color hooded shirt, sunglasses with the hood over his head. Sinclair also described him as approximatly 5'8" tall. Sinclair advised when he approached the counter he had a blue in color bank bag in his hand, and he handed her a note stating that he had a bomb. She stated that he asked for all the money, and to not give him the bait money, but she stated she did any way plus some money out of her drawer that was not bait money, and that he told her to hurry. She advised when he got the money in the bag he went out the front door of the bank, and took a right toward Badcock and she hit the panic alarm.

The second employee I spoke with was Quitta Deal. She stated she was in e side office helping a customer. She stated she received an email from another teller (Jennifer Young) who stated there was a suspicious male in the bank. Deal stated once she got this email, she observed him running out the front door of the bank and took a right toward Badcock Furniture.

I then spoke with Jennifer Young, who is another employee at the bank. She stated she was working at the far right station when you walk in the front door. She stated she observed a white male enter the bank wearing jean overalls, dark hoodie and sunglass with a hood over his head. She stated she observed him with a blue bank bag, and a bulge in the bag. She stated she felt suspicious about him when he walked in the bank because the way he had himself covered and acting. Young advised when Sinclair asked for the customer, the subject cut the next customer in line and the suspect cut him and went to the counter. She advised he did not produce a weapon, but observed him being very suspicious and sent an email to Deal who was in an office.

I also spoke with Kiyomi Perez. She advised she did not see anything because she was working the drive-thru. Therefore she had her back turned to the entire incident.

The last person in the bank I spoke with was Warren Hill, who was a customer. He stated he was walking into the bank, and observed a subject approaching the door with him. Hill stated he held the door for him, and observed him to be a white or hispanic male. He advised he had head gear and was wearing dark colored clothing. Hill advised he was in front of him waiting to see an employee. He advised when the employee asked for the next customer, the suspect cut him in line.

The total amount that was taken from the bank was $2,330.00. A complete list of serial numbers and exact currency will be in case file.

After speaking with everyone at the bank, I went followed the trail of the dog team to see if I could find where the dye pack busted, but my results were negative. I then went to Badcock Furniture and spoke with a witness in reference to this incident. The witness was an employee with Badcock Furniture and his name was Andrew Holmes. Holmes stated he was near the front of the business, and observed a subject running out of the bank toward the back of Badcock. Holmes stated he went to the back of Badcock, and observed him running past the loading dock, and down the hill and took a left and ran back toward the front of the building. He stated he observed the suspect jump into a white in color vehicle and start

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED			ARRESTED UNDER 18	EX-CLEAR UNDER 18
☐ YES ☑ NO	☐ YES ☑ NO	☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	02/19/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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SUPPLEMENTARY REPORT

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☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

NARRATIVE

driving toward him. He stated the suspect then observed him, and took off across the parking lot toward Ollie's.

While at the incident location a concerned citizen came by the incident location to give police information. He stated he was on Haltiwanger Road and observed a small white 4-door vehicle driven by one person that almost ran him off the road. He stated the vehicle drove through the parking lot of the Nu-Way at Haltiwanger and Northside Drive, headed west on Northside Drive. We then received information from Johnny McAlla at Ballentine Ford. He advised he observed the picture of the vehicle, and the suspect on the media. He stated they had just sold a vehicle similar to the one police were looking for two months ago, and the guy did not have a license. He stated the guy appeared to be suspicious during the sale. He provided us with the information, and stated it was Thomas Allen Smith who resides at [redacted]. We then learned that was the direction the suspect was headed from Haltiwanger. We then located the residence, and spoke with a neighbor who lives to the right of the residence. She stated around 1430 hours she observed the neighbor leaving the residence in a white 4-door vehicle around 1430 hours. After obtaining all of this information we obtained a search warrant on the house, and she garage on the right side of the residence. The SWAT team then gained entry into the residence, finding no one inside. We then made entry into the garage and observed the vehicle matching the description of the suspect vehicle. We observed the tag to be off the vehicle and a piece of white in color cardboard over the Ballentine Dealership emblem. We also observed where it appeared things were burned in a grill behind the residence. The vehicle and several other items were taken from the residence, see return of seerch warrant to get a complete list.

