

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
JUN 04 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DEMARCUS L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2017-002624

\_\_\_\_\_  
RECORD ON APPEAL  
\_\_\_\_\_

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State of South Carolina  
County of Saluda

Court of General Sessions

State )  
 )  
 )  
 v. )  
 )  
 Demarcus L. Robinson )  
 )  
 Defendant. )

Transcript of Record  
16-GS-41-310  
16-GS-41-311  
16-GS-41-312

November 6 - 8, 2017  
Saluda, South Carolina

B E F O R E:

The Honorable Robert E. Hood, Judge; and a jury.

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Official Court Reporter

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E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-1	Video	154	154
4	S-2	Photograph	158	159
5	S-3	Photograph	158	207
6	S-4	Photograph	158	207
7	S-5	Photograph	158	207
8	S-6	Photograph	158	207
9	S-7	Photograph	158	207
10	S-8	Photograph	158	207
11	S-9	Photograph	158	207
12	S-10	Photograph	158	207
13	S-11	Photograph	158	207
14	S-12	Photograph	225	231
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16	S-14	Photograph	225	231
17	S-15	Photograph	225	231
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23		Rounds		
24	S-21	Newport 100 Cigarettes and	258	259
25		Garcia y Vega Cigar		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-22	Men's Gray Underwear	261	266
4	S-23	U.S. Currency	264	266
5	S-24	U.S. Currency	264	266
6	S-25	U.S. Currency	264	266
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NO.

DESCRIPTION

ID.

EVD.

S-45

Photograph

297

301

1                   (The following proceedings were held on  
2                   November 6, 2017.)

3                   **THE COURT:** All right. We're on the record in  
4                   2016-GS-41-3 -- what are the indictment numbers?  
5                   The numbers that are on here say that he has 11  
6                   charges, but I think he only has three.

7                   **MR. FENDER:** Judge, I've got him on  
8                   2016-GS-41-312 for possession of a firearm during a  
9                   violent crime. I've got him on 2016-GS-41-310 for  
10                  kidnapping and 2016-GS-41-311 for armed robbery.

11                  **THE COURT:** Okay. And you are Demarcus  
12                  Robinson; is that right?

13                  **DEFENDANT:** Yes, Your Honor.

14                  **THE COURT:** Okay. And Ms. Zmroczek's your  
15                  attorney; is that right?

16                  **DEFENDANT:** Yes, sir.

17                  **THE COURT:** Okay. All right. And there were  
18                  some pretrial matters we need to take up,  
19                  Ms. Zmroczek?

20                  **MS. ZMROCZEK:** That's correct, Your Honor.

21                  **THE COURT:** All right. You have the floor.

22                  **MS. ZMROCZEK:** Thank you.

23                  Your Honor, so the major thing that I have  
24                  filed in this case was a motion to compel. And by  
25                  way of background, this case was not originally

1 assigned to Mr. Fender. On March 8th of 2017, I  
2 sent a letter detailing the items of discovery that  
3 I was -- that I had been requesting. He has two  
4 separate cases. He has a felony DUI, which that's  
5 not why we're here today.

6 Correct?

7 **MR. FENDER:** Here on the armed robbery.

8 **MS. ZMROCZEK:** Yeah, we're here on that. And  
9 they just have provided me stuff on that. So this  
10 is all on the case that's on the trial docket for  
11 this week, which is armed robbery, kidnapping and  
12 possession of a weapon.

13 **THE COURT:** Is that one incident?

14 **MR. FENDER:** That's correct, Judge.

15 **THE COURT:** Okay.

16 **MS. ZMROCZEK:** And so, on March 8th of 2017, I  
17 sent a letter to both Mr. Fender and Mr. Maye,  
18 because Mr. Fender had the felony DUI and Mr. Maye  
19 had this case. Mr. Fender was the only one who  
20 responded, and he responded that he didn't have  
21 anything to do with the armed robbery case, but he  
22 would get me what he could on the felony DUI.

23 Some months go by, Your Honor, and there is  
24 some communication, and I still don't have what I  
25 was looking for. And then there was a change in the

1 guard with the assistant solicitor of going, and I  
2 understand that this case kind of got moved to  
3 Mr. Fender.

4 And so on July 25th -- or, actually, it was  
5 technically filed July 28th. It was e-mailed on  
6 July 25th. I sent all of these motions because time  
7 was just going and going and going. And one of the  
8 things that I know is not in the Court or the  
9 solicitor's control is that there are only so many  
10 terms of court in Saluda. We were attempting to try  
11 to have these things heard out of county but still  
12 within the circuit, and our schedules, being as they  
13 were, could never line up.

14 But even as of the date of today, Your Honor,  
15 with regard to the motion to compel, I was handed  
16 some of the evidence this morning. And this is  
17 what's concerning, Your Honor, and I know that I  
18 argue this in every county, so you're not new to  
19 this argument, but I've been asking for the bench  
20 notes from SLED, and Mr. Fender handed them to me  
21 this morning. And I understand that he may have  
22 just got them this morning, but the date on these  
23 pages is May 26, 2017. So, again, I don't know why  
24 I'm getting them the morning right before we're  
25 supposed to go to trial. That being said, I can

1 cross that off the list.

2 I do have copies of the 9-1-1 call, so over the  
3 last couple of weeks they have been provided to me.  
4 In August -- August 17th of this year, so just a few  
5 months ago, they did provide me a big portion of  
6 discovery, but there are still some things that are  
7 missing.

8 They indicate to me on 3A5 that there are no  
9 body cameras. And as long as they put that on the  
10 record, that'll be a different pretrial motion once  
11 they can confirm that.

12 I still don't have the color lineups where the  
13 two people were selected. They tell me that there  
14 are no in-car cameras.

15 I don't have any of the K-9 information. And,  
16 Your Honor, this is extremely important. When I say  
17 K-9 information, what I'm looking for are the  
18 training records, the proficiency testing. And  
19 there's a very -- I just got in the August  
20 supplement. There's a very detailed kind of  
21 supplemental incident report from the Saluda County  
22 Sheriff's Department that talks about how Deputy  
23 Hicks and Lieutenant Padgett started to track with  
24 Deputy Hallman's K-9, Copper. And they detail where  
25 they go. It's written down.

1           But what I don't have, Your Honor, are any of  
2 the proficiencies. What -- if they were -- they say  
3 they stopped at a fence, but they don't indicate  
4 whether the dog indicated that there was something.  
5 I just need the information with the K-9 because it  
6 seems to be something that they're heavily relying  
7 on. So that was 3A8.

8           They tell me that I have all of the statements  
9 and officer notes. As long as they put that on the  
10 record, then we can deal with that later.

11           3A10, the Circle K loss report and claims. So  
12 -- I know Your Honor just heard about an armed  
13 robbery at a Circle K. This is actually the same  
14 Circle K. This incident happened August 1st of  
15 2016, so a few months after the one that you just  
16 pled, but they're not related, to my knowledge. But  
17 I've asked for the loss report.

18           There was some money that was collected  
19 outside. Just -- the evening of November 2nd, I  
20 received an e-mail from Mr. Fender with some  
21 pictures that were taken, I'm assuming, by Saluda  
22 County. They never said who they were taken by.  
23 But there's some money on the ground, and then  
24 there's some money in another place that's found.  
25 What I'm looking for is what the total loss that was

1 claimed.

2 All SLED crime -- I have 11.

3 12, I do have the inside videos. There are  
4 three cameras that are positioned outside of this  
5 Circle K. I have been continuously asking for the  
6 outside videos and have not received the outside  
7 videos of 3A12.

8 I did receive a property list recently. I do  
9 not have a chain of custody. I don't have a copy of  
10 the chain.

11 I do have 15. I do have 16. I do have 17 and  
12 18. Those were recently provided.

13 And, Your Honor, when I sent out these initial  
14 discovery requests, obviously all of this was  
15 encompassed. I sent out, pursuant to the rules,  
16 letters requesting these specific items. I even  
17 sent copies of Kyles v. Whitley and the other  
18 applicable case law.

19 Your Honor, I still have also not received any  
20 Giglio material regarding officer -- or, I guess,  
21 Sergeant or Captain or Chief Raffield at the time,  
22 and I know that there's -- some exist, Your Honor,  
23 and as well as any other officers that were  
24 involved. And the reason I know that something  
25 exists is because he was previously employed in

1       Edgefield and was terminated there, so I know that  
2       there's at least something in his file that may have  
3       to do with -- that goes to his credibility.

4               So, Your Honor, those were the things that I --  
5       the things that I outlined are the things that I'm  
6       still specifically missing. I don't know how I'm  
7       supposed to go to trial tomorrow when I've been  
8       requesting and requesting and requesting these  
9       items. If they can provide them to me this week, I  
10      think I can go to trial next week.

11              The problem is is, as I keep telling them, I  
12      need it. And I've been telling them this not just  
13      recently, but I filed these back in July, and this  
14      is the first opportunity that we've had to have this  
15      heard.

16              **THE COURT:** All right. Mr. Fender.

17              **MR. FENDER:** May it please the Court, Your  
18      Honor. If I may, I'm just going to try to respond  
19      to each of these allegations.

20              **THE COURT:** First thing she said she's missing  
21      are the color photo lineups.

22              **MR. FENDER:** Judge, I've got a e-mail where  
23      they were sent to her on October the 24th, 2017.  
24      Again, they were previously sent in black and white.  
25      I've got an e-mail showing that they had been sent

1 in color.

2 **MS. ZMROCZEK:** I've printed out all the  
3 e-mails, Your Honor, so I can hand it up -- I can  
4 show them what I have.

5 (Pause.)

6 **MR. FENDER:** Judge -- and, again, Judge, we  
7 take the position that these were turned over. This  
8 lineup is actually not in any relationship to this  
9 defendant. It was a co-defendant that was ID'd in  
10 the lineup.

11 And, Judge --

12 **THE COURT:** Hold on. Stay on one thing at a  
13 time.

14 He says he sent them to you via e-mail. Did  
15 you get them or not?

16 **MS. ZMROCZEK:** I did not. And also, Your  
17 Honor, it says --

18 **THE COURT:** So this is impossible. What y'all  
19 are saying is impossible, either they weren't sent  
20 or they were sent and you received them and you're  
21 still talking about them; which one is it?

22 **MS. ZMROCZEK:** I received the co-defendant. I  
23 have not received the one of the defendant.

24 **THE COURT:** Is there one on the defendant?

25 **MR. FENDER:** There was not a lineup done on the

1 defendant, Judge.

2 **MS. ZMROCZEK:** Okay. And if that's their  
3 position, then I'll deal with that in the trial.

4 **THE COURT:** Okay. Color photo lineups dealt  
5 with.

6 K-9 records of the dog named Copper.

7 **MR. FENDER:** Judge, there's no K-9 records on  
8 this dog that's been provided to us. I don't think  
9 there is.

10 **THE COURT:** What does the dog do in the case?

11 **MR. FENDER:** Judge, if I may, can we allow law  
12 enforcement to expand upon that?

13 **THE COURT:** Yeah. Sure. Somebody just tell  
14 me.

15 You swear everything you're about to tell me is  
16 the truth?

17 **CORPORAL RAFFIELD:** I do, Your Honor.

18 **THE COURT:** Okay. Tell me what the dog does in  
19 the case.

20 **CORPORAL RAFFIELD:** Your Honor, the dog  
21 basically catches a last scent from the point where  
22 the money is located in the front of the business.  
23 It tracks around the same side of the building that  
24 the witness told them the defendant ran. It  
25 continues down the sidewalk for about probably 40

1 yards, comes across some more money in the front  
2 yard, tracks around the corner of the house, comes  
3 across a black-in-color T-shirt, goes over a fence  
4 into the woods, an animal of some type jumped up  
5 which startled the dog, and that was the end of it.  
6 The dog could not get back on track.

7 **THE COURT:** So did the dog ever find anybody?

8 **CORPORAL RAFFIELD:** It did not, Your Honor.

9 **MR. FENDER:** Judge, it did find a trail of  
10 money. And it is of probative value to the State,  
11 but it's not, you know, per se a K-9 tracking dog  
12 in, like, that kind of traditional sense. You know,  
13 if it facilitates the trial, I mean, we're fine  
14 going without that because we do have independent,  
15 you know, ways to get from point A to point B.

16 **THE COURT:** How does that dog affect your  
17 client?

18 **MS. ZMROCZEK:** Well, Your Honor, because the  
19 track that it follows is going away from my client's  
20 house. The T-shirt that is found does not come back  
21 with any DNA. In fact, my client is excluded from  
22 that, so --

23 **THE COURT:** So what's the issue?

24 **MS. ZMROCZEK:** It's potential exculpatory  
25 evidence, Your Honor, that I should have access to.

1           **THE COURT:** What are you talking about?

2           **MS. ZMROCZEK:** I'm talking about a dog tracking  
3 whoever robbed this convenience store and it not  
4 coming back to my client.

5           **THE COURT:** Okay. I would consider that to be  
6 beneficial to your client.

7           **MS. ZMROCZEK:** Right.

8           **THE COURT:** So if they don't have any records  
9 to establish the history of the dog, then under  
10 State versus White, even if you tried to present  
11 that, it would be inadmissible.

12          **MS. ZMROCZEK:** Right.

13          **THE COURT:** So that would hurt your client.

14          **MS. ZMROCZEK:** Right, but --

15          **THE COURT:** So I don't know why we're going  
16 down this rabbit trail.

17          **MS. ZMROCZEK:** If it's their position that this  
18 is not a tracking dog and they're not going to  
19 mention it, then we won't -- then we will waive that  
20 issue.

21          **THE COURT:** All right. Next is the loss  
22 report, total loss. What about that?

23          **MR. FENDER:** Judge, there's not a loss report.  
24 I believe that's been previously articulated.

25                 And I would further provide, Judge, I've

1 attempted to be in contact with Ms. Zmroczek's  
2 office. And I've got an e-mail, again, from, you  
3 know, October 27th, a couple weeks before this  
4 trial, just kind of articulating everything that's  
5 been turned over and also offering to meet with  
6 Ms. Zmroczek so that she can review my file, as well  
7 as meet with law enforcement to review the physical  
8 evidence. None of those phone calls were returned.  
9 None of these e-mails were returned.

10 Judge, here we are the morning of the trial --

11 **THE COURT:** I'm not fussing at you, Mr. Fender.  
12 You'll will know when I'm fussing at you. I'm not  
13 fussing at you. I'm just asking for an explanation.  
14 Okay?

15 Now, she says there's something about there's  
16 pictures of money; is that right?

17 **MR. FENDER:** That's correct, Judge.

18 **THE COURT:** And who took those pictures?

19 **MR. FENDER:** I believe it notes -- if you  
20 actually, you know, open the file, it says on each  
21 picture -- or at least as far as the file, which  
22 deputy took which picture.

23 **THE COURT:** What about it, Ms. Zmroczek?

24 **MS. ZMROCZEK:** Your Honor, if they can't give  
25 me a loss report, that's fine. We'll deal with it

1 during trial.

2 **THE COURT:** What about the pictures? He says  
3 the pictures are self-authenticating with who took  
4 them. You stood up and told me that I have pictures  
5 of money, but I don't know who took the pictures.

6 **MS. ZMROCZEK:** Correct.

7 **THE COURT:** He tells me that on the files  
8 themselves, they say who took the pictures.

9 **MS. ZMROCZEK:** Well, Your Honor, I will gladly  
10 meet with him afterwards, and he can show me on the  
11 picture where it says their name. I can do that.

12 **THE COURT:** Okay. What about the outside  
13 cameras? What exists with that, Mr. Fender?

14 **MR. FENDER:** Again, Judge, if law enforcement  
15 can briefly --

16 **THE COURT:** Go ahead.

17 **CORPORAL RAFFIELD:** Your Honor, I was very  
18 familiar with the system. I was responsible for  
19 security for the Town of Ridge Spring. And, at the  
20 time, their outside cameras were not operating. And  
21 I continued to assist them to get them fixed. They  
22 finally have.

23 **THE COURT:** All right. The outside cameras  
24 were not operating.

25 **MS. ZMROCZEK:** Thank you.

1           **THE COURT:** Okay. And what about chain of  
2 custody? What nonfungible items do you need a -- or  
3 what fungible items do you need a chain of custody  
4 on?

5           **MS. ZMROCZEK:** I believe there's a gun.

6           **THE COURT:** A gun is a nonfungible item. It's  
7 self-authenticating. What drug or DNA or swab or  
8 something that can be altered --

9           **MS. ZMROCZEK:** From the shirt, Your Honor.

10          **THE COURT:** The what?

11          **MS. ZMROCZEK:** The shirt.

12          **THE COURT:** Okay. And was there evidence  
13 collected from the shirt?

14          **MS. ZMROCZEK:** There was.

15          **THE COURT:** And what does that evidence show?

16          **MS. ZMROCZEK:** That it does not match my  
17 client.

18          **THE COURT:** Okay. So why do you need a chain  
19 of custody on that?

20          **MS. ZMROCZEK:** As long as they'll stipulate to  
21 it, Your Honor, then that's fine.

22          **THE COURT:** Do y'all agree that the shirt that  
23 was collected doesn't match her client?

24          **MR. FENDER:** Judge, we take some exception to  
25 the scientific finding there. It's my understanding

1 from SLED, and I don't want to testify for them,  
2 but --

3 **THE COURT:** I'm not asking you to testify, just  
4 tell me what the report says.

5 **MR. FENDER:** That basically they shut down the  
6 testing after they found multiple strands of DNA on  
7 the same garment.

8 **THE COURT:** Okay. All right. And so do you  
9 have a chain of custody on the shirt?

10 **MR. FENDER:** Judge, I believe they write,  
11 physically, on the piece of evidence, you know, in  
12 the evidence locker of Ridge Spring. And we  
13 provided opportunity for her to view that, which she  
14 didn't take advantage of.

15 **THE COURT:** Y'all write it on the Best Kit?

16 **CORPORAL RAFFIELD:** Your Honor, we had clear  
17 bags at the time with the labels of information. I  
18 filled all that out. The stuff that was sent to  
19 SLED, I did the chain of custody going to SLED.  
20 SLED does their own processing and sends it back to  
21 us.

22 **THE COURT:** All right. Do you have the SLED  
23 chain of custody?

24 **MR. FENDER:** Judge, I don't know that off the  
25 top of my head. I'm not contesting it. I don't

1 know if, you know, Ms. Zmroczek is wanting to talk  
2 about it or not wanting to talk about it.

3 **THE COURT:** Are you attempting to introduce the  
4 shirt?

5 **MR. FENDER:** I'm not.

6 **THE COURT:** Okay. Are you going to object to  
7 her introducing the shirt?

8 **MR. FENDER:** No objection.

9 **MS. ZMROCZEK:** Then that's settled, Your Honor.

10 **THE COURT:** And then the Giglio information  
11 about any of the officers.

12 **MR. FENDER:** Judge, before we address that  
13 issue, just for clarification on the shirt and the  
14 DNA, if we are going to go down that route, I would  
15 like the opportunity to have the chemist just kind  
16 of come and further explain, you know, as part of  
17 the State's case in chief, not entering the shirt  
18 itself, but having a chemist explain what was done  
19 in this case.

20 **MS. ZMROCZEK:** I won't have an objection.

21 **THE COURT:** Okay. All right. And what about  
22 the Giglio information?

23 **MR. EARGLE:** Your Honor, is there someone  
24 specific?

25 **THE COURT:** I have no clue. I don't know who

1 -- I know about two people in this room. I don't  
2 know anybody. I don't have any history with  
3 anybody. I don't have any dog in this fight.

4 What Mr. -- excuse me -- what Ms. Zmroczek is  
5 asking for is any Giglio information, which would be  
6 any, essentially -- I'm not quoting the case  
7 directly obviously; I'm just going off the general  
8 premise of what it stands for is -- if there's  
9 something in an officer's file or personnel record  
10 that would go towards his or her credibility, it has  
11 to be turned over. Have I succinctly stated that --

12 **MS. ZMROCZEK:** That's correct.

13 **THE COURT:** -- in a one-sentence explanation of  
14 a very lengthy U.S. Supreme Court case?

15 **MR. EARGLE:** We would be happy to get -- if  
16 she's referring, like, Deputy Raffield now who is  
17 the former chief of police for Ridge Spring, who at  
18 one time was a deputy for the Edgefield Sheriff's  
19 Office, I'll be happy to get whatever they have and  
20 bring it to you in a sealed envelope. We'd prefer  
21 you to look at it and make a judicial determination  
22 if there's anything in there that would be Giglio  
23 material.

24 **MS. ZMROCZEK:** I think that goes with any  
25 officer.

1           **THE COURT:** That's exactly how I would ask,  
2           yeah. That's exactly how I would prefer to do it.

3           **MR. EARGLE:** And you want that for each law  
4           enforcement officer?

5           **MS. ZMROCZEK:** Everyone that's going to  
6           testify.

7           **THE COURT:** Well, I mean, if it exists.

8           **MR. EARGLE:** If it exists, correct.

9           **THE COURT:** I mean -- yeah, if there's  
10          something in there that goes directly towards  
11          somebody's credibility, put it in a file, give it to  
12          me, and I can review it and then determine what, if  
13          any of it, is discoverable.

14          **MR. EARGLE:** Yes, sir.

15          **MS. ZMROCZEK:** And then lastly, Your Honor,  
16          they turned over a bunch of still photos -- going  
17          back to the SLED issue -- some still shots that were  
18          taken from the video, and then they also took some  
19          pictures of my client's various tattoos. I've seen  
20          no report. I don't know who at SLED isolated the  
21          videos. I don't know if they're intending on having  
22          somebody come and testify that they can make a match  
23          from tattoos to these pictures. And if so, I need  
24          that report, their CV and any information regarding  
25          that.

1           **THE COURT:** All right. Yes, sir.

2           **CORPORAL RAFFIELD:** Your Honor, Joe West with  
3 SLED, he is their guru for audio/visual. He's the  
4 one that prepared the video. I took the information  
5 to him. He did all the still photographs. And from  
6 what I understand, is that he's planning to come and  
7 testify.

8           **THE COURT:** Okay. Does he have a report?

9           **MR. FENDER:** Judge, we'd have to look at what  
10 was Bates Stamped, but I believe we turned over a  
11 receipt from SLED, but outside of that, it's my  
12 understanding there's no report from him.

13          **THE COURT:** Okay.

14          **MS. ZMROCZEK:** I would say if they attempt to  
15 proffer him as an expert or to give an opinion of  
16 some sort, I think I'm entitled to know what that  
17 opinion is before the trial starts.

18          **THE COURT:** Yes, she is.

19          **MR. FENDER:** Judge, I don't think we intend to  
20 offer him as an expert. You know, it's our  
21 contention, you know, we would be laying the  
22 foundation for these matters by asking people who  
23 were there, law enforcement, the victim, does this  
24 fairly and accurately depict? You know, SLED is  
25 more --

1           **THE COURT:** So, hold on. Do you plan on Joe  
2 West testifying as an expert that the tattoos match?

3           **MR. FENDER:** That's a jury question.

4           **THE COURT:** Yeah. You don't plan on offering  
5 him as an expert in matching tattoos, right?

6           **MR. FENDER:** Right.

7           **THE COURT:** You plan on showing the pictures  
8 and then letting the jury determine whether or not  
9 they match or not, right?

10          **MR. FENDER:** Yes, sir.

11          **THE COURT:** Okay. I'm not trying to tell you  
12 how you -- I'm just walking you through it.

13                 What Ms. Zmroczek's worried about is somebody  
14 coming up here and professing to be an expert and  
15 matching tattoos and rendering an opinion and the  
16 first time she's ever heard about that is while the  
17 guy's on the witness stand, so -- but that's not  
18 where you're going with it.

19                 But Joe West is the person who took the videos,  
20 cut out the photos or whatever, I don't know all  
21 that terminology, but created it into a still shot.  
22 And he can certainly testify as to what he went  
23 through to create that into that still shot, but --

24                 **MS. ZMROCZEK:** And I would just ask for his CV,  
25 Your Honor.

1           **THE COURT:** Yeah, if he has a CV, turn it over  
2 to Ms. Zmroczek.

3           What else?

4           **MS. ZMROCZEK:** Your Honor, those are all of  
5 the, I believe, items on my motion to compel. I  
6 will look at the physical evidence. Today,  
7 obviously, I've seen pictures of everything. I  
8 think that we'll have pretrial -- I'll have more  
9 pretrial specific motions in the morning based on  
10 missing evidence and things like that, which should  
11 take probably an hour in the morning.

12          **THE COURT:** Why can't we do it this afternoon?

13          **MS. ZMROCZEK:** Or we can do it this afternoon.

14          **THE COURT:** And if we need to take a break so  
15 you can go --

16          **MS. ZMROCZEK:** I mean, I'll need a break.

17          **THE COURT:** Yeah. I mean, you're not ready to  
18 make your pretrial motions today?

19          **MS. ZMROCZEK:** I will be, Your Honor. I can do  
20 them this afternoon.

21          **THE COURT:** Okay. All right. What else?

22          What's the plea offer in this case?

23          **MR. FENDER:** Judge, there's an offer of a plea  
24 to armed robbery with a cap of 20 years. He'll be  
25 looking at 10 to 20.

1           **THE COURT:** You understand that's your plea  
2 offer?

3           **DEFENDANT:** Yes, Your Honor.

4           **MS. ZMROCZEK:** I did relay that to him.

5           **THE COURT:** You understand that's your plea  
6 offer?

7           **DEFENDANT:** Yes, sir.

8           **THE COURT:** Okay. All right.

9           **MR. FENDER:** And, Judge, for clarification when  
10 we discussed that plea, that was not in the context  
11 of trial. You know, if Ms. Zmroczek would like us  
12 to reopen that, we'd certainly do that, but, you  
13 know, that doesn't hang out there in perpetuity.

14           **THE COURT:** Right.

15           **MS. ZMROCZEK:** He's aware of that. I mean,  
16 we'll discuss it again.

17           **THE COURT:** If you're going to plea, you need  
18 to plea today to get that deal. You understand  
19 that?

20           **DEFENDANT:** Yes, Your Honor.

21           **THE COURT:** Okay. I'm not telling you to. I'm  
22 just saying once the trial starts, you know, they're  
23 not going to offer you that deal anymore.

24           Okay. What else? What else do we need to take  
25 up?

1           **MS. ZMROCZEK:** I guess, any rap sheets on any  
2 witnesses.

3           **THE COURT:** You got rap sheets on any  
4 witnesses, Mr. Fender, that show something that is  
5 admissible under Rule 60 -- whatever it is?

6           **MR. FENDER:** Nothing, Judge.

7           **THE COURT:** Nothing. Okay.

8 All right. What else?

9           **MS. ZMROCZEK:** That's it.

10          **THE COURT:** All right. So let's take a break  
11 for an hour, then we'll come back, and whatever the  
12 couple pleas y'all got, we can do those.

13 All right. Let's take a break for an hour.  
14 We'll come back and do those pleas, and then we'll  
15 go ahead and knock out the pretrial in this case  
16 this afternoon.

17           (A recess transpired.)

18          **THE COURT:** All right. We're back on the  
19 record in 2016-GS-41-310, 311 and 312, State of  
20 South Carolina versus Demarcus Robinson. The State  
21 is present and the defendant is present, represented  
22 by Ms. Zmroczek.

23 Okay. What else do we need to take up prior to  
24 jury selection tomorrow?

25          **MS. ZMROCZEK:** And, Judge, just because I know

1 that sometimes I tend to work late, but, actually,  
2 I'm a little more prepared this time, and I was  
3 going to e-mail the voir dire questions for  
4 tomorrow, but I'm having trouble getting online,  
5 I've told your law clerk that I will have them to  
6 her and to the State before 8:00 P.M. this evening.

7 **THE COURT:** Just bring them in paper form  
8 tomorrow.

9 **MS. ZMROCZEK:** And I'll bring them in paper  
10 form as well.

11 So the first thing, Your Honor, is I'm looking  
12 at the indictments. There are three indictments,  
13 2016-GS-41-312, and I don't have any issues with  
14 that indictment, but I'm looking at now  
15 2016-GS-41-310 and it's just -- there are a few  
16 things on the back of that indictment, Your Honor.  
17 It says --

18 **THE COURT:** Can I see it? Somebody got a --  
19 where is the original or is there a copy somewhere?

20 **MS. ZMROCZEK:** I'm sorry. I thought you had  
21 them, Your Honor.

22 **THE COURT:** No, ma'am.

23 (Pause.)

24 **THE COURT:** Thank you, ma'am.

25 **THE CLERK:** You're welcome.

1           **THE COURT:** Okay. So we're not doing the DUI,  
2 right?

3           **MS. ZMROCZEK:** Correct.

4           **THE COURT:** Okay. So you want me to look at  
5 310?

6           **MS. ZMROCZEK:** 310. So on the back, obviously,  
7 just one thing -- well, the first thing is there's a  
8 scrivener's error. It's William Houston. I don't  
9 know that that matters so much, but I thought that  
10 the Court would certainly like to correct -- make  
11 sure it has his correct name.

12           **THE COURT:** Is that right, Mr. Fender?

13           **MR. FENDER:** It's in the body of the  
14 indictment; that's correct.

15           **THE COURT:** And how does Mr. Houston spell his  
16 name?

17           **MR. FENDER:** H-o-u-s-t-o-n.

18           **THE COURT:** All right. Any objection to me  
19 amending the indictment to say that?

20           **MR. FENDER:** No objection.

21           **THE COURT:** Okay.

22           All right. Ms. Zmroczek.

23           **MS. ZMROCZEK:** And then the other issue, Your  
24 Honor, it says, Did -- Without authority of law and  
25 without consent by the following means, to wit: The

1 defendant, with the use of physical force, did  
2 unlawfully seize and confine -- it says by physical  
3 force and battery on the victim. It's the "and  
4 battery" on the victim that we would like stricken  
5 from this indictment.. It's not part of an element  
6 that needs to be proved.

7 We agree that the "seized and confined by  
8 physical force" is appropriate language, but I have  
9 the EMS records, Your Honor, that shows that there  
10 was no physical injury and -- so we would object to  
11 the battery of the victim language being as part of  
12 the indictment.

13 **THE COURT:** What about it, Mr. Fender?

14 **MR. FENDER:** Judge, I think you can see him  
15 physically kind of grab the victim as he's stocking  
16 the shelves, and then he kind of puts a gun to his  
17 back and walks him over to the cash register.

18 Judge, I think there's a factual basis for it  
19 so that there would be a trial. And I wouldn't  
20 oppose "or battery", amending "and" to "or".

21 **MS. ZMROCZEK:** Well, I think they would have to  
22 elect. I mean, I think physical force would include  
23 putting a gun to somebody and forcing them to the  
24 cash register.

25 **MR. FENDER:** Judge, I'd ask the Court to leave

1       it as is. This is a factual issue and we'll see  
2       video of this.

3               **THE COURT:** Well, I'm going to explain to them  
4       what kidnapping is, so -- and my definition will  
5       control. So I think the indictments puts the  
6       defendant on sufficient notice of what he's charged  
7       with and what he's accused of doing and the factual  
8       circumstances surrounding it, so I'm going to leave  
9       that one alone.

10              **MS. ZMROCZEK:** I just wanted to make sure that,  
11       you know, that they don't think that there has to be  
12       some battery, and I know that you'll explain that to  
13       them.

14              **THE COURT:** Okay.

15              **MS. ZMROCZEK:** And then on 311, the indictment  
16       for armed robbery, Your Honor, it says, The taking  
17       of goods and/or money described as approximately \$69  
18       in currency and/or a carton of cigarettes and/or a  
19       carbonated beverage or carbonated beverages, I think  
20       that there needs to be an election if it was money  
21       or cigarettes or all of it. I don't -- if it's  
22       "and", then we can take the "or" out, but I think  
23       they need to elect what he's being accused of  
24       taking.

25              **THE COURT:** Why? Where is the case that says

1 that?

2 **MS. ZMROCZEK:** Your Honor, I didn't -- I mean,  
3 I believe it falls under corpus delicti. They have  
4 to -- they have to determine or they have to say --  
5 if he took all of them. If they want to say "and",  
6 that's fine, but what they're trying to prove is  
7 that he took money or -- and/or cigarettes and/or  
8 carbonated beverages.

9 **THE COURT:** All right. The indictment is a  
10 notice document. This is putting the defendant on  
11 notice of anything that the State would be alleging  
12 that he potentially stole in the allegations of this  
13 armed robbery. And, therefore, I find the currency  
14 and/or the cigarettes and/or the carbonated  
15 beverages to be appropriate elements of what the  
16 State can allege to prove, either they can prove he  
17 stole all of those things or they can attempt to  
18 prove that he stole one of those things or some  
19 combination of the three of those things.

20 And I believe that's the State's attempt to put  
21 the defendant on notice of what he allegedly stole  
22 during the robbery, and I find that proper inside  
23 the indictment. It actually aids the defendant in  
24 putting him on notice of what they are alleging that  
25 he stole.

1           **MS. ZMROCZEK:** The next motion, Your Honor, is  
2 just our general motion to sequester witnesses. We  
3 know that the lead investigator, who I believe is  
4 Raffield, and the victim certainly have a right to  
5 be present. We would ask that any and all other  
6 witnesses be sequestered. And we understand that  
7 that's reciprocal, so we would have any of our  
8 witnesses sequestered.

9           **THE COURT:** Any objection, Mr. Fender?

10          **MR. FENDER:** No objection.

11          **THE COURT:** Okay. So the way -- here's -- now,  
12 listen, I realize I've never held court in this  
13 building before, so I don't know who all these  
14 people are. Okay? So I don't know who y'all's  
15 witnesses are. Likewise, I don't know who your  
16 witnesses are, if any. So I need y'all to do your  
17 best to internally monitor those people coming in  
18 and out.

19                If somebody -- and somebody could walk in, for  
20 all I know, you know, they could be the Mayor of the  
21 Town of Saluda or they could be the next witness. I  
22 don't know who these people are, so if you see  
23 somebody walk in and you know they're not supposed  
24 to be in here, just say, hey, Judge, can we  
25 approach? And then we can ask the person to slide

1 out without making a scene.

2 So that sequestration will be reciprocal, that  
3 means it'll be on the State and on the defense. It  
4 will not apply to the lead investigator. It will  
5 also not apply -- is there more than one victim or  
6 is there just one victim?

7 **MR. FENDER:** Just one victim.

8 **THE COURT:** Okay. It will not apply to the  
9 victim in the case, and, of course, sequestration  
10 does not apply to expert witnesses. But I don't  
11 know who these people are, so if y'all see them,  
12 somebody waive at me or say, Let's approach, so we  
13 can ask them to be excused.

14 Next?

15 **MS. ZMROCZEK:** The next is kind of a question,  
16 Your Honor. So I have a Neil v. Biggers down with a  
17 question mark. So -- by way of background, the  
18 victim in the case says that he thinks it's  
19 Mr. Robinson, not because he can see his face or  
20 anything, but because he felt like it was the same  
21 build as him. So -- and now they're saying that  
22 there's no selection of a photo lineup, but his name  
23 is given by the victim. So I guess we need to flesh  
24 that out if there's going to be any in-court  
25 identification.

1           **THE COURT:** Okay. What's the State's intention  
2 on the victim making an in-court identification of  
3 the defendant?

4           **MR. FENDER:** Judge, what we attempt to show is  
5 that Ridge Spring is actually a pretty small area.  
6 And the clerk, he knew the defendant. They live in,  
7 somewhat, about a half a mile or so, something like  
8 that.

9           You know, additionally, this defendant, he  
10 takes his shirt off, puts it around his head, he had  
11 very distinctive marks on his shoulders, as well as  
12 tattoos and stuff like that, and also he was a  
13 regular customer at this gas station.

14           And just to clarify, he didn't say he knows --  
15 or he didn't say he thought, he said he knew. We  
16 have audio recording of that. You can hear him say  
17 that he's 99 percent sure within just moments of  
18 this happening, and then he later reviews it and  
19 says, Yes, that's Demarcus.

20           **THE COURT:** Does he see a photo lineup?

21           **MR. FENDER:** He does not, not of Demarcus.

22           **THE COURT:** Okay. So the victim is prepared to  
23 testify that he has prior knowledge of the  
24 defendant?

25           **MR. FENDER:** That is correct.

1           **THE COURT:** That he knows who he is, that he  
2 knows him from the community, that he recognizes him  
3 when he sees him. Does he know his name?