We then learned he had someone he knew at [redacted]. We went to that location and spoke with Mr. Adams. He stated Thomas does work for him every now and then, since Thomas did not have a job. He stated he last saw Thomas earlier in the day in a white in color vehicle. He stated Thomas seemed agitated because the Department of Social Services took too long to him, when he was there. He stated Thomas came to his residence around 1100 hours the day of the incident. We also showed him a picture that was in the media and he stated it was Thomas Smith.

Another search warrant was conducted on February 19, 2016 to obtain the ashes from the grill, and search the residence during day time hours where there was sufficient lighting to attempt and locate other evidence of the crime. While at the residence, investigators observed clothing in the backyard. The clothing matched the description of what the suspect was wearing, and smelled of lighter fluid.

Also, during the search warrant we found paper work that contained phone numbers for his brothers who live in Michigan. I contacted each brother Jeffery Smith, Gary Smith, Robert Smith and Ernest Smith. All brothers stated they have not spoken to Thomas in several months. They learned from the news and from family he was wanted for a Bank Robbery. They stated they all had a fallen out with him because he was suppose to take care of their family estate and all were suppose to get some money from the deaths of their mother and father. The stated Thomas blew through all the money, and did not pay the taxes on the residence, after they sent him some money. They advised if they found out his whereabouts and showed up to their houses they would contact police immediately. Also note while speaking with Gary he stated he saw the picture in the media and identified the person in the media as his brother Thomas Smith.

Warrants were obtained for Armed Robbery, Conveying a Bomb Threat.

See other investigators supplementals.

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SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED | ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	02/19/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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NARRATIVE

Supplemental completed by M. Dixon (1359) 2-19-2016

On today's date city detectives received information that the suspect could possibly be in the area of the Ideal Motel located on Hwy 221. Det kay spoke with the owner of the motel and asked to see the list of subjects staying currently and from the night before. We did locate the card filled out by Thomas Allen Smith (photographs of the card were taken). The manager stated that she said the subject was a white male but was unsure of any details. She advised that the information on the card was info that the subject got off of his DL. They advised that the subject stayed in room 110 that was currently occupied by someone else. They said that he was dropped off by someone but was unsure of who and that he paid with cash. We did check all the 20$ bills that the hotel with none of the bait money being located. They also advised that he came and asked for the cab companies number and that he could have possibly gotten a ride with them. Det Moore contacted Southside Cab who advised that they had no fares during the night to that locating or near that location. Later on in the evening Det Moore and I went to numerous hotels in Greenwood with negative results in locating Smith.

Investigation to continue...

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED | ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
DIXON, M	02/22/2016	1359			
			FOLLOW - UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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NARRATIVE

On 2-20-2016, Detective McClinton received information from an anonymous caller whom stated that they wished to pass along information about the bank robbery that occurred on 2-17-2016 at the South State Bank. Detective McClinton, Agent Lovett and Agent Brooks did make contact with the anonymous caller and agreed to meet with the caller in the New Spring Church parking lot. Upon arrival, the complainant advised that they had observed a subject whom they believed to be the suspect from the bank robbery in the Lil'Cricket (1208 Bypass 72 NE) convenience store; around approximately 2300hrs.

The complainant stated that the white male subject walked into the store wearing a dark colored jacket and a stocking cap. The complainant stated that while inside the store, the subject continuously attempted to conceal his face by pulling his jacket up. The complainant stated that they remembered the suspects photograph from the newspaper and believed it to be him. The complainant stated that the subject purchased a "Mad Dog 20/20" alcoholic beverage and left the store. The complainant stated that they observed the subject walk across the bypass, in the direction of America's Best Value Motel.

Detective McClinton, Agent Lovett and Agent Brooks then went to the above mentioned Lil'Cricket in order to view the surveillance footage from the time frame given by the complainant. While viewing the footage, Detective McClinton, Agent Lovett and Agent Brooks did observe the subject that the complainant described. The subject was observed acting extremely suspicious and never would look towards the camera or pick his head up completely. The subject was observed wearing a black in color jacket, black pants, dark colored shoes and a gray stocking hat.

When the subject approached the counter to purchase the alcohol, the subject was observed to have a gray in color goatee that matches that of the suspect from the bank robbery. Even after paying for the alcohol, the subject is observed using his hand in an attempt to conceal his face. Detective McClinton, Agent Lovett, Agent Brooks, Agent Cox and Agent Burden then went to America's Best Value Motel and made contact with the employee at the front desk. A photograph of the suspect was shown to the employee. The employee stated that the subject looked familiar and she believed him to be staying in room 213 at her motel. The employee advised that the subject's name was "Jeffrey Johnson" and his information sheet showed he had an address of [redacted], Greenwood SC.

Multiple attempts to make contact with the subject in room 213 were made with negative results. A male voice could be heard inside of the room stating that his name was Jeffery Johnson, but the subject refused to come to the door to verify his identity. Agent Lovett then made contact with a subject whom claimed to be Jeffrey Johnson via telephone number [redacted]-0332. When asked, Jeffrey Johnson advised Agent Lovett that he was not at the motel; but was a friend's house in Greenwood, SC. Johnson was asked why someone would use his identity and advised that he was approached by a white male subject on 2-20-2016 at the "Stop-A-Minit" (1205 Bypass 72 NE).

Johnson stated that the white male subject advised he was homeless and would pay Johnson in US currency if he would check him into a motel room; under Johnson's name. Johnson was shown a photograph of the suspect and Johnson advised that the subject in the photograph looked very similar to the subject he rented the room for. Several more attempts were made to get the subject in room 213 to come to the door, but to no avail. The subject inside room 213 stated "I'm Jeffrey Johnson and I've done nothing wrong".

Based on the above information, a Search Warrant was obtained for room 213 at the America's Best Value motel. Lt. Sean Williams with GCSO was contacted and did request the SWAT team to respond to the motel. After the arrival of the SWAT team, several more attempts were made to have the subject exit the room; but to no avail. The SWAT team did make entry into the hotel room via the room's glass window. Once inside, Thomas Allen Smith was located lying on the bed furtherest from the door. Smith was lying on the bed nude and began shouting that his rights were being violated and that he'd done nothing wrong.

Smith was advised that he was being placed under arrest for Armed Robbery. Smith was handcuffed behind his back; the

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SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
McCLINTON, W	02/22/2016	1458			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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cuffs were double locked an checked for fit. Smith was then assisted with a pair of pants, a shirt and shoes in order to be led from the hotel room. Smith was then placed into the rear of MP Thompson's patrol vehicle and transported to GCDC without incident. The rear of MP Thompson's patrol vehicle was checked for contraband pre and post arrest with negative results.

A search of room 213 was then conducted and the following items were located:

-Gray in color stocking cap found in bathroom
-Mulit colored glass smoking pipe found in tank of toilet
-Black in color jean pants found on floor in hotel room
-Tan in color knit shirt found on bed where suspect was located
-Black in color cell phone & white in color cell phone battery located between wall and bed that suspect was on
-"Mad Dog 20/20" Orange Jubilee bottle located on floor between beds
-SCDL for Thomas Allen Smith located underneath edge of TV stand/dresser
-Dominoes Pizza menu with two phone numbers, located on night stand in between beds
-Brown in color wallet with identity cards belonging to Thomas Allen Smith
-Cash Money found in brown wallet: $20.00 bill (SN:ME21172446A), 3x $1.00 bills (SN:F16625227P) (SN:B32223116F) (SN:L39927024Q), 2x $100.00 bills (SN:LE82270032B) (SN:

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SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
McCLINTON, W	02/22/2016	1458			
			FOLLOW-UP INVESTIGATION ☑ YES ☐ NO — OFFICER MOORE, B	2/18/2016	

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Detective Adams and I responded to this call and patrolled the area looking for the suspect. He had negative results locating the suspect or his vehicle.