4           **MR. FENDER:** I don't know that, but law  
5 enforcement is indicating that he does. And just  
6 additionally, like, this happened back in August,  
7 and you'll hear about them playing basketball and  
8 him seeing him and seeing the shoulder and that kind  
9 of stuff shirtless.

10           **THE COURT:** Well, there's no -- I don't know  
11 that we need to do a Biggers hearing, but he would  
12 certainly need to lay that foundation before I would  
13 let him make an in-court identification.

14           **MS. ZMROCZEK:** And then also I think the other  
15 part of this, which goes into a motion in limine, is  
16 so Mr. Robinson was accused of shoplifting in the  
17 same store in June of --

18           **THE COURT:** Tell me when this allegedly  
19 occurred.

20           **MS. ZMROCZEK:** August 1st.

21           **THE COURT:** Of what year?

22           **MS. ZMROCZEK:** 2016.

23           **THE COURT:** Okay.

24           **MS. ZMROCZEK:** And so in June of 2016, there  
25 was an arrest of Mr. Robinson. It was maybe never

1           effectuated. I think they effectuated the arrest  
2           actually after -- I think they effectuated the  
3           arrest on August 1st for that shoplifting, but --  
4           so, obviously, we would move to keep out that  
5           shoplifting and that's how he...

6           **THE COURT:** All right. Mr. Fender.

7           **MR. FENDER:** Judge, just for clarification, the  
8           shoplifting incident was two to three weeks before  
9           he robbed the store, so they had an active warrant  
10          for the shoplifting because they didn't immediately  
11          apprehend him.

12          You know, where this comes into this case,  
13          we've talked about this, you know, if Your Honor  
14          instructs us not to mention that, you know, that's  
15          fine, but we --

16          As a matter of law, you know, they did arrest  
17          this defendant. And part of the whole process was  
18          the active warrant for arrest for the shoplifting,  
19          you know, after they -- after they identified him as  
20          Demarcus, you know, by using the dogs and by knowing  
21          where he stayed, law enforcement went to his house  
22          with that active warrant, and also based on the  
23          evidence that they collected in this case, they  
24          stopped and then they got an additional warrant to  
25          search that area, but legally --

1           **THE COURT:** I certainly wouldn't let the --  
2           what is -- Mr. Houston, is that the alleged victim's  
3           name?

4           **MS. ZMROCZEK:** Yes.

5           **THE COURT:** I certainly wouldn't let him say  
6           that Mr. Robinson or somebody that fits  
7           Mr. Robinson's description committed a shoplifting  
8           at the same store three weeks earlier. At this  
9           point, I would leave -- I think, you know, I don't  
10          know why we -- I don't know why the police would  
11          need to say he has an active warrant for  
12          shoplifting.

13          I'm not, you know, certainly, they're allowed  
14          to go to his house and that kind of thing, but we  
15          need to leave any incident -- instance of a prior  
16          shoplifting out of the mix. So make sure you tell  
17          Mr. Houston that, that he knows he doesn't need to  
18          go into that.

19          I'm not saying that could become relevant later  
20          based upon cross-examination or any potential  
21          defense case, but, at this point, in the State's  
22          case in chief, we need to leave the shoplifting out.

23          **MR. FENDER:** So just for clarification, Your  
24          Honor, you're asking us, basically, to have law  
25          enforcement to testify that they went to a known

1 place that he stayed --

2 **THE COURT:** Yes.

3 **MR. FENDER:** -- leaving out the act of  
4 shoplifting?

5 **THE COURT:** Right.

6 **MR. FENDER:** Thank you.

7 **MS. ZMROCZEK:** And I know that he mentioned  
8 dogs again and I thought we had covered that  
9 earlier.

10 **MR. FENDER:** No dogs.

11 **THE COURT:** He was just explaining to me what  
12 was going on with them, right?

13 **MR. FENDER:** It's just, you know, we've got  
14 kind of three different ways of getting from point A  
15 to point B, but it sounds to me like, in keeping  
16 with Your Honor's instruction, just going on --

17 **THE COURT:** Yeah. I think they can say, you  
18 know, we, you know, we went to where he was; we  
19 knew, you know, we had information about where he  
20 lived or something of that nature without going into  
21 he had an active warrant for shoplifting at the same  
22 exact store. I think that will clearly fall under  
23 404(b) and -- he's not even convicted of it probably  
24 at this point, is he?

25 Even if he is, you know, if he testifies or

1 something like that, we can revisit all that, but at  
2 this point, on the State's case in chief  
3 presentation, that will need to stay out.

4 **MS. ZMROCZEK:** And then also along that same  
5 line of the 404(b) evidence, on the -- and I'm sure  
6 that they're not going to introduce the radio  
7 traffic, but there's radio -- on the radio traffic,  
8 there's talk about him possibly being involved in an  
9 Aiken burglary and them looking for a vehicle. So I  
10 just wanted to make sure that they understand that I  
11 want -- unless he gets on the stand, obviously  
12 that's fair game, but --

13 **THE COURT:** Are you good with that?

14 **MR. FENDER:** Judge, we're good with leaving out  
15 the Aiken stuff, but if she's gets into trying to  
16 hem them up on the different times and stuff like  
17 that, that may open the door to stuff relevant just  
18 to this particular incident.

19 **THE COURT:** Okay. What I'm talking about is on  
20 direct. If she opens some door on cross, then we  
21 can take a break and flesh it out.

22 **MR. FENDER:** Yes, sir.

23 **THE COURT:** But no one needs to be saying, We  
24 think he's involved in a burglary in Aiken, or, you  
25 know, he's got warrants out of Aiken, or, the car's

1 wanted from Aiken, or anything like that.

2 **MS. ZMROCZEK:** And then the next thing I have,  
3 Your Honor, is a motion to suppress any evidence  
4 gathered as a result of a search warrant.

5 **THE COURT:** Okay..

6 **MS. ZMROCZEK:** I was provided a search warrant  
7 and a return. And my first concern, Your Honor, is  
8 it said, Supplemented by oral testimony of the  
9 affiant. So I think -- and I can hand up a copy so  
10 Your Honor can see that; it will probably be  
11 helpful. And it's pages 95 through 99 of 117.

12 (Pause.)

13 **THE COURT:** Okay. What's your motion on the  
14 search warrant?

15 **MS. ZMROCZEK:** Well, Your Honor -- well, I  
16 guess my first question is what was the -- and I  
17 forwarded the Court a case. I e-mailed it to you,  
18 as well as your clerk and to Mr. Fender. It's State  
19 v. Alphonso Chaves Thompson. It's filed February  
20 22nd, 2017.

21 So I think that, Your Honor, what we need is  
22 testimony to see -- I think, based on just the very  
23 limited information that was given in the written  
24 affidavit, which was -- since I don't have it in  
25 front of me, bear with me -- but I believe it says

1 that the reason that they had the probable cause to  
2 search his house was because he was found wearing  
3 gray boxers and that you can partially see some gray  
4 boxers in the video. And if I'm misspeaking, please  
5 correct me, but I think that's what it said.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** And then it says, but -- and  
8 that, in and of itself, I think the case law is  
9 pretty clear that that --

10 **THE COURT:** Well, what the affidavit says is  
11 that the officer was sworn and states that the  
12 defendant did, on August the 1st, 2016 -- there's an  
13 extra 5 at the end of 2016, that's probably a typo  
14 -- did commit the criminal offense of armed robbery  
15 at the Circle K, 300-A East Main Street, Ridge  
16 Spring, within Saluda County.

17 The defendant, after the robbery, fled to the  
18 address of Merritt Avenue and was located within  
19 the same. The defendant was still wearing partial  
20 clothing from the armed robbery, which was observed  
21 on the store video security video. The store clerk  
22 also advised that he knows the defendant personally  
23 and identified the subject during the robbery.  
24 That's what it says.

25 **MS. ZMROCZEK:** Okay. And our concern is the

1 "fled to Merritt". I don't know that there was  
2 any -- any evidence that I could find of that. And  
3 so, I guess, our question is what's the basis for  
4 that information?

5 **THE COURT:** And what's your client's standing  
6 to challenge the search warrant?

7 **MS. ZMROCZEK:** Well, it was his family's -- it  
8 was his mother's house. He was staying there. And  
9 so, Your Honor, we believe that that gives him  
10 standing. He had a room, he had his stuff in a room  
11 and was a part-time resident there, at least an  
12 overnight resident.

13 **THE COURT:** Okay.

14 **MR. FENDER:** Judge, just for clarification,  
15 this is all within a very small area. You know, law  
16 enforcement was acting on the defendant, you know,  
17 running back to Pecan Grove, I think, was the name  
18 -- you know, he's a regular customer to and from  
19 there -- actually went to that house with an active  
20 arrest warrant for shoplifting, knocked on the door,  
21 talked to mama, I believe, and she says, Yeah, he's  
22 upstairs.

23 Judge, that legally gave them the right to go  
24 up there just based on the warrant alone. But  
25 outside of that warrant, they called a time out.

1 They said, hey, we're seeing cash, we're seeing a  
2 gun --

3 **THE COURT:** We need to take testimony on all of  
4 that so that the record's clear. I'm not saying  
5 that what you're saying is not accurate, but the  
6 best way to do it is to take testimony.

7 **MR. FENDER:** I call Mike Raffield to the stand.

8 **THE COURT:** Okay. Come on up here and be  
9 sworn, and we'll get this in through testimony and  
10 then we can make sure the record's clear.

11 MICHAEL JAMES RAFFIELD,  
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FENDER:

15 **Q** Just getting right to it --

16 **MR. FENDER:** Judge, can I go forward with  
17 direct?

18 **THE COURT:** Yes, sir, absolutely.

19 BY MR. FENDER:

20 **Q** Can you please identify yourself for the  
21 record?

22 **A** I'm Michael Raffield, currently with the Saluda  
23 County Sheriff's Office, former Chief of Ridge  
24 Spring Police Department.

25 **Q** Did you have the opportunity to apprehend

1 Demarcus Robinson in August of 2016?

2 **A** I did.

3 **Q** Can you -- where did you apprehend him at?

4 **A** At Merritt Street. I was familiar with  
5 that location. I had been there before.

6 **Q** What led you to that location?

7 **A** I was doing another investigation involving  
8 Demarcus Robinson. I knew that his family lived  
9 there and spoken with them.

10 **Q** Is that in relation to an armed robbery?

11 **A** Part of it, yes.

12 **Q** What happened at the scene at the Circle K?

13 **A** On the incident date, in this incident, was an  
14 armed robbery.

15 **Q** But outside of that, did you know Demarcus from  
16 other incidents and from your law enforcement  
17 activity in a small area?

18 **A** I did.

19 **MS. ZMROCZEK:** And, Your Honor, we would object  
20 to that being in front of the jury.

21 **THE COURT:** We're not in front of a jury.

22 **MS. ZMROCZEK:** I understand.

23 **THE COURT:** Keep going.

24 BY MR. FENDER:

25 **Q** What led you from the gas station to the house?

1       **A**     The initial information I had received from the  
2       first responding units was that the victim had  
3       already identified the subject as Demarcus Robinson.  
4       I was already familiar that Demarcus had stayed at  
5       Merritt Avenue. And I went straight to that  
6       location because the officers, at that time, were  
7       tracking parallel to Main Street going westbound  
8       back toward that residence and were not far from it.

9       **Q**     Just to tell us a little bit about that gas  
10      station, is there kind of a trail or a cut-through  
11      with a fence?

12      **A**     There was a fence and there was a trail, but  
13      not one that people would normally travel. But the  
14      direction from that point where the officers entered  
15      the woods, they were going straight to the back of  
16      Merritt Avenue to some wooded -- a wooded area  
17      in a field.

18      **Q**     A trail to the defendant's neighborhood?

19      **A**     Correct.

20      **Q**     Did you also recover loose bills?

21      **A**     Loose what?

22      **Q**     Loose bills.

23      **A**     Correct. The victim told us that the defendant  
24      had ran around the Pecan Grove side of the business,  
25      so there was money in the front parking lot. As we

1           went around the business going down Pecan Grove,  
2           just off the sidewalk in the front yard at 111 Pecan  
3           Grove, there was a single five-dollar bill. In  
4           relationship to the little single-wide there, it was  
5           maybe a third of the way down in front of it.

6           Further progression just around the corner of  
7           the single-wide in the grass, there was a black  
8           T-shirt.

9           **Q**     What happened when you got to that residence?

10          **A**     I made contact -- or attempted to make contact  
11          by knocking on the door and didn't get anybody to  
12          the door initially. I contacted our dispatch and  
13          got the -- Demarcus Robinson's mother's cell phone  
14          number from prior calls, got her on the phone, asked  
15          her to meet me at the front door.

16          Once she met me at the front door, I asked her  
17          if Demarcus was there. She turned her body sideways  
18          and said, What's going on? I explained to her there  
19          was an armed robbery. She turned her head, put it  
20          down, walked the hallway and started going up the  
21          stairs and started calling Demarcus' name. I  
22          followed in behind her, went upstairs, located  
23          Mr. Robinson.

24          **Q**     At this point, as well as this armed robbery,  
25          you also had an active arrest warrant for

1 shoplifting?

2 **A** I did.

3 **Q** What did you observe upstairs?

4 **A** He was secured. He was not laying on a bed.  
5 He was laying on, like, a sleeping bag with clothing  
6 underneath that. I immediately saw fives and ones  
7 folded. So I went ahead and secured him in  
8 handcuffs, asked, at that time, Lieutenant Padgett  
9 to stand by so I could do a search warrant. He  
10 agreed to stand by and not let anybody in or out of  
11 the room that he was discovered in.

12 I went and conducted a search warrant, I  
13 believe it was through Judge Horne, returned and got  
14 Evan Garris to execute a search warrant.

15 **Q** What did you find as a result of that search  
16 warrant?

17 **A** The money that was underneath the bedding -- I  
18 can give you the exact total if I look in the  
19 report. Located was 41 U.S. dollars, 5 in five  
20 bills, 16 in ones, located underneath the sleeping  
21 bag. Two pair of black shorts were also located  
22 underneath the sleeping bag.

23 A camo backpack was located in the closet  
24 within the same room, which contained a box of  
25 Magtech .38 Special bullets containing 35

1 cartridges. And I remember seeing a blue Rubbermaid  
2 top on the bottom of the closet -- the closet didn't  
3 have any clothes or nothing that I remember hanging  
4 in it -- underneath that was a silver or  
5 gray-in-color revolver with five rounds in it.

6 And I noticed on the top shelf, there was  
7 Newport cigarettes and a, what I call, a cigarillo,  
8 but it's the foil that a cigar comes in. And after  
9 looking at the video, I had seen the defendant  
10 holding a carton of cigarettes -- I couldn't make  
11 out the brand at that time -- and the single cigar.  
12 So those are the items that we discovered after  
13 obtaining the search warrant.

14 **Q** And these are the same items from the crime  
15 scene?

16 **A** It is.

17 **MR. FENDER:** Thank you.

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 **Q** Is it deputy now?

21 **A** It's corporal.

22 **Q** Corporal. Thank you.

23 **A** Corporal Deputy.

24 **Q** Really? Is it okay if I just call you  
25 corporal?

1           So, Corporal, when you -- you responded to the  
2           Circle K?

3           **A**     Uh-huh.

4           **Q**     At what time was that?

5           **A**     I don't have the actual CAD sheet. The exact  
6           time that I signed on the radio and told dispatch  
7           I'd be en route would be on a CAD sheet.

8           **Q**     Okay.

9           **A**     I can tell you the incident occurred,  
10          approximately, 2:42, and I would imagine that I was  
11          en route within probably 20 to 30 minutes. But,  
12          again, to be accurate, I'd have to see the CAD  
13          sheet.

14          **Q**     Okay. And then you went straight from the  
15          Circle K to        Merritt?

16          **A**     I went straight from my residence, because I  
17          was off duty at the time, in the direction of the  
18          Circle K, was able to communicate with units on  
19          scene. And their preliminary investigation was  
20          conducted by, at that time, Captain Grenier with the  
21          Ridge Spring Police Department along with Saluda  
22          County Sheriff's Office.

23                 Based on the information they had already  
24          received, I went straight to        Merritt Avenue  
25          because I had knowledge that Demarcus Robinson lived

1           there, and they were already tracking in that  
2           direction. And he was already identified by the  
3           clerk that was on duty that night.

4           **Q**     And you said that his mother went in and you  
5           followed her?

6           **A**     When I first made actual contact with the  
7           mother, I asked where Demarcus was at. She asked me  
8           what was going on. I explained to her there had  
9           been an armed robbery and that Demarcus had been  
10          identified. She turned, dropped her head and  
11          started walking away and calling Demarcus' name  
12          going up the steps, and that's when I entered the  
13          residence and followed her up.

14          **Q**     Okay. When you got to the steps, you  
15          immediately put him in handcuffs, so he was secured?

16          **A**     He was laying on a bedding of like a, best I  
17          can remember, like a sleeping bag with clothing and  
18          stuff up underneath it. The first thing I did was  
19          secure his hands, looked for immediate weapons right  
20          in the general area, that's when I observed the  
21          money and then he was handcuffed.

22          **Q**     Okay. And so, at that time, he's -- at that  
23          point, he's in custody?

24          **A**     Correct.

25          **Q**     And you take him out of the house at that

1 point?

2 **A** I actually got Captain Grenier to transport him  
3 to the Saluda County Detention Facility.

4 **Q** Okay. And did you remain in the house?

5 **A** I did.

6 **Q** Okay.

7 **A** For a very short period of time.

8 **Q** But you didn't do any searching while you were  
9 in there?

10 **A** Oh, no, no. I immediately asked Lieutenant  
11 Padgett to stand by to -- because the family was  
12 trying to walk through that room, and hold that room  
13 for me secure so I can go obtain a search warrant.

14 **Q** And who is -- when you're on the call radios,  
15 who is 300? When it says 300 and they call into  
16 dispatch, who is that?

17 **A** 300 is the identifier for the chief of police  
18 of Ridge Spring, which, on that date, was myself.

19 **Q** Was you. Okay.

20 And so there were other people there as well in  
21 addition to you, correct?

22 **A** Correct.

23 **Q** Okay. And -- so then you left the premises?

24 **A** Once I asked Lieutenant Padgett to stand by and  
25 secure that room, I did. I went back to my office

1 and quickly typed up a search warrant and drove  
2 across the county to meet with Judge Horne.

3 Q And judge who?

4 A Judge Horne.

5 Q Okay. He's a magistrate?

6 A He's one of the two magistrates, correct.

7 Q And what time did he sign that search warrant?

8 A I would have to look at the CAD sheet.

9 Q Would it also be on the search warrant?

10 A It possibly could be. I don't remember a time  
11 being on it. It's probably going to be reflected on  
12 the CAD sheet.

13 There's generally not a time identifier on the  
14 search warrant that I can remember ever seeing, but  
15 it was shortly after the armed robbery within, just  
16 speculating, an hour and a half, two hours. But,  
17 again, to be specific, we need to look at the CAD  
18 sheet. We tried to get our dispatcher to --

19 MS. ZMROCZEK: Your Honor, I can show him -- if  
20 I may see it, then I can show him and then show you  
21 as well.

22 Q I'm going to show you the search warrant. And  
23 on page 98 of 117, is that the affidavit that you  
24 filled out? Is that your signature?

25 A It is. And that is my initials, and that's my

1 handwriting for the date and the time, which is  
2 8/1/16 at 0700 hours.

3 Q And that means -- that's what time that that  
4 was signed and presented to the judge?

5 A The one line through is on a Deputy Clark,  
6 which would have not been correct. I believe that's  
7 why I initialled it, dated and timed, but I'm not  
8 sure exactly when I actually put that on there. I  
9 would imagine I put the 0700 when I made that  
10 correction, but I can't tell you for sure that it  
11 was done at the time that I met with the magistrate  
12 or if it was an hour or two later. Again, I'd have  
13 to defer to the CAD sheet.

14 Q It also says that it was supplemented by oral  
15 testimony, your search warrant. Do you recall that?

16 A I'm familiar. What's your question is what I'm  
17 waiting for?

18 Q Okay. My question is what -- what oral  
19 supplement did you provide to the magistrate?

20 A The general language that we normally -- when  
21 we present a search warrant is we hand the search  
22 warrants to the judge. In this case, it was Judge  
23 Horne. I handed him three copies. Generally, he  
24 asks, Is this truthful -- or whatever a judge  
25 normally asks -- Raise your right hand. I submit,

1 Yes, it is. And the judge, after reviewing it,  
2 signed it, handed it back.

3 **Q** So you did not provide him any additional  
4 testimony?

5 **A** Not that I recall.

6 **Q** Okay. So it was just what's on the search  
7 warrant?

8 **A** Correct.

9 **Q** You said that in the search warrant, that it  
10 was -- that person had been identified, but also  
11 that they were wearing gray boxers that had been  
12 seen on the video. When did you watch that video?

13 **A** That morning along with the manager and the  
14 regional manager who had arrived before this was  
15 over.

16 **Q** And that was prior to going to Merritt?

17 **A** That would be after going to Merritt, but  
18 that warrant you're referring to is a second  
19 warrant, which was effected at the jail on  
20 Mr. Robinson's clothing.

21 **MS. ZMROCZEK:** Your Honor, I have no further  
22 questions.

23 **THE COURT:** Redirect?

24 \*\*\*\*\*

25 \*\*\*\*\*

## REDIRECT EXAMINATION

1  
2 BY MR. FENDER:

3 Q Just to clarify for the record, you didn't do a  
4 photo lineup on Demarcus, right?

5 A I believe I actually sent one off to SLED, but  
6 I don't remember presenting one to anyone,  
7 specifically the victim, William Houston. I know  
8 that I showed him the one of the co-defendant, but  
9 I'm confident I did not show one of Demarcus because  
10 of the fact that he had already identified Demarcus.

11 Q So you did a photo lineup of Terrell?

12 A Of Terrell, correct.

13 MR. FENDER: Thank you. Nothing further.

14 THE COURT: Okay. Thank you.

15 All right. Ms. Zmroczek.

16 MS. ZMROCZEK: Your Honor, in addition to the  
17 case that I sent you, I understand that -- I  
18 understand the difference between a search incident  
19 to a lawful arrest. We're not arguing that there  
20 wasn't a reason to arrest him, but the case law,  
21 specifically, State v. McTier, M-c-T-i-e-r, which  
22 is, 264 S.C. 475, 215 S.E.2d 908, it's a 1975 case,  
23 and there are several that follow that, but that's  
24 the seminal case, Your Honor, it says that when --  
25 when searching incident to a lawful arrest, once a

1 person is in -- is in custody, that his immediate  
2 person and surrounding can be available.

3 The testimony that was given today is based on  
4 what the search warrant says. And as a basis for  
5 the search warrant, Your Honor, there's obviously  
6 some discrepancy between what is in the search  
7 warrant and what was testified to today because, as  
8 I believe you read in the testimony, it's stated  
9 that defendant was seen wearing gray boxers just  
10 like on the video.

11 **THE COURT:** The word gray boxers never came out  
12 of my mouth. The only person --

13 **MS. ZMROCZEK:** Oh, sorry, clothing.

14 **THE COURT:** The only person who says the word  
15 gray boxers is you. It says, The defendant was  
16 still wearing -- was found still wearing partial  
17 clothing from the armed robbery, which was observed  
18 on the store video security video.

19 **MS. ZMROCZEK:** Right. Sorry.

20 So the partial clothing is what I'm focusing on  
21 and observed on the store video, that that affidavit  
22 for the search warrant was based on watching the  
23 store video, which officer -- Corporal Raffield  
24 testified that he didn't watch that until after  
25 applying for the search warrant. So that's where my

1 concern lies, Your Honor, is the veracity of what  
2 was sworn out to the magistrate at that time.

3 **THE COURT:** Mr. Fender.

4 **MR. FENDER:** Judge, again, he can rely on  
5 hearsay for that purposes.

6 Judge, he had a -- he had to get an arrest  
7 warrant to go there. Mom says he's there. They go  
8 up there. They see stuff used in the crime. They  
9 don't immediately search, they stop to get another  
10 warrant.

11 You know, Judge, I think law enforcement  
12 followed the proper procedure, you know, given the  
13 facts and circumstances of this case, especially  
14 considering there is, you know, this is pretty hot  
15 here. We're talking about the course of an hour or  
16 two when this whole thing went down.

17 And another officer did see the video and then  
18 this officer relied in part on that and other  
19 independent facts in regards to the warrant issue.

20 **THE COURT:** Anything else, Ms. Zmroczek?

21 **MS. ZMROCZEK:** That's all we have, Your Honor.

22 **THE COURT:** Okay. I find the search warrant to  
23 be permissible and it should not be suppressed and  
24 the contents of the search should not be suppressed.  
25 The officer went to a duly-appointed magistrate, a

1 fair and impartial magistrate, and presented him  
2 with this affidavit which he swore to be the truth  
3 to the magistrate. And the affidavit contains a  
4 sufficient probable cause for the basis that the  
5 defendant had committed a crime and that he was in  
6 the incident location.

7 And one of the -- I guess, one of the unique  
8 things about this that sets this apart from the  
9 case, the 2017 case, and Ms. Zmroczek quoted it, is  
10 the -- the time difference, because in this  
11 situation, we're looking at an incident that had  
12 just occurred, an officer that was just made aware  
13 of information. We're dealing with very close  
14 proximity between incident location, officer  
15 responding in place to be searched.

16 And it just flows logically that he was seen --  
17 that the defendant was seen committing the crime by  
18 a person that he knew. They were given the  
19 direction that he was running. His -- the home, the  
20 place where he admits that he was staying overnight,  
21 was in close proximity, that's the position in which  
22 they were looking for him. Officer Raffield --  
23 Corporal Raffield knew that's where he stayed, and  
24 he had authority to search the defendant and the  
25 surrounding area just based upon the law search

1 incident to arrest. But they went above and beyond  
2 that and took the time to secure the premises to  
3 make sure that the defendant was secure and the  
4 location was secure and go get a search warrant.

5 So I think it flows naturally that based upon  
6 the evidence that they were given that the defendant  
7 committed an armed robbery, which would mean armed  
8 with a weapon and/or the presentation or the  
9 representation of what appeared to be a weapon, that  
10 evidence would flow from the location he's at within  
11 a very short period of time of when the incident  
12 allegedly occurred, and I find the search to be  
13 appropriate based upon the relevant case law.

14 Next?

15 **MS. ZMROCZEK:** And, Your Honor, just so we can  
16 clear up a few -- I know that today there was no  
17 jury --

18 **THE COURT:** Okay. So we need to be careful  
19 when these officers, and we're -- for the record,  
20 we're in a pretrial hearing. We're outside the  
21 presence of the jury. There's not even a potential  
22 juror sitting in here.

23 And I understand why you took the steps that  
24 you took, Corporal Raffield, that makes perfect  
25 sense to me. You knew where he lived, you knew that

1 he was accused of -- or he had a warrant for him  
2 previously robbing the store, and I -- the way that  
3 your mind works and flowed and the things that you  
4 did made perfect sense to me. Some of the things I  
5 need you to not say.

6 So you say, at one point, I called dispatch to  
7 get his mom's phone number because we had the number  
8 on record. I think you can, you know, switch that  
9 around to, you know, we -- using information sources  
10 that are available to us, we were able to obtain his  
11 mom's phone number.

12 You know -- you know, I don't want you saying  
13 anything, well, I knew -- what I don't want you to  
14 create the impression -- let me say it in the big  
15 picture better -- is that I knew who Demarcus  
16 Robinson was because he was a menace to the society  
17 of Ridge Spring and everybody knew who he was  
18 because we all thought he was going around  
19 shoplifting and robbing. And I understand that may  
20 be your position, even though you haven't said that,  
21 but I don't want to give off the impression that  
22 he's just a known menace to the society of Ridge  
23 Spring, and so that the jury thinks that has  
24 anything to do with whether or not he committed this  
25 armed robbery, you know.

1           So just -- Mr. Fender, probably whoever is  
2 going to handle his testimony, just when you walk  
3 through it this afternoon or tonight, just kind of  
4 walk through it and so he's, you know, can kind of  
5 practice how he wants to say those things without  
6 saying that.

7           Now, the flip side of that is -- and,  
8 Ms. Zmroczek, you know exactly what I'm about to say  
9 -- you know, don't open the door to it on  
10 cross-examination or I may let him say exactly, you  
11 know, how he knows who he is or where he's going.

12           **MS. ZMROCZEK:** I'm familiar with that.

13           And, also, just -- he said that officers were  
14 tracking, and so I just have to -- I believe that  
15 what they testified to earlier is that this dog, who  
16 isn't really a tracking dog, was the one that they  
17 were following, so maybe if we can sort of somehow  
18 clean that up.

19           **THE COURT:** I think it's fair to say that there  
20 were officers on scene looking for Mr. Robinson. Is  
21 that a fair way to put it?

22           **CORPORAL RAFFIELD:** Looking in the direction  
23 that the victim told us he ran.

24           **THE COURT:** That's right. And my understanding  
25 is Mr. Houston says, you know, he robbed me or

1           whatever he says -- of course, I haven't heard him  
2           testify -- but he basically goes out and goes this  
3           way and, you know, the officers, whether they be  
4           City of Ridge Spring or Saluda or SLED or whoever,  
5           show up and go in that general direction, which is  
6           -- that's perfectly fine to say. I don't want them  
7           to think they have some court-qualified dog  
8           tracking, you know, expert kind of thing. But it's  
9           perfectly fine to say, They showed up and they went  
10          in that direction because they're, you know, they're  
11          trying to apprehend somebody. Make sense?

12                   **CORPORAL RAFFIELD:** Yes, sir.

13                   **THE COURT:** Thank you.

14                   What else?

15                   **MS. ZMROCZEK:** And, Your Honor, I believe, at  
16          this time, those are all of the -- those are all the  
17          pretrial motions I have.

18                   **THE COURT:** Anything from the State that we  
19          need to take up pretrial?

20                   **MR. EARGLE:** Your Honor, the only thing was  
21          before lunch about the Giglio material.

22                   **THE COURT:** Okay.

23                   **MR. EARGLE:** Just for the record, I've spoken  
24          with the Saluda County Sheriff's Office, the  
25          Johnston Police Chief and former Chief of Ridge

1 Spring's Mike Raffield, any officers that are  
2 testifying, to their knowledge, has no Giglio  
3 credibility issues.

4 This came sealed from the Edgefield County  
5 Sheriff's Office where Corporal Raffield was  
6 formerly employed.

7 **THE COURT:** All right. Thank you very much.

8 **MR. EARGLE:** Yes, sir.

9 **THE COURT:** Okay. So the State has about how  
10 many witnesses? I'm not holding you to this number;  
11 I'm just trying to get a ballpark.

12 **MR. FENDER:** I would estimate a maximum of six  
13 to eight.

14 **THE COURT:** Okay. And is there a video to be  
15 seen?

16 **MR. FENDER:** There is a brief video, Your  
17 Honor.

18 **MS. ZMROCZEK:** Actually, I'm glad you brought  
19 that up, Your Honor. That's why you get paid the  
20 big bucks.

21 So they provided me a DVD last week of a body  
22 cam interview with someone who's been arrested as a  
23 co-defendant. And on that body cam, officer --  
24 Corporal Raffield keeps saying, There's audio and  
25 video, we got it all, there's audio and video, which

1 gave me some pause for concern, Your Honor, because  
2 the video that I have has no audio. And I  
3 understand that officers can lie, they're allowed to  
4 do that, but I wanted -- I asked Mr. Fender if his  
5 DVD had audio and he said, no. So I just wanted to  
6 make sure that that was just some investigation  
7 manipulation tool as opposed to there's audio that I  
8 don't have.

9 **MR. FENDER:** Judge, it's my understanding that  
10 the video from the scene does have audio. And just  
11 for clarification, that was with Terrell Lockett,  
12 who's, like, the co-defendant. They were trying to  
13 interrogate him. He's not related to this case. I  
14 mean, the State may or may not call him..

15 **THE COURT:** Does she have the video that has  
16 the -- whatever the audio is on it?

17 **MR. FENDER:** We've provided her with the same  
18 stuff that we have, so I don't know if there's some  
19 issue with getting it to play or that kind of thing.

20 **MS. ZMROCZEK:** And I'll meet with him  
21 afterwards.

22 **THE COURT:** Okay. All right. What else?  
23 So you've got about six witnesses and there is  
24 a video?

25 **MR. FENDER:** Yes, sir.

1           **THE COURT:** Okay. And how are we playing the  
2 video?

3           **MR. FENDER:** Judge, we're probably going to be  
4 playing it from a laptop directly to a TV screen.  
5 And we also have some photos and just a couple  
6 pieces of physical evidence.

7           **THE COURT:** And you have all the equipment that  
8 you need to do that?

9           **MR. FENDER:** Yes, sir.

10          **THE COURT:** Okay. And what time does the jury  
11 panel come in in the morning, Madame Clerk?

12          **THE CLERK:** They're coming in at 9:30. We'll  
13 be ready by 10:00.

14          **THE COURT:** Okay. So y'all will be ready to  
15 start jury selection at 10:00?

16          **THE CLERK:** Yes, sir.

17          **THE COURT:** All right. What else,  
18 Ms. Zmroczek?

19          **MS. ZMROCZEK:** I think that's it, Your Honor.  
20 I think that if they have some photographs and we  
21 can look at this video, we can do that, obviously,  
22 now that we have some time. And I will have my voir  
23 dire questions in the morning. It's the same that  
24 you've seen.

25          **THE COURT:** Okay. Yeah, whatever voir dire and

1 witness list that you have, go ahead and get those  
2 to us in paper form, make sure Madame Court Reporter  
3 has a copy of your witness list so she knows exactly  
4 who they are.

5 And anything else from you, Mr. Fender?

6 **MR. FENDER:** Nothing from the State.

7 **THE COURT:** From Ms. Zmroczek?

8 **MS. ZMROCZEK:** Nothing.

9 (The proceedings were concluded for November  
10 6, 2017.)

11 (The following proceedings were held on  
12 November 7, 2017.)

13 **THE COURT:** All right. Ladies and gentlemen,  
14 as I explained to you this morning, you are here for  
15 a term of criminal court, and we will now proceed  
16 with that.

17 Is the State ready to proceed?

18 **MR. FENDER:** Yes, Judge. We do have a matter  
19 of law. May we approach?

20 **THE COURT:** Yes.

21 (Whereupon, a bench conference was held off  
22 the record in the presence of the jury panel, but  
23 out of the hearing of the jury panel.)

24 **THE COURT:** All right. Is the State ready to  
25 proceed?

1           **MR. FENDER:** Yes, Judge.

2           **THE COURT:** All right. You may call your case.

3           **MR. FENDER:** State calls State versus Demarcus  
4 Robinson on 2016-GS-41-311, true-billed indictment  
5 armed robbery; 2016-GS-41-310, kidnapping; and  
6 2016-GS-41-312, possession of a firearm during the  
7 commission of a violent offense.

8           **THE COURT:** All right. Ladies and gentlemen,  
9 the State has called its case. This is the State of  
10 South Carolina versus Demarcus L. Robinson.  
11 Mr. Robinson has been indicted by the Saluda County  
12 Grand Jury for one count of armed robbery, one count  
13 of possession of a firearm during the commission of  
14 a violent offense and one count of kidnapping. And  
15 I hold in my hand his indictments.

16           Now, the fact that Mr. Robinson was indicted in  
17 this case is not proof of anything. It is not  
18 evidence of anything. These indictments are simply  
19 the documents that give this Court the authority to  
20 hear this case. They are not proof or evidence to  
21 these indictments.

22           Mr. Robinson has pled not guilty. That plea  
23 puts the burden of proof on the State to prove his  
24 guilt to a jury beyond a reasonable doubt.

25           I'm now going to read the indictments to you.

1 Again, these are allegations at this point. And the  
2 first indictment is for armed robbery. It alleges  
3 that Demarcus Robinson, along with others, on or  
4 about August the 1st of 2016, in Saluda County, at  
5 the Circle K, located at 300 East Main Street, Ridge  
6 Spring, South Carolina, while armed with a firearm  
7 described as gray in color, feloniously take from  
8 William Houston, the store clerk, the victim, by  
9 means of force or intimidation, the goods and/or  
10 monies of the victim, and that he, along with  
11 others, did threaten the victim with the  
12 representation of a firearm taking goods and/or  
13 monies being described as follows: approximately,  
14 \$69 in U.S. currency and/or a carton of Newport  
15 cigarettes and/or carbonated beverages, with the  
16 intent to deprive the owner permanently of the  
17 property.