While on scene Captain Butler brought Andre Holmes to Detective Adams and asked Adams to interview him. Adams spoke with Holmes and Holmes told him that he was at the window of Badcock and noticed the suspect run from the bank. He said that when he seen him running toward the back of Badcock that he ran to the back of the building and seen the suspect get into a white vehicle that was parked in the NewSpring parking lot next to the Badcock sign. When asked Mr. Holmes stated that he thought the vehicle was a Volvo.

We later spoke with Deputy Hood who stated that he thought he passed the suspect vehicle while turning on to Sample Rd. He then showed us the video from his in car video and he had Mr. Holmes look at the vehicle and he said that it was the vehicle that the suspect got into and left. The vehicle on the video was a Volkswagen.

Later in the I received information from Tony Gary that someone had called him and told him that they were at the New Way on Northside Drive when the suspect vehicle came through the parking lot. City Detectives responded to the New way to look at the video. When we walked into the store we spoke with the employee ********** and she stated that she had seen the pictures of the suspect on Facebook and that she thought that the suspect had just been inside the store. She said that she thought the persons name was Jose McDaniel. She told me to do to the liquor store and speak with the employee there.

I went to the Liquor store and spoke with Angie Nickels who stated that she had seen the picture of the suspect and that she thought that the suspect was Jose McDaniel.

We later determined that McDaniel was not the suspect.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
KAY, W	02/22/2016	1353			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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NARRATIVE

On February 18, 2016 I was contacted via telephone by Capt. McAllister after a called had been dispatched to patrol units of an armed robbery at the incident location. Capt. McAllister requested that I respond an assist with processing the scene by collecting potential touch DNA from the counter area that the suspect had leaned over. Upon arrival I was directed to the last teller station to the left when entering the front door. I did swab the entire counter area using four different trace DNA swabs, which were placed into separate swab drying boxes. I was then advised by Detective McClinton that the suspect had entered the bank through the front doors and according to surveillance video he was not wearing any gloves on his hands. I did process the front doors and was able to develop and lift a partial palm print on the right interior side of the front door, as well as several other partial latent prints. I did process the exterior side of the front door and was able to develop and lift a partial print on the left side exterior door. Nothing else of evidential value was located in or around the area at this time.

All items collected were placed into evidence according to policy.

At approximately 1900hrs on February 18, 2016 I was once again contacted via telephone in reference to assisting with processing the vehicle believed to have been used in this incident. I then responded to [redacted] and observed several detectives on scene with a search warrant for the residence and vehicle, which was located in an unattached garage. I did photograph several items inside the residence, which were later collected by detectives, as well as the vehicle. After a search of the vehicle I did collect a blue in color fleece type jacket, which was found to have a set of keys for the vehicle and a pair of gardening type gloves in the pocket. Several other items/documents were collected from the vehicle by detectives. I did also swab a hotel key card using a trace DNA swab, which I was advised had been located in the yard of the residence upon search of the residence and surrounding area.

Mikes wrecker was then contacted by Capt. McAllister to tow the vehicle from the residence and I did follow them to the Impound Lot, where the vehicle was secured inside the impound lot.

All evidence collected by me was then placed into evidence according to policy.
Photos of vehicle were attached to original incident report.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
GRIFFIN, K	02/22/2016	1200			
			FOLLOW - UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

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PAGE 1 OF 1 PAGES

NARRATIVE

On August 8, 2016 I (Det. Moore) received a phone call from a female who wanted to remain anonymous, but called from telephone number [redacted]-6566. She stated she was looking at the media at observed a picture of the suspect we put on the news that robbed a bank in February, and she stated the person we have in custody (Thomas Allen Smith) does not look like the person in the video footage. I advised her there was evidence that pointed to Smith and he is the one who robbed the bank. She stated she the person that robbed the bank was Martin Gonzalez and provided a picture of him to Fox Carolina who in turn sent it to Capt. McAlister. She also advised Gonzalez has the overalls that matched the ones in the picture. I advised the female we have the clothes that was worn during the robbery. She stated she understood and needed no further assistance.