18 The second indictment, again, which is an  
19 allegation at this point -- excuse me -- which is an  
20 allegation, is that Demarcus Robinson did, in Saluda  
21 County, on or about August the 1st of 2016,  
22 willfully and unlawfully display a firearm during  
23 the commission of a violent crime of armed robbery  
24 in violation of the South Carolina Code of Laws.

25 And the third indictment, which is, again, an

1 allegation, is that Mr. Robinson did, in Saluda  
2 County, on or about August the 1st of 2016,  
3 unlawfully seize, confine, inveigle, decoy, kidnap,  
4 abduct or carry away one William Houston without  
5 authority of law and without consent by the  
6 following means, to wit: The defendant, with the  
7 use of physical force, did unlawfully seize and  
8 confine, by physical force and battery, the victim,  
9 William Houston, in violation of the South Carolina  
10 Code of Laws.

11 Again, ladies and gentlemen, these indictments  
12 are not evidence of anything. They are not proof of  
13 anything. They're merely the documents which give  
14 this Court the authority to hear this case. So I am  
15 now going to ask you questions about this case.  
16 And, again, as I told you this morning, you are  
17 under oath, and it is very important that you answer  
18 truthfully to the questions that I'm about to ask  
19 you.

20 All right. So, Mr. Fender, if you and the  
21 other solicitors will please stand up and introduce  
22 yourselves to the jury.

23 **MR. FENDER:** Good morning. My name's Doug  
24 Fender. This is Al Eargle.

25 **MR. EARGLE:** Good morning.

1           **THE COURT:** All right. Ladies and gentlemen,  
2           the question is are you related by blood or  
3           marriage, close personal friends with, have any  
4           connection to, business, personal, social or  
5           otherwise, either Assistant Solicitor Fender or  
6           Assistant Solicitor Eargle? Have you ever been  
7           represented by them or on the other side of a case  
8           from them or do you have any connection to anyone at  
9           the Eleventh Circuit Solicitor's Office? The  
10          Eleventh Circuit Solicitor's Office accompanies  
11          Edgefield County, McCormick County, Saluda County  
12          and Lexington County. If so, please stand.

13                   (Juror stands.)

14          **THE COURT:** And tell me your name, sir.

15          **JUROR:** My name is Lewis Quattlebaum.

16          **THE COURT:** And who do you know,

17          Mr. Quattlebaum?

18          **JUROR:** My son is an investigator with the  
19          solicitor's office.

20          **THE COURT:** All right. And would this affect  
21          your ability to be fair and impartial?

22          **JUROR:** No, sir.

23          **THE COURT:** Are you willing to base your  
24          decision off the evidence and the law?

25          **JUROR:** Yes, sir.

1           **THE COURT:** And will you do so?

2           **JUROR:** Yes, sir.

3           **THE COURT:** Thank you very much.

4           Anybody else?

5           (There was no response.)

6           **THE COURT:** All right. The defendant in this  
7 case is Mr. Demarcus Brown. And his attorney  
8 Ms. Aimee Zmroczek from Columbia.

9           Ms. Zmroczek, if you'd please stand up and  
10 introduce yourself and your client.

11           **MS. ZMROCZEK:** Thank you. I'm Aimee Zmroczek.  
12 My main office is in Columbia. I do practice  
13 throughout the state and federally.

14           This is my client -- this is my client,  
15 Demarcus Robinson, who is from Ridge Spring -- or --  
16 yeah, Ridge Spring.

17           **THE COURT:** All right. Is anybody related by  
18 blood or marriage, close personal friends with, have  
19 any connection to, business, personal, social or  
20 otherwise, either Mr. Robinson or Ms. Zmroczek? As  
21 to Ms. Zmroczek, have you ever been represented by  
22 her or on the other side of a case from her? If so,  
23 please stand.

24           (There was no response.)

25           **THE COURT:** All right. The next thing I'm

1 going to do, ladies and gentlemen, is read you a  
2 list of potential witnesses in this case. And if  
3 you hear a name that you know or if it's somebody  
4 that you think you know, I want you to please stand,  
5 and then we'll gather that information from you once  
6 I'm finished with the list.

7 All right. So the list is William Houston --

8 (Juror stands.)

9 **THE COURT:** Oh, yes, sir.

10 **JUROR:** My son --

11 **THE COURT:** Tell me your name.

12 **JUROR:** My name is Terrence Lockett, Sr.

13 **MS. ZMROCZEK:** Your Honor, may we approach?

14 **THE COURT:** Yes. Y'all come on up.

15 (Whereupon, a bench conference was held off  
16 the record, in the presence of the jury panel, but  
17 out of the hearing of the jury panel.)

18 **THE COURT:** Mr. Lockett, you're excused from  
19 jury service in this case. Thank you very much.

20 Okay. So the next thing I'm going to do is  
21 read a list of potential witnesses. If you hear a  
22 name you know or if it's somebody you think you  
23 know, please just stand up where you are.

24 If any of these witnesses are present in the  
25 courtroom, they don't all have to be right now, but

1 some of them may be, I would ask that they stand  
2 when their name is called:

3 William Houston, Mike Raffield with the Saluda  
4 County Sheriff's Office -- y'all turn around and  
5 face out -- Russ Padgett with Saluda County -- thank  
6 you -- Gary Hitt with Saluda County, Evan Garris  
7 with the department of corrections, Cathern Leisy  
8 with SLED, Geri or Gary Grenier with Ridge Spring  
9 Police Department, Gary Hitt, Joe West with SLED,  
10 Ashley Turner with the Saluda County Sheriff's  
11 Office, Tyrell Lockett, Chuck Padgett with Saluda  
12 Police Department, John Hicks with the sheriff's  
13 office, Catherine Robinson, Jasime Yi with SLED,  
14 Shannon Molina, Kim Darnell with the detention  
15 center, Lee Shorter with the police department,  
16 Brittany Cyrus, Derrick Cyrus, Alexis Young,  
17 Catherine Robinson, another Katherine Robinson,  
18 Shannon Molinda and Chris Watkins with Watkins  
19 Digital Forensics.

20 The question is is anybody related by blood or  
21 marriage, close personal friends with, have any  
22 connection to, business, personal or social or  
23 otherwise, any of the witnesses that I just named?

24 The witnesses can be seated.

25 Don't raise your hand now; stand up.

1 (Jurors stand.)

2 **THE COURT:** Tell me your name.

3 **JUROR:** Shirley Gibson, Juror 64.

4 **THE COURT:** And who do you know, Ms. Gibson?

5 **JUROR:** Catherine Robinson, Derrick Cyrus, and  
6 I know all of his family.

7 **THE COURT:** Okay. And will this affect your  
8 ability to be fair and impartial?

9 **JUROR:** I don't think so.

10 **THE COURT:** Okay. That's a yes or no question.

11 **JUROR:** No.

12 **THE COURT:** Are you willing to base your  
13 decision off the evidence and the law?

14 **JUROR:** Yes.

15 **THE COURT:** And are you willing to follow my  
16 instructions?

17 **JUROR:** Yes.

18 **THE COURT:** And will you do so?

19 **JUROR:** Yes.

20 **THE COURT:** Thank you very much.

21 All right. Right behind her, tell me your  
22 name, ma'am.

23 **JUROR:** Beverly Major, Juror 106.

24 **THE COURT:** And who do you know, Ms. Major?

25 **JUROR:** I live in Ridge Spring, and so I know

1 Geri Grenier, the police officer.

2 **THE COURT:** Okay. And would this affect your  
3 ability to be fair and impartial?

4 **JUROR:** No.

5 **THE COURT:** Are you willing to base your  
6 decision off the evidence and the law?

7 **JUROR:** Yes.

8 **THE COURT:** And will you do so?

9 **JUROR:** Yes.

10 **THE COURT:** Thank you.

11 All right. Coming right across, tell me your  
12 name.

13 **JUROR:** Tiffany Pearson, 129.

14 **THE COURT:** And who do you know, Ms. Pearson?

15 **JUROR:** Ashley Turner.

16 **THE COURT:** And will this affect your ability  
17 to be fair and impartial?

18 **JUROR:** No.

19 **THE COURT:** Are you willing to base your  
20 decision off the evidence and the law?

21 **JUROR:** Yes, sir.

22 **THE COURT:** And will you do so?

23 **JUROR:** Yes, sir.

24 **THE COURT:** All right. Right across, what's  
25 your name, ma'am?

1           **JUROR:** Tammy Horne, Number 80.

2           **THE COURT:** Number 80?

3           **JUROR:** 80.

4           **THE COURT:** Ms. Horne, who do you know?

5           **JUROR:** Ashley Turner.

6           **THE COURT:** And will this affect your ability  
7 to be fair and impartial?

8           **JUROR:** No, sir.

9           **THE COURT:** Are you willing to base your  
10 decision off the evidence and the law?

11          **JUROR:** Yes, sir.

12          **THE COURT:** And will you do so?

13          **JUROR:** Yes, sir.

14          **THE COURT:** All right. Right behind her, yes,  
15 ma'am, your name?

16          **JUROR:** Sherrie Wilson.

17          **THE COURT:** Ms. Wilson?

18          **JUROR:** 204.

19          **THE COURT:** 204. Who do you know, Ms. Wilson?

20          **JUROR:** I know Russ Padgett.

21          **THE COURT:** Okay. And will this affect your  
22 ability to be fair and impartial?

23          **JUROR:** No, sir.

24          **THE COURT:** Are you willing to base your  
25 decision off the evidence and the law?

1           **JUROR:** Yes, sir.

2           **THE COURT:** And will you do so?

3           **JUROR:** Yes.

4           **THE COURT:** Okay. Right next to her, tell me  
5 your name, ma'am.

6           **JUROR:** Patricia Matthews, Juror Number 113. I  
7 know Russ Padgett...

8           **THE COURT:** Speak up for me now. You know who?

9           **JUROR:** Russ Padgett and Geri from Ridge  
10 Spring. I really know some of these other cops,  
11 too.

12           **THE COURT:** Okay. And will this affect your  
13 ability to be fair and impartial?

14           **JUROR:** No, sir.

15           **THE COURT:** Are you willing to base your  
16 decision off the evidence and the law?

17           **JUROR:** Yes, sir.

18           **THE COURT:** And will you do so?

19           **JUROR:** Yes, sir.

20           **THE COURT:** All right. Mr. Bobby, I don't  
21 remember your last name, but what's --

22           **JUROR:** Corley.

23           **THE COURT:** Mr. Corley, that's right. I  
24 apologize. And who do you know, Mr. Corley?

25           **JUROR:** I know Russ Padgett.

1           **THE COURT:** Okay. And will this affect your  
2 ability to be fair and impartial?

3           **JUROR:** No.

4           **THE COURT:** Are you willing to base your  
5 decision off the evidence and the law?

6           **JUROR:** Yes.

7           **THE COURT:** And will you do so?

8           **JUROR:** Yes.

9           **THE COURT:** Okay. And last, what's your name,  
10 ma'am?

11          **JUROR:** Sheila Hopkins.

12          **THE COURT:** Ms. Hopkins is Juror Number 79.  
13 Who do you know?

14          **JUROR:** Deidra Robinson, Catherine Robinson,  
15 also Mr. Demarcus Robinson.

16          **THE COURT:** Okay. And will this affect your  
17 ability to be fair and impartial?

18          **JUROR:** No.

19          **THE COURT:** Are you willing to base your  
20 decision off the evidence and the law?

21          **JUROR:** Yes.

22          **THE COURT:** And will you do so?

23          **JUROR:** Yes.

24          **THE COURT:** Okay. Anybody else think they know  
25 or may know or could know any of the potential

1 witnesses?

2 (There was no response.)

3 **THE COURT:** All right. The next question is  
4 this: Has any member of the jury panel formed or  
5 expressed any opinions about any issues or matters  
6 involved in this case?

7 (There was no response.)

8 **THE COURT:** Has any member of the jury panel or  
9 -- excuse me -- is any member of the jury panel  
10 aware of any bias or prejudice that you may have  
11 towards the State or the defendant in this case?

12 (There was no response.)

13 **THE COURT:** Is there any member of the jury  
14 panel who is a member of or a contributor to any  
15 group which has, as its primary concern, the  
16 promotion of law enforcement or victims' rights?  
17 This would include, but is not limited to, MADD,  
18 SADD or defendants' rights, such as the Innocence  
19 Project. If so, please stand.

20 (There was no response.)

21 **THE COURT:** Does any member of the jury panel  
22 know of any reason whatsoever why he or she should  
23 not serve as a juror in this case? Is there anyone  
24 in the room who believes they cannot be fair and  
25 impartial to both the State and to the defendant?

1 (There was no response.)

2 **THE COURT:** All right. Is anybody in the room  
3 related to someone who is in law enforcement, a  
4 member of your immediate family is involved in law  
5 enforcement, please stand?

6 (Jurors stand.)

7 **THE COURT:** All right. Ms. Horne, who are you  
8 related to?

9 **JUROR:** Toby Horne.

10 **THE COURT:** Okay. And where does he or she  
11 work?

12 **JUROR:** He's right there. He's in the  
13 sheriff's department.

14 **THE COURT:** Okay. And will this affect your  
15 ability to be fair and impartial?

16 **JUROR:** No.

17 **THE COURT:** Are you willing to base your  
18 decision off the evidence and the law?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And will you do so?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Yes, ma'am, your name?

23 **JUROR:** I'm Evelyn Shell. My niece is married  
24 to Donovan Shealy.

25 **THE COURT:** Okay. Tell me your last name

1           again.

2           **JUROR:** Shell.

3           **THE COURT:** Okay. And will this affect your  
4           ability to be fair and impartial?

5           **JUROR:** No.

6           **THE COURT:** Are you willing to base your  
7           decision off the evidence and the law?

8           **JUROR:** Yes.

9           **THE COURT:** And will you do so?

10          **JUROR:** Yes.

11          **THE COURT:** All right. Yes, ma'am, your name?

12          **JUROR:** Cathy Stone, 182.

13          **THE COURT:** And who are you related to?

14          **JUROR:** My sister's a magistrate judge.

15          **THE COURT:** Is what?

16          **JUROR:** A magistrate judge.

17          **THE COURT:** Okay. Will that affect your  
18          ability to be fair and impartial?

19          **JUROR:** No.

20          **THE COURT:** Are you willing to base your  
21          decision off the evidence and the law?

22          **JUROR:** Yes.

23          **THE COURT:** And will you do so?

24          **JUROR:** Yes.

25          **THE COURT:** Okay. Yes, ma'am.

1           **JUROR:** Terri Rodgers. First cousin to Sheriff  
2 Perry.

3           **THE COURT:** And will this affect your ability  
4 to be fair and impartial?

5           **JUROR:** No.

6           **THE COURT:** Are you willing to base your  
7 decision off the evidence and the law?

8           **JUROR:** Yes.

9           **THE COURT:** And will you do so?

10          **JUROR:** Yes.

11          **THE COURT:** All right. Yes, ma'am, tell me  
12 your name again.

13          **JUROR:** Patricia Matthews, Juror 113. My  
14 nephew works for the Irmo Police Department.

15          **THE COURT:** Okay. And will this affect your  
16 ability to be fair and impartial?

17          **JUROR:** No, sir.

18          **THE COURT:** Are you willing to base your  
19 decision off the evidence and the law?

20          **JUROR:** Yes, sir.

21          **THE COURT:** And will you do so?

22          **JUROR:** Yes.

23          **THE COURT:** Okay. Yes, ma'am, your name?

24          **JUROR:** Margaret Huggins, 82.

25          **THE COURT:** Number 82. And who are you related

1 to, Ms. Huggins?

2 **JUROR:** My daughter's a policeman.

3 **THE COURT:** And will this affect your ability  
4 to be fair and impartial?

5 **JUROR:** No.

6 **THE COURT:** Are you willing to base your  
7 decision off the evidence and the law?

8 **JUROR:** Yes.

9 **THE COURT:** And will you do so?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Okay. What's your name, sir?

12 **JUROR:** Damon Thompson, 185. My

13 brother-in-law's a policeman in Alabama.

14 **THE COURT:** And will this affect your ability  
15 to be fair and impartial?

16 **JUROR:** No, sir.

17 **THE COURT:** Are you willing to base your  
18 decision off the evidence and the law?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And will you do so?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Thank you very much.

23 Just one second.

24 (Pause.)

25 **THE COURT:** All right. Is there anyone in the

1 room who knows anything about the case? This is an  
2 incident that allegedly occurred on or about August  
3 the 1st of 2016, at the Circle K in Ridge Spring,  
4 South Carolina. So what I'm -- the question is --  
5 and, again, those are allegations. I'm not saying  
6 that that's evidence. Those are the allegations in  
7 the case.

8 Does anyone know anything about the case? Has  
9 anyone heard anything about the case? Has anyone  
10 read anything about the case? Does anyone have any  
11 knowledge about the case or anyone involved in the  
12 case in any way, shape or form? If so, please  
13 stand.

14 (There was no response.)

15 **THE COURT:** Has anyone formed or expressed an  
16 opinion about any issue or matter involved in the  
17 case? If so, please stand.

18 (There was no response.)

19 **THE COURT:** Has anyone or a member of their  
20 immediate family ever worked at that Circle K in  
21 Ridge Spring?

22 (There was no response.)

23 **THE COURT:** So the next question is what I call  
24 a reciprocal question. There's going to be two  
25 parts to it. So what I want to know is have you or

1 a member of your immediate family ever been the  
2 victim of a burglary, a kidnapping or a robbery?  
3 Or, you or a member of your immediate family ever  
4 been accused of or the defendant in a burglary,  
5 kidnapping or robbery case? If so, please stand.

6 (Jurors stand.)

7 **THE COURT:** Okay. You three come right over  
8 here to one of these ladies in the red jackets.

9 (Whereupon, the following bench conferences  
10 were held on the record, in the presence of the jury  
11 panel, but out of the hearing of the jury panel.)

12 **THE COURT:** All right. Mr. Martinez, you're  
13 first. Is it you or a family member?

14 **JUROR:** Family member.

15 **THE COURT:** Okay. And what happened?

16 **JUROR:** My mother and father were held as  
17 hostages at their home.

18 **THE COURT:** They were what?

19 **JUROR:** Held as hostages and got robbed;  
20 somebody broke into their home.

21 **THE COURT:** And when was that?

22 **JUROR:** About four or five years ago.

23 **THE COURT:** Okay. And would this affect your  
24 ability to be fair and impartial?

25 **JUROR:** No, sir.

1           **THE COURT:** Are you willing to base your  
2 decision off the evidence and the law?

3           **JUROR:** Yes, sir.

4           **THE COURT:** And will you do so?

5           **JUROR:** Yes, sir.

6           **THE COURT:** Okay. Next.

7           **BAILIFF:** Number 166..

8           **JUROR:** My son had a --

9           **COURT REPORTER:** Had a what? I'm sorry.

10          **THE COURT:** Four-wheeler, ATV.

11          And would this affect your ability to be fair  
12 and impartial?

13          **JUROR:** No.

14          **THE COURT:** Are you willing to base your  
15 decision off the evidence and the law?

16          **JUROR:** Yes.

17          **THE COURT:** Thank you.

18          **BAILIFF:** 95.

19          **THE COURT:** Yes, sir, go ahead.

20          **JUROR:** My son was accused of kidnapping, but  
21 it was throwed out.

22          **THE COURT:** Okay. And would this affect your  
23 ability to be fair and impartial?

24          **JUROR:** No, sir.

25          **THE COURT:** Are you willing to base your

1 decision off the evidence and the law?

2 **JUROR:** Yes, sir.

3 **THE COURT:** And will you do so?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Thank you.

6 **BAILIFF:** Number 4.

7 **JUROR:** My father was robbed at gunpoint in his  
8 home.

9 **THE COURT:** And will this affect your ability  
10 to be fair and impartial?

11 **JUROR:** No, sir.

12 **THE COURT:** Are you willing to base your  
13 decision off the evidence and the law?

14 **JUROR:** Yes, sir.

15 **THE COURT:** And will you do so?

16 **JUROR:** Yes.

17 **THE COURT:** Thank you.

18 **BAILIFF:** 164.

19 **JUROR:** I had a chain saw stolen from my house  
20 last year.

21 **THE COURT:** And will this affect your ability  
22 to be fair and impartial?

23 **JUROR:** No, sir.

24 **THE COURT:** Are you willing to base your  
25 decision off the evidence and the law?

1           **JUROR:** Yes, sir.

2           **THE COURT:** And will you do so?

3           **JUROR:** Yes, sir.

4           **THE COURT:** Thank you.

5           **BAILIFF:** Number 68.

6           **THE COURT:** Go ahead.

7           **JUROR:** My sister owned a convenience store in  
8 another county. There was a murder in her parking  
9 lot out there, been about five or six years ago.

10          **THE COURT:** Was she murdered?

11          **JUROR:** Oh, no. It was individuals in a car.  
12 It was a drug deal gone bad.

13          **THE COURT:** And will this affect your ability  
14 to be fair and impartial?

15          **JUROR:** No, sir.

16          **THE COURT:** And are you willing to base your  
17 decision off the evidence and the law?

18          **JUROR:** Yes, sir.

19          **THE COURT:** And will you do so?

20          **JUROR:** Yes, sir.

21          **THE COURT:** Thank you.

22          **BAILIFF:** 162.

23          **JUROR:** Morning. Not sure if it counts, I had  
24 an enclosed trailer stolen out of my yard in Saluda  
25 County, never recovered or anything, about -- I'm

1 not really sure what information you're looking for.

2 **THE COURT:** Will that affect your ability to be  
3 fair and impartial?

4 **JUROR:** No.

5 **THE COURT:** Are you willing to base your  
6 decision off the evidence and the law?

7 **JUROR:** Yes.

8 **THE COURT:** And will you do so?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Okay.

11 (The bench conferences were concluded.)

12 **THE COURT:** All right. Anybody else on that  
13 question?

14 (There was no response.)

15 **THE COURT:** I need Juror Number 196 to come  
16 forward, please.

17 (Whereupon, the following bench conferences  
18 were held on the record, in the presence of the jury  
19 panel, but out of the hearing of the jury panel.)

20 **THE COURT:** Do you understand you're under  
21 oath?

22 **JUROR:** (No response.)

23 **THE COURT:** Yes or no?

24 **JUROR:** (Juror shook head.)

25 **THE COURT:** You do not understand that you're

1 under oath?

2 **JUROR:** I don't know what this is. This is my  
3 first time being here.

4 **THE COURT:** Do you understand what being under  
5 oath means?

6 **JUROR:** Huh-huh.

7 **THE COURT:** That means you swear to tell me the  
8 truth.

9 **JUROR:** Yes, sir.

10 **THE COURT:** You understand what that means?  
11 How far did you go in school?

12 **JUROR:** The tenth grade.

13 **THE COURT:** Okay. And you don't understand  
14 what being under oath means?

15 **JUROR:** No, sir.

16 **THE COURT:** Okay. And it's my understanding  
17 that you were in the hallway talking about the  
18 police.

19 **JUROR:** Yes, sir. I had got convicted of a  
20 crime yesterday, public disorderly conduct.

21 **THE COURT:** Okay. And were you in the hallway  
22 talking to other jurors about the police and police  
23 misconduct?

24 **JUROR:** Oh, no, sir. I was talking to, like,  
25 one of my friends about it.

1           **THE COURT:** That's here?

2           **JUROR:** Yes, sir.

3           **THE COURT:** Okay. And where did this  
4 conversation take place?

5           **JUROR:** Outside in the waiting room.

6           **THE COURT:** Okay. And what did you tell him or  
7 her?

8           **JUROR:** It was a dispute that went on  
9 yesterday, and I thought it went against me with  
10 public disorderly conduct.

11          **THE COURT:** And who did you have this  
12 conversation with?

13          **JUROR:** A girl that's in here.

14          **THE COURT:** What's her name?

15          **JUROR:** Kira.

16          **THE COURT:** Kira what?

17          **JUROR:** I don't know her last name.

18          **THE COURT:** Okay. And where is she?

19          **JUROR:** She's sitting over there with the  
20 glasses.

21          **THE COURT:** In the black and pink sweater?

22          **JUROR:** Yes, sir.

23          **THE COURT:** So you don't believe that you have  
24 any bias or prejudice against the police?

25          **JUROR:** Oh, no, sir. I just said that the

1 police had got caught on me yesterday for a dispute  
2 that went on with public disorderly conduct. And I  
3 tried to tell the police what happened, but they  
4 took me to jail.

5 **THE COURT:** Okay. So do you have a bias  
6 against them?

7 **JUROR:** No, sir.

8 **THE COURT:** You don't. So you weren't in the  
9 hallway talking trash about the police in front of  
10 other jurors?

11 **JUROR:** Huh-huh.

12 **THE COURT:** So if somebody tells me --

13 **JUROR:** But I was just talking about the girl  
14 that did it, that called the police on me.

15 **THE COURT:** Is she here?

16 **JUROR:** Oh, no, sir.

17 **THE COURT:** Okay. I don't want you discussing  
18 your personal situations with anybody else. Do you  
19 understand that?

20 **JUROR:** Yes, sir.

21 **THE COURT:** Okay. You can have a seat.

22 Right here. Yes, ma'am. Come forward.

23 What's your name?

24 **JUROR:** Kira Dozier, Number 41.

25 **THE COURT:** And did you have a conversation

1 with the young lady that just came up here in the  
2 hallway?

3 **JUROR:** Yes.

4 **THE COURT:** And what was the substance of that  
5 conversation?

6 **JUROR:** About what happened yesterday.

7 **THE COURT:** And what did she tell you?

8 **JUROR:** She got into it with somebody at the  
9 store.

10 **THE COURT:** Okay. And what did she say about  
11 the police?

12 **JUROR:** That they had arrested her.

13 **THE COURT:** And did she say anything negative  
14 towards them?

15 **JUROR:** No.

16 **THE COURT:** She didn't?

17 **JUROR:** Not that I know of.

18 **THE COURT:** And do you have any bias or  
19 prejudice against the State or the police department  
20 or the sheriff's department?

21 **JUROR:** No.

22 **THE COURT:** In any way, shape or form?

23 **JUROR:** No.

24 **THE COURT:** You can sit here fairly and  
25 impartially?

1           **JUROR:** Yes.

2           **THE COURT:** You can set aside whatever comments  
3 you learned from Ms. Watson and base your decision  
4 off the evidence and the law?

5           **JUROR:** Yes.

6           **THE COURT:** And will you do so?

7           **JUROR:** Yes.

8           **THE COURT:** Okay.

9           (The bench conferences were concluded with  
10 the jurors. And the following bench conference was  
11 held with the attorneys, out of the hearing of the  
12 jury panel.)

13          **MR. FENDER:** Could you instruct her not to  
14 talk?

15          **THE COURT:** I already did.

16          **MR. FENDER:** She's continuing to talk.

17          (The bench conference was concluded.)

18          **THE COURT:** Okay. Ladies and gentlemen, is  
19 there anybody else -- I'm going to ask this question  
20 one more time, and I mean this, this is real, this  
21 is real life. Okay? So if anybody has any bias or  
22 prejudice against either the State or the defendant  
23 now is the time to tell me.

24          (There was no response.)

25          **THE COURT:** I promise you what we want on this

1 jury is 12 people who have nobody to reward and  
2 nobody to punish. We want 12 people who will sit  
3 fairly, who will sit impartially, that sit without  
4 bias and without prejudice towards either side, they  
5 will listen to the evidence in the case, they will  
6 determine what the facts are in the case, they will  
7 then apply those facts to the law that I will give  
8 them and ultimately reach a verdict. Is there  
9 anybody in the room who believes they cannot do that  
10 fairly and impartially?

11 (Jurors stand.)

12 **THE COURT:** All right. Please come forward.

13 (Whereupon, the following bench conferences  
14 were held on the record, in the presence of the jury  
15 panel, but out of the hearing of the jury panel.)

16 **THE COURT:** What's your name?

17 **JUROR:** Julius Stewart.

18 **THE COURT:** What do you want to say?

19 **JUROR:** I know some of the people from Ridge  
20 Spring, so I don't want to have nothing to do with  
21 it.

22 **THE COURT:** Just have a seat. Don't discuss it  
23 with anybody else.

24 180's out.

25 What's your name, ma'am?

1           **JUROR:** Sheila Hopkins, Number 79. My son and  
2 him are real close friends.

3           **THE COURT:** It's too close?

4           **JUROR:** Yeah.

5           **THE COURT:** That's fair. Just don't discuss it  
6 with anybody. Just go back and have a seat.

7           She's out.

8           **JUROR:** I got a question. Can I be excused or  
9 exempt from this?

10          **THE COURT:** Why?

11          **JUROR:** Because this is my first time being  
12 here. I feel nervous. I don't want to be here.

13          **THE COURT:** Okay. Do you have a bias?

14          **JUROR:** I just don't want to be here.

15          **THE COURT:** Why not?

16          **JUROR:** Because I just got -- I just got  
17 charges. I'm just not comfortable being here in the  
18 courtroom.

19          **THE COURT:** Do you have a bias or prejudice one  
20 way or the other for either side?

21          **JUROR:** No, sir. I just don't want to be here.

22          **THE COURT:** Okay. Have a seat.

23          **JUROR:** 33. I don't think I'll be fair with  
24 the lawyers nowadays.

25          **THE COURT:** You're fine. Just have a seat and

1 don't discuss it with anybody.

2 33 is out.

3 (The bench conferences were concluded with  
4 the jurors. And the following bench conference was  
5 held with the attorneys, out of the hearing of the  
6 jury panel.)

7 **THE COURT:** What's your position on Ms. Watson?

8 **MS. ZMROCZEK:** I don't know if she understands  
9 what the words bias or prejudice means, but I think  
10 that, clearly, she has exhibited bias.

11 **THE COURT:** So you're okay with her being  
12 struck for cause?

13 **MS. ZMROCZEK:** Yes.

14 **THE COURT:** Okay. 196 is out.

15 (The bench conference was concluded.)

16 **THE COURT:** Okay. So what we're going to do  
17 now, ladies and gentlemen, is -- so there's about  
18 60-some-odd of you in here. What's going to happen  
19 now is the computer is going to create a randomly  
20 generated list to select from. Okay? So they're  
21 going to -- they're going to take all of you,  
22 they're going to put you in the computer system, and  
23 the computer system is going to pop you out in the  
24 order that I don't get to pick, that the clerk's  
25 office doesn't -- that no one gets to pick in the

1 room, and then that's how you'll be selected. Okay?

2 The way we used to do it is we used to have  
3 this big wheel and it had, like, all these little,  
4 almost like, bingo balls in them, and they had a  
5 blind person that would literally spin the wheel and  
6 then draw them out. I'm not making this up. So now  
7 we have a computer system that Court Administration  
8 created that will take the names and then put them  
9 in a randomly generated list. Okay?

10 So if your name is called, what I want you to  
11 do -- where do y'all like them to come, Madame  
12 Clerk?

13 **THE CLERK:** Right here.

14 **THE COURT:** So if your name is called, I want  
15 you to come stand right in front of this microphone  
16 right here and I want you to face out, face towards  
17 the jury -- I mean, yeah, face towards your peers.  
18 Okay? And then they're going to ask the State do  
19 they want to seat you or excuse you, and then  
20 they'll ask the defense do they want to seat you or  
21 excuse you. So if either side says excused, you'll  
22 just go to the back of the room. If both sides say  
23 seat or swear, then you're going to come over here  
24 and we will -- you'll have a seat. So bring all of  
25 your belongings with you if your name is called.

1 Okay?

2 (Pause.)

3 **THE COURT:** Strikes are five and ten, and two  
4 alternates, one and two on each.

5 All right. Here we go. So if your name is  
6 called, gather all of your belongings, walk right up  
7 here to this microphone and face out. Okay? If you  
8 get -- if one side says excuse or strike, don't get  
9 your feelings hurt. Okay?

10 Are you ready, Madame Clerk?

11 **THE CLERK:** Yes.

12 Juror Number 195, Robert M. Watson.

13 (Whereupon, Robert M. Watson, a white male,  
14 was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. FENDER:** Please seat.

17 **THE CLERK:** What say you for the defense?

18 **MS. ZMROCZEK:** Please seat this juror.

19 **THE CLERK:** Please take a seat.

20 Juror Number 41, Kira G. Dozier.

21 (Whereupon, Kira G. Dozier, a black female,  
22 was called forward.)

23 **THE CLERK:** What say you for the State?

24 **MR. FENDER:** Please excuse.

25 **THE CLERK:** You may take your seat.

1 Juror Number 68, Wayne E. Grice.

2 (Whereupon, Wayne E. Grice, a white male,  
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please seat.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please excuse the juror for this  
8 trial.

9 **THE CLERK:** You may take your seat.

10 Juror Number 82, Margaret E. Huggins.

11 (Whereupon, Margaret E. Huggins, a white  
12 female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please seat.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please excuse the juror for this  
17 trial.

18 **THE CLERK:** You may take your seat.

19 Juror Number 119, Kathy W. Miles.

20 (Whereupon, Kathy W. Miles, a white female,  
21 was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. FENDER:** Please seat.

24 **THE CLERK:** What say you for the defense?

25 **MS. ZMROCZEK:** Please seat the juror.

1           **THE CLERK:** Take a seat in the jury box.

2           Juror Number 167, Evelyn K. Shell.

3                   (Whereupon, Evelyn K. Shell, a white female,  
4 was called forward.)

5           **THE CLERK:** What say you for the State?

6           **MR. FENDER:** Please seat.

7           **THE CLERK:** What say you for the defense?

8           **MS. ZMROCZEK:** Please swear the juror.

9           **THE CLERK:** Take a seat in the jury box,  
10 please.

11           Juror Number 110, Jose M. Martinez.

12                   (Whereupon, Jose M. Martinez, a Hispanic  
13 male, was called forward.)

14           **THE CLERK:** What say you for the State?

15           **MR. FENDER:** Please excuse.

16           **THE CLERK:** You may take your seat.

17           Juror Number 148, Terri S. Rodgers.

18                   (Whereupon, Terri S. Rodgers, a white  
19 female, was called forward.)

20           **THE CLERK:** What say you for the State?

21           **MR. FENDER:** Please seat.

22           **THE CLERK:** What say you for the defense?

23           **MS. ZMROCZEK:** Please excuse the juror for this  
24 trial.

25           **THE CLERK:** You may take a seat.

1 Juror Number 20, Cressie B. Brooks.

2 (Whereupon, Cressie B. Brooks, a black  
3 female, was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please seat.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please swear the juror.

8 **THE CLERK:** You may take a seat in the jury  
9 box.

10 Juror Number 106, Beverly S. Major.

11 (Whereupon, Beverly S. Major, a white  
12 female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please seat.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please excuse the juror from  
17 this trial.

18 **THE CLERK:** You may take your seat.

19 Juror Number 120, Chaquita Minick.

20 (Whereupon, Chaquita A. Minick, a black  
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. FENDER:** Please seat.

24 **THE CLERK:** What say you for the defense?

25 **MS. ZMROCZEK:** Please swear the juror.

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

2           Juror Number 7, Rendie H. Anderson.

3           (Whereupon, Rendie H. Anderson, a white  
4 female, was called forward.)

5           **THE CLERK:** What say you for the State?

6           **MR. FENDER:** Please excuse.

7           **THE CLERK:** You may take your seat.

8           Juror Number 113, Patricia R. Matthews.

9           (Whereupon, Patricia R. Matthews, a white  
10 female, was called forward.)

11          **THE CLERK:** What say you for the State?

12          **MR. FENDER:** Please seat.

13          **THE CLERK:** What say you for the defense?

14          **MS. ZMROZCEK:** Please excuse the juror for this  
15 trial.

16          **THE CLERK:** You may take your seat.

17          Juror Number 179, Monik J. Stevens.

18          (Whereupon, Monik J. Stevens, a black  
19 female, was called forward.)

20          **THE CLERK:** What say you for the State?

21          **MR. FENDER:** Please excuse.

22          **THE CLERK:** You may take your seat.

23          Juror Number 13, Lisa W. Berry.

24          (Whereupon, Lisa W. Berry, a white female,  
25 was called forward.)

1           **THE CLERK:** What say you for the State?

2           **MR. FENDER:** Please seat.

3           **THE CLERK:** What say you for the defense?

4           **MS. ZMROCZEK:** Please excuse the juror for this  
5 trial.

6           **THE CLERK:** You may take your seat.

7           Juror Number 35, Bobby L. Corley.

8           (Whereupon, Bobby L. Corley, a white male,  
9 was called forward.)

10          **THE CLERK:** What say you for the State?

11          **MR. FENDER:** Please seat.

12          **THE CLERK:** What say you for the defense?

13          **MS. ZMROCZEK:** Please excuse the juror for the  
14 trial.

15          **THE CLERK:** You may take your seat.

16          Juror Number 121, Brandon L. Morris.

17          (Whereupon, Brandon L. Morris, a black male,  
18 was called forward.)

19          **THE CLERK:** What say you for the State?

20          **MR. FENDER:** Please excuse.

21          **THE CLERK:** You may take your seat.

22          Juror Number 204, Sherrie G. Wilson.

23          (Whereupon, Sherrie G. Wilson, a white  
24 female, was called forward.)

25          **THE CLERK:** What say you for the State?

1           **MR. FENDER:** I believe we used our strikes.

2           **THE COURT:** Does the State move to strike for  
3 cause?

4           **MR. FENDER:** Present.

5           **MS. ZMROCZEK:** Please excuse the juror.

6           **THE CLERK:** You may take your seat.

7           Juror Number 197, Kenneth West.

8                   (Whereupon, Kenneth A. West, a white male,  
9 was called forward.)

10          **THE CLERK:** What say you for the State?

11          **MR. FENDER:** Please present.

12          **THE CLERK:** What say you for the defense?

13          **MS. ZMROCZEK:** Please swear the juror.

14          **THE CLERK:** Go ahead and take your seat in the  
15 jury box.

16          Juror Number 107, Casey J. Maloney.

17                   (Whereupon, Casey J. Maloney, a white male,  
18 was called forward.)

19          **THE CLERK:** What say you for the State?

20          **MR. FENDER:** Please present.

21          **THE CLERK:** What say you for the defense?

22          **MS. ZMROCZEK:** Please swear the juror.

23          **THE CLERK:** Go ahead and take a seat in the  
24 jury box, please.

25          Juror Number 66, Delfuni Glover.

1 (Whereupon, Delfuni Glover, a black female,  
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. FENDER:** Please present.

5 **THE CLERK:** What say you for the defense?

6 **MS. ZMROCZEK:** Please swear the juror.

7 **THE CLERK:** Please take a seat in the jury box.  
8 Juror Number 64, Shirley Diane Gibson.

9 (Whereupon, Shirley Diane Gibson, a black  
10 female, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. FENDER:** May we approach?

13 **THE COURT:** Sure.

14 (Whereupon, a bench conference was held off  
15 the record, in the presence of the jury panel, but  
16 out of the hearing of the jury panel.)

17 **THE CLERK:** What say you for the State?

18 **MR. FENDER:** Please present.

19 **THE CLERK:** What say you for the defense?

20 **MS. ZMROCZEK:** Please swear the juror.

21 **THE CLERK:** Go ahead and get in the jury box.  
22 Juror Number 166, James R. Shealy.

23 (Whereupon, James R. Shealy, a white male,  
24 was called forward.)

25 **THE CLERK:** What say you for the State?

1           **MR. FENDER:** Please present.

2           **MS. ZMROCZEK:** Please swear the juror.

3           **THE CLERK:** Take a seat in the jury box,  
4 please.

5           Juror Number 151, Jonathan M. Roof.

6           (Whereupon, Jonathan M. Roof, a white male,  
7 was called forward.)

8           **THE CLERK:** What say you for the State?

9           **MR. FENDER:** Please present.

10          **THE CLERK:** Defense?

11          **MS. ZMROCZEK:** Please swear the juror.

12          **THE CLERK:** You can take a seat in the jury  
13 box.

14          Juror Number 6, Gerald D. Amick.

15          (Whereupon, Gerald D. Amick, a white male,  
16 was called forward.)

17          **THE CLERK:** What say you for the State?

18          **MR. FENDER:** Please present.

19          **THE CLERK:** What say you for the defense?

20          **MS. ZMROCZEK:** Please excuse the juror for this  
21 trial.

22          **THE CLERK:** You can have a seat.

23          Juror Number 102, Gary H. Lott.

24          (Whereupon, Gary H. Lott, a white male, was  
25 called forward.)

1           **THE CLERK:** What say you for the State?

2           **MR. FENDER:** Please present.

3           **THE CLERK:** What say you for the defense?

4           **MS. ZMROCZEK:** Please excuse the juror for this  
5 trial..

6           **THE CLERK:** You may have your seat.

7           Juror Number 5, Ovidio Aguirre.

8                     (Whereupon, Ovidio Aguirre, a Hispanic male,  
9 was called forward.)

10          **THE CLERK:** What say you for the State?

11          **MR. FENDER:** Please present.

12          **THE CLERK:** What say you for the defense?

13          **MS. ZMROCZEK:** Please swear the juror.

14          **THE CLERK:** You may take your seat.

15          **THE COURT:** Two alternates. Strikes will be  
16 one and two on each.

17          **THE CLERK:** Juror Number 157, Jessie M.  
18 Salters.

19                     (Whereupon, Jessie M. Salters, a white male,  
20 was called forward.)

21          **THE CLERK:** What say you for the State?

22          **MR. FENDER:** Please present.

23          **THE CLERK:** What say you for the defense?

24          **MS. ZMROCZEK:** Please swear the juror.

25          **THE CLERK:** Have a seat in the jury box.

1 Juror Number 130, Denise C. Pound.

2 (Whereupon, Denise C. Pound, a white female,  
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please present.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please excuse the juror for this  
8 trial.

9 **THE CLERK:** You may take your seat.

10 Juror Number 149, Cerrato Amanda Rodriguez.

11 (Whereupon, Cerrato Amanda Rodriguez, a  
12 Hispanic female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please present.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please swear the juror.

17 **THE CLERK:** Take a seat in the jury box.

18 **THE COURT:** All right. Any exceptions to the  
19 jury selection process from the State?

20 **MR. FENDER:** Nothing from the State, Judge.

21 **THE COURT:** From the defense?

22 **MS. ZMROCZEK:** Nothing from the defense, Your  
23 Honor.

24 **THE COURT:** Okay. All right. Ladies and  
25 gentlemen, if you are in the audience, I want to say

1           thank you very much for your willingness to serve  
2           this week and thank you very much for being here.

3           You do not --

4                     Sit down.

5                     I want to say thank you very much for your  
6           willingness to be here and thank you very much for  
7           your willingness to serve. I know there are many  
8           other places that you would rather be and things  
9           that you would rather be doing. We cannot do what  
10          we do at this courthouse without good people like  
11          you being willing to come up here and serve and give  
12          of their time. I know that it's a sacrifice, and I  
13          appreciate that.

14                    I do want to let you know, as a visiting judge,  
15          that your courthouse staff is very well equipped.  
16          They do a great job. You have a great Clerk of  
17          Court. She knows how to take care of the judges as  
18          they come in. And they're very professional and  
19          very competent and have their act together.

20                    It's a pleasure to go into small counties and  
21          see how things are running truly efficiently and  
22          running very well. They only have very few weeks  
23          here in Saluda County, whereas, in Richland County,  
24          we run about 46 weeks of criminal court with two  
25          judges there full time. They probably have, what,

1 six or seven terms here throughout the year?

2 **THE CLERK:** Eight.

3 **THE COURT:** Eight terms a year. And so it's  
4 nice to come into these small counties and see how  
5 efficiently these things are running. And your  
6 clerk's office does a great job, and they're very  
7 professional.

8 You do not need to call back in. You do not  
9 need to come back in. You are excused for the rest  
10 of the week. If you get called for jury duty in the  
11 next two years, you can tell them you served this  
12 week. Thank you very much and have a nice day.

13 (The remaining jury panel was excused.)

14 **THE COURT:** Let me get all of these people out  
15 of this room and then give me about five minutes,  
16 then I'm going to release you for lunch and tell you  
17 when to come back. So just let me get all of these  
18 people out, and then I'll give you some  
19 instructions. Okay?

20 (Pause.)

21 **THE COURT:** All right. Ladies and gentlemen,  
22 give me about five minutes of your undivided  
23 attention, then I'm going to release you for lunch.  
24 And when you come back this afternoon, we'll roll  
25 straight into the trial. Okay?

1           Now, again, as I told you this morning, my name  
2 is Robert Hood and I'm from Columbia. It's a  
3 pleasure to be with you. I've been assigned by  
4 Court Administration to this term of court in Saluda  
5 County, and you have been selected as a jury in this  
6 case.

7           Now, before I release you for lunch, I need to  
8 give you one brief bit of cautionary advice while  
9 you're out of the courtroom. I know that right this  
10 minute that you don't know anything about this case  
11 because you've all told me, because I've asked you,  
12 do you know anything about this case, and so it  
13 would be difficult for you to talk about the case,  
14 but you know what the issues are and you know what  
15 the charges are, and if so, it's improper for you to  
16 discuss any aspect of this case amongst yourselves  
17 or with anyone else not only between now and this  
18 afternoon, but at any time during the course of this  
19 trial.

20           I'll give you more specific information and  
21 instructions right after lunch, but I wanted to bind  
22 you over between now and then so that you won't slip  
23 and start talking about the case or anyone involved  
24 in the case or things that you think might be  
25 involved in this case between now and then.

1           Now, you can't talk about it amongst  
2 yourselves, and you also can't let anybody else talk  
3 to you about it. So if somebody tries to talk to  
4 you, tell them that you're a juror and that I've  
5 told you not to discuss the case, that should end  
6 the matter right there. If it doesn't, and for some  
7 reason, that person continues to try to talk to you,  
8 find out who they are, separate yourselves from that  
9 person and let me know when you come back to court  
10 and I'll take care of that matter myself.

11           Now, during this course of this trial, you  
12 can't expose yourself to any information about this  
13 case. Now, I know of no news media. I don't even  
14 know what the local paper in Saluda is called, but  
15 no news media has asked to be in here or there's no  
16 recording, there's no TV cameras, nothing like that.  
17 Okay? But if, for some reason, you're watching the  
18 news tonight and this case comes on, which would be  
19 completely foreign to me, you should turn it off.  
20 You're not to look at any news accounts or do any  
21 research or Google anything to try to figure out  
22 what this case is about or anything like that.

23           Now, everything that we've gone through this  
24 morning since we started this jury selection process  
25 has been to ensure that you would be able to make

1 your decision based upon what you hear in this  
2 courtroom and nothing else. Once we -- we want to  
3 make sure that the integrity of the process remains  
4 intact throughout this trial, and if you follow  
5 these instructions, it will.

6 So here's rule number one: Rule number one is  
7 you're not allowed to discuss this case with anyone,  
8 including each other, in any way shape or form. You  
9 can't talk to your spouse, your boyfriend, your  
10 girlfriend, your children, your employer, your  
11 employee, your best friend, your mama, your daddy,  
12 your cousin. I don't care who it is, you're not  
13 allowed to discuss this case with anyone in any way,  
14 shape or form. Okay?

15 Here's why: What if you start talking about  
16 the case, especially in a small community like this,  
17 and somebody says, I know all about that case, let  
18 me tell you about it, or, let me tell you about  
19 this, or, let me tell you about that, all of that  
20 would be outside influences which you are not  
21 allowed to have. You're going to base your decision  
22 on the testimony that comes in, the evidence that's  
23 admitted and the law that I give you and your common  
24 sense and nothing else. Okay? So don't talk about  
25 the case with anyone including each other.

1           Y'all can talk about whether Clemson's going to  
2 pull it out with FSU this weekend or how South  
3 Carolina barely held in against Georgia or you can  
4 talk about why it's November and it's 80 degrees  
5 outside. You can talk about anything you want to,  
6 but you can't talk about this case. Okay? And that  
7 means you can't talk about a party, a witness. You  
8 can't say, I like his tie, or, I don't like his tie,  
9 or, you know, what is that crazy Judge talking  
10 about, nothing like that. Okay? You can talk about  
11 anything else.

12           Rule number two, you can't let anybody else  
13 talk to you about the case. So if someone tries to  
14 talk to you about the case, you need to say, stop,  
15 I'm a juror, I can't talk about it, and remove  
16 yourself from that situation and report it to me.  
17 Okay?

18           Number three, you're not allowed to do any  
19 research on this case. Okay? So you can't go home  
20 and, you know, or -- now, I live in 2017. When you  
21 leave here, you're all going to get on your phones,  
22 right? You're going to text somebody, call  
23 somebody, check Facebook, check Twitter, check  
24 Instagram, check some app that I don't even know  
25 what it is, but you can't use anything to go get or

1 send information about this case. So if I say, you  
2 know, if I say a word today that you don't know what  
3 it means, you can't go look it up. Okay? You have  
4 to base your decision on what happens here in the  
5 courtroom. So you're not allowed to do any research  
6 on the case.

7 If you don't have to go through Ridge Spring to  
8 go home, then don't go through Ridge Spring to go  
9 home. Okay? Because you don't know that what Ridge  
10 Spring looks like today is what Ridge Spring looked  
11 like when this incident allegedly occurred. Make  
12 sense? Okay?

13 All right. Now, last thing is this: In  
14 Richland County, this is pretty simple because when  
15 people go to lunch, there's all these places for  
16 them to go to lunch, right? In Saluda and smaller  
17 counties, I deal with this a lot in Kershaw County,  
18 there's only so many places to eat. Okay? So  
19 you're allowed -- I'm going to release you for  
20 lunch, and you're allowed to go eat lunch. You can  
21 go home and eat lunch, you can go eat lunch  
22 somewhere here in town, wherever you want to, but if  
23 you see somebody involved in the case, and that  
24 means basically anybody that's sitting in the  
25 courtroom at this very moment, they are all going to

1 ignore you. Okay? If you see me at lunch, I'll say  
2 hey to you or, you know, something like that. If  
3 you see anybody other than me, they're going to  
4 ignore you. Okay?

5 The lawyers and the parties and the witnesses  
6 in this case have been told not to talk to you, not  
7 to have any contact with you. So as you came back  
8 in the building, if you see them, they're going to  
9 ignore you. As you leave to go to lunch, if you see  
10 somebody, they're going to ignore you. Okay?  
11 Because they're not allowed to have any contact with  
12 you. I promise you an innocent good morning or good  
13 afternoon seen by the other side is always  
14 misconstrued. Okay?

15 Now, I live in the real world and we're in  
16 Saluda, right? Okay. And there's only so many  
17 places to go eat, but you need -- if you go eat,  
18 either keep to yourself or, you know, stay with  
19 other jurors, but do not discuss the case in any  
20 way, shape or form. Okay?

21 So those are your basic rules. When you come  
22 back for -- after lunch, I'll give you a lot more  
23 rules to kind of detail how the trial will work, but  
24 when you come back, we're going to jump right into  
25 it.

1           Now, I like to start on time. Okay? Some  
2 judges are famous for not being on time to anything.  
3 That's not me. So if we're not starting on time,  
4 that's because I'm dealing with something I have to  
5 deal with before I bring you in, otherwise, I like  
6 to start on time.

7           So if you're somebody that usually doesn't show  
8 up to things on time, you need to convince yourself  
9 that we're starting 15 minutes before I say so that  
10 you're here on time. Okay? Don't make me send  
11 somebody in a car with blue lights on the top of it  
12 to find you because you didn't show up on time. You  
13 with me? Okay? Everybody good? Everybody  
14 following me?

15           Okay. My two alternates, you're required to  
16 sit on the back row. Okay?

17           And, Mr. Watson, you're going to be the foreman  
18 of this jury. So when we come back in, you're going  
19 to sit right where this gentleman in the Polo shirt  
20 is seated. Anyone else can sit wherever they want  
21 to. Okay?

22           I don't allow note taking, but I'll explain all  
23 that to you later. But right now I want you to --  
24 it's almost noon -- it's a couple minutes after  
25 noon. We're going to start back at 1:15. 1:15, I

1 want you to be in your jury room, ready to go. The  
2 bailiffs will show you how to come in and how to go  
3 out, and then I'll tell you -- walk you through who  
4 everybody is and how the trial is going to work.

5 1:15, ready to go. We're going to push right into  
6 this case and get going today. Okay? Everybody  
7 with me?

8 Okay. 1:15. Thank you very much. Everyone  
9 else remain seated.

10 (The jury was excused for lunch.)

11 **THE COURT:** All right. Anything from the State  
12 before we break?

13 **MR. FENDER:** Nothing from the State, Judge.

14 **THE COURT:** From the defense?

15 **MS. ZMROCZEK:** Nothing, except, Your Honor, I  
16 believe -- I think it was on the record, but with  
17 Juror 196, we did agree that she had some bias or  
18 prejudice.

19 **THE COURT:** Okay. I think she -- she clearly  
20 was conflicted about something with somebody in some  
21 way, shape or form. So, yeah, I think that was the  
22 right decision.

23 **MS. ZMROCZEK:** And I think she heard it, but I  
24 wanted just to make sure.

25 **THE COURT:** Okay. 1:15, 1:15. See you then.

1 (Whereupon, there was a luncheon recess.)

2 **THE COURT:** State ready?

3 **MR. FENDER:** Yes, Judge.

4 **THE COURT:** Defense ready?

5 **MS. ZMROCZEK:** Yes, Your Honor.

6 **THE COURT:** All right. Bring them in.

7 (The jury returns to the courtroom.)

8 **THE COURT:** Welcome back. Thank you very much  
9 for being on time. The first thing that we're going  
10 to do this afternoon is you're going to be sworn in.  
11 Now, this morning you took an oath and that  
12 oath was you promised me to tell me the truth to the  
13 answer to the -- to the questions that I asked.  
14 This oath that you're going to take this afternoon  
15 is different. This oath has been used in the -- has  
16 been used in our court systems for over a hundred  
17 years.

18 And what this oath does, it embodies your duty  
19 and responsibility to be fair and impartial and to  
20 sit without any bias or prejudice towards either  
21 side, to listen to the evidence in the case, to  
22 determine what the facts are and to follow the law  
23 that I'm going to give you. And what you are doing  
24 is you are essentially making a promise to me and to  
25 the parties in this case and to the lawyers in this

1 case and to each other and to yourself that you will  
2 follow my instructions and you will follow the law  
3 that I give you and try this case fairly and  
4 impartially as if you are a judge yourself wearing  
5 your own black robe sitting there fairly and  
6 impartially. So if you will please rise and the  
7 clerk will swear you in.

8 (The jury was duly sworn at 1:20 P.M.)

9 **THE COURT:** Okay. Thank you very much.

10 All right. Now, Mr. Foreman, we're not going  
11 to allow any note taking, so you don't need to bring  
12 that notebook back out with you again. And I'll  
13 explain why I do not allow note taking in just a few  
14 moments.

15 But just to start, before we begin the actual  
16 trial of this case, I thought it might be helpful to  
17 explain to you how the trial will work. First, the  
18 State, or the solicitor's office, will be allowed to  
19 make an opening statement. Now, this opening  
20 statement is not evidence. It's simply an outline  
21 to help you understand what that party expects the  
22 evidence to show. The defendant may, if he chooses,  
23 present an opening statement, but he does not have  
24 to for reasons that I will explain to you in just a  
25 moment.

1           Now, as I go through this opening charge, I  
2           want you to listen for the word evidence. The word  
3           evidence is a defined term, so I'm going to explain  
4           to you what is evidence and what is not evidence.  
5           Okay?

6           Following the opening statements, you will hear  
7           testimony, and you will hear the evidence in the  
8           case. So the evidence will consist of testimony  
9           from the State's witnesses, as well as any physical  
10          exhibits which will be introduced into evidence.

11          Following the completion of the testimony, the  
12          attorneys will, again, have an opportunity to make  
13          what is called closing statements or closing  
14          arguments to you. This is an opportunity for the  
15          attorneys to summarize the case from their  
16          respective points of view. Again, the opening  
17          statement and the closing arguments by the attorneys  
18          are not evidence.

19          Following the closing statements, I will tell  
20          you or instruct you on what the law is in South  
21          Carolina as it pertains to the issues that have  
22          arisen in the case. Once I've done that at the very  
23          end of the case, you will then be permitted to begin  
24          your deliberations in order to reach a verdict.

25          You are now the jury in this case, and I need

1 to take a few minutes to tell you about your duty  
2 and to give you some instructions. In a nutshell,  
3 your responsibility is this: It is your duty to  
4 decide from the evidence what the facts are. You  
5 and you alone are the judges of the facts. You will  
6 hear the evidence, decide what the facts are and  
7 then apply those facts to the law that I will give  
8 you at the end of the case. That's how you'll reach  
9 a verdict. In doing so, you must follow the law  
10 that I give you whether you agree with it or not.

11 Evidence will consist of the testimony of the  
12 witnesses who will come right here and be sworn in  
13 and testify, any documents or any photos or anything  
14 received into evidence as an exhibit, and any facts  
15 on which the lawyers agree or anything that I tell  
16 you to accept.

17 So, basically, the way I like to look at it is  
18 there's a line in the courtroom. On that side of  
19 the line, you control the facts. On this side of  
20 the line, I control the law. You can't tell me what  
21 the law is and I can't tell you what the facts are,  
22 unless all the parties agree.

23 So, in some cases, the lawyers will say, We all  
24 agree or we all stipulate that on that day the sky  
25 was blue -- I'm just making that up; you understand

1 that -- and so I would tell you, The lawyers agree  
2 or stipulate the sky was blue that day. Otherwise,  
3 you won't hear me talk about the facts. Okay? So  
4 you should not take anything that I say or do during  
5 the trial as indicating what I think of the evidence  
6 or what I think your verdict should be.

7 Now, this is a criminal case that's been  
8 brought by the State of South Carolina. And the  
9 State has charged the defendant with armed robbery,  
10 kidnapping and possession of a weapon during the  
11 commission of a violent crime.

12 Now, the charges against the defendant are  
13 contained in the indictments which I read to you  
14 this morning. Now, these indictments are not  
15 evidence of anything. They are not proof of  
16 anything. They're simply the description of the  
17 charge made by the State against the defendant.

18 To these charges, the defendant has pled not  
19 guilty. And he is presumed to be innocent unless  
20 and until proven guilty beyond a reasonable doubt.  
21 Proof beyond a reasonable doubt is proof that leaves  
22 you firmly convinced of the defendant's guilt.

23 A defendant has the right not to testify, and  
24 he never has to prove his innocence or present any  
25 evidence at all. The burden of proof is always upon

1 the State of South Carolina.

2 Now, some things that you will hear during this  
3 trial are not evidence, and you must not consider  
4 them as evidence in the case: Number one, the  
5 statements and the arguments of the attorneys are  
6 not evidence. Number two, the questions and the  
7 objections of the attorneys are not evidence.  
8 Number three, anything that I tell you to disregard.

9 So in almost every single case I do, somebody  
10 says something and I have to tell the jury to  
11 disregard that statement. If I tell you to  
12 disregard that statement, you are to treat it as if  
13 it never happened. Okay?

14 Now, there are two types of evidence which you  
15 may hear in this case, one is called direct and one  
16 is called circumstantial. So direct evidence is  
17 what somebody saw, heard, did, touched, smelled,  
18 something of that nature. Circumstantial evidence  
19 is indirect evidence. It is proof of one or more  
20 facts from which you can find another fact. You are  
21 to consider both direct and circumstantial evidence.  
22 The law permits you to give equal weight to both,  
23 but it is for you to decide how much weight to give  
24 any evidence at all.

25 Now, throughout this trial and during these

1 proceedings, there are rules that determine how  
2 everything works. From who gets to go first, to who  
3 gets to go second, to how witnesses are questioned,  
4 there are rules. This book -- notebook you see  
5 right here {indicating}, this is my rules book.  
6 Okay? And there are rules on evidence.

7 So this is how it'll work: So when a lawyer  
8 asks a question or offers an exhibit into evidence  
9 and a lawyer on the other side thinks it's not  
10 permitted by the rules, the lawyer on the other side  
11 may object. So they'll stand up and say, Objection,  
12 hearsay; objection, relevance; objection, whatever.  
13 Okay? And then I'll rule.

14 So if I say the objection is overruled, then  
15 the question can be answered or the exhibit can be  
16 received into evidence. If I sustain the objection,  
17 if I say, Sustained -- they'll say, Objection;  
18 leading. I'll say, Sustained, or something of that  
19 nature. If I sustain the objection, then the  
20 question cannot be answered or the exhibit cannot be  
21 received into evidence. Whenever I sustain an  
22 objection to a question or deny a motion to admit an  
23 exhibit into evidence, you must ignore the question  
24 or the existence of the potential exhibit, and you  
25 must not guess what the answer would have been or

1 what the exhibit would have shown.

2 Now, it will be necessary during this trial  
3 that I ask you to leave the courtroom while I  
4 discuss legal matters with the lawyers that come up  
5 during the trial. This happens in every single  
6 trial in the state of South Carolina, and, for that  
7 matter, for the entire country. When this occurs,  
8 do not speculate about what we are discussing or why  
9 you were asked to leave the room. This is simply a  
10 procedure that the law requires when some legal  
11 issues come up.

12 Now, there will also be occasions when I ask  
13 the attorneys to approach the bench or one of them  
14 may stand up and say, Your Honor, may we approach?  
15 Okay? So when that happens, usually I'm talking  
16 about scheduling. I'm trying to figure out, it's  
17 the end of the day, how long is your next witness,  
18 or something like that. But sometimes when I ask  
19 them to approach the bench, it's to decide legal  
20 issues.

21 Now, I will do this as often as possible to  
22 keep you from walking back and forth and back and  
23 forth in between your jury room and here. So when  
24 this happens, don't think anybody's trying to keep  
25 anything from you or hide something from you. This

1 is a procedure used by all lawyers and by all courts  
2 to decide legal questions. Okay?

3 And to -- to decide the facts of this case, you  
4 have to decide which witnesses to believe and which  
5 witnesses not to believe. Here are the rules: You  
6 can believe everything a witness says, you can  
7 believe none of what a witness says, or you can  
8 believe part of what a witness says.

9 Some things you are to consider, but you're not  
10 limited to, are: What was the witness' ability to  
11 see, hear or know what they testified to; how good  
12 was the witness' memory; what was the witness'  
13 demeanor or manner like while they were on the  
14 witness stand; does the witness have an interest in  
15 the outcome of the case or do they have any motive  
16 or bias or prejudice; was the witness contradicted  
17 by anything they said or wrote before the trial or  
18 by other evidence that you believe; how reasonable  
19 was the witness' testimony when considered in light  
20 of the other evidence you believe?

21 The bottom line is this: We all judge people's  
22 credibility every single day. And we do it, and you  
23 don't even realize that you're doing it. Okay? The  
24 best example in my house is before we go to the bus  
25 stop, the question is, Did you brush your teeth?

1 Right? And if you're a parent, you know that  
2 because you've asked that question to a child,  
3 right? And so you make a decision on whether to  
4 believe that child or not. You make a credibility  
5 decision. You probably already made multiple ones  
6 today. Okay?

7 And so your decision may be based upon the  
8 child's breath, if you see food in the child's teeth  
9 or their teeth are still pink or red from some kind  
10 of cereal they ate, or your history with the child  
11 in knowing that, you know, it's a teenage girl and  
12 she wouldn't go anywhere without brushing her teeth,  
13 but you make those decisions based upon your common  
14 sense.

15 When you came back in the building this  
16 afternoon, you didn't leave your common sense at the  
17 metal detector. They believe in you. The lawyers  
18 believe in you, that's why they selected you for  
19 this case, and so we ask that you use your common  
20 sense. Okay?

21 Now, until I advise you that you are allowed to  
22 begin deliberating, you are not allowed to discuss  
23 this case with anyone, including each other,  
24 friends, family members and anyone involved in the  
25 case. This includes discussions face-to-face, by

1 telephone, e-mail, text message, blog, Facebook,  
2 Twitter, some other kind of app that I don't even  
3 know what it is. Whatever it is, you can't use it  
4 to get information about the case, to send  
5 information about the case or to discuss anything  
6 about the case.

7 You're not allowed to use electronic devices  
8 while in the courtroom or in your jury room. You  
9 will be permitted to have these devices on your  
10 lunch breaks and for overnight, but you are not  
11 allowed to get or send information or do any  
12 research about this case on any electronic device or  
13 any other research.

14 Again, I know of no news media about this case,  
15 but if, for some reason, you're reading the  
16 newspaper or you're watching TV and you realize it's  
17 this case, please turn it off or put it away.

18 Once the case is submitted to you, you can only  
19 discuss it with each other.

20 The attorneys and the parties have been advised  
21 they are not to talk to you at all. So if they see  
22 you in the hall and they don't even say hello,  
23 they're not being unfriendly, they're just following  
24 my instructions.

25 It is important that you keep an open mind, not

1       decide any issue in this case until all of the  
2       evidence has been presented; the lawyers have made  
3       their closing arguments and I've instructed you on  
4       the law in this case. It is your responsibility to  
5       determine the guilt or the innocence of the  
6       defendant and your verdict must be based solely on  
7       the evidence that is presented to you and on the law  
8       that I give you during and at the close of the  
9       trial.

10       Mr. Foreman, it'll be your added duty to  
11       preside in the jury room. You will be the presiding  
12       juror, and you will also be the jury spokesperson  
13       here in court. It will also be your duty to write  
14       the verdict, but I'll give you further instructions  
15       on that at the end.

16       I do not allow note taking. The reason I do  
17       not allow note taking is when you start taking  
18       notes, you stop listening and the testimony  
19       continues on. Your notes are not the official  
20       record of what occurred in here; the court  
21       reporter's transcription is. So your notes would  
22       not be valid during your jury deliberations, and  
23       that's why I do not allow notes.

24       Now, let me make sure you know who everybody  
25       is. So this is Bailey Davis, and she works for me.

1 She is my law clerk. So she has graduated from law  
2 school, taken the bar exam. She passed the bar  
3 exam.. We're very excited about that. She's  
4 actually getting sworn in to be an attorney on  
5 Monday. So she will spend her first year of  
6 practicing law working for me. So you'll see her  
7 walking in and out and working on her computer,  
8 that's pretty normal.

9 You know your Clerk of Court, Ms. Coleman,  
10 right here. And this is Ms. Davis, the Deputy Clerk  
11 of Court right here. They'll be with us this week.

12 And then this is Ms. Sheppard, who has her back  
13 to you at the moment, and she is our court reporter.  
14 And I like to say she is the most important person  
15 in the room. She's smiling at me. That's right.

16 So Ms. Sheppard is the only person who is  
17 always working. And she is literally taking down  
18 every single word we say. Okay? So if somebody  
19 starts talking real fast, you'll hear me tell them  
20 to slow down.

21 Sometimes witnesses and attorneys talk over  
22 each other, that's just the nature of a trial. When  
23 that happens, you'll hear me say stop or time out or  
24 be quiet or everybody stop talking. Okay? I'm not  
25 doing that to be rude or to be mean to anybody, but

1 she can only take down one single voice at a time,  
2 and we want her record of what she creates in here  
3 to be accurate.

4 So if people are talking over each other, you  
5 will hear me tell them, Stop talking, let him  
6 finish, let her finish. And I have to do that so  
7 that the record is correct and that people's words  
8 can be accurately recorded. Okay? So I'm not  
9 trying to be mean or rude to anybody, but I have to  
10 make sure the record of what happens here is  
11 correct.

12 So when she needs a break or she tells me, you  
13 know, I need to take a break, I always take a break  
14 because our court reporters do a great job and they  
15 are always working in the courtroom. Okay?

16 So that's just kind of a basis of who everybody  
17 is. And we will start now with opening statements.

18 State ready to proceed?

19 **MR. FENDER:** Yes, Judge.

20 **THE COURT:** Okay. The floor is yours.

21 OPENING STATEMENT

22 **MR. FENDER:** Good afternoon.

23 First of all, I just want to thank all of you  
24 for being here today. I know it probably already  
25 feels like a long day, but what you're doing here is

1 really important, though. This isn't TV. This is  
2 real life Saluda County. And the case that you're  
3 going to hear about today happened just a few miles  
4 from where you're sitting this afternoon at the  
5 Circle K Gas Station in Ridge Spring. And I just  
6 want to get right to why we're all here.

7 This case is about the defendant going into  
8 that gas station, middle of the night, pulling out a  
9 gun, pointing it at the victim, taking money, taking  
10 cigarettes before he ran away. And that's why we're  
11 here.

12 Ladies and gentlemen of the jury, you're going  
13 to hear from witnesses in this case, people who were  
14 there, people who can tell you what happened, the  
15 law enforcement who investigated the case. You're  
16 going to hear from Willie Houston. He's the victim  
17 in this case. He was working that night, working  
18 the cash register, stocking the shelves when the  
19 defendant came in, pointed that gun at him, made him  
20 walk over to the cash register, took the bills, took  
21 the cigarettes and ran away.

22 Now, Demarcus, the defendant, he didn't have a  
23 shirt on. And you'll see on a video that,  
24 basically, he took some kind of piece of clothing  
25 and wrapped his face up, you know, trying to cover

1 up his identity and everything like that.

2 But, you know, Ridge Spring, kind of like  
3 Saluda, is a small town. It's a place where people  
4 know each other, they know of each other. And  
5 Willie Houston, the victim, the clerk, the cashier,  
6 in this case, well, he recognized Demarcus. He knew  
7 him from the neighborhood. He knew him as somebody  
8 who came in and out of that store quite frequently.

9 Again, this is middle of the night after the  
10 defendant came in, pointed that gun at Willie, ran  
11 away with the money. Willie called 9-1-1 and all  
12 the police, all the law enforcement in the area,  
13 well, they rushed over to the gas station to stop  
14 the bad guy, to secure the scene, to investigate.  
15 And you know what? They found the defendant just a  
16 couple hours later about half a mile from the crime  
17 scene that he had just robbed. And what did he have  
18 with him? The gun, cash, cigarettes.

19 Ladies and gentlemen of the jury, you're going  
20 to get to hear from law enforcement in this case.  
21 I'd ask you to just pay close attention to what they  
22 have to say. They're going to tell you about the  
23 investigation. They're going to tell you about the  
24 evidence that they found. And we're really lucky,  
25 really lucky, in this case, too, today because we

1 have video, surveillance video, from the Circle K.

2 Now, this isn't like a Hollywood movie or  
3 anything like that, but if you'll pay close  
4 attention to the video that you get to see up on the  
5 screen and listen to these witnesses, you'll get a  
6 really good idea of what happened that night.

7 You'll see the defendant. You'll see him pointing a  
8 gun, a handgun, a gray or silver revolver with a  
9 black handle. You'll see him take the money, take  
10 the cigarettes, the same items that law enforcement  
11 later found with him just a couple hours later.

12 What's your common sense tell you, folks?

13 Ladies and gentlemen of the jury, this isn't  
14 going to be a TV crime drama, it's not going to be a  
15 Hollywood whodunit, there's not going to be any  
16 dramatic plot twist. This is real life Saluda  
17 County. This is a real case. This is going to be a  
18 straightforward case. This is going to be a case  
19 based on facts, a case based on evidence, evidence  
20 that proves that the defendant is guilty beyond a  
21 reasonable doubt, eyewitness identification, video  
22 evidence, police investigation, the defendant found  
23 just hours later with the items from the crime  
24 scene.

25 Now, I told you about the facts. I just want

1 to speak briefly about the law. The defendant  
2 committed three crimes under our South Carolina law,  
3 robbery, kidnapping and possession of a weapon  
4 during a crime. The Judge will tell you more about  
5 what each of these means at the end of the trial.  
6 Your Honor is an expert on the law, and I would just  
7 ask you to pay close attention to what he has to  
8 say..

9 Right now you may be thinking, I don't really  
10 know much about the law. But the fact of the matter  
11 is you don't have to to decide this case, to know  
12 that what the defendant did was wrong.

13 You know, we all have our own sense of right  
14 and wrong, maybe we got it from our parents in  
15 church, from our family, our friends or in school,  
16 and you all brought that sense of right and wrong  
17 with you to court this morning. You brought your  
18 sense of right and wrong, you brought your sense of  
19 common sense, and I would ask you to use those two  
20 things as you decide this case.

21 Again, you'll see this video. You'll know that  
22 what the defendant did was wrong. He broke the law.

23 Seizing or confining Willie Houston, the  
24 victim, against his will, under the law, that's  
25 kidnapping. Taking money by intimidation, under the

1 law, that's robbery. Using or carrying a gun to  
2 commit those crimes, under our law -- South Carolina  
3 law, that's possession of a weapon during that  
4 crime.

5 The other legal concept that I just wanted to  
6 briefly mention is this idea of reasonable doubt.  
7 You may have heard about that on TV. I'm sure the  
8 defense attorney's going to make a big deal about  
9 it, but it's not beyond all doubt, it's not without  
10 a doubt, it's all about being reasonable.