Case remains cleared by arrest.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MOORE, B	08/08/2016	1419			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

15

AGENCY I.D. SC0240100

SUPPLEMENTARY REPORT

CASE NUMBER: 16003432 | NCIC INQ. | NCIC ENTD.

☐ ORIGINAL REPORT ☑ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

NARRATIVE

On 01/03/2017 Officers were given information that a Martin Vera Gonzales was the person who robbed the South State Bank. The information was an anonymous tip. Detectives had no reason to suspect Gonzales, especially in light of the overwhelming evidence against Smith who was arrested for this crime in 2016. RO, Capt. McAllister followed up on this leads anyway.

On 01/06/17 Capt. McAllister went to Las Cascadas in Ninety-Six, SC. Gonzales was located working at the restaurant. Upon seeing Gonzales, RO notice immediately that Gonzales did not match the physical description of the bank robber in height, weight nor looks. RO did speak with Gonzales. He was asked if he had robbed the South State Bank. He stated absolutely not. I then asked him if he had any idea who might have called this tip in. He paused and with an unexcited or unsurprised expression said, "my ex-wife." I informed him that I did not know who had called the tip in. He then showed RO facebook post from his ex-wife: Jessica Nation Castillo. These post were posted shortly after a hearing in which she lost custody of their children. He stated that they are going through a very nasty custody battle over their children and she is unhappy about the current results. He stated that they are scheduled for a hearing in February on 2017 and this is why he believes that she is attempting to cause him trouble. RO can find no evidence that even placed Gonzales in Greenwood on the date of the incident. He does not match the description nor does he look like the subject in the surveillance video. This lead is exhausted.

I later spoke with both Tom Austin (Attorney for Gonzales) and Andrew Hodges who both advised me that they were confident that this "tip" was called in an attempt to hurt/punish Gonzales.

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED					
☐ YES ☑ NO	☐ YES ☑ NO	☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MCALLISTER, M	01/09/2017	1165			
			FOLLOW-UP INVESTIGATION OFFICER MOORE, B ☑ YES ☐ NO	2/18/2016	

16

Search Warrant Residence.

1st Search Warrant

COPY

COPY

STATE OF SOUTH CAROLINA

County of Greenwood

[redacted]

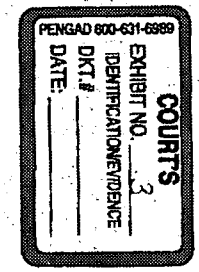
SEARCH WARRANT

407 E. Northside Drive

Date 2-18-2016

Officer Michael Dixon

2/18/2016 6:09:00 PM



490

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

AFFIDAVIT

Personally appeared before me, one MICHAEL DIXON who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Blue jean overalls, dark hoodie, sunglasses, a four door volkswagon white in color believed to be used in the commision of this crime, the note, US Currency, bank bag

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

[redacted] located within Greenwood County. The house is white in color residence with green shutters on the windows. There are two windows to the left of the front door and several windows to the right of the door. The front entrance way is covered with an awning. To the right side of the house there is a driveway leading to a separate garage also white in color. there is also an entrance to the house on the right side of the residence. Also to be included are any vehicles located on the curtilidge of the property.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 2-18-2016 an Armed Robbery occurred at the South State Bank located at (1224 Bypass 72 NE). A male subject entered wearing blue overalls with a dark colored hoodie/ shirt underneath. The male was also wearing sunglasses, he approached the teller in the bank and handed her a note that he had a bomb and that she was to give him all the money. The teller at the bank did what she was told and gave the suspect what money she had to him at which time he put the money in a blue bank bag that he brought along with him. Once that was completed the suspect took back the note he had passed and left the bank. He fled on foot and got in to a white in color vehicle and fled the scene. Approx 4 hours after the incident occurred a tip was called in that the subject had recently purchased the vehicle used in the armed robbery from the ford dealership. The name of Thomas Allen Smith was the customer who bought the vehicle. We learned of his address at [redacted] and law enforcement set up in the areas around the residence. A neighbor verified that she saw Smith leaving in a white vehicle around the time of the incident. It is this Officers belief that Smith along with evidence crucial to the prosecution of this case will be found within the residence, garage, and vehicle.