11 The fact of the matter is you're all reasonable  
12 people. I'm sure that you have to make reasonable  
13 decisions in your business and family lives every  
14 day, and today's not going to be any different.  
15 You're going to be asked to make a decision based on  
16 facts, a decision based on evidence. What you'll  
17 see in this case is evidence that proves the  
18 defendant is guilty beyond a reasonable doubt.

19 I don't know if any of you have ever served on  
20 a jury before, but there's really only one thing  
21 that you need, and you all brought it with you to  
22 court this morning, that's your common sense. All  
23 you need is your common sense to look at this  
24 evidence. All you need is your common sense to see  
25 who's telling you the truth. And all you need is

1 your common sense to find the defendant, Demarcus  
2 Robinson, guilty. Thank you.

3 **THE COURT:** All right. Thank you very much,  
4 Mr. Fender.

5 All right. Ms. Zmroczek, would you like to  
6 make an opening statement?

7 **MS. ZMROCZEK:** Yes, Your Honor. May it please  
8 the Court.

9 **THE COURT:** Yes, ma'am.

10 **MS. ZMROCZEK:** If a picture is worth a thousand  
11 words, then a video is worth a million. But what  
12 matters is mainly what we're looking for when we  
13 view these items.

14 Ladies and gentlemen, thank you for your  
15 service. It's going to be hard. It's going to be  
16 boring. You're going to want to ask questions, but  
17 that's why we're here. We're here to ask those  
18 questions. We ask the questions, and some of them  
19 are going to be tough. That doesn't make our job  
20 easy. It's so that you can individually decide what  
21 the facts are in this case.

22 Now, if you'll come with me back to August 1st,  
23 2016, 300 East Main Street, Circle K in Ridge  
24 Spring, bright florescent lights, music playing and  
25 Willie Houston is working. He's stocking items in

1 the front row, and his back is to the door. You'll  
2 see this on the video. About 2:39, the door alarm  
3 goes off. Mr. Houston turns and sees a person come  
4 in. That person's also been arrested and not here  
5 on trial today. That person has a conversation  
6 about a beer special. He's in the store for  
7 approximately 30 seconds when you see the door open,  
8 you hear the quick beam.

9 At this time, Mr. Smith -- Mr. Houston has gone  
10 back to stocking, looking carefully at his items,  
11 bending over. And you'll see this. And from that  
12 door, comes this friend of the person who entered,  
13 face covered completely, walks straight up to  
14 Mr. Houston, who is still on his knees, and puts a  
15 gun to his back, forces him to the cash register,  
16 takes the money. And you'll see -- you'll see  
17 Mr. Houston, hands up, looking away. Because I  
18 assure you that he will tell you that's probably the  
19 longest minute of his life, because it lasts one  
20 minute, and you'll see how much of an identification  
21 he gets to make.

22 Ridge Spring is a small town. The last census  
23 was 823 residents, 1.9 square miles. I grew up in a  
24 small town east of Baton Rouge, in Louisiana, with  
25 my six sisters. And as a caveat, one of my sisters

1 lives here now and switched shoes with me without  
2 telling me, so my shoes are a little bit big today.  
3 If you see me trip, I promise I'm not that clumsy.

4 But the beauty of growing up in a small town  
5 also comes with the drama. I had six sisters. We  
6 fought, and apparently are still fighting over  
7 clothes. We fought over boys. We fought over  
8 athletics. We fought over everything. We had  
9 neighbors. Sometimes those neighbors would see us  
10 come in late, tell on us, but they would also  
11 protect us.

12 My parents used to force us to watch this every  
13 Sunday night, Paul Harvey, The rest of the story.  
14 Ladies and gentlemen, what you're going to hear is  
15 the rest of the story.

16 When Willie Houston calls 9-1-1, and you'll  
17 hear it, he says, I was just robbed by a person five  
18 nine to six foot, had a gun. That's what he says,  
19 because that's what he knows. Thirteen minutes  
20 later, it takes the police 13 minutes to get there,  
21 and in that 13 minutes, he gives the name -- as soon  
22 as the police get there, he gives the name Demarcus  
23 Robinson. Demarcus Robinson, 20 years old, lives in  
24 Ridge Spring, grew up there.

25 Ladies and gentlemen, the rest of the story

1 comes now. Why would he give that name? Because  
2 you'll see what he could and couldn't see. Well,  
3 because as with a lot of small town living, comes  
4 drama. Demarcus grew up really close with a family  
5 named Derrick Cyrus. Derrick was his friend. They  
6 grew up together. They played together. They  
7 fought together. They matured together. And as  
8 they matured, they both developed an interest in the  
9 same girl. And that girl, Alexis Young, has a child  
10 by each of them now. That friendship has been  
11 broken.

12 You told us we'd hear the rest of the story;  
13 where does Mr. Houston come in? Here is where  
14 Mr. Houston comes in: Mr. Houston dates Brittany  
15 Cyrus, the sister of Derrick. After this falling  
16 out, the name that he comes up with is Demarcus  
17 Robinson. Was it malicious? Probably not. Was it  
18 accurate? Absolutely not.

19 But the police have a name and they go to  
20 Demarcus' house and they find some items that  
21 they're going to try to make you put this square peg  
22 into a round hole. Oh, well, we found some money.  
23 We found a gun. We found black shorts. If finding  
24 black shorts in a 20 year old's bedroom is enough to  
25 link him to a crime, then our justice system is

1 failing.

2 You get to weigh this evidence. You get to see  
3 what makes sense, see what adds up and see what  
4 doesn't add up. Because, ladies and gentlemen, what  
5 you'll see doesn't add up is they're missing several  
6 key pieces of items.

7 The person who robbed Mr. Houston at gun point  
8 had a bandanna and a T-shirt over their whole entire  
9 top of their body. You'll see it. And  
10 Investigator, at the time Chief, Raffield finds that  
11 shirt -- finds that shirt, that very shirt that  
12 you're going to see in that video.

13 Ladies and gentlemen, this is what you won't  
14 find: There's no DNA. There are no fingerprints.  
15 There's nothing that comes back to Demarcus Robinson  
16 except for the jilted word of Mr. Houston given in a  
17 time of extreme despair.

18 We chose you, as the Judge said, because you  
19 have an awesome responsibility. You're going to  
20 decide the facts and the evidence and apply the law  
21 to determine whether or not Demarcus Robinson is  
22 guilty of three very serious felonies. It's not --  
23 it's not a job you take lightly, and it's a job we  
24 know you won't take lightly, that's why we selected  
25 you. And at the end of this case, ladies and

1 gentlemen, when you listen and you see -- you see  
2 what you look for and you apply it to the law, each  
3 and every one of you, individually and collectively,  
4 will be proud to say the government has not proved  
5 their case. Demarcus Robinson has not committed  
6 this crime. We cannot speculate, and you will find  
7 him not guilty. Thank you.

8 **THE COURT:** All right. Thank you,  
9 Ms. Zmroczek.

10 All right. You may call your first witness.

11 **MR. FENDER:** The State calls William Houston.

12 **THE COURT:** All right. Mr. Houston, please  
13 come forward and be sworn.

14 WILLIAM HOUSTON,  
15 having been duly sworn, testified as follows:

16 **THE COURT:** All right. Now, you hear that air  
17 conditioning?

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** Okay. So I need you to stay close  
20 to that microphone so that everybody can hear what  
21 you say. Okay?

22 **THE WITNESS:** Okay.

23 **THE COURT:** Okay. Mr. Fender, your witness.

24 **MR. FENDER:** Thank you, Judge.

25 \*\*\*\*\*

1 DIRECT EXAMINATION.

2 BY MR. FENDER:

3 Q Good afternoon, Mr. Houston.

4 A Good afternoon.

5 Q Before we get started, can you tell the jurors  
6 just a little bit about who you are and where you're  
7 from?

8 A My name is William Houston. I'm originally  
9 from Augusta, Georgia. I moved to Ridge Spring,  
10 South Carolina, maybe like three years ago, November  
11 1st. So I worked at Circle K for roughly about a  
12 year. I work at U.S. Fibers now. And, also, I work  
13 a pecan orchard. So that's about the sum of it.

14 Q So you now work for U.S. Fibers?

15 A Yes, sir.

16 Q And you previously worked for the Circle K?

17 A Yes, sir.

18 Q Is that the gas station there in Ridge Spring?

19 A Yes, sir.

20 Q Were you working there on August the 1st of  
21 2016?

22 A Yes, sir.

23 Q What shift were you working?

24 A I was working night shift.

25 Q What hours are that?

1       **A**     It's normally 8:00 to 6:00 in the morning -- or  
2       10:00 to 6:00, excuse me.

3       **Q**     Do you recall what happened that night?

4       **A**     Yes. I was -- I was working night shift. I  
5       went to clean the shelves, one guy walked in. And a  
6       few seconds later, I felt somebody -- somebody came  
7       in, and I felt him put a gun to my head. And they  
8       lifted me up, walked me behind the counter. And he  
9       made me empty the drawer, asked me could I open the  
10      safe. And after that, he ran, left out the door.  
11      And that's a quick summary of what happened.

12      **Q**     Do you recall what that gun looked like?

13      **A**     Yes. It was silver, a small handgun or  
14      revolver, silver with a black handle.

15      **Q**     About what time did this happen?

16      **A**     It was, I want to say maybe after 2:30, maybe  
17      2:40 to be exactly.

18      **Q**     What were you doing when he first came into the  
19      store?

20      **A**     I was cleaning the shelves, kneeling down.

21      **Q**     So you were kind of bent down; is that fair to  
22      say?

23      **A**     Yes, sir.

24      **Q**     And then he came up behind you with a gun?

25      **A**     Yes, sir.

1 Q What happened next?

2 A He told me to get up. And -- from what I can  
3 remember, he told me to get up and open the drawer  
4 and give him the money.

5 Q So he walked you from the shelves over to the  
6 cash register?

7 A That's correct, yes, sir.

8 Q Then you opened the cash register and gave him  
9 the money?

10 A Yes, sir. I did as he complied.

11 Q Tell us a little bit about the money that you  
12 gave him and kind of how the cash register works  
13 late at night at the gas station. Can you please  
14 share that with us?

15 A Yes. Basically, when we're the cashiers at  
16 Circle K, you have to -- you have to drop all your  
17 20s, 10s and 50s and 100s. So we're not allowed to  
18 have anything over, at that time, was \$50. We're  
19 not allowed to have anything over that, so we make  
20 our drops regularly. And that's about how it works  
21 as far as the money -- dropping our money. We keep  
22 nothing but ones and fives in the drawer, that's  
23 preferable for management.

24 Q One and five-dollar bills?

25 A Yes, sir.

1           **Q**     So you keep low bills in that cash register at  
2           night?

3           **A**     Yes, sir.

4           **Q**     Is that what you gave the defendant in this  
5           case?

6           **A**     Yes, sir. Yes, sir.

7           **Q**     One and five-dollar bills to the best of your  
8           recollection?

9           **A**     That's the best of my recollection, yes, sir.

10          **Q**     And that was the man with the silver revolver?

11          **A**     Yes, sir.

12          **Q**     Now, did you get a good look at the gun?

13          **A**     Yes.

14          **Q**     Did you get a good look at the person who  
15          robbed you?

16          **A**     Yes. Besides from him having the mask on, I  
17          got a good look at everything else.

18          **Q**     Tell us what you remember he looked like.

19          **A**     Well, he was -- he had long curly hair -- well,  
20          an afro, curly afro, brown skin. He had a scar on  
21          his back. He had a tattoo on his arm, something  
22          like stars, I'm assuming. It's kind of foggy about  
23          the tattoos, but I remember stars on his arm. He  
24          had on shorts, no shirt. That's the best  
25          description I can give you right now.

1 Q Now, these star tattoos, what body part was  
2 that on; do you recall?

3 A It was on one of his arms.

4 Q But the main thing you were focused on was the  
5 gun?

6 A Yes, the gun that was in my face at the time.

7 Q And you testified that the robber was  
8 shirtless?

9 A Yes.

10 Q And that he had a scar on his shoulder?

11 A Yes.

12 Q As well as possibly additional tattoos?

13 A Yes.

14 Q But you can't say, specifically, what those  
15 tattoos are, you're just testifying that he did have  
16 tattoos?

17 A Yes.

18 Q Did you know who this person was who had the  
19 gun at you?

20 A Initially, I didn't, but maybe after a few  
21 minutes, I got -- after I gathered my bearings, I  
22 realized who it was fairly quickly.

23 Q Who was it?

24 A Demarcus.

25 Q Is he seated with us in the courtroom today?

1           **A**    Yes, sir.

2           **Q**    Can you point him out to us? Describe what  
3           he's wearing.

4           **A**    He's over there, the defendant, with the gray  
5           shirt and a black tie.

6           **Q**    So you're testifying that you actually knew  
7           Demarcus before the night that he robbed you?

8           **A**    Yes.

9           **Q**    All right. Tell us about how you knew him,  
10          please.

11          **A**    Well, Demarcus is one of the first people I met  
12          when I -- when I came around and I met my fiancée,  
13          he was one of the first people I met, so -- and,  
14          also, I know him from the neighborhood and from the  
15          store. He was a regular in the store.

16          **Q**    So he's in and out of that store a lot?

17          **A**    Yes.

18          **Q**    And you testified that you all live in the  
19          neighborhood?

20          **A**    Yes. He stay -- his mother and he stay right  
21          around the corner from me.

22          **Q**    At that time, were you walking to work every  
23          day?

24          **A**    Yes.

25          **Q**    Did you see Demarcus on your walks?

1       **A**     Yes.  He -- him and a few other guys used to  
2       play football right in the yard, you know, on my way  
3       to work right behind the store, two houses behind  
4       the store.  So, yeah, I mean, that's just one time.  
5       I've seen him several -- countless times.

6       **Q**     Tell me about what did you see when he was  
7       playing football.

8       **A**     When guys out there playing football, you know,  
9       they have on shirts or no shirts and they'd be, you  
10      know, playing tackle or whatever.

11      **Q**     So you're kind of familiar with Demarcus'  
12      build, that sort of thing?

13      **A**     Yeah, that's how I noticed the scar on his --  
14      from, you know, him playing football in the front  
15      yard with the guys.

16      **Q**     And he was the one that robbed you that night?

17      **A**     Yes.

18      **Q**     Mr. Houston, at the Circle K Gas Station, do  
19      you all have surveillance video?

20      **A**     Yes.

21      **Q**     Was it in proper working order, to your  
22      knowledge, that night?

23      **A**     Yes, it was.

24      **Q**     Have you had the opportunity to review the  
25      video of what happened?

1           **A**     Yes, I have.

2           **Q**     Mr. Houston --

3           **MR. FENDER:** Judge, may I approach the witness?

4           **THE COURT:** Yes, sir.

5           BY MR. FENDER:

6           **Q**     Have you had an opportunity to review this  
7           disk?

8           **A**     Yes, I have.

9           **Q**     Is this the surveillance video from that night?

10          **A**     Yes.

11          **Q**     And you're testifying that this is a fair and  
12          accurate depiction?

13          **A**     Yes.

14          **Q**     Is that your initials on there as well?

15          **A**     Yes.

16          **MR. FENDER:** Judge, at this time, I'd enter  
17          State's Exhibit 1, the surveillance video, ask to  
18          publish it to the jurors.

19          **MS. ZMROCZEK:** Your Honor, I didn't hear what  
20          number he said.

21          **THE COURT:** Number 1.

22          **MS. ZMROCZEK:** Sure.

23          **THE COURT:** State's Exhibit Number 1 admitted  
24          without objection.

25                   (State's Exhibit Number 1, video, marked and

1 admitted into evidence.)

2 **MS. ZMROCZEK:** Your Honor, may I get up just so  
3 I can see?

4 **THE COURT:** Sure.

5 **MS. ZMROCZEK:** Thank you.

6 **THE COURT:** Y'all got it set up to play.

7 **INVESTIGATOR QUATTLEBAUM:** It's going to take  
8 just a minute, Your Honor.

9 **THE COURT:** Okay. That's fine.

10 (Pause.)

11 (Whereupon, State's Exhibit Number 1 was  
12 played for the jury. During the playing of the  
13 video, the following occurred.)

14 BY MR. FENDER:

15 **Q** This is for clarification, Mr. Houston, there's  
16 multiple cameras inside that store, correct?

17 **A** That's true.

18 **Q** What we just saw was a video of the cash  
19 register portion?

20 **A** (Witness nodded head.)

21 **Q** Can you see the TV, sir?

22 **MR. FENDER:** Judge, may he step around?

23 **THE COURT:** You may. Keep your voice up if  
24 they ask you questions. Okay?

25 **THE WITNESS:** All right.

1 (Witness leaves the witness stand.)

2 BY MR. FENDER:

3 Q Mr. Houston, the video that's on the screen  
4 now, does that show where the soda is, the candy and  
5 that kind of stuff is?

6 A Yes. The front door, right there at the  
7 entrance.

8 Q Who's in the frame right now?

9 A That's me in the frame right now.

10 Q What are you doing?

11 A Cleaning and stocking the shelves and doing the  
12 front face for the day shift.

13 Q Okay. And just for clarification, you know, we  
14 saw one video and now we're seeing the same video of  
15 the same stuff but from a different angle; is that  
16 fair to say?

17 A I believe so.

18 Q Thank you.

19 A (Witness resumes the witness stand.)

20 Q So, for clarification, Mr. Houston, you're over  
21 there working on those shelves, the defendant comes  
22 up behind you with a gun and then that's the two of  
23 you walking over to the cash register?

24 A Yes.

25 Q And that's where he demanded the cash?

1       **A**     Yes.

2       **Q**     Did he take anything else other than the one  
3       and five-dollar bills that you testified to?

4       **A**     Yeah. I seem to remember him grabbing a case  
5       of cigarettes and maybe grabbed some cigars off the  
6       shelf.

7       **Q**     And his face was covered; is that correct?

8       **A**     Yes, from down here {indicating}, from his nose  
9       down.

10      **Q**     Could you see his hair?

11      **A**     Yes.

12      **Q**     What did his hair look like?

13      **A**     He had a curly afro.

14      **Q**     You reviewed the videos. Have you also had an  
15      opportunity to look at the still photos from this  
16      video?

17      **A**     Yes, I have.

18               **THE COURT:** Get a little closer to that  
19      microphone.

20               **THE WITNESS:** Yes, I have.

21               **THE COURT:** Thank you.

22      BY MR. FENDER:

23      **Q**     Do they also fairly and accurately depict what  
24      happened?

25      **A**     They do.

1           **MS. ZMROCZEK:** Your Honor, I think we're going  
2 to need to approach about some of these.

3           **THE COURT:** Okay.

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

7                   (State's Exhibit Numbers 2 through 11,  
8 photographs, marked for identification.)

9 BY MR. FENDER:

10           **Q** Mr. Houston, I'm going to show you, at this  
11 time, what's been marked for identification purposes  
12 as State's 2 through 11. Can you please review  
13 these photographs?

14           **A** Yes, sir.

15           **Q** Are these fair and accurate descriptions of  
16 what happened that day?

17           **A** Yes.

18           **Q** Mr. Houston, at this time, I'm going to direct  
19 your attention to State's Exhibit 2, and State's  
20 Exhibit 2 only. Can you please tell us what's going  
21 on in that picture?

22           **A** That picture, he's ordering me to get the money  
23 out of the drawer, so I'm putting my code in and  
24 taking the money out of the drawer.

25           **MS. ZMROCZEK:** I'm sorry, Your Honor, I can't

1 hear.

2 **THE WITNESS:** He's ordering me to get money out  
3 of the drawer, so I'm putting my code in and doing  
4 as he ordered.

5 **THE COURT:** Do you want to move to admit that  
6 one?

7 **MR. FENDER:** Judge, I'd move to publish this.  
8 This is as we discussed at the bench.

9 **THE COURT:** Any objection?

10 **MS. ZMROZCZEK:** Not to Number 2.

11 **THE COURT:** All right. State's Exhibit Number  
12 2 admitted without objection.

13 **MR. FENDER:** This and this alone at this time,  
14 Judge.

15 (State's Exhibit Number 2, photograph,  
16 admitted into evidence.)

17 BY MR. FENDER:

18 **Q** Mr. Houston, whose hands are those there?

19 **A** Do I need -- can I get up?

20 **THE COURT:** You can step down. Keep your voice  
21 up, please.

22 **A** (Witness leaves the witness stand.)

23 Whose hands are those right there?

24 **Q** Yes, sir.

25 **A** Those seem to be Demarcus' hands.

1 Q And he was pointing the gun at you?

2 A Yes, that's correct.

3 Q Do you recall what that gun looked like?

4 A Silver with a black handle.

5 Q Did he also have tattoos?

6 A I remember some stars on one of his arms. I'm  
7 not sure which arm it was.

8 Q So he had star tattoos on his arm and he had a  
9 gun pointed at you?

10 A Yes.

11 (Witness resumes the witness stand.)

12 Q So, Mr. Houston, after you'd been robbed, we  
13 saw on the video that you called 9-1-1; is that  
14 correct?

15 A That's correct.

16 Q Do you recall about how much time it took  
17 before the police got there?

18 A I don't. It seemed like forever, maybe 20  
19 minutes -- 10 or 15, 20 minutes. I don't recall.

20 Q What happened once the police got there?

21 A Once the police got there, they asked me --  
22 when they got there, they asked me was I okay with,  
23 you know, what happened. And I told them that the  
24 defendant, Demarcus, was the one that robbed me  
25 because I had -- I gained my senses and I was able

1 to evaluate what happened at that time, so I told  
2 them exactly what happened.

3 Q How did you know it was Demarcus?

4 A From the tattoos -- well; the scar on his --  
5 mainly, from the scar on his shoulder and the  
6 tattoos and, you know, his body build, you know.

7 Q So he had -- are you saying that he has a  
8 unique body build?

9 A I guess I'm somewhat familiar with it because,  
10 like I said, I used to see him when I walked to the  
11 store, you know, playing football. So, you know,  
12 yes, from my perspective, yes.

13 Q So when you're walking back and forth to work  
14 every day, a lot of times you saw the defendant  
15 shirtless?

16 A Sometimes, sometimes.

17 Q Out there playing football, basketball?

18 A Yes.

19 Q So you have a good idea of what he looks like  
20 without his shirt on because of the scar and because  
21 of the tattoos?

22 A Yes.

23 Q And this is the man who robbed you that night?

24 A Yes.

25 MR. FENDER: For the record, Your Honor, at

1 this time, the State has entered State's Exhibit 1  
2 and State's Exhibit 2. This witness has, for  
3 identification purposes, testified in regards to  
4 State's Exhibit 3 through 11. I've got no further  
5 questions for him at this time, but I would ask  
6 leave of the Court to recall him, if needed.

7 **THE COURT:** All right.

8 Ms. Zmroczek, cross-examination?

9 **MS. ZMROCZEK:** Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 **Q** Mr. Houston?

13 **A** Yes, ma'am.

14 **Q** Do you remember talking to Earl Ballentine this  
15 morning?

16 **A** I do not.

17 **Q** You don't remember that?

18 **A** This morning?

19 **Q** Yeah.

20 **A** No, I do not.

21 **Q** Talked to him last night?

22 **A** Yes, I did.

23 **Q** Told him last night you didn't want to come  
24 testify, right?

25 **A** That's not true.

- 1 Q Okay. Tell this jury who Brittany Cyrus is.
- 2 A That's my fiancée.
- 3 Q You and Brittany have a child together?
- 4 A That's correct.
- 5 Q You and Brittany live together?
- 6 A That's correct.
- 7 Q Brittany is a sister of Derrick?
- 8 A That's correct.
- 9 Q Derrick and Demarcus used to be friends?
- 10 A That's correct.
- 11 Q And when I say used to be friends, we're
- 12 talking the closest of friends, right?
- 13 A Yes, ma'am.
- 14 Q Everything they did together?
- 15 A Yes, ma'am.
- 16 Q And they had a fallen out?
- 17 A Yes, ma'am.
- 18 Q Over a female?
- 19 A I'm not sure why they fell out.
- 20 Q You're not sure why they fell out?
- 21 A No, ma'am.
- 22 Q But you picked a side, right?
- 23 A That's not correct.
- 24 Q Okay. You don't have a loyalty to the Cyruses?
- 25 A I don't know how my loyalty would play in this,

1 but with family, yes, I have loyalty to the family,  
2 but this had nothing to do with loyalty.

3 Q Okay. I want to talk about a few different  
4 things that you testified to. Okay? So I'll try to  
5 keep it clear. If you don't understand my question,  
6 let me know. Okay?

7 A Yes, ma'am.

8 Q All right. How old are you?

9 A I'm 34.

10 Q How far did you go in school?

11 A I finished the 11th grade. And I got my GED at  
12 DeKalb Technical.

13 Q Okay. Have any eye problems?

14 A I do not.

15 Q Good vision?

16 A From my point of view, yes, ma'am.

17 Q What do you mean from your point of view?

18 A I'm not an eye doctor, so -- but I can see  
19 clearly.

20 Q Okay. You can see things in front of you?

21 A Yes, ma'am.

22 Q You can't see things behind you?

23 A No, ma'am.

24 Q Okay. You testified that -- that the person  
25 that robbed you, and I believe you said put a gun to

- 1 your face, right?
- 2 **A** To my head.
- 3 **Q** To your head.
- 4 **A** Yes, ma'am.
- 5 **Q** Which part of your head?
- 6 **A** To the back of my head.
- 7 **Q** Okay. You didn't see the gun then?
- 8 **A** Not at that moment, no, ma'am, that's correct.
- 9 **Q** Okay. And they had a curly afro. Is that what  
10 you said?
- 11 **A** Yes. I saw the hair through the edges of  
12 whatever he had on, yes.
- 13 **Q** You saw the hair through the edges of what he  
14 had on?
- 15 **A** Yes. And when he leaned down, you could see --  
16 when he would lean down or when I left the cash  
17 register, you could see the back of his head and  
18 it's kind of curly afro.
- 19 **Q** Okay. And how far down his back did it go?
- 20 **A** I wouldn't say it went on his back. I would  
21 say it was on his neck.
- 22 **Q** On his neck?
- 23 **A** Yes.
- 24 **Q** Neck wasn't covered?
- 25 **A** No, ma'am. His head was covered, though.

1 Q Completely covered?

2 A Yes, ma'am, almost completely covered.

3 Q Okay. What part wasn't covered?

4 A His face, a little bit of his hair right there  
5 {indicating}, and right there at the back of his  
6 neck.

7 Q Okay. And this shoulder scar --

8 A Yes, ma'am..

9 Q -- was it on the front of his shoulder, side of  
10 his shoulder or the back of his shoulder?

11 A I seem to remember it somewhere towards his  
12 back. I don't recall specifically where it was.

13 Q Right or left?

14 A I don't recall specifically where it was.

15 Q How long?

16 A I don't know the -- I couldn't give you that.

17 Q Okay. This was the distinctive scar --

18 A Yes.

19 Q -- that you relied upon to identify Demarcus?

20 A It was almost a keloid. You know, you could  
21 tell it was an old scar. I have one on my arm like  
22 that somewhere. So, yes, I'm familiar with those  
23 kind of --

24 Q You have one on your arm?

25 A Yes. It was somewhat like this scar, but it

1 was much bigger and identifiable.

2 Q Okay. So it's bigger than yours?

3 A Yes, ma'am.

4 Q You said tattoos?

5 A Yes. I vaguely remember the star. I remember  
6 the stars, but I don't remember the entire tattoo,  
7 but it was more than the initial stars that I -- but  
8 I can only remember what I told you.

9 Q Which arm?

10 A I can't recall.

11 Q Top of the arm -- and by top, I mean where the  
12 back of the hand is -- or inside of the arm?

13 A To the best of my knowledge, I just know I saw  
14 the stars. I don't even remember -- a lot of things  
15 are foggy around that time, so my -- it was over a  
16 year ago, so a lot of stuff is kind of foggy, and I  
17 want to be completely honest. So I just remember  
18 the stars, I can remember -- and the scar. I can  
19 tell you that I remember that from my memory.

20 Q You remember that from your memory?

21 A Yes, vaguely the stars because I wasn't able to  
22 remember the entire tattoo, but I know I remember  
23 the star.

24 Q And when did you see that?

25 A When he took me to the cash register and he had

1 a gun pointed to my face.

2 Q Okay. So it was in his gun hand?

3 A I don't recall. I just recall that I remember  
4 seeing the stars on his arm.

5 Q Okay. And you said, Took me to the cash  
6 register, gun pointed to my face, correct?

7 A To my head.

8 Q To your head?

9 A Yes.

10 Q Front of your head or back of your head?

11 A I know he had the gun pointed at me, maybe it  
12 was -- at some points, it was maybe to the back of  
13 my head, some points it was maybe to the front of my  
14 face. At different points, the gun was to my front  
15 or to the back of my --

16 Q When the gun was to your front, what were you  
17 focused on?

18 A Living.

19 Q Let me rephrase that. It was a poorly asked  
20 question. When I say focused, I mean with your  
21 eyes, what were you looking at?

22 A Primarily, the gun.

23 Q Okay. So I don't have a gun, okay, but I'm  
24 going to make my hand like a gun. All right? So is  
25 that fair to say --

1           **MS. ZMROCZEK:** May I approach, Your Honor?

2           **Q**     All right. So was this person taller than you  
3           or shorter than you?

4           **A**     Height, the only thing I could remember at the  
5           time that I was getting robbed, I wasn't equating  
6           height. I really didn't pay attention to the -- I  
7           really couldn't even tell you what gun he had in the  
8           hand even though I saw the video, because, you know,  
9           a lot of stuff is foggy. I just remember specific  
10          things that helped me identify him when the police  
11          got there.

12          **Q**     And what were those specific things? That's  
13          what I'm asking you.

14          **A**     The tattoos, I remember the star. I don't  
15          remember the entire tattoo; I remember the star.  
16          And I can remember the scar on his back. And I can  
17          remember the body build. And I can remember seeing  
18          a little bit of his hair from the back of his neck  
19          and on the sides like I told you.

20          **Q**     How tall are you?

21          **A**     Five eleven, approximately.

22          **Q**     Was he taller or shorter?

23          **A**     I cannot remember, ma'am, because he got me  
24          from the back, and I didn't have a chance to -- he  
25          wasn't standing right next to me. He had a gun to

1 my head and he was standing at a distance, so I  
2 couldn't equate -- again, I can't equate the height.  
3 I couldn't tell you whether he was taller or  
4 shorter.

5 **Q** Okay. When the gun's pointed at your face, at  
6 your front --

7 **A** Yes.

8 **Q** -- and you're looking at the gun, right?

9 **A** Yes.

10 **Q** Okay. And you're looking at the hand and arm  
11 that's holding the gun, right?

12 **A** No. I was just looking at the gun and I'm  
13 looking at the actual body, so the gun and the body.  
14 I'm not paying specifics to the hand.

15 **Q** Okay. When -- we watched the video?

16 **A** Yes.

17 **Q** And the first person comes in?

18 **A** Yes.

19 **Q** And -- let's talk about the store for a minute.  
20 Actually, let's back up. Okay? I want to talk  
21 about the Circle K.

22 **A** Okay.

23 **Q** Okay. There were lots of cameras?

24 **A** That's correct.

25 **Q** How many inside, approximately? How many did

1 you watch? Let me ask that.

2 **A** How many cameras did I watch? I didn't  
3 watch -- I didn't watch the video till sometime  
4 after it happened. So that night, I didn't watch  
5 any cameras. And at the time I watched the video, I  
6 couldn't tell you how many cameras I watched, but I  
7 know I watched the video or whatever, so.

8 **Q** So the camera, the first one that we saw, was  
9 facing the cash register. Are there two registers?

10 **A** Yes, there were.

11 **Q** Okay. And we're going to help the jury here.  
12 So where this TV is, okay, that's where -- let's say  
13 that's where the cash register was that you were at,  
14 correct?

15 **A** Yes, ma'am.

16 **Q** And that is -- backs up to a window, right?

17 **A** That's correct.

18 **Q** That looks out into the parking lot?

19 **A** Yes, ma'am.

20 **Q** The Circle K is 24 hours?

21 **A** Yes, ma'am.

22 **Q** And people come and get gas?

23 **A** Yes, ma'am.

24 **Q** And there are three -- at least three cameras  
25 outside, correct?

- 1       **A**     No, there are two.
- 2       **Q**     Two cameras?
- 3       **A**     Yes.
- 4       **Q**     In working order?
- 5       **A**     Yes, ma'am.
- 6       **Q**     That night in working order?
- 7       **A**     From the best of my knowledge, I'm assuming.
- 8       **Q**     Okay. And, actually, you have a little screen
- 9       that -- on the inside that you can see the cameras
- 10      outside?
- 11      **A**     In the office, yes.
- 12      **Q**     In the office?
- 13      **A**     Yes.
- 14      **Q**     Okay. There is a door that you had your back
- 15      to, I believe, right?
- 16      **A**     That's correct.
- 17      **Q**     Okay. So you had your back to the door. Is
- 18      there another door or is that the only entrance and
- 19      exit?
- 20      **A**     That's the only entrance and exit.
- 21      **Q**     So two -- the video you watched and
- 22      authenticated, correct?
- 23      **A**     Correct.
- 24      **Q**     The time stamps are accurate?
- 25      **A**     Correct.

1 Q Haven't been changed?

2 A To the best of my knowledge.

3 Q So if the time stamp says 2:39 somebody walks  
4 in, you would agree with 2:39?

5 A I would be compelled to agree, yes.

6 Q And you turned around and greeted them?

7 A Yes.

8 Q And did you know who that person was?

9 A Yes.

10 Q Who is that person?

11 A That was Terrell.

12 Q Terrell?

13 A Lockett.

14 Q And you told the police that that night?

15 A I don't recall what I told the police about  
16 Terrell. He wasn't the focus of anything. I didn't  
17 even know he was supposedly a part of this, so I  
18 didn't even -- he wasn't something I talked about  
19 until they told me they saw him waving at Demarcus,  
20 telling him to come on.

21 Q So they told you that?

22 A Yes, my manager as he viewed the tape the next  
23 day.

24 Q So you didn't see that with your own eyes?

25 A Until I viewed the tape. Yes, I did see it --

1 no, I didn't see it at that moment. When I viewed  
2 the tape, I saw it.

3 Q Okay. So we have these cameras, and you  
4 identified yourself -- I'm going to hand you State's  
5 Exhibit 2.

6 A Okay.

7 Q Which one are you?

8 A I'm at the cash register in the black shirt.

9 Q I have my little green laser. Am I accurately  
10 pointing to you?

11 A A little bit farther. Yes, ma'am, that's  
12 accurate.

13 Q A little bit further?

14 A Yes, ma'am.

15 Q So you were all the way up in the corner?

16 A That's correct.

17 Q Okay. And are those your hands?

18 A Yes, ma'am, those are my hands.

19 Q Up like this {indicating}?

20 A Actually, they're on the cash register, putting  
21 my numbers in. As far as I can recall by that  
22 picture, I'm putting -- they're not up.

23 Q Okay. And you were putting money where?

24 A I was putting my code into the computer, trying  
25 to get the drawer open.

1 Q Okay. And you never left from that spot?

2 A That's not correct.

3 Q Okay. When did you leave from that spot?

4 A Sometime after I called 9-1-1.

5 Q So let's talk about that call to 9-1-1. Okay?

6 A Okay.

7 Q You called 9-1-1 around 2:42?

8 A I assume, yes.

9 Q Right when they left?

10 A Yes.

11 Q Now, you watched them walk out?

12 A No, I didn't watch them walk out. I watched  
13 somebody -- the only thing I remember watching was  
14 somebody running around -- the defendant running  
15 around in the parking lot two or three times  
16 dropping money, and that's when I looked out the  
17 window.

18 Q You saw the person running around the parking  
19 lot?

20 A Yes. He ran back and forth. He was trying to  
21 figure out which way do he go, which way was  
22 feasible for him to run.

23 Q You saw that before you called 9-1-1 or after?

24 A I may have had the phone in my hand in the  
25 process of dialing 9-1-1, but I was watching him

1 while he was doing that.

2 Q And were you watching him on camera or were you  
3 looking out the window?

4 A I was looking out the window at him.

5 Q So here's the front doors, right?

6 A Yes.

7 Q Let's say, so it's easier for you, here are the  
8 front doors. This is the parking lot.

9 A Correct.

10 Q Okay. Where was -- where did you see this  
11 person running around?

12 A He ran from -- well, he ran from the pump one  
13 to halfway past the other pump that's directly on  
14 the other side of pump one, which would be three or  
15 four, the middle pump.