Sworn to and Subscribed before me
This 18 day of Feburary , 20 16

Signature of Judge (L.S.)

2/18/2016 6:09:00 PM

AFFIANT

ADDRESS: 528 Edgefield St
GREENWOOD, SOUTH CAROLINA 29649

PHONE: 864-942-8407

2

STATE OF SOUTH CAROLINA }
COUNTY OF Greenwood } SEARCH WARRANT

S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Greenwood

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

[redacted] located within Greenwood County. The house is white in color residence with green shutters on the windows. There are two windows to the left of the front door and several windows to the right of the door. The front entrance way is covered with an awning.. To the right side of the house there is a driveway leading to a separate garage also white in color. there is also an entrance to the house on the right side of the residence. Also to be included are any vehicles located on the curtilidge of the property.

COPY

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Blue jean overalls, dark hoodie, sunglasses, a four door volkswagon white in color believed to be used in the commision of this crime, the note, US Currency, bank bag

COPY

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to C. Ryan Johnson within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

GREENWOOD, S.C.

Feburary 18, 20 2016

Signature of Judge (L.S.)

SCCA/513
(3-78)

2/18/2016 6:09:00 PM

3

RETURN

I received the attached Search Warrant Feb 18, 20 16, and have executed it as follows:

On Feb 18, 20 16 at 7:03 o'clock P M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Residence
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

COPY

1. Baymont room key Found in Book bag
2. White in Color Volkswagen Passat Vin WVWAA73CX6E052597
3. Bills Receipt Dated 2-17-2016 Found in Vehicle
4. Light Blue Address Book Located in Vehicle
5.

COPY COPY

This inventory was made in the presence of

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of , 20

(L.S)
Signature of Judge

(Signature of Officer Executing Warrant)

2/18/2016 6:09:00 PM

STATE OF SOUTH CAROLINA

County of Greenwood

[redacted]

SEARCH WARRANT

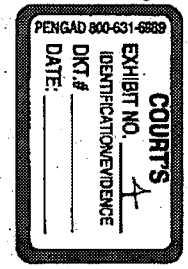
Search Warrant for Residence.

2nd Search Warrant

Date 2-19-2016

Officer Matthew Blackwell

2/19/2016 9:44:00 AM



494

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

AFFIDAVIT

Personally appeared before me, one _____ who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Blue jean overalls, dark hoodie, sunglasses, a four door volkswagon white in color believed to be used in the commision of this crime, the note, US Currency, bank bag

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

[redacted] located within Greenwood County. The house is white in color residence with green shutters on the windows. There are two windows to the left of the front door and several windows to the right of the door. The front entrance way is covered with an awning.. To the right side of the house there is a driveway leading to a separate garage also white in color. there is also an entrance to the house on the right side of the residence. Also to be included are any vehicles located on the curtilidge of the property.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 2-18-2016 an Armed Robbery occurred at the South State Bank located at (1224 Bypass 72 NE). A male subject entered wearing blue overalls with a dark colored hoodie/ shirt underneath. The male was also wearing sunglasses. he approached the teller in the bank and handed her a note that he had a bomb and that she was to give him all the money. The teller at the bank did what she was told and gave the suspect what money she had to him at which time he put the money in a blue bank bag that he brought along with him. Once that was completed the suspect took back the note he had passed and left the bank. He fled on foot and got in to a white in color vehicle and fled the scene. Approx 4 hours after the incidnet occurred a tip was called in that she subject had recently purchased the vehicle used in the armed robbery from the ford dealership. The name of Thomas Allen Smith was the customer who bought the vehicle. We learned of his address at [redacted], and law enforcement set up in the areas aroud the residence. A neighbor verified that she saw Smith leaving in a white vehicle around the time of the incident. It is this officers belief that Smith along with evidence crucial to the prosecution of this case will be found within the residence, garage, and vehicle.