16 Q So when he ran, this person, he ran straight  
17 out or to the right or to the left?

18 A He initially ran straight out. Then he started  
19 running right to left, and he did that two or three  
20 times. Then he finally started to run towards Pecan  
21 Road.

22 Q So Pecan Road, is that to the right or to the  
23 left?

24 A Depending on which way -- from my cash  
25 register, where I was standing, it would have been

1 to the left, going towards the door this way  
2 {indicating}.

3 Q And you saw that from your cash register?

4 A Well, I saw that from the window by the cash  
5 register, yes, ma'am; the window at the cash  
6 register, yes, ma'am. I didn't see him actually  
7 running around the building, but I know he went that  
8 way. And I got on the phone to call the  
9 authorities.

10 Q You didn't see it, but you know it?

11 A Well, yes, I know he didn't run this way  
12 because I was looking out the window the whole time.  
13 So he had to either run down the highway or around  
14 the building towards Pecan Road.

15 Q The video -- the second video that we watched,  
16 remember that one?

17 A Yes, ma'am.

18 Q Do you recall going to the floor?

19 A I recall being kneeling there, yes, working  
20 when he came in.

21 Q No, no. At the end of the video -- we can  
22 watch it again. You want to watch it again?

23 A That's fine.

24 **THE WITNESS:** Can I get up, Your Honor?

25 BY MS. ZMROCZEK:

1 Q Absolutely. Just make sure you keep your voice  
2 up. Okay?

3 A Yes, ma'am.

4 (Witness leaves the witness stand.)

5 (Whereupon, State's Exhibit Number 1 was  
6 played.)

7 Q Am I accurately pointing you out?

8 A Yes, ma'am.

9 Q That's you right there?

10 A Yes, ma'am.

11 Q Can you read the time on that for me?

12 A The time stamp says 40 -- 2:42:58 A.M.

13 Q 2:42:58 A.M.?

14 A Yes, ma'am.

15 Q That's you on the ground?

16 A That's correct.

17 Q Okay. Have a seat.

18 A (Witness resumes the witness stand.)

19 Q You called 9-1-1?

20 A Yes, ma'am.

21 Q You told them you'd been robbed?

22 A Yes, ma'am.

23 Q They asked you for a description?

24 A Yes, ma'am.

25 Q You told them someone was five nine to six

- 1 foot?
- 2 **A** Yes, ma'am.
- 3 **Q** You said their face had a cover?
- 4 **A** That's correct.
- 5 **Q** You said they had on shorts?
- 6 **A** Yes, ma'am.
- 7 **Q** And they had a gun?
- 8 **A** Yes, ma'am.
- 9 **Q** You said, in fact, he had some type of scarf  
10 over his head?
- 11 **A** Yes, ma'am. He had a scarf on his -- I don't  
12 know if I said head, but, yes, he had a scarf on his  
13 head and his face.
- 14 **Q** A scarf on his head and his face?
- 15 **A** Yes, ma'am.
- 16 **Q** The woman that answered the 9-1-1 call, the  
17 dispatcher.
- 18 **A** Yes, ma'am.
- 19 **Q** Stayed on the phone with you?
- 20 **A** Yes, ma'am.
- 21 **Q** Spoke with you frequently?
- 22 **A** From what I can remember, yes, ma'am.
- 23 **Q** Asked you if you had locked the door?
- 24 **A** Yes, ma'am.
- 25 **Q** You told her you were afraid to go lock the

1 door or you didn't know how to lock the door; is  
2 that right?

3 **A** I didn't know where the keys were. I was not  
4 -- but I wasn't familiar with everything, so I  
5 didn't know where the keys were, yes, ma'am, that's  
6 correct.

7 **Q** And you had been at the Circle K for one year?

8 **A** No, ma'am. I don't recall how long I was  
9 there, maybe four months, four to six months at that  
10 time.

11 **Q** Four to six months?

12 **A** At that time, yes, ma'am.

13 **Q** You actually lived a half a mile from the  
14 Circle K?

15 **A** Yes, ma'am.

16 **Q** You would walk to work?

17 **A** Yes, ma'am.

18 **Q** Down Pecan Grove Road?

19 **A** Yes, ma'am.

20 **Q** Take you 11 minutes or so?

21 **A** Yes, ma'am, roughly.

22 **Q** And that's where you saw Demarcus every day or  
23 frequently?

24 **A** Yes, ma'am, sometimes. I wouldn't say  
25 frequently, but I seen him a few times over there

1 playing ball.

2 Q Okay. Define a few times for me.

3 A Maybe like six, seven.

4 Q Six, seven times in four to six months?

5 A We'll say before -- I'm equating everything to  
6 maybe a few weeks or the time that I can remember  
7 just before the robbery, but I've seen him over  
8 there way more than that. But going to the point to  
9 where him with his shirt off playing ball, yes,  
10 maybe like six or seven times, yes, ma'am.

11 Q Football or basketball?

12 A Football.

13 Q Not basketball?

14 A Not basketball.

15 Q It was football?

16 A Yes, ma'am.

17 Q Who was he playing?

18 A A guy that stayed there at the house, Sammy  
19 Davis. I don't recall the other individuals.

20 Q Okay. And you saw this as you would walk to  
21 work.

22 A Yes, ma'am, a few times.

23 Q You worked third shift?

24 A Yes, sometimes.

25 Q That began at 10:00 P.M.?

1       **A**     Yes, ma'am, but I was also on other shifts  
2           periodically sometimes that would have me come in  
3           and do backup and dump the trash. So it wasn't like  
4           -- my job was a little bit more than just third  
5           shift, yes.

6       **Q**     Okay. You told the dispatcher you needed an  
7           ambulance?

8       **A**     That's correct.

9       **Q**     You didn't have any physical injuries?

10      **A**     No.

11      **Q**     The dispatcher kept you on the phone?

12      **A**     Yes.

13      **Q**     Asked if you'd seen them -- a little bit -- a  
14           few minutes later, she asked, Have you seen him,  
15           right?

16      **A**     I don't recall.

17      **Q**     Which officer did you speak with when you --  
18           when they got there?

19      **A**     I don't recall.

20      **Q**     How many officers did you speak with?

21      **A**     I spoke with just about every officer that came  
22           out there that night, so I don't recall how many  
23           officers came out there, maybe it was more than two.

24      **Q**     Okay. And you told them right away Demarcus  
25           Robinson?

1       **A**     Yes.

2       **Q**     And do you remember meeting with, at the time,  
3       Chief Raffield?

4       **A**     Yes.

5       **Q**     Met with you that morning?

6       **A**     He was one of the officers that showed up  
7       there, yes, ma'am.

8       **Q**     Asked you to write a statement?

9       **A**     Yes, ma'am.

10      **Q**     Asked you to put down everything you could  
11      remember?

12      **A**     Yes, ma'am.

13      **Q**     I know that it's been a year.

14      **A**     Yes, ma'am.

15      **Q**     Things are foggy now?

16      **A**     Yes.

17      **Q**     Things were not foggy then?

18      **A**     I wouldn't go that far. I mean, I had just got  
19      robbed at gunpoint, so I was trying -- I knew  
20      Demarcus robbed me and I was trying to give Raffield  
21      the best information I could, you know, about the  
22      situation, yes, ma'am. And, also, the statement  
23      that I wrote, it was -- I had to go back and rewrite  
24      it because I couldn't -- I could barely write  
25      because -- that's because I was going through some

1 type of anxiety attack, that's why I called the  
2 ambulance.

3 **Q** Okay. So you went back and rewrote the  
4 statement?

5 **A** Well, I had to go back and make spelling  
6 corrections, yes, ma'am.

7 **Q** Okay. When you're making those spelling  
8 corrections, you were told to make sure that every  
9 important detail was in there, right?

10 **A** Nobody told me to make sure every important --  
11 they told me to write down everything that happened,  
12 so, you know, I wrote down everything that I could  
13 remember at that time.

14 **Q** And what you could remember at that time --  
15 now, I'm talking about you had a chance to calm  
16 yourself down and go back and make changes, right?

17 **A** Spelling changes, yes, ma'am.

18 **Q** Well, had something been incorrect because of  
19 your anxiety, you would have changed it, right?

20 **A** I assume so, yes, ma'am.

21 **Q** Okay. In that statement, you say, An  
22 individual grabbed me from behind?

23 **A** If that's what my statement says, yes.

24 **Q** Would it refresh your recollection to see your  
25 statement?

1           **A**     Yes, ma'am, it would.

2           **MS. ZMROCZEK:** Your Honor, may I approach?

3           **THE COURT:** Yes, ma'am.

4           **THE WITNESS:** Yes, ma'am, that's correct.

5           BY MS. ZMROCZEK:

6           **Q**     That's your -- accurate?

7           **A**     Yes, ma'am, that's my handwriting.

8           **Q**     That's your handwriting?

9           **A**     Yes, ma'am.

10          **Q**     With the corrections?

11          **A**     Yes, ma'am.

12          **Q**     And what you wrote was true?

13          **A**     Yes, ma'am, to the best of my recollection.

14          **Q**     Accurate?

15          **A**     Yes, ma'am, to the best of my recollection.

16          **Q**     And complete?

17          **A**     Yes, ma'am.

18          **Q**     Tell this jury whose name is in this piece of  
19          paper.

20          **A**     Whose name is in there?

21          **Q**     On what line does it say Demarcus Robinson?

22          **A**     I don't know if I put his name in there, but  
23          before I wrote that statement, I already had told  
24          Mike Raffield and the office -- whichever one of the  
25          officers that I spoke to, that I believe it was

1 Demarcus that robbed me at the store. So me  
2 neglecting to put his name on the paper, I was just  
3 trying to give them a basic overview, so it wasn't  
4 me being specific, you know.

5 **Q** But you were specific about an individual. In  
6 fact, you said that three times?

7 **A** Yes. I wanted to be -- I wanted to be legally  
8 correct when I was talking to them.

9 **Q** Right. You wanted to be legally correct?

10 **A** Yes.

11 **Q** And so you called the person individual and  
12 suspect?

13 **A** That's right.

14 **Q** Okay. You even put in this statement that  
15 there was also an individual asking for ice --  
16 asking for ice, seen on camera asking him to hurry  
17 up?

18 **A** Yes.

19 **Q** Okay. And this statement was written on August  
20 1st, 2016. So the date of the incident?

21 **A** That's correct.

22 **Q** At 4:46 in the morning?

23 **A** Yes, ma'am, to the best of my knowledge.

24 **Q** You watched the video by that point?

25 **A** No, I didn't watch it. Everyone else was

1 watching it in the store around there at that time.

2 Q And you stated that that individual --

3 A The one getting ice?

4 Q -- had been in the store several times before  
5 the robbery?

6 A Yes, ma'am. The one getting ice, correct,  
7 ma'am.

8 Q Did we see the one getting ice on the video?

9 A Yes, ma'am.

10 Q And you told all of that information that  
11 night?

12 A To the best of my knowledge, yes, ma'am.

13 Q Have you spoken with the investigators since  
14 that night?

15 A Yes.

16 Q Provided any other statements?

17 A I mean -- yes. Yes, I provided statements to  
18 them -- well, other statements pertaining to...

19 Q Handwritten statements?

20 A I don't remember writing any other handwritten  
21 statements, but if I did and it's in my handwriting,  
22 I don't remember.

23 Q After -- you said you knew Demarcus well?

24 A Yes.

25 Q Where did he live?

1       **A**     He stayed -- I don't recall the specific name  
2       of the street, but he stayed maybe like just around  
3       the corner from me. Yeah, just around the corner  
4       from me.

5       **Q**     Ever go to his house?

6       **A**     No.

7       **Q**     Never hung out with him?

8       **A**     No, not at his house. He came to my house  
9       because him and my brother-in-law, they were  
10      friends. So by hanging out, if you mean he came  
11      where I was and was he in the vicinity where I was,  
12      I guess you can deem that hanging out because he was  
13      in the vicinity where I was, but as far as hanging  
14      out and going places, no.

15      **Q**     Just a few more questions.

16      **A**     Okay.

17      **Q**     You said vicinity, right?

18      **A**     Like, yard or a street or sidewalk, yes.

19      **Q**     Okay. So let's talk about when you're walking  
20      to work and he's playing football.

21      **A**     Yes.

22      **Q**     How far apart were you?

23      **A**     I mean, they were right on the sidewalk, so --  
24      in the yard, so I mean -- and then I stopped and I'd  
25      go in the yard and talk, you know, to the guy who

1 stayed there because I also knew him. So maybe  
2 sometime we were less than two feet from each other  
3 or maybe sometime we were 20 feet from each other.  
4 There's no way to just put a measurement on it.

5 **Q** Sometimes two, sometimes 20?

6 **A** Yes, ma'am, that's a rough...

7 **Q** Approximately six times?

8 **A** I wouldn't say approximately with anything. I  
9 told you I said roughly. It's an estimate.

10 **Q** Okay. Not more than six?

11 **A** It's an estimate. It could have been.

12 **Q** You knew about the fight with Brittany's  
13 brother, Derrick?

14 **A** I do not know about a fight.

15 **Q** You don't know about the friendship breaking  
16 up?

17 **A** Yes, I do know they had issues before I was  
18 robbed at the store. Yes, I do know they had  
19 issues.

20 **Q** How long before?

21 **A** I can't give you a specific.

22 **Q** Not too long before, right?

23 **A** Yeah, it was right around the time I was  
24 robbed.

25 **Q** Right around the time?

1       **A**     Maybe a day or two, maybe a week. I can't go  
2       right to the specific time.

3       **Q**     And Derrick, your future brother-in-law, was  
4       mad?

5       **A**     I don't know how he -- no. As far as his --  
6       his mentality on the situation, I tried to, you  
7       know, stay out his business, but I know that they  
8       have an encount -- a few encounters around that  
9       time.

10      **Q**     Okay. Last thing I want to talk about is the  
11      money drop.

12      **A**     Okay.

13      **Q**     You did them frequently?

14      **A**     Yes.

15      **Q**     When was the last time you did a money drop  
16      before 2:40 in the morning?

17      **A**     I don't remember. I think I had just dropped  
18      that -- made that drop. I don't recall, but I made  
19      the drop shortly before they came in or whatever.

20      **Q**     And that means that you only had, per your  
21      rules, only had \$50 in the register?

22      **A**     No. At that time, the rules -- the rules  
23      changed after that robbery. The rules changed. We  
24      weren't supposed to keep anything over 50, but given  
25      the fact before they -- before I was robbed in that

1 store, I had a lot of traffic, so I made my drop  
2 with my big bills, but I did have a lot of small  
3 ones and fives. So my manager told me I had \$110  
4 missing out of my drawer that night, so -- and I  
5 heard it was 76. So I got 70 from them originally  
6 from -- but it was nothing but ones and fives in my  
7 drawer.

8 Q \$110 in ones and fives?

9 A That's what my manager said. I've heard a  
10 different number since then, so, yes.

11 Q Do they keep paperwork on that?

12 A Yes, I assume Circle K does, yes, ma'am.

13 Q Did you have to sign any statement for work?

14 A I don't know. I may have. I don't recall. I  
15 don't recall.

16 MS. ZMROCZEK: Beg the Court's indulgence.

17 (Pause.)

18 Q I want to be real specific with this football  
19 playing area.

20 A Yes, ma'am.

21 Q What street was it on?

22 A Pecan Grove.

23 Q It was on Pecan Grove?

24 A Yes, ma'am.

25 Q And what house number?

1           **A**     I don't know the exact house number.  It's a  
2           white trailer right next to a church that's directly  
3           behind the store.

4           **Q**     White trailer right next to a church directly  
5           behind the store?

6           **A**     Yes, ma'am.

7           **Q**     Who lived there?

8           **A**     A guy by the name of Sammy.

9           **Q**     Sammy lived there?

10          **A**     Yeah.

11          **Q**     And the football was played, you said, on the  
12          sidewalk?

13          **A**     No.  They played close to the sidewalk.  It was  
14          played in the yard, but sometimes I walked in the  
15          yard to talk to them on my way to work or sometimes  
16          I just walked straight on the sidewalk, you know.  
17          So, I mean, is there a specific -- something  
18          specific you wanted me to answer from this question,  
19          ma'am?

20          **Q**     I just want to make sure that you were clear  
21          and honest with the 9-1-1 operator.

22          **A**     Yes.  I was clear and honest with everything  
23          I've said, yes, ma'am.

24                   **MS. ZMROCZEK:**  Thank you.  No further  
25          questions.

1           **THE COURT:** Redirect?

2           **MR. FENDER:** Judge, may we approach?

3           **THE COURT:** Yeah.

4           All right. Ladies and gentlemen, let's take a  
5           break. Do not discuss your -- do not discuss the  
6           case in any way, shape or form, keep an open mind.  
7           We'll be back with you in about ten minutes. Do not  
8           discuss the case, keep an open mind and retire to  
9           your jury room.

10                   (The jury retires to the jury room.)

11                   (The defendant leaves the courtroom.)

12           **THE COURT:** Get him back in here.

13           You can step down, but you're not allowed to  
14           discuss your testimony with anyone, but you can go  
15           to the restroom, get a drink of water, whatever you  
16           want to. In ten minutes, be seated right there.  
17           Okay?

18           **THE WITNESS:** Okay.

19                   (The defendant enters the courtroom.)

20           **THE COURT:** Don't take him out again until I  
21           take a break. Okay? Got it?

22           All right. Go ahead.

23           **MR. FENDER:** Judge, at this time, I'm going to  
24           be asking the defendant to show his tattoos to the  
25           jurors concerning State v. Hart.

1           **THE COURT:** Are you going to do a redirect?

2           **MR. FENDER:** I will redirect as well.

3           You know, at this time, Judge, you know, we've  
4           laid foundation during our direct in regards to the  
5           -- into identification, as well as you've heard a  
6           lot on cross about the tattoos. So, you know,  
7           again, under State v. Hart, this will be the  
8           appropriate time to show --

9           **THE COURT:** You got a copy of that case?

10          **MR. FENDER:** I do.

11          And I can, you know, do redirect --

12          **MS. ZMROCZEK:** I need the cite, too, Your  
13          Honor.

14          **MR. FENDER:** -- if you want me to do that  
15          before State v. Hart, but we do intend to make that  
16          motion.

17          **THE COURT:** All right. Let's take a break. Be  
18          back in ten minutes.

19          (Brief Recess.)

20          **THE COURT:** All right. What's your position on  
21          State versus Hart, Ms. Zmroczek?

22          **MS. ZMROCZEK:** Your Honor, I couldn't pull it  
23          up. I need the cite.

24          **THE COURT:** 304 S.C. 344.

25          What do you want him to display, Mr. Fender?

1           **MR. FENDER:** Judge, I'd like to take his shirt  
2 off and show his arms, chest and back area.

3           **THE COURT:** All right.

4           **MS. ZMROCZEK:** Your Honor, there's no reason  
5 for him to disrobe. They have photos.

6           **THE COURT:** They have photos of what?

7           **MS. ZMROCZEK:** They have photos of all these  
8 tattoos.

9           **THE COURT:** Where are they?

10          **MR. FENDER:** Judge, it's a matter of law.

11          **THE COURT:** Are there photos of him?

12          **MR. FENDER:** There are photos.

13          **THE COURT:** And when were they taken?

14          **MR. FENDER:** Just the night that he was booked  
15 in, so they're contemporaneous.

16          **THE COURT:** Okay. All right. Where are those?

17          **MR. FENDER:** I've got them.

18          **THE COURT:** Let me see those.

19          **MR. FENDER:** Judge, if I may, just briefly on  
20 the record, you know, again, we take the position  
21 that State v. Hart is good law. We have every right  
22 to do it. You know, if it helps the trial  
23 efficiency-wise, we're fine with entering those as  
24 an alternative to that, but, again, that's the  
25 State's position.

1           **THE COURT:** What State versus Hart says is, It  
2 is well-settled law that the State's exhibition of a  
3 defendant's physical characteristics does not  
4 implicate his privilege against self-incrimination  
5 because such an exhibition is not testimonial,  
6 quoting Schmerber versus California, United States  
7 Supreme Court, 1966.

8           **MS. ZMROCZEK:** Your Honor, I agree that that's  
9 what the case says. If they want to have him  
10 disrobe in front of the jury and show all of his  
11 tattoos, as long as I get to cross-examine him on  
12 that without putting in evidence, then --

13           **THE COURT:** You don't get to cross-examine him  
14 on it. The law doesn't say that. If he wants to  
15 testify, he can, but that's a different story.

16           **MS. ZMROCZEK:** All right. So, just so they're  
17 clear, they're going to have him take his -- stand  
18 in front of the jury, take his shirt off and he's  
19 not to say a word and they're not going to ask him  
20 any questions, correct?

21           **THE COURT:** Right.

22           **MS. ZMROCZEK:** Okay.

23           **MR. FENDER:** Just to make this -- pursuant to  
24 the best evidence rule, you know, we're not  
25 opposing, if we just want to avoid doing that, just

1 using these photographs, if that's not objected to  
2 by the defense.

3 **THE COURT:** Which one do you want?

4 **MS. ZMROCZEK:** Your Honor, he'll take his shirt  
5 off.

6 **THE COURT:** Okay. All right. We're not going  
7 to do it now. We're right in the middle of  
8 somebody's testimony.

9 Okay. Who's the second witness?

10 **MR. FENDER:** Joe West, Your Honor.

11 **THE COURT:** Okay. And is he here?

12 **MR. FENDER:** Yes, sir.

13 **THE COURT:** All right. Let's go and finish  
14 this witness, then we'll go into Joe West. And then  
15 once we take a break, I'll let him -- he can take  
16 his shirt off. He doesn't need to disrobe in front  
17 of them. He can take his shirt off and then we can  
18 -- he can go back somewhere and redress properly.

19 I'm not going to make him, you know, I'm not  
20 going to make him disrobe in front of the jury, but  
21 I'll allow him -- pursuant to that case, I will  
22 allow them to see him with his shirt off, front and  
23 back, but, you know, I'm not going to make him make  
24 a spectacle of himself and disrobe and have to put  
25 his shirt and pants and all that back on. We'll

1 bring the jury out, let them see it and then take  
2 him somewhere else so he can get dressed properly.

3 Okay. Bring them in.

4 (The jury returns to the courtroom.)

5 **THE COURT:** All right. Welcome back. Sorry  
6 about the extended break. Our computer systems and  
7 the Internet are not communicating with each other  
8 very well, so we were trying to get that issue  
9 worked on.

10 All right. We're on redirect with Mr. Houston.  
11 Does the State have any?

12 **MR. FENDER:** Just very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. FENDER:

15 **Q** Mr. Houston, what were your emotions like when  
16 this happened?

17 **MS. ZMROCZEK:** Your Honor, I believe that's  
18 outside the scope of --

19 **THE COURT:** Overruled.

20 You can answer the question.

21 **THE WITNESS:** When it happened, just like some  
22 extreme anxiety. Felt like I was having a heart  
23 attack is a good way to explain it.

24 BY MR. FENDER:

25 **Q** Did you ask for an ambulance?

1       **A**    Yes, I did.

2       **Q**    What do you remember specifically?

3       **A**    I just remember, you know, once I gathered my  
4       bearings, just shaking really bad and, you know, my  
5       chest hurting really bad because of, you know, the  
6       situation.

7       **Q**    Do you remember a gun?

8       **A**    Yes, I do.

9       **Q**    Do you remember tattoos?

10      **A**    Yes, I do.

11      **Q**    Do you remember Demarcus Robinson?

12      **A**    Yes, I do.

13      **Q**    How many times did you look down at your watch  
14      during this robbery?

15      **A**    I didn't have a watch. I looked -- I was -- I  
16      don't even remember looking at any time. I just --  
17      I know I did, you know, call the phone. You know, I  
18      know they had the time on the phone, but I don't  
19      remember looking any.

20      **Q**    But can you give us a general time? Was it  
21      sometime between 2:00 and 4:00 A.M.?

22      **A**    Yeah. It was -- I'd say it was after 2:40,  
23      after 2:40.

24      **Q**    Okay. And did you call 9-1-1 immediately?

25      **A**    Yes.

1 Q And that's what we observed on the video,  
2 correct?

3 A That's correct.

4 Q And how long did it take before they got there?

5 A I don't recall the specific time, maybe 10 to  
6 15, maybe 20 minutes. I don't know, seemed like  
7 forever.

8 Q So during this time period or the next hour or  
9 so thereafter, did you leave the Circle K?

10 A No, I did not.

11 Q So you didn't go to Demarcus' house or anything  
12 like that?

13 A No.

14 Q Okay. As a matter of fact, did you tell the  
15 police when you said that it was Demarcus  
16 Robinson --

17 MS. ZMROCZEK: Objection, Your Honor; leading.

18 THE COURT: Sustained. Rephrase your question.

19 BY MR. FENDER:

20 Q Did you tell the police where Demarcus Robinson  
21 was?

22 A I don't recall, but I recall suggesting  
23 maybe -- he maybe went to his house or so. I don't  
24 know. I don't recall.

25 Q Is that the direction the robber ran?

1       **A**     No, it's not. The direction he ran was kind of  
2       towards my house. It was the exact opposite of his  
3       house.

4       **Q**     Did you see him running around back and forth  
5       in the parking lot with no shirt on?

6       **A**     With his shirt on?

7       **Q**     With his shirt off?

8       **A**     Yes. With his shirt off, yes.

9       **Q**     And you've also seen him playing football with  
10      his shirt off; is that correct?

11      **A**     That's correct.

12      **Q**     Is he a regular customer?

13      **A**     Yes. He frequents the store regularly. Well,  
14      he did.

15      **Q**     I know you say frequents. It's fair to say  
16      that you know of; is that correct?

17      **A**     Yes.

18      **Q**     Any idea about putting an exact number or  
19      quantity on that word frequent?

20      **A**     Over 30 times.

21      **Q**     So a regular; is that fair to say?

22      **A**     Yes.

23           **MR. FENDER:** May I approach the witness, Your  
24      Honor?

25           **THE COURT:** You may.

1 BY MR. FENDER:

2 Q Mr. Houston, is this the statement that you  
3 were cross-examined on earlier?

4 A Yes.

5 Q All right. What was -- what was crossed out  
6 there? Can you make that out through the crossing  
7 out?

8 A I was -- that's -- I was stocking. And I  
9 wanted to say, And all of a sudden --

10 MS. ZMROCZEK: Your Honor, I'm going -- I  
11 didn't hear the question. I don't know if he's  
12 trying to get him to read his statement in. I don't  
13 think that's --

14 THE COURT: The question is, What was crossed  
15 out?

16 THE WITNESS: As far as what I can -- what's  
17 legible, the word "and", you know --

18 BY MR. FENDER:

19 Q Just as far as what's crossed out, did you  
20 attempt to spell "and all" as one word?

21 A Yes, I did. My hand was doing what it wanted  
22 to do.

23 Q And then you crossed it out and you wrote "and  
24 all" as two words?

25 A Yes. I wrote it all as two words. And then I

1           crossed it out. And then I also did the same thing  
2           with the word manager, as you can see.

3           **Q**     You attempted to spell it m-a-n-i-n-g?

4           **A**     Yes, sir.

5           **Q**     And then you spelled it m-a-n-a-g-e-r?

6           **A**     Yes, sir.

7           **Q**     And those are the only two crossed out  
8           portions?

9           **A**     Yes, sir, that's correct.

10          **Q**     And that's what she was asking you about  
11          earlier?

12          **A**     Yes, sir, about the corrections, yes, sir.

13          **Q**     And it's true that you did meet with law  
14          enforcement several times?

15          **A**     That's correct.

16          **Q**     Did they ever tell you what to say?

17          **A**     No, they did not.

18          **Q**     What did they tell you?

19          **A**     Basically, they told me to -- they asked me  
20          what happened. They told me to be honest, you know,  
21          about what happened, be straightforward about what  
22          happened, and I was.

23          **Q**     Did they tell you to tell the truth?

24          **A**     Yes.

25          **MR. FENDER:** Thank you.



1 Q And not one time in your statement did you list  
2 the name Demarcus Robinson?

3 A That's correct.

4 MS. ZMROCZEK: Thank you.

5 THE COURT: All right. You may step down.

6 Thank you very much.

7 MR. FENDER: Judge, just briefly, I'll recross.

8 THE COURT: No. Call your next witness.

9 MR. FENDER: State calls Joe West.

10 JOSEPH WEST,

11 having been duly sworn, testified as follows:

12 THE COURT: State your full name.

13 THE WITNESS: Joseph West.

14 DIRECT EXAMINATION

15 BY MR. FENDER:

16 Q Mr. West, can you briefly tell the jurors who  
17 you work for and what you do?

18 A I'm a SLED agent, which is commonly called the  
19 South Carolina Law Enforcement Division. I've been  
20 there since 1991. I'm assigned to narcotics. And  
21 within narcotics, you have a separate division  
22 called tech services. And within that division, we  
23 do video forensics.

24 Q Did you have the opportunity to review a video  
25 from the Circle K in Ridge Spring, South Carolina?

1       **A**    I did.

2       **Q**    Can you please review these items for us?

3       **A**    Yes, sir.

4       **Q**    Are you familiar with these items?

5       **A**    Yes, sir.

6       **Q**    Can you tell us about that, please?

7       **A**    So these would be photographs that we pull from  
8       video images that was obtained from the store.

9       Often agencies will bring in a video --

10       **MS. ZMROCZEK:** Your Honor, I'm sorry. I can't  
11       hear.

12       **THE COURT:** This air conditioning unit is like  
13       the death of all noise in here. So I'm fine with  
14       you turning yourself to the jury, that's fine, just  
15       make sure you're talking into the microphone so we  
16       can all hear you, Agent West.

17       **THE WITNESS:** Yes, sir.

18       **THE COURT:** Thank you very much.

19       **THE WITNESS:** So, typically, agencies, they  
20       bring in a video from a store, a crime scene or  
21       somebody's house, and it's a video like we see on  
22       TV. And part of a job in tech services is to pull a  
23       screen capture from portions of the video that may  
24       be relevant that show an incident or an action that  
25       occurred during a crime.

1 BY MR. FENDER:

2 Q And what, specifically, did you do with these  
3 items?

4 A So, essentially, when we pull the video or we  
5 pull the pictures from the video, we will save them  
6 as a digital image file, typically a bitmap file,  
7 which is something that we see in computers. It'll  
8 be saved onto a CD-ROM or a DVD-ROM disk, and then  
9 we can print those out as we see here in court.

10 Q Essentially, are you looking for evidence and  
11 other defining characteristics?

12 A Yes, sir.

13 MR. FENDER: Judge, at this time, I'd enter  
14 these items into evidence and seek to publish them  
15 to the jury.

16 THE COURT: All right. Ms. Zmroczek?

17 MS. ZMROCZEK: Without objection.

18 THE COURT: All right. State's Exhibit Numbers  
19 3 through 11 admitted without objection.

20 (State's Exhibit Numbers 3 through 11,  
21 photographs, admitted into evidence.)

22 BY MR. FENDER:

23 Q Again, is this the item that you testified that  
24 you had reviewed?

25 THE COURT: You can get down and look at it on

1 the screen. Just keep your voice up, please.

2 **THE WITNESS:** Yes, sir.

3 (Witness leaves the witness stand.)

4 BY MR. FENDER:

5 **Q** And I'm going to show you now State's Exhibit  
6 5, which is in evidence.

7 **A** Yes, sir.

8 **Q** So is it true that there's --

9 **MS. ZMROCZEK:** Objection, Your Honor. May we  
10 approach?

11 **THE COURT:** Sure.

12 (Whereupon, a bench conference was held off  
13 the record, in the presence of the jury, but out of  
14 the hearing of the jury.)

15 **THE COURT:** Overruled.

16 **MR. FENDER:** Judge, may I turn the lights off  
17 to fix the glare?

18 **THE COURT:** Sure. I don't know how to do that.  
19 I'm sure somebody does.

20 BY MR. FENDER:

21 **Q** What do you see in this picture?

22 **A** So this is one of the pictures we took from the  
23 video. And you'll notice there's, like, a  
24 discoloration in parts of this picture you see here  
25 because we like to put, basically, a circle around

1 what's relevant, so there was a circle on this  
2 portion. And this shows a subject behind the  
3 counter of the convenience store.

4 **Q** What do you observe on the subject?

5 **A** Well, he appears to be wearing a mask and a  
6 head covering. He appears not to have a shirt on.  
7 He appears to have something in his left hand and  
8 another object in his right hand.

9 **Q** Do you observe any tattoos or distinguishing  
10 features?

11 **A** You can see some coloration on the skin. In  
12 these pictures, you really can't get the, you know,  
13 if it were a picture of Mickey Mouse or something,  
14 you couldn't see that because of the way the  
15 resolution is in the cameras, but here you can see  
16 some coloration on this person's skin.

17 **Q** Let me show you now what's in evidence as  
18 State's Exhibit 7. Is this photo similar to the  
19 characteristics you testified in the last one?

20 **A** Yes, sir. Again, here we see the circle. And  
21 I think my highlight was to show what appears to be  
22 a firearm in the subject's hand, you know, holding  
23 the gun out and coming behind the counter.

24 **Q** Show you now State's Exhibit 8 in evidence.  
25 Does this appear to be similar highlighting as you

1 testified to previously?

2 **A** Yeah. Once again, we see the circle. Rather  
3 than show the whole, you know, what's happening over  
4 here, the circle was snapping what's really  
5 important in the picture. And, again, you see what  
6 appears to be a firearm with the subject and another  
7 person in front of him kneeling down.

8 **Q** Is that the same on State's 9?

9 **A** Yeah. Once again, you have two subjects in  
10 there, one pushing -- or behind the other subject.

11 **Q** And State's 10 also?

12 **A** Again, we see the highlight circle of the  
13 portion we're looking at.

14 **Q** And State's 11?

15 **A** So this is a little darker to see. Can we  
16 brighten that?

17 So, in this photograph, we'll see an arm. And,  
18 again, we see some coloration of the skin there.  
19 And we see the top of what appears to be the head  
20 with the covering over the head.

21 **Q** So you have arms, tattoos and gun?

22 **A** Yes, sir.

23 **Q** Is there anything else that you want to add  
24 about your work in this case?

25 **MS. ZMROCZEK:** Objection, Your Honor.

1           **THE COURT:** Sustained. Ask a question.

2           BY MR. FENDER:

3           **Q**     You don't -- do you work in Ridge Spring?

4           **A**     No, sir.

5           **Q**     You work for SLED, correct?

6           **A**     Yes, sir.

7           **Q**     And you're sent evidence to perform this kind  
8           of work?

9           **A**     Typically, the agencies bring it to us at SLED  
10           and we work on it when it comes in, but they come  
11           from all across the state, yes, sir..

12          **Q**     Other than that, you don't know much about this  
13           case; is that fair to say?

14          **A**     That's correct, yes, sir.

15          **Q**     You don't have a dog in the fight other than  
16           working on --

17          **MS. ZMROCZEK:** Objection, Your Honor.

18          **THE COURT:** Sustained.

19          **MR. FENDER:** That's all.

20          **THE COURT:** Turn the lights back on.  
21           Cross-examination?

22                   (Witness resumes the witness stand.)

23                                   CROSS-EXAMINATION

24          BY MS. ZMROCZEK:

25          **Q**     Agent West?

1           **A**     Yes, ma'am.

2           **Q**     You have no training in computer or video  
3           enhancements, correct?

4           **A**     So I have training in video enhancement and  
5           video forensics I received from private companies  
6           and from government agencies.

7           **Q**     So you received training on how to get the best  
8           quality evidence still shot, correct?

9           **A**     Yes, ma'am.

10          **Q**     And you received all of the CDs, all of the  
11          videos in this case?

12          **A**     I believe so, ma'am.

13          **Q**     And you were asked to provide the most relevant  
14          evidence?

15          **A**     Yes, ma'am.

16          **Q**     How many pictures did you screen shot of the  
17          gun being pointed in the front of Mr. Houston?

18          **A**     I don't know that exactly, ma'am. I'll have to  
19          look at the photographs and see.

20          **Q**     In fact, you watched all of the videos?

21          **A**     I watched a video, yes, ma'am.

22          **Q**     Just one video?

23          **A**     I don't recall, ma'am.

24          **Q**     Okay. We don't have any screen shots where  
25          Mr. Houston is facing the suspect, correct?