Sworn to and Subscribed before me
This 19 day of Feburary , 20 16

Lesa Hatchl
Signature of Judge (L.S.)

AFFIANT

ADDRESS: 528 Edgefield St
GREENWOOD, SOUTH CAROLINA 29649

PHONE: 864-942-8407

2/19/2016 9:44:00 AM

2

COUNTY OF Greenwood

SEARCH WARRANT

Section 17-13-160.
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Greenwood

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

[redacted] located within Greenwood County. The house is white in color residence with green shutters on the windows. There are two windows to the left of the front door and several windows to the right of the door. The front entrance way is covered with an awning.. To the right side of the house there is a driveway leading to a separate garage also white in color, there is also an entrance to the house on the right side of the residence. Also to be included are any vehicles located on the curtilidge of the property.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Blue jean overalls, dark hoodie, sunglasses, a four door volkswagon white in color believed to be used in the commision of this crime, the note, US Currency, bank bag

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

GREENWOOD, S.C.

Foburary 19, 20 2016

Signature of Judge (L.S.)

SCCA/513
(3-78)

2/19/2016 9:44:00 AM

3

RETURN

I received the attached Search Warrant 2-19, 20 16, and have executed it as follows:

On 2-19, 20 16 at 10:30 o'clock 10:30 AM, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Residence

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

① Grey vest
② Black hoodie
③ Liberty Overalls
④ Sunglasses
⑤ Dupont East drying Enamel Can
⑥ Contents of water still
⑦ Papers yellow with name (inhouse) on clipboard "Carol", "Lila" - Card left from photographed
⑧ Card from (inside house) w/ telephone numbers
⑨ Photo of suspect & Red/Brg. Dodge truck

This inventory was made in the presence of Matt Emery

AND William K

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____

day of _____, 20 _____

_____ (L.S)
Signature of Judge

_____
(Signature of Officer Executing Warrant)

2/19/2016 9:44:00 AM

WITNESSES

Mike Dixon

Greenwood Police Department

WARRANT NUMBER

2016A2420100144

True Bill

Foreman of the Grand Jury

Date: 6-10-16

VERDICT

Foreman

Guilty

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2016

Indictment # 16GS24- 0795

THE STATE

vs.

Thomas Allen Smith

INDICTMENT FOR

ARMED ROBBERY
§ 16-11-0330

CDR: 0139

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

498

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

ARMED ROBBERY
§ 16-11-0330

At a Court of General Sessions, convened on the 10th day of June, 2016, the Grand Jurors of Greenwood County present upon their oath:

That Thomas Allen Smith, on or about February 18, 2016, in Greenwood County, willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Gail Sinclair by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner, South State Bank, Inc., permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

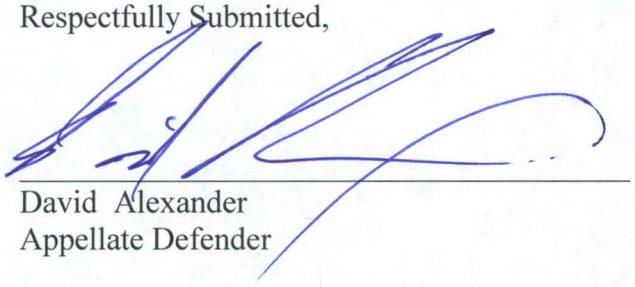
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Deputy Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of April, 2019.

RECEIVED
APR 01 2019
SC Court of Appeals