- 1           **A**     Mr. Houston is the clerk, ma'am?
- 2           **Q**     Correct.
- 3           **A**     Other than what we've seen in the pictures
- 4           right there, no, ma'am.
- 5           **Q**     Okay. And you manipulated these photos?
- 6           **A**     No, ma'am. I capture screen shots.
- 7           **Q**     When you captured the screen shot, it didn't
- 8           have the circle?
- 9           **A**     No, ma'am.
- 10          **Q**     So you manipulated the photo?
- 11          **A**     We didn't change the photograph.
- 12          **Q**     Okay. But you -- when you screen shot it, it
- 13          did not have the circle?
- 14          **A**     Yes, ma'am.
- 15          **Q**     You changed the photo by adding the circle?
- 16          **A**     We put the circle on there. We did not add or
- 17          take anything away from the photograph.
- 18          **Q**     Because that's what you wanted to focus on?
- 19          **A**     Yes, ma'am.
- 20          **Q**     I'm going to hand you State's 6. And you were
- 21          adding the circle, right?
- 22          **A**     Yes, ma'am.
- 23          **Q**     And you've got that focused right in on --
- 24          which hand is that?
- 25          **A**     It's the right hand, ma'am.

1 Q Can you see the palm -- or the back side of the  
2 hand?

3 A Yes, ma'am.

4 Q You have a clear picture of it, right?

5 A Fairly.

6 Q Very clear picture?

7 A Fairly, yes, ma'am.

8 Q Okay. And you blew this up, zoomed in?

9 A Yes, ma'am.

10 Q Trying to get the best view, right?

11 A Yes, ma'am.

12 Q These cameras are motion censored?

13 A In some cases. I'm not sure how that system  
14 was set up. If you'd like me to explain that, I  
15 will.

16 Q I'm sorry?

17 A Should I explain -- I don't know if it was --  
18 sometimes there are camera systems in businesses and  
19 residences that don't function essentially or record  
20 anything unless it detects motion and sometimes they  
21 run continuously. And I'm unaware as to what that  
22 case was in this video.

23 Q You weren't able to tell by watching the video?

24 A No, ma'am, I don't recall that.

25 Q Okay. Were you -- who was directing you as to

1 what screen shots to pick?

2 **A** No one, ma'am. I was just informed that it was  
3 a robbery. And, typically, when a case comes in,  
4 you just look at the video. You can see what's  
5 occurring in the video. In this case, it was,  
6 clearly, a gun and, clearly, a gun pointed at  
7 somebody. Clearly, a violent act is occurring, so  
8 that's what I was trying to capture when I reviewed  
9 the video.

10 **Q** And when you capture, you have to hit pause?

11 **A** In a roundabout way, yes, ma'am.

12 **Q** And if there's movement, that can distort the  
13 image?

14 **A** So, you know, basically, we look at a picture  
15 -- if you think about it, you've seen pictures on  
16 TV. You've seen really good video and you've seen  
17 video that's not so great. Typically, in commercial  
18 stores and in older systems, the resolution or the  
19 not-so-great part of the video is not good, so, you  
20 know, you're going to see some distortion of  
21 anything. Especially when you zoom in on it, you  
22 get really small pixels in the beginning and big  
23 pixels when you zoom in really close.

24 **Q** And you talked about pixels. In fact, the  
25 pixels on these videos, the dimensions recorded on

1 the video were 352 by 240, correct?

2 **A** They were prettily low, yes, ma'am.

3 **Q** Tell the jury what you mean when you say pretty  
4 low.

5 **A** So, again, when we speak of resolution,  
6 essentially, the higher the number, the better the  
7 resolution. If you think of your TV set that you  
8 had ten years ago versus now -- you know, the latest  
9 thing is 4K; there's always a new thing coming out  
10 -- the picture looks better because there's more  
11 little small pixels or pictures on the screen that  
12 just make it look better.

13 **Q** But this was the lowest quality?

14 **A** It's pretty low, yes, ma'am.

15 **Q** In fact, it's a three to two aspect ratio,  
16 right?

17 **A** Yes, ma'am.

18 **Q** Which is the lowest quality video that can be  
19 recorded on a standard CCTV video?

20 **A** It's low. I would imagine it could go a little  
21 bit lower, but you wouldn't have anything really  
22 good then.

23 **Q** And you don't know what setting this equipment  
24 had?

25 **A** No, ma'am.

1 Q The frame per second of the video, are you  
2 familiar with that?

3 A Yes, ma'am.

4 Q What was the frames per second?

5 A So, again, when she speaks of frames per  
6 second, essentially, when you watch a movie or a TV  
7 screen or something, like, on your phone, it may be  
8 30 frames a second. And, essentially, that's enough  
9 pictures that fool the eye into thinking something's  
10 moving, especially the more frames, the better it  
11 is, you know, looks smoother.

12 So what we see is in video systems in stores  
13 and houses, people will lower or the manufacturer  
14 will lower the frames per second, 25, 20, 15 or some  
15 cases even lower than that, you know, one per  
16 second. So what you're doing is you're not  
17 capturing great images, but you're able to store  
18 more stuff on there.

19 Q The video frames per second in this case was  
20 two?

21 A I don't know that, ma'am. It was not great.

22 Q You don't know that?

23 A No, ma'am.

24 Q Okay. Because it's the lowest possible  
25 quality, when you zoom in, that causes distortion?

1       **A.**    So, again, distortion, being the thing that we  
2       start out from a picture that's far away and you  
3       have all these little pixels that make it look like  
4       a real thing, and when you zoom in -- like, if it  
5       were a picture of a dog and you zoom in, the  
6       pictures become bigger and you really can't tell,  
7       the closer you get, if it's a dog anymore.  If you  
8       zoom on his ears, it's just a bunch of square  
9       blocks.  So farther sometimes is better.  When you  
10      zoom in, it just makes it look worse.

11      **Q**    So the answer is yes?

12      **A**    What was the question?

13      **Q**    The question was when you zoom in, it distorts  
14      the image?

15      **A**    It doesn't look as good sometimes as it does  
16      from a distance.

17      **Q**    Heavy pixelation can cause darkening or  
18      lightening of an image?

19      **A**    Again, the video quality, yes.

20      **Q**    So the answer's yes?

21      **A**    Yes, ma'am.

22      **Q**    Okay.

23           **MS. ZMROCZEK:**  I have no further questions,  
24      Your Honor.

25           **THE COURT:**  Redirect?

1 REDIRECT EXAMINATION

2 BY MR. FENDER:

3 Q How much would it cost to set a gas station  
4 up --

5 MS. ZMROCZEK: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. FENDER:

8 Q How many frames per second did you say that  
9 this is?

10 A It was low, sir. I'm not sure -- Ms. Zmroczek  
11 said two per second, but, you know --

12 Q Is that unusual, though?

13 A No, sir.

14 Q Is it so slow that you can't see defining scars  
15 and tattoos?

16 A So, you know, again, it's not going to be as  
17 clear as you want it to be. Like, if we took a  
18 picture with our telephone and when you watch the  
19 video play, it's going to be real choppy. Like,  
20 it's not a smooth motion of the arm, it's just kind  
21 of choppy. So that's what we'd see in the low  
22 frames per second.

23 MR. FENDER: Thank you.

24 THE COURT: Recross?

25 MS. ZMROCZEK: Just one brief question.



1           **THE COURT:** All right. Take him back to the  
2 bathroom and let him take off his shirt, please.

3                   (The defendant leaves the courtroom.)

4           **THE COURT:** Who is your next witness?

5           **MR. FENDER:** Dale Hallman.

6           **THE COURT:** Mr. Hallman's not on the witness  
7 list.

8                   (The defendant enters the courtroom.)

9           **MS. ZMROCZEK:** Your Honor, may I give him --  
10 how long is he going to --

11           **THE COURT:** Well, I'm trying to figure out how  
12 exactly I want to do it. What I'm thinking about  
13 saying is, Mr. Robinson has a constitutional right  
14 to remain silent, but the State also is given the  
15 authority to exhibit his physical characteristics,  
16 and they've asked that he remove his shirt for the  
17 jury.

18           And so -- then I'm going to give them a moment  
19 to view him and for him to turn around so they can  
20 see the front and the back, and then probably just  
21 not say anything else. I mean, I would say less  
22 than 60 seconds. I'm not going to allow him to  
23 stand up there and be paraded around, you know, like  
24 that. And then once that happens, I'm going to send  
25 them back to the jury room and then allow him to get

1 redressed in a private setting.

2 **MS. ZMROCZEK:** Thank you.

3 **THE COURT:** What's Mr. Hallman supposed to  
4 testify to?

5 **MR. FENDER:** Judge, we would call Shannon  
6 Molina as our next witness.

7 **THE COURT:** Okay. Shannon Molina.

8 All right. Okay. You okay?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. So when they come back in --  
11 and, for the record, Mr. Robinson has been nothing  
12 but polite and respectful and dressed appropriately  
13 for court and has been paying attention and  
14 following along and acting very appropriately. So  
15 when they come back in, I'm going to say basically  
16 that, you know, you don't -- you have the right not  
17 to testify and you don't have to say anything. This  
18 isn't, you know, isn't making you say anything, but  
19 the law allows the State to show your physical  
20 characteristics.

21 And so I'm just going to have you come up, just  
22 get up and just walk right over here kind of to  
23 where the jury -- the jury table is and then come --  
24 kind of stand right over here in front of the --  
25 kind of in front of the witness stand. Then once

1           you stand there for a few seconds, just turn around  
2           so they can see you from the back side. And then  
3           after that, you can just walk right back over to the  
4           table. Okay?

5           **DEFENDANT:** Yes, sir.

6           **THE COURT:** Okay. I'm not saying you have to  
7           like doing it, but you understand what we're doing?

8           **DEFENDANT:** Yes, sir.

9           **THE COURT:** Okay. All right. Good.  
10          Okay. Let's bring them back in.

11          (The jury returns to the courtroom.)

12          **THE COURT:** Okay. Welcome back, ladies and  
13          gentlemen.

14          Mr. Roof, come on down here on the front row.

15          Okay. Ladies and gentlemen, as I explained to  
16          you at the beginning of this trial, the defendant  
17          doesn't have to prove anything. The defendant  
18          doesn't have to say anything. The defendant doesn't  
19          have to testify. And that's because the burden of  
20          proof in this case is upon the State. And it's  
21          their responsibility to prove to you beyond a  
22          reasonable doubt the elements of the offense.

23          One thing that the law allows is the law allows  
24          the State to exhibit the defendant's physical  
25          characteristics, characteristics. Okay? And so, at

1 this time, Mr. Robinson, and he knows he's going to  
2 come on over --

3 Come on over, Mr. Robinson.

4 We've asked Mr. Robinson to take off his shirt,  
5 and he's done that. He's done that in a private  
6 setting. And he's going to come over in front of  
7 you, right here in front of --

8 Come on over just a little bit more.

9 I'm going to allow him to stand -- stand facing  
10 them. And then after a few seconds, here in just a  
11 little bit -- all right. Mr. Robinson, and if you  
12 could please turn around for them. Okay. Going to  
13 have him turn around. Okay. All right. Thank you  
14 very much.

15 **MR. FENDER:** Judge, and we'll be asking for the  
16 tops of his hands.

17 **THE COURT:** Yeah. Make sure they can see both  
18 sides of your arms, tops and bottoms of your hands.

19 (Defendant complies.)

20 **THE COURT:** Okay. Thank you very much,  
21 Mr. Robinson.

22 We're going to send you back to your jury room.  
23 I'm going to allow him to get dressed in a private  
24 setting, and then we'll bring you right back out and  
25 continue. Okay? So do not discuss the case, keep

1 an open mind. Okay? Thank you very much.

2 (The jury retires to the jury room.)

3 **THE COURT:** Okay. You can take him.

4 (The defendant leaves the courtroom.)

5 **THE COURT:** Is there anything else you need her  
6 to mark while he's putting his shirt back on?

7 (State's Exhibit Numbers 12 through 16,  
8 photographs, marked for identification.)

9 (The defendant enters courtroom.)

10 **THE COURT:** Are you good?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** All right. Bring them back in.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Welcome back, ladies  
15 and gentlemen. We'll continue with the next  
16 witness.

17 The State can call their next witness.

18 **MR. FENDER:** State calls Shannon Molina.

19 SHANNON MOLINA,

20 having been duly sworn, testified as follows:

21 **THE COURT:** All right. Have a seat right  
22 there. State your full name for the record, and if  
23 you would, please, spell your last name.

24 **THE WITNESS:** Shannon Molina, M-o-l-i-n-a.

25 **THE COURT:** All right. Thank you very much.

1 Now, you hear that air conditioning unit?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Okay. So when you talk like that,  
4 no one can hear you. You've got to keep your voice  
5 right there on the microphone for me. Okay?

6 **THE WITNESS:** Okay.

7 **THE COURT:** Thank you.

8 DIRECT EXAMINATION

9 BY MR. FENDER:

10 **Q** Ms. Molina, can you tell the jurors just  
11 briefly where you work at?

12 **A** Circle K in Ridge Spring, South Carolina.

13 **Q** What's your job there?

14 **A** I'm the manager.

15 **Q** Do y'all have a video surveillance system?

16 **A** Yes, sir.

17 **Q** Can you tell us a little bit about that?

18 **A** It's -- the cameras show the inside, and we can  
19 view everything from the inside. And it even has  
20 sound on it.

21 **Q** Do you recall August the 1st, 2016?

22 **A** Yes, sir.

23 **Q** Can you tell us about what happened that night?

24 **A** I got a call at three something in the morning  
25 from --

1           **MS. ZMROCZEK:** Objection, Your Honor; hearsay.

2           **THE COURT:** Sustained.

3           BY MR. FENDER:

4           **Q**     Did you go to the Circle K that night?

5           **A**     Yes, sir.

6           **Q**     What did you do there?

7           **A**     I went in to burn a video for a robbery.

8           **Q**     And that was a surveillance video?

9           **A**     Yes, sir.

10          **Q**     Were all the cameras working?

11          **A**     The inside cameras.

12          **Q**     So, to your knowledge, the inside camera was  
13          working?

14          **A**     Yes, sir.

15          **Q**     Did you all secure the video?

16          **A**     Yes, sir.

17          **Q**     Did you all give it to law enforcement?

18          **A**     Yes, sir.

19          **Q**     Do you recall what was taken during that  
20          robbery?

21          **A**     Cash.

22          **Q**     Approximately how much?

23          **A**     A hundred and something. I'm not sure exactly  
24          how much. I can't remember.

25          **Q**     Were the outside cameras working?

1           **A**     No, sir, not at the time.

2           **Q**     So you just had video from the inside?

3           **A**     Yes, sir.

4           **Q**     And you reviewed that?

5           **A**     Yes, sir.

6           **Q**     Did it show a robbery?

7           **A**     Yes, sir.

8           **Q**     August the 1st, 2016?

9           **A**     Yes, sir.

10          **MR. FENDER:** Thank you.

11          **THE COURT:** Cross?

12          **MS. ZMROCZEK:** No questions.

13          **THE COURT:** Have a nice day. Thank you very  
14 much.

15          All right. Call your next witness.

16          **MR. FENDER:** Lee Shorter, Your Honor.

17                    JAMES LEE SHORTER,

18          having been duly sworn, testified as follows:

19          **THE COURT:** All right. State your full name  
20 for the record.

21          **THE WITNESS:** James Lee shorter.

22          **THE COURT:** Stay close to that mic. Okay?

23          **THE WITNESS:** All right.

24          **THE COURT:** Thank you.

25                                   \*\*\*\*

DIRECT EXAMINATION

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BY MR. FENDER:

**Q** Before we get into this case, can you tell the jurors a little bit about who you are and who you work for?

**A** I'm James Lee Shorter, and I work for the Saluda Police Department. I've been working for them for about three years.

**Q** Did you have to go through any kind of training and whatnot before you got your law enforcement job?

**A** I had to go to the academy for 12 weeks.

**Q** What did you learn there?

**A** About everything to be a cop, just learned about laws and officer safety.

**Q** And you said you -- where did you say you currently work?

**A** Saluda Police Department.

**Q** What's your rank there?

**A** I'm a patrolman, first class.

**Q** What are your day-to-day duties? What does that entail?

**A** Just run traffic, answer calls.

**Q** Respond to incidents?

**A** That's right.

**Q** Were you working on August the 1st, 2016?

1           **A**     I was.

2           **Q**     Can you tell us what you remember from that  
3           night or early morning?

4           **A**     I was sitting next to Deputy Hallman. We were  
5           talking. They got a call for an armed robbery in  
6           Ridge Spring. He requested that I respond to the  
7           scene with him once the call came through.

8           **Q**     So y'all went to -- where did you go to?

9           **A**     Went to the Circle K in Ridge Spring.

10          **Q**     Is that in Saluda County?

11          **A**     It is. It's in Saluda County.

12          **Q**     What is the first thing you did when you got  
13          there?

14          **A**     The first thing I did, I exited my patrol  
15          vehicle along with Deputy Hallman. We saw money  
16          laying in the parking lot. He passed me his camera,  
17          asked if I could photograph it while he went and  
18          talked to the store clerk, look at the video.

19          **Q**     Are any of these items familiar to you?

20          **A**     Yes, sir. Yes, sir, all of them.

21          **Q**     I've showed you now what's been marked as  
22          State's 12 through 16. What are these items? Can  
23          you tell the jurors in your own words?

24          **A**     Money we found laying in the parking lot.

25          **Q**     And these are pictures?

1       **A**     They are.

2       **Q**     Do they fairly and accurately depict what you  
3       observed when the pictures were taken?

4       **A**     They do.

5       **Q**     Have they been changed or altered in any way?

6       **A**     No, sir.

7               **MR. FENDER:** Judge, at this time, I'd seek to  
8       enter these items into evidence, State's 12 through  
9       16, and publish to the jurors.

10               **MS. ZMROCZEK:** Without objection.

11               **THE COURT:** 12 through 16 without objection.

12                       (State's Exhibit Numbers 12 though 16,  
13       photographs, admitted into evidence.)

14               **MR. FENDER:** Judge, with leave of the Court,  
15       could the witness step down?

16               **THE COURT:** Sure.

17               Now, listen, you're pretty soft spoken, so I  
18       need -- that air conditioning makes it hard to hear  
19       in here, so make sure you keep your voice up so  
20       everybody can hear you. Okay?

21               **THE WITNESS:** Yes, sir.

22               **THE COURT:** Thank you very much.

23                       (Witness leaves the witness stand.)

24       BY MR. FENDER:

25       **Q**     If you could, direct your attention to the TV

1 there. What are we seeing in this picture?

2 **A** Money we found laying in the parking lot as  
3 soon as we arrived on the scene.

4 **Q** That's State's Exhibit 12, which is in  
5 evidence:

6 I'm going to show you State's 13 in evidence.  
7 Can you tell me what are you observing in this  
8 picture?

9 **A** Another pile of money we found laying in the  
10 parking lot.

11 **Q** Can you make out the denomination there?

12 **A** I cannot.

13 **Q** Okay. State's Exhibit 14, what are you seeing  
14 in this picture?

15 **A** Front door of the Circle K.

16 **Q** State's 15, what about this picture?

17 **A** That's the two roads where the Circle K sits  
18 at, corner of Main and Pecan Grove.

19 **Q** Why did y'all take this picture?

20 **A** Just to verify the location of the Circle K  
21 Convenience Store.

22 **Q** And, lastly, State's Exhibit 16, can you tell  
23 us what we're seeing there?

24 **A** Another pile of money we found laying in the  
25 parking lot.

1           **Q**     Can you make out the denomination of those  
2           bills?

3           **A**     One U.S. dollar bills.

4           **THE COURT:**   Say that again.

5           **THE WITNESS:**   They appear to all be one dollar  
6           U.S. currency.

7           **THE COURT:**   Okay.

8           BY MR. FENDER:

9           **Q**     If you could, just take the witness stand for  
10          us.

11          **A**     (Witness resumes the witness stand.)

12          **Q**     Do you recall, approximately, what time all of  
13          this was going on?

14          **A**     Early morning hours is all I can recall.

15          **Q**     When law enforcement -- when a call like this  
16          comes over the radio, what does law enforcement do?

17          **A**     We respond as fast and as safely as we can to  
18          get to the scene to make sure everybody's okay.

19          **Q**     So you secure the scene?

20          **A**     We did. As soon as I arrived on scene, we saw  
21          the money, Deputy Hallman went inside to talk to the  
22          clerk. He asked me to take photos of the money.

23          And I stayed with the money and kept it secure until  
24          he was able to come back and secure it himself.

25          **Q**     So you're doing scene security, but are you the

1 investigator in this case?

2 **A** I am not.

3 **Q** Who's the investigator?

4 **A** Deputy Hallman was the first person on the  
5 scene. Once more units showed up, I left the scene  
6 once I knew everybody was safe. And that's as far  
7 as I know.

8 **Q** This happened in Ridge Spring?

9 **A** It did.

10 **Q** And what agency were you working for at that  
11 time?

12 **A** Town of Saluda.

13 **Q** And did y'all have an agreement to assist them  
14 with big stuff like this?

15 **A** Yes, sir.

16 **Q** Do you recall who the chief of police in Ridge  
17 Spring was at that time?

18 **A** Mike Raffield.

19 **Q** Was he the chief investigator in this case?

20 **A** I believe he was. He was at the time -- he was  
21 the chief at the time of the incident, and I do  
22 believe he took it over.

23 **Q** And you provided scene security?

24 **A** Yes, sir.

25 **MR. FENDER:** Thank you. Please answer the

1 defense attorney's questions.

2 **THE COURT:** Cross-examination?

3 **MS. ZMROCZEK:** Thank you. Briefly.

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 **Q** Officer, you have a call number?

7 **A** Yes, ma'am.

8 **Q** What was your call number?

9 **A** PDA.

10 **Q** I'm sorry?

11 **A** PDA.

12 **Q** PDA?

13 **A** Yes, ma'am.

14 **Q** What time did you arrive on scene?

15 **A** The same time the deputy did, Deputy Hallman.

16 **Q** So you and Deputy Hallman were the first two  
17 there?

18 **A** Yes, ma'am.

19 **Q** Saw money?

20 **A** Yes, ma'am.

21 **Q** Got your camera?

22 **A** Yes, ma'am.

23 **Q** Your camera is issued through the sheriff's  
24 department?

25 **A** No, ma'am. I got Deputy Hallman's camera. It

1 was issued to him.

2 Q Okay. When y'all get your issued cameras, do  
3 you check the date?

4 A Yes, ma'am.

5 Q And you check the time?

6 A Yes, ma'am.

7 Q And so they were accurate on these photos?

8 A Yes, ma'am.

9 Q Okay. So, on State's Exhibit 14, do you  
10 recognize that?

11 A Yes, ma'am.

12 Q Okay. And you recognize Deputy Hallman?

13 A Yes, ma'am.

14 Q And then who's the other person?

15 A I'm having a hard time seeing that. Appears to  
16 be the store clerk.

17 Q Store clerk?

18 A Yes, ma'am.

19 Q So he was outside when you got there?

20 A Yes, ma'am.

21 Q And that was time stamped 8/1/2016 at 3:00  
22 A.M., correct?

23 A Yes, ma'am.

24 Q And that was the accurate and correct time?

25 A Yes, ma'am.

- 1 Q State's 12, would that be the clerk?
- 2 A Yes, ma'am, that's him.
- 3 Q Sitting outside?
- 4 A Yes, ma'am.
- 5 Q Did you do a report in this case?
- 6 A I did not.
- 7 Q Said that Officer Hallman went in to view the
- 8 video with the clerk?
- 9 A Yes, ma'am.
- 10 Q Is this the clerk in State's 12 that you're
- 11 referring to?
- 12 A Yes, ma'am.
- 13 Q You also said that you went to the academy?
- 14 A I did.
- 15 Q Received training?
- 16 A Yes, ma'am.
- 17 Q As a first responder?
- 18 A Yes, ma'am.
- 19 Q Were you running code to get to the location?
- 20 A I was.
- 21 Q Okay. And tell the jury what running code
- 22 means.
- 23 A It means you're running lights and sirens,
- 24 trying to get to a scene as fast as you can, but as
- 25 safely as possible.

1 Q With the town -- in your Town of Saluda  
2 vehicle?

3 A Yes, ma'am.

4 Q Is it equipped with a camera?

5 A It is.

6 Q A dash cam?

7 A Yes, ma'am.

8 Q Is that dash cam started when the lights come  
9 on?

10 A Yes, ma'am, it is.

11 Q Did you turn your dash cam in for this?

12 A No, ma'am.

13 Q Were you ever requested to?

14 A No, ma'am.

15 Q Was it running?

16 A Yes, ma'am.

17 Q Your dash cam have audio?

18 A Yes, ma'am, it does.

19 Q In addition to video?

20 A Yes, ma'am.

21 Q And is that the condition that you found the  
22 clerk when you got to the scene?

23 A Excuse me?

24 Q Is that the condition, the physical condition,  
25 that you saw the clerk when you got to the scene?

1 And I'm referring to State's 14 and 12.

2 **A** Yes, ma'am.

3 **Q** Was there an ambulance there?

4 **A** Not that I recall.

5 **Q** As a first responder and road deputy, are you  
6 trained to know when people require ambulances?

7 **A** Yes, ma'am. If they're stating that they're  
8 hurting or in any type of pain, we'll call one for  
9 them.

10 **Q** Did you call one?

11 **A** No, ma'am, I didn't.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** Redirect?

14 **REDIRECT EXAMINATION**

15 **BY MR. FENDER:**

16 **Q** If the time code was off, would that affect the  
17 contents of the picture?

18 **A** No, sir, it wouldn't.

19 **MR. FENDER:** Nothing further.

20 **THE COURT:** All right. Have a nice day.

21 **MR. FENDER:** Judge, did you ask for the next  
22 witness?

23 **THE COURT:** Yes.

24 **MR. FENDER:** Michael Raffield, Your Honor.

25 **THE COURT:** All right. We need to take up one

1 issue, ladies and gentlemen. Step back to your jury  
2 room. Do not discuss the case. We'll be back with  
3 you in just a few moments. Thank you very much.

4 (The jury retires to the jury room.)

5 **THE COURT:** Okay. For the record, yesterday I  
6 was provided a sealed envelope which appears to be  
7 from somebody with the Edgefield County Sheriff's  
8 Office in reference to potential Giglio material in  
9 reference to Chief Raffield. And I have reviewed  
10 the information that was contained in that  
11 information. And I find -- make a finding of fact  
12 that none of it goes directly towards his  
13 credibility on the witness stand.

14 I have reviewed the incident reports. There  
15 are a couple of employee warnings and some memos to  
16 the files. And none of them have anything to do  
17 with -- that would affect his credibility as a  
18 witness. And I will not allow him to be  
19 cross-examined on it nor will I allow it to be  
20 turned over.

21 **MR. EARGLE:** Thank you, Your Honor.

22 **THE COURT:** I had not ruled on that issue and I  
23 needed to.

24 **MS. ZMROCZEK:** Thank you, Your Honor.

25 **THE COURT:** Okay. Let's take about -- I want

1 to try to get Raffield done today. How long do you  
2 think you're going to be on direct?

3 **MR. FENDER:** Judge, this is going to be pretty  
4 substantial as the chief investigating officer.

5 **THE COURT:** Yeah, I know. I want to try to get  
6 him done today. So let's take a quick five-minute  
7 break and then we'll jump right back into him.  
8 Okay?

9 **MS. ZMROCZEK:** Will that include  
10 cross-examination, too?

11 **THE COURT:** Yeah.

12 (Brief Recess.)

13 **THE COURT:** All right. Chief Raffield, you  
14 remember what we talked about yesterday about the  
15 things you're not going to say while on the witness  
16 stand?

17 **CORPORAL RAFFIELD:** Your Honor, I do remember.

18 **THE COURT:** Thank you. And I appreciate that.  
19 All right. Let's bring them in.

20 (The jury returns to the courtroom.)

21 **THE COURT:** All right. Welcome back, ladies  
22 and gentlemen. And we will continue with the next  
23 witness.

24 Mr. Fender, you may call your next witness.

25 **MR. FENDER:** Michael Raffield, Your Honor.

1           **THE COURT:** All right. Please come forward and  
2 be sworn, sir.

3                           MICHAEL JAMES RAFFIELD,  
4           having been duly sworn, testified as follows:

5           **THE COURT:** If you would, state your full name  
6 and spell your last name for us, please...

7           **THE WITNESS:** Yes, sir. Michael James  
8 Raffield. Last name is R-a-f-f-i-e-l-d.

9                           DIRECT EXAMINATION

10          BY MR. FENDER:

11          **Q**     Mr. Raffield, what's your current rank?

12          **A**     I am a corporal with the Saluda County  
13 Sheriff's Office Patrol Division.

14          **Q**     Corporal Raffield, before we get started in  
15 this case, can you tell the jurors a little bit  
16 about who you are, your background, your training,  
17 your law enforcement experience?

18          **A**     Yes, sir. Currently, today, I have 25 years of  
19 law enforcement. I started with the municipal  
20 public safety, which is police and fire, was a  
21 national registry paramedic in addition to that. I  
22 was a federal agent after 9/11 for approximately  
23 eight years, served in that capacity, came back to  
24 local law enforcement, was with the sheriff's office  
25 from the year of 2012. I took the chief of police

1 position with Ridge Spring prior to running for  
2 sheriff in Edgefield County. It was a two-year  
3 contract. I did not win, unfortunately. And at the  
4 end of that contract, I came back to Saluda:

5 In my career, I've been a part of numerous  
6 investigations personally, murder, kidnapping, armed  
7 robberies, and, unfortunately, involving adults and  
8 juveniles.

9 **Q** So your background is in police work and in  
10 investigation?

11 **A** Correct.

12 **Q** Were you working on August the 1st, 2016?

13 **A** I was employed as chief of police. At that  
14 time, I had one other officer working for me, but,  
15 essentially, all the responsibilities fell on my  
16 shoulders, that would be administrative stuff  
17 required by SLED to keep a police department open,  
18 plus all the calls for service, anything from a  
19 barking dog to, in this case, an armed robbery. I  
20 was the person that was responsible to go out,  
21 answer the call, gather all the evidence, do  
22 interviews and get everything ready for court.

23 My department's unique, small, tiny  
24 municipality. The way it worked was I worked 40  
25 hours a week. Obviously, I can't work 24 hours a

1 day. So, in addition to my schedule, the Saluda  
2 County Sheriff's Office covered the calls when I was  
3 not working or actually on duty, with the exception  
4 if it was an emergency, something of great  
5 magnitude, such as a murder or armed robbery, I  
6 would be notified.

7 Once I came on duty to respond to the scene and  
8 take it over to be, I guess you'd say, the chief  
9 investigator, Saluda County agreed to be a support  
10 agency to assist me in the investigation. And  
11 that's what occurred on this day.

12 **Q** Just briefly, you're the chief investigator and  
13 these outside agencies just come in and help the  
14 small town of Ridge Spring when they need it?

15 **A** Correct.

16 **Q** Okay. Going to August 1st of 2016, what do --  
17 what do you recall from that night?

18 **A** That night I was actually off, sleeping very  
19 soundly at home, found out that there had been an  
20 armed robbery at the Circle K. So I immediately got  
21 up, got dressed and responded in an emergency  
22 capacity with the lights and sirens, as it was just  
23 discussed, to the scene.

24 While en route, I ensure that the scene had  
25 been locked down by law enforcement there to protect

1 the integrity of any evidence or witnesses that,  
2 potentially, could come out of it, made sure that,  
3 you know, if there was any medical assistance  
4 needed, that that was covered, and most importantly,  
5 a perimeter, if they had additional manpower that  
6 could help set up a perimeter based on the  
7 information that was communicated to me.

8 While I was en route, I was informed that the  
9 armed robbery occurred at the Circle K and the  
10 subject had ran on foot -- and the subject had  
11 already been identified as Demarcus Robinson, who is  
12 sitting in here today {indicating} -- at 300-A East  
13 Main street, which is the address for Circle K.

14 **Q** What's the importance of setting up that  
15 perimeter and the initial law enforcement response?

16 **A** The perimeter is set up that way if they're --  
17 the first thing we try to do is make sure that the  
18 scene is secure in itself to prevent people,  
19 customers, from coming in after an armed robbery  
20 occurred, that way we don't have evidence that's  
21 disturbed or missing.

22 The perimeter is set up when we know for a fact  
23 that the person did not leave in a car, but they  
24 left on foot. And based on the timeframe from the  
25 time the incident occurs until we can get the first

1 officer on the scene, we can kind of estimate that  
2 we need to do a perimeter of several blocks, several  
3 tenths of a mile, up to a mile based on just, you  
4 know, common sense, but that would be important so  
5 that way if somebody did leave on foot, we would  
6 have enough of an area contained to try to actually  
7 capture them soon after the incident occurred.

8 **Q** So you're trying to catch the bad guy and  
9 preserve evidence?

10 **MS. ZMROCZEK:** Your Honor, objection.

11 **THE COURT:** Sustained.

12 BY MR. FENDER:

13 **Q** What happened when you got to Ridge Spring once  
14 you responded to that call?

15 **A** While en route, the information that I had  
16 obtained was that Demarcus Robinson had been  
17 identified as the armed robbery suspect. At that  
18 time, I went to Merritt Avenue, which is  
19 approximately two to three-tenths of a mile from the  
20 incident location.

21 **Q** If I may, did you talk to anyone at the scene  
22 of the Circle K?

23 **A** I talked to people that had been at the scene  
24 of the Circle K to gain information as I was  
25 responding in an emergency capacity.

1           **MR. FENDER:** Your Honor, may I approach the  
2 witness?

3           **THE COURT:** Yes.

4                     (State's Exhibit Numbers 17 through 19,  
5 aerial photographs, marked for identification.)

6 BY MR. FENDER:

7           **Q**     Corporal Raffield, what do these items appear  
8 to be?

9           **A**     These are topographical pictures of the  
10 geography within the Ridge Spring area, specifically  
11 the Circle K up to the residence where I located and  
12 arrested Demarcus Robinson that morning.

13           **MR. FENDER:** Judge, at this time, I'd like to  
14 enter these into evidence and allow Corporal  
15 Raffield to step down and use the projector to show  
16 what he's talking about.

17           **MS. ZMROCZEK:** Without objection, Your Honor.

18           **THE COURT:** Without objection.

19                     (State's Exhibit Numbers 17 through 19,  
20 aerial photographs, admitted into evidence.)

21           **THE COURT:** Keep your voice up. Okay?

22           **THE WITNESS:** Yes, sir.

23                     (Witness leaves the witness stand.)

24 BY MR. FENDER:

25           **Q**     If you could, just in your own words and with

1 these exhibits, can you explain to us what you're  
2 telling us about the Circle K Gas Station and these  
3 location events and whatnot?

4 **A** Absolutely. Do you mind if I step up to the  
5 actual photograph?

6 This {indicating} is Main Street in Ridge  
7 Spring, South Carolina, also Saluda County. This is  
8 Pecan Grove Road. This is the Circle K Gas Station  
9 and the parking lot outlined. That's the cover over  
10 the top of the pumps. Directly behind it is a  
11 church and directly behind that here is a  
12 single-wide that faces Pecan Grove, which is 111.

13 **Q** So what -- when you went away from the gas  
14 station to the residence, explain what happened.

15 **A** Okay. Let me change pictures, if you don't  
16 mind.

17 **Q** State's 17.

18 **A** Let me have just one second so I can look at  
19 the original.

20 I apologize. The railroad here actually is  
21 confusing me. This {indicating} is actually Main  
22 Street. This is the intersection of Pecan Grove  
23 Road and Main Street. And, again, this is the gas  
24 station in its entirety, the church and 111 Pecan  
25 Grove.

1           If we come back westbound, which will be toward  
2           Edgefield from Ridge Spring in that direction, this  
3           is Merritt Avenue right here going back into the  
4           neighborhood. And where these trees are at right  
5           here {indicating} is        Merritt Avenue, which is a  
6           house. Laundry mat is right here, if you're  
7           familiar with the Soap and Suds. You can basically  
8           access it by going down Merritt. And then you can  
9           turn to the right, and that's        Merritt Avenue.

10           As far as at the scene, the investigation  
11           revealed that the money was in the front parking  
12           lot. Additionally, money -- a five-dollar bill was  
13           located directly in front of the single-wide trailer  
14           right here {indicating}, which I actually obtained  
15           and photographed before moving it for evidence  
16           today. At that point.--

17                       (Witness resumes the witness stand.)

18           At that point, based on the communication that  
19           I had received -- like I said, I was trying to gain  
20           information en route trying to assess what was going  
21           on, what needed to be done immediately -- I  
22           identified that I needed to go to        Merritt  
23           Avenue. At that point, I asked other officers to  
24           come in to, basically, pull the perimeter in on that  
25           house believing that Demarcus Robinson was there,

1 made contact with his mother. She inquired --

2 **MS. ZMROCZEK:** Objection, Your Honor; hearsay.

3 **THE COURT:** Overruled. Go ahead.

4 **THE WITNESS:** My investigation revealed that  
5 Demarcus was there. I explained to his mother why I  
6 was there. At which point, I observed her to drop  
7 her head and turn away from me while calling out his  
8 name, trying to get his attention.

9 Investigation revealed he had only been home  
10 for, approximately, an hour and a half based on the  
11 information I received from family, which put  
12 approximately a 30-minute window, according to  
13 information, from the time of the actual armed  
14 robbery. It had been, approximately, two hours, but  
15 it's supposed to be that he had been there maybe 30  
16 minutes longer than that because it was an  
17 estimation.

18 As I located Mr. Robinson, he was upstairs in a  
19 bedroom that really didn't have any furniture. He  
20 was laying on top of what appeared to be a sleeping  
21 bag that had, like, clothing underneath it. The  
22 room, at that time, was dark. So the first thing I  
23 did for safety of myself and other officers and  
24 Mr. Robinson himself was secured his hands,  
25 immediately searched around the area of his

1 waistband and where the clothing was at to make sure  
2 there wasn't a weapon, because this was an armed  
3 robbery, so we're anticipating, potentially, running  
4 into a deadly threat.

5 At that point, pulling up the corner of the  
6 sleeping bag, again, looking for a weapon, I  
7 observed -- and I want to give you the exact  
8 figures, if y'all will give me just a second --  
9 which investigation later revealed was 41 U.S.  
10 dollars, five five-dollar bills and one -- I'm sorry  
11 -- and 16 one-dollar bills, which was consistent  
12 with the information that I had received that the  
13 denomination of the money, which was unique, was the  
14 fact that it was only fives and ones. It was \$41.  
15 At that point, Mr. Robinson was stood up and secured  
16 in handcuffs.

17 To prevent any legal matter, I asked Lieutenant  
18 Padgett with the Saluda County Sheriff's Office, who  
19 was on scene at that time and the highest ranking  
20 member of Saluda County that was there at that time,  
21 if he would physically take control of that room.  
22 And the purpose behind that was to protect any  
23 evidence that, potentially, was in that room. And I  
24 knew, based on my training through the South  
25 Carolina Criminal Justice Academy, that I had to get

1 a search warrant.

2 So, at that time, Investigator Padgett --  
3 Lieutenant Investigator Padgett stood by for me. I  
4 went and completed a search warrant and took it to  
5 the magistrate judge, which is required, and  
6 received a signature from the judge authorizing the  
7 search and responded back to the scene. This  
8 process took probably an hour to probably an hour  
9 and a half. I can't give you an exact time.

10 Once I returned back to the scene, I'm not  
11 allowed, legally, to execute my own search warrant  
12 that I prepared and got the judge to sign, so I  
13 asked Deputy Evan Garris to execute that search  
14 warrant. Investigation revealed, upon the execution  
15 of that search warrant, that underneath that  
16 bedding, which I was just speaking about, was 41  
17 U.S. dollars in denominations of ones and fives.  
18 Additionally, underneath the mattress in the same  
19 area as the money were two pair of black shorts,  
20 which, again, based on the information that had been  
21 communicated to me, was consistent with what other  
22 officers had observed in the video that they had  
23 seen prior to me getting there.

24 I was, basically, given a play-by-play of what  
25 was seen on that video by Deputy Hallman, who was

1 the first responding unit there. Based on that, I  
2 knew that the defendant was believed to be Demarcus  
3 Robinson, what his clothing description was at the  
4 time, additionally, that there was a silver-in-color  
5 or gray-in-color revolver with black handles, which  
6 is very specific.

7 So, as the investigation unfolded in the room  
8 that Demarcus Robinson was located and arrested in,  
9 in that closet, I don't remember anything hanging,  
10 like clothing, but what I do distinctly remember was  
11 at the top, there was several packs of Newport  
12 cigarettes. I believe it's five. There was also a  
13 Vega cigarillo packet with one of the cigars in it.  
14 There was a camo bookbag resting on the floor in  
15 that closet, and inside that, there was located a  
16 box of .38 bullets. I believe it was 35 -- a 35  
17 count.

18 Additionally, I locate a silver or  
19 gray-in-color revolver with black handles. The  
20 handles are familiar to, like, Pachmayr. It's just  
21 -- it's a brand name that's been around for years.  
22 The cylinder was open. It was found to be loaded.  
23 Of course, the gun was made rendered safe.

24 And the items I just described were then  
25 secured. I packaged everything, took possession of

1 everything and did the proper chain of custody on  
2 the package.

3 Again, I told you earlier, I'm not currently  
4 with Ridge Spring. My former employee, who was  
5 hired intentionally to replace me, when he took over  
6 as chief, he took over all of the evidence and  
7 maintained it in his possession, locked in a secure  
8 evidence locker that belongs to Ridge Spring until  
9 today where he brought it to court.

10 (State's Exhibit Number 20, Revolver with  
11 five .38 Special Rounds, marked for identification.)

12 **MR. FENDER:** May I approach, Judge?

13 **THE COURT:** Yes.

14 BY MR. FENDER:

15 **Q** Tell the jury about this, please.

16 **A** Yes, sir.

17 Being a small department, our budget's not, you  
18 know, padded with extra money. This is, basically,  
19 an evidence bag. It's law enforcement grade. It's  
20 the same type material that you'd find at any  
21 grocery store. But on the outside, it's got  
22 specific information, such as evidence or property  
23 description, the agency case number, the item  
24 number, who the suspect is, the victim, location,  
25 date, time, who it was recovered by, and then an

1 area for the description. And at the top, you can  
2 see that -- the evidence tape. And this was sealed  
3 completely till just a few hours ago when myself and  
4 the two counsels looked over the evidence.

5 This is actually the firearm that I collected  
6 that night. It is secured and was rendered safe. I  
7 put the lock on it so it can't be closed and loaded.  
8 This is a Charter Arms Shelton, Connecticut, made  
9 Revolver .38 Special. It has five cylinder holes  
10 for bullets. And at that time of the morning when  
11 it was discovered, it was loaded with five rounds in  
12 it. The five rounds -- these are .38 Special  
13 rounds. That's what the gun was loaded with.

14 All the evidence was taken, again, by myself.  
15 The money that was located in front of the store in  
16 the parking lot, that's the only evidence that was  
17 not collected by myself. The wind was blowing.  
18 Deputy Hallman, being the first on the scene, to  
19 prevent that evidence from being ran over or blown  
20 away, after he went inside and talked to the victim,  
21 came back outside after it was photographed and  
22 picked that money up and he hand transferred that  
23 money to me.

24 The five-dollar bill that was located in the  
25 front of 111 Pecan Grove, I collected that and

1           photographed it. All the evidence that was  
2           discovered in the room and in the closet where  
3           Mr. Robinson was located and arrested, I  
4           photographed and I took possession of it.

5           **Q**     During the course of your investigation, did  
6           you determine that gun to be consistent with the one  
7           used in the robbery?

8           **A**     I did. The gun -- the information that I had  
9           received en route, as well as the video that I  
10          viewed after the arrest was made, I had, at that  
11          time, Officer Grenier -- Captain Grenier  
12          transport --

13          **MS. ZMROCZEK:** Your Honor, I'm going to object  
14          to -- there's some gun comparison that's not been  
15          provided to me.

16          **THE COURT:** Overruled. Go ahead.

17          **THE WITNESS:** Once Mr. Robinson was located,  
18          because I'm the chief investigator, I asked my other  
19          officer, my only other officer, to transport him to  
20          the detention facility, and I really got into the  
21          meat of the investigation.

22                 Upon viewing the video myself, I observed this  
23          gun to match the gun that was in the video. It was  
24          described to us by the victim as a gray or  
25          silver-in-color revolver with black handles, and

1 that's what I observed in the house and when I took  
2 this weapon, because I do believe it to be the  
3 weapon that was used in the crime in conjunction  
4 with the Newport cigarettes that I observed in the  
5 video. Because as the robbery's occurring, and  
6 you've seen the photographs of the subject with his  
7 arms extended, you can see in one hand that he's  
8 holding something other than a gun. And in that  
9 hand, to me, it appeared to be a box of cigarettes,  
10 as well as a silver packet, which is the Vega cigar  
11 cigarillo, which was also discovered in the closet  
12 right beside the cigarettes.

13 So, you know, at the location where he was at,  
14 we recovered a gun that was consistent with the  
15 video and the victim's description; we found  
16 cigarettes consistent with what was taken out of the  
17 store; we found money that was specifically in the  
18 denominations, the denomination of one and fives as  
19 the clerk or the victim had told us; and we had  
20 recovered some clothing from under the bedding  
21 exactly where the money was at that met the  
22 description that was in the video and as was  
23 communicated to me.

24 **MR. FENDER:** Judge, I'd move that firearm into  
25 evidence. I believe it's State's 20.

1           **MS. ZMROCZEK:** Without objection.

2           **THE COURT:** State's 20 without objection.

3                   (State's Exhibit Number 20, revolver with  
4 five .38 Special Rounds, admitted into evidence.  
5 State's Exhibit Number 21, Newport 100 cigarettes  
6 and Garcia y Vega cigar, marked for identification.)

7 BY MR. FENDER:

8           **Q**     Corporal Raffield, what does this item appear  
9 to be?

10          **A**     I'm sorry. I started having to use reading  
11 glasses about three years ago.

12                   This, again, is an evidence bag that I actually  
13 filled out. And it is four packs of Newport  
14 cigarettes 100-size boxes and one Garcia Vega silver  
15 cigar.

16                   At Merritt Avenue within the closet, the  
17 upstairs room that Mr. Robinson was located in,  
18 these were actually sitting on top of the shelf  
19 along with the cigar. When you look at the video  
20 and the pictures, you can actually see the cigarette  
21 box extended out in the left hand with the Vega  
22 cigar, basically, on top with the box running  
23 through like so {indicating}. They were recovered  
24 by myself, packaged and brought today.

25          **Q**     Through the course of your investigation, did

1       you determine that to be consistent with what was  
2       taken?

3       **A**     Correct.

4       **Q**     And if you could, just touch briefly, what's  
5       the purpose of law enforcement sealing things up  
6       and, you know, writing all this stuff on there?

7       **A**     We're required to have a, what they call, a  
8       proper chain of custody. And, basically, it just  
9       ensures that -- who the person was that took  
10      possession of whatever the evidence was and that a  
11      proper chain was completed, showing that the  
12      evidence has been protected from the time that it  
13      was discovered and secured until a day that it can  
14      be adjudicated in court, as we are here today.

15      **Q**     So the stuff we have here is what was taken  
16      from the defendant?

17      **A**     Correct.

18           **MR. FENDER:** And, Judge, at this time, I would  
19      enter the cigarettes as State's 22.

20           **MS. ZMROCZEK:** Without objection.

21           **THE COURT:** 21 admitted without objection.

22                   (State's Exhibit Number 21, Newport 100  
23      cigarettes and Garcia y Vega cigar, admitted into  
24      evidence.)

25      **BY MR. FENDER:**

1       **Q**     And, Corporal Raffield, did you also take  
2       clothing items from that bedroom as well?

3       **A**     I did. I took, like I said, two pair of black  
4       shorts.

5             I executed another search warrant at the jail.  
6       What I discovered during the investigation, on the  
7       video, you can see that the defendant, Demarcus  
8       Robinson, had on a gray-in-color pair of underwear.  
9       And the reason you can tell is the underwear was  
10      riding higher than the shorts were in the picture in  
11      the video, similar to the term of sagging, but it  
12      wasn't to that extreme, but it was enough that you  
13      could tell it was gray in color.

14            When Mr. Robinson was located asleep, the only  
15      thing he had on at that time was underwear that was  
16      gray in color. Based on legal procedures, I had to  
17      obtain a search warrant because he had already been  
18      processed into the jail, which triggered me having  
19      to get a search warrant for that. A search warrant  
20      was obtained, his underwear was then taken because  
21      it was consistent with the video showing that,  
22      again, Demarcus Robinson was the one that was  
23      involved in this.

24            **MS. ZMROCZEK:** Objection, Your Honor. He's  
25      making a legal conclusion.

1           **THE COURT:** Sustained. He can't -- he's not  
2 allowed to give his opinion.

3           **MS. ZMROCZEK:** And I would ask that that be  
4 stricken.

5           **THE COURT:** All right. That's stricken from  
6 the record.

7           **THE WITNESS:** In the video, it was determined  
8 that the person who completed this armed robbery was  
9 wearing a pair of black shorts, but above the black  
10 shorts, you can see that they were wearing a gray in  
11 pair {sic} of what appeared to be underwear. When  
12 Mr. Robinson was arrested, he was wearing underwear  
13 meeting that description. It was taken as evidence  
14 to present to you, the jury, today so you can make a  
15 decision.

16           **MS. ZMROCZEK:** Objection, Your Honor.

17           **THE COURT:** Overruled.

18                   (State's Exhibit Number 22, men's gray  
19 underwear, marked for identification.)

20 BY MR. FENDER:

21           **Q** I'm not going to ask you to take it out, but  
22 can you tell the jurors what this is?

23           **A** This is my handwriting. It's Item Number I  
24 that I had placed in -- on this chain of custody  
25 inside this bag. It was obtained at the Saluda

1 County Detention Center at 4:20 on the same date,  
2 4:20 P.M. This investigation continued for quite  
3 some time, being a one-man department. It has  
4 inside one pair of gray-in-color underwear taken  
5 from Demarcus Robinson's property bag at the Saluda  
6 County Detention Facility by use of a warrant.

7 **Q** Through the course of your investigation, did  
8 you determine that to be consistent with what the  
9 robber was wearing?

10 **A** Correct. Again, the video itself depicted that  
11 the robber had on something covering the upper  
12 portion of his head, something covering the lower  
13 portion of his jaw and mouth. This part, basically,  
14 was open {indicating}.

15 The video also depicts that the person had on  
16 no shirt exposing their entire chest, back, arms,  
17 neck. The person did have on a pair of black  
18 shorts, and, again, riding above those black shorts  
19 inside was what appeared to be gray underwear. The  
20 defendant in the video had on no socks or shoes.

21 **Q** Just to be clear on the timeline, Corporal  
22 Raffield, approximately, what time, through the  
23 course of your investigation, did you determine the  
24 robbery happened?

25 **A** I don't want to come to court and not appear to

1 be precise, so what I rely on is what I refer to as  
2 our CAD sheet. It's not exact because everybody  
3 gets busy when we have a major event like this,  
4 whether it's an armed robbery or whatever the thing  
5 is.

6 Our dispatcher, every time we call in, if they  
7 believe it's something significant, they stamp it  
8 basically, they put a time with it. So, based on  
9 the CAD and not just speculating, it shows that the  
10 original call was dispatched at 2:43 A.M. on the 1st  
11 -- on 8/1 of 2016. They tried to make contact with  
12 me, as I had stated earlier, but I was asleep. I  
13 did not get notified until the second call, which  
14 woke me up. It shows that I made -- that they made  
15 contact with me at approximately four -- I'm  
16 sorry -- somewhere between 3:30 and a little after  
17 4:00.

18 **Q** And what time did you apprehend Demarcus?

19 **A** On the CAD sheet, it shows that he was actually  
20 transported from the scene of Merritt Avenue to  
21 the jail at 4:42. So, based on my past 20 years'  
22 experience and, unfortunately, having to arrest  
23 people, generally, it's about a ten-minute delay or  
24 so barring any kind of exigent circumstances. So I  
25 would imagine he would have been arrested maybe

1 right around 4:20 to 4:25, somewhere in that  
2 timeframe.

3 **Q** So he was apprehended with items consistent  
4 with the robbery within a couple hours?

5 **A** Correct.

6 **Q** And you said that the -- that the gray  
7 underwear was later that afternoon?

8 **A** Correct, based on information -- and, again,  
9 the arrest was actually made based on the  
10 communication that I had with officers and what they  
11 observed in the video.

12 Once he was arrested and I didn't have to worry  
13 about him any longer because another officer had  
14 transported him to the jail, I was able to actually  
15 go and really get into the investigation, view the  
16 video for myself, interview the victim and collect  
17 the evidence. And then based on that, it was the  
18 discovery in the video that the defendant had on  
19 what appeared to be gray underwear that was riding  
20 about an inch above black-in-color shorts.

21 (State's Exhibit Numbers 23 through 25, U.S.  
22 currency, marked for identification.)

23 **Q** I'm handing you now what's been marked 23, 24,  
24 25. Can you tell the jurors about these, please?

25 **A** Yes, sir.

1           This package here is \$23. It's my handwriting  
2 with inside it's three five-dollar bills, and, I  
3 believe, it's eight one-dollar bills. This was  
4 located at Circle K in the front parking lot. And  
5 it's U.S. currency, one and fives.

6           This package, also completed by myself as far  
7 as the writing on the outside, it's \$41. It was  
8 five five-dollar bills and 16 one-dollar bills. And  
9 what's unique about this, this is what was found  
10 under the bedding folded up along with the two pair  
11 of black shorts. The denominations were consistent  
12 with what had been reported as stolen from the  
13 Circle K during the armed robbery.

14           The last package is a single five-dollar bill.  
15 This is significant because the five-dollar bill was  
16 located in the front yard of 111 Pecan Grove Road.  
17 In reference that I had shown earlier, this is the  
18 single-wide, basically, that is directly behind  
19 Circle K. There's a church and then that  
20 single-wide. This was found in the front yard. The  
21 reason it's significant is because the victim had  
22 relayed to law enforcement that upon the defendant  
23 exiting the store, he ran to the left or toward  
24 Pecan Grove.

25           So we have the money in the front parking lot.

1 And then as you go around continuation, just a short  
2 distance down the sidewalk within inches of the  
3 sidewalk in the grass in the front yard of 111, we  
4 find a five-dollar bill.

5 **THE COURT:** Are you moving those in?

6 **MR. FENDER:** Judge, at this time, I'd enter 22,  
7 23, 24 and 25.

8 **MS. ZMROCZEK:** Without objection.

9 **THE COURT:** Without objection.

10 (State's Exhibit Numbers 22 through 25  
11 admitted into evidence. State's Exhibit Numbers 26  
12 and 27 marked for identification.)

13 BY MR. FENDER:

14 **Q** Corporal Raffield, will you please explain  
15 these items to the jury?

16 **A** Both of these are filled out by me. As I  
17 described earlier in the closet, after executing the  
18 search warrant, this camo backpack was found laid,  
19 basically, resting on the floor. And as I said  
20 earlier, there were some .38 rounds found. This is  
21 a 50-round box, but with inside is only 35 rounds,  
22 which is what is written on the outside of the bag.

23 Based on the fact that these bullets were  
24 similar or actually the same brand, it's not just  
25 similar, to the five that were inside the revolver

1 that was located in the same room, I obtained it as  
2 evidence.

3 Q Let me stop you briefly. Corporal Raffield,  
4 are those what you would use to load this?

5 A Correct. The five that I showed you that were  
6 singular a few minutes ago likely came out of the  
7 same box because it's the same brand, same caliber.

8 Q And you did find this revolver loaded with the  
9 defendant, correct?

10 A Correct.

11 Q Please continue.

12 A Again, this is filled out by myself. When I  
13 reached underneath the bedding looking for weapons,  
14 because of the fact this was an armed robbery, in  
15 addition to the \$41 I just described a few minutes  
16 ago, these are the pair of two black shorts that  
17 were also found. From looking at the shorts and  
18 looking at the video, it was consistent, so it was  
19 secured as evidence to present.

20 Q Consistent with the crime scene?

21 A With the video from the crime scene what the  
22 defendant was wearing.

23 MR. FENDER: Judge, at this time, I'd enter 26  
24 and 27.

25 MS. ZMROCZEK: No objection.

1           **MR. FENDER:** And I'd ask the record to reflect  
2           that in evidence now is State's 1 through State's  
3           27.

4           **THE COURT:** Without objection.

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

7                   (State's Exhibit Numbers 26 and 27 admitted  
8           into evidence. State's Exhibit Numbers 28 through  
9           36 marked for identification.)

10           **MS. ZMROCZEK:** Without objection, Your Honor.

11           **MR. FENDER:** Judge, at this time, I'd like to  
12           go ahead and enter these in that case, 28 through  
13           36.

14           **THE COURT:** Admitted without --

15           **MR. FENDER:** And I'd ask leave of the Court for  
16           -- for Corporal Raffield to come down and use the  
17           projector at this time.

18           **THE COURT:** All right.

19                   (Witness leaves the witness stand.)

20                   (State's Exhibit Numbers 28 through 36,  
21           photographs, admitted into evidence.)

22           **THE WITNESS:** Okay. These first three  
23           photographs are pictured in the room that  
24           Mr. Robinson was located in. The red material that  
25           you see in the picture is a fair representation of

1 what appeared to be a sleeping bag when he was first  
2 located on top of it.

3 Again, there was clothing and other items under  
4 it, kind of like padding, what appeared to be like  
5 it was padded, to lay on. Also, that's where the  
6 money that I described earlier, I believe it was \$41  
7 in fives and ones, along with the two pair of black  
8 shorts were tucked underneath in the same area.

9 This next picture is, again, the material --

10 **MS. ZMROCZEK:** Your Honor, I would ask if he  
11 can identify the number just so I can keep track.

12 **THE COURT:** Please.

13 **THE WITNESS:** The first was 28. This one is  
14 34.

15 **THE COURT:** Thank you.

16 **THE WITNESS:** And the last one of this one is  
17 29. And it shows some of the clothing in part of  
18 the floor.

19 The rest of the photographs that I'm presenting  
20 are photographs that was discovered inside a closet  
21 in the same room. That is the camo bag that I just  
22 showed while on the stand with the Magtech .38  
23 Special rounds.

24 **MS. ZMROCZEK:** Which number? I'm sorry.

25 What number, please?

1           **THE WITNESS:** 33. This one is 32. This is a  
2 picture of the firearm I was just holding and it's  
3 showing the five rounds that was discovered inside  
4 the cylinder at the time the gun was located.

5           This is the bottom portion of the closet. I  
6 had stated earlier that it didn't appear anything  
7 was hanging clothes in that closet, but what I did  
8 notice is this blue Rubbermaid top and underneath  
9 that was the firearm, which was in the top right  
10 corner.

11           **MS. ZMROCZEK:** Number, please.

12           **THE WITNESS:** 31.

13           30 is another picture depicting the same.

14           35 is a profile of the right side of the gun  
15 that says Charter Arms. It shows the serial number  
16 of 113347, which is what's documented on my initial  
17 incident report and what I was just holding a few  
18 minutes ago. That was 35.

19           36 is a left-side profile of the firearm. This  
20 is before it was opened. And the cylinder, it looks  
21 like it's in the closed position. Sorry, I'm having  
22 to manipulate it to get some light.

23           On the front of the barrel, it stipulates it's  
24 a .38.. And I believe it's stating it's a Charter  
25 Arms on the top of that, but I can't see because of

1 the lighting. And that's all the photographs.

2 BY MR. FENDER:

3 **Q** Just for clarification, you found the defendant  
4 with these items?

5 **A** That's correct. All these items that I just  
6 showed while sitting on the witness stand and just  
7 talked about were items that were found in the same  
8 room that Demarcus Robinson was located and  
9 arrested.

10 **Q** And this is consistent with what was found --

11 **A** Yes, it was consistent. The clothing, the  
12 money, the gun, everything that I just presented was  
13 consistent with the armed robbery and what was  
14 depicted in the video.

15 (Witness resumes the witness stand.)

16 **Q** Was anybody else in that room other than  
17 Demarcus?

18 **A** No. He was the only one in the room when he  
19 was discovered. Again, there was no furniture in  
20 there. He was laying on top of what appeared to be  
21 some type of sleeping bag with clothing underneath  
22 it for padding.

23 **Q** But you knocked on the door and the mother came  
24 to the door?

25 **A** Correct.

1 Q What was her reaction?

2 A When I -- when she had actually --

3 MS. ZMROCZEK: Objection, Your Honor; asked and  
4 answered.

5 THE COURT: Sustained. Let's move forward.

6 MR. FENDER: Judge, may we approach briefly?

7 THE COURT: Sure.

8 Y'all stand up and stretch your legs while they  
9 approach.

10 (Whereupon, a bench conference was held off  
11 the record, in the presence of the jury, but out of  
12 the hearing of the jury.)

13 MR. FENDER: Please answer the defense  
14 attorney's questions.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Twenty-five years in law enforcement?

19 A This year, yes, ma'am.

20 Q This year. Received training through the  
21 Criminal Justice Academy?

22 A (Witness nodded head.)

23 Q Yes?

24 A Yes.

25 Q You received training with the FBI?

1       **A**     No.

2       **Q**     You didn't receive any training?  You just  
3       worked there?

4       **A**     I didn't work for the FBI.

5       **Q**     Okay.  Federal agents?

6       **A**     I worked for a federal agency, correct.

7       **Q**     Which federal agency?

8       **A**     Federal Air Marshals.

9       **Q**     Federal Air Marshals.  Received training there?

10      **A**     I went to FLETC and then I went to an academy  
11      that was designed specifically for the Air Marshal  
12      program.

13      **Q**     You would agree with me, Officer Raffield, that  
14      you are a professional?

15      **A**     I try to be.

16      **Q**     That you -- as you eloquently stated earlier,  
17      you want this jury to have all the information so  
18      that they can make the informed decision, correct?

19      **A**     Absolutely.

20      **Q**     So, Agent Raffield, why haven't you introduced  
21      all the evidence that you collected?

22      **A**     (No response.)

23      **Q**     What evidence did you leave out that you  
24      collected?

25           **MR. FENDER:**  I'd object.  I think this is

1 outside the scope of his direct.

2 **THE COURT:** She's asked the question; he can  
3 answer it.

4 I think you may need to ask it more  
5 specifically.

6 BY MS. ZMROCZEK:

7 **Q** Let me be more specific. Did you recover an  
8 item of clothing outside of 111 Pecan Grove Road?

9 **A** Absolutely, I did.

10 **Q** What was that item of clothing that you  
11 recovered?

12 **A** It was a black-in-color T-shirt that was  
13 consistent with what the defendant was wearing  
14 across his face in the video.

15 **Q** And you collected that?

16 **A** Absolutely. Photographed and collected it and  
17 sent it to SLED for analysis.

18 **Q** Okay.

19 **MR. FENDER:** Judge, again, I'd object to the  
20 characterization that it's not in evidence. I  
21 believe it is in evidence.

22 **THE COURT:** Is it?

23 **MR. FENDER:** I'll withdraw to allow the  
24 question.

25 **THE COURT:** Okay. Go ahead.

1 BY MS. ZMROCZEK:

2 Q Do you have that in front of you?

3 A I have a pair of black -- two pair of black  
4 shorts. I do not have it in front of me. I have  
5 the paperwork where I sent it to SLED for analysis  
6 and then can explain that.

7 Q Sure.

8 A Okay. Trying to do a match of DNA with a  
9 suspect is always additional evidence to present. I  
10 sent the information on the black T-shirt to SLED  
11 trying to get a comparison based on the defendant's  
12 DNA. I don't work for SLED, don't know their  
13 policies, but what I was informed is when they do  
14 testing, if they find more than one strand of DNA on  
15 any item, that's the end of the test. For whatever  
16 purposes, that's their policy.

17 Basically, it was inconclusive is what SLED  
18 told me. It didn't -- it didn't necessarily  
19 indicate that it was Mr. Robinson's DNA, but it  
20 didn't say it was not his DNA, but that's their  
21 policy, for whatever reason. I submitted it in good  
22 faith hoping to get a match or for it to not be a  
23 match, but based on the fact that it had more than  
24 one DNA sample on it, that's their policy.

25 Basically, it was explained to me by SLED that

1 any item that anybody wears that is washed in  
2 clothing -- with other people's clothes, like most  
3 families do, is going to have more than one -- one  
4 item of DNA on it.

5 So that's the short story behind what occurred  
6 with the black T-shirt, but what was important to me  
7 was where it was located. Where the five-dollar  
8 bill was located in front of 111 Pecan Grove, if you  
9 go around the corner of that trailer into the wooded  
10 area is where -- right before you get to the fence  
11 that was observed freshly knocked down, that's where  
12 the black T-shirt was on. And if you draw a line  
13 straight from that black T-shirt through the woods,  
14 two-tenths of a mile down the road, you end up at  
15 the back door of Merritt Avenue, which is where  
16 the defendant was located and arrested.

17 **Q** Agent Raffield, is it your testimony here on  
18 the stand under oath that in your 25 years of law  
19 enforcement and several years within this state,  
20 that you've never received an item or an analysis  
21 from SLED that has more than one DNA a major or a  
22 minor contributor?

23 **A** I'm trying to think of what DNA evidence I've  
24 actually submitted.

25 **Q** In 25 years.

1       **A**     Well, I can explain the 25 years. Eight years  
2       I was a federal agent, I didn't deal with DNA; I was  
3       dealing with terrorists. I had one job at that  
4       time, that was to prevent another 9/11.

5             When I was with the City of North Augusta,  
6       which was the first ten years of my career, I was a  
7       low-level officer and a traffic officer. I did all  
8       kind of stuff, but I was not an investigator at that  
9       time.

10            When I came to Saluda, we kind of do a little  
11       bit of everything. We still have an investigation's  
12       division, so my need to actually fill something out  
13       to send to SLED was less because we had an  
14       investigation's division that did that.

15            But when I became chief, which is for a  
16       two-year period, everything fell on my shoulders.  
17       So the only evidence that I remember sending to SLED  
18       in those two years was that black T-shirt.

19       **Q**     Agent Raffield, is it your testimony that  
20       you've never received a report from SLED that has an  
21       item with a major contributor and a minor  
22       contributor? Is that your testimony?

23       **A**     I don't understand what you're saying, a major  
24       contributor and a minor contributor.

25       **Q**     You never received evidence from SLED that

1 showed more than one DNA on a piece of evidence  
2 ever?

3 **A** Not other than this case.

4 **Q** I want to talk about your involvement because  
5 I'm a little bit confused, so help me out. You were  
6 awoken?

7 **A** Correct. I was off duty. It was somewhere  
8 around 3:30 in the morning when I was notified that  
9 there had been an armed robbery. I was asleep.

10 **Q** Okay. And, at that point, you get in your  
11 vehicle and run code?

12 **A** Correct.

13 **Q** With your lights?

14 **A** Uh-huh.

15 **Q** Yes?

16 **A** Yes.

17 **Q** And your dash cam?

18 **A** I don't remember if we had a dash cam in that  
19 car at the time.

20 **Q** Okay. And you go where?

21 **A** I would start responding to the scene, as I  
22 stated earlier, started communicating with officers  
23 that had information, which was vital for me to make  
24 decisions since everything, ultimately, fell on my  
25 shoulders. And I'm --

1 Q So you went --

2 A I'm trying to answer your question, Counselor.

3 Q Sure.

4 A I went to Merritt Avenue based on the  
5 information that I had received from the first  
6 on-scene officer, which was Dale Hallman.

7 Q So you did not go to Circle K, you went to  
8 Merritt?

9 A Initially, I went to Merritt Avenue. I did  
10 go to Circle K minutes later after the arrest was  
11 made.

12 Q Okay. One of your duties as a lead  
13 investigator is to make sure that you gather all the  
14 information from the officers that assisted you,  
15 right?

16 A We try to obtain information to what each  
17 officer did in a major crime. A lot of times what  
18 we ask an officer to do is to complete a supplement.  
19 Sometimes it occurs where you're able to get all the  
20 moving parts and information, and sometimes you  
21 don't.

22 Again, I was asleep when it occurred. I was  
23 off duty. I had to rely on what the officers told  
24 me as I responded and what I could personally  
25 observe. And then the CAD sheet kind of explains

1 who responded, what time they got there, anything  
2 significant. So, to the best of my ability, I tried  
3 to capture everything that I knew about the  
4 incident.

5 **Q** And then you said that this investigation was  
6 ongoing?

7 **A** Correct. When this thing started and I was  
8 awoken, I did not go home till late -- later that  
9 day. I had to do followups. I went back to the  
10 scene after the arrest and met with the manager  
11 Ms. Molina, who was here earlier, and her regional  
12 manager. At that point, I got a chance to view the  
13 video for myself, got a determination of  
14 approximately \$106, which is on my initial report,  
15 which was believed to be the dollar amount that was  
16 stolen that morning with the recovery of  
17 approximately \$69 that was located in the parking  
18 lot, Pecan Grove residence and inside the Merritt --  
19 Merritt house.

20 From there, I spoke with Mr. Houston who  
21 appeared to be very distraught to the point of  
22 hyperventilation, just classic signs of shock. I  
23 tried to obtain a statement from him. This went on  
24 for several hours because I wasn't trying to rush  
25 him. Based on his state of mind, I could tell that

1 he was visibly upset.

2 Q When you went to the academy, they trained you  
3 to write reports?

4 A They gave us some basic guidelines to answer  
5 the who, what, where, when and why, try to stay away  
6 from opinions and, basically, just state, you know,  
7 factual information.

8 Q All the important information?

9 A Everything that you're aware of, correct.

10 Q In your report -- do you have a copy in front  
11 of you?

12 A I do.

13 Q Can you tell me which page you indicated that  
14 Mr. Houston was very upset and visibly shaken to the  
15 point of signs of, I believe you said -- what was  
16 the word?

17 A Hyperventilate?

18 Q Yes.

19 A On page ten, as I depict what I was doing  
20 during the investigation, part of my responsibility  
21 is also to attend to the victim, I advised the  
22 victim of the arrest, which I'm required by law to  
23 do under victims' rights, notified him what time the  
24 bond hearing would approximately occur.

25 Mr. Houston, at that time, advised me that he did

1 not wish to attend and that he did want assistance  
2 from the victim advocate, meaning that he knew he  
3 was going to need counseling.

4 I did not write specifically in the report that  
5 I observed him hyperventilating. And his demeanor  
6 is readily available on the video for you to make  
7 your own decision.

8 **Q** You testified that when you spoke with the  
9 residents of Merritt, that they gave you a time  
10 at which they saw Demarcus?

11 **A** It was very specific. I remember that clearly.  
12 I was told that he had been home for approximately  
13 an hour and a half, which is very close to the time  
14 of the armed robbery occurring. I was told that he  
15 did a play kick to his sister who was an adult in  
16 the house -- I guess she was laying down, I don't  
17 know, but that's what she had told me -- and that he  
18 had warmed up a bowl of, like, macaroni and cheese  
19 or something to that effect I believe, which is all  
20 in my report that was written soon after this  
21 incident, before going upstairs and lying down and  
22 my arrival.

23 **Q** And, in fact, they told you 2:30 A.M., correct?

24 **A** No, ma'am.

25 **Q** Do you have a copy of your report in front of

1 you?

2 **A** What page?

3 **Q** (Indicating.)

4 **A** I apologize. It's in my report.

5 **Q** I'm sorry?

6 **A** I said, I apologize; it's in my report. It  
7 says, During the time spent at Merritt Avenue,  
8 Mr. Robinson's mother and sister, Ms. Kathleen  
9 Robinson, both stated that Mr. Robinson came home  
10 that morning at approximately 2:30.

11 And as I stipulated earlier, there was about a  
12 30-minute variance between the time that they stated  
13 he got home and the time the actual armed robbery  
14 occurred.

15 **Q** I'm going to show you State's Exhibit -- when  
16 you say 30-minute period, you mean it occurred 30  
17 minutes after he was home?

18 **A** After he was alleged to be home.

19 **Q** I'm going to show you State's 34.

20 **A** Okay.

21 **Q** And you took that picture?

22 **A** Uh-huh.

23 **Q** And can you identify what this is?

24 **A** It appears to be a cup of some type of food  
25 with some residue and a spoon or something in it.

1 Q Okay. You don't recall what type of food that  
2 is?

3 A I don't recall the photo -- being in the  
4 photograph, but I don't dispute that it appears to  
5 be a bowl of maybe what the mother had stipulated.

6 Q Which would have been macaroni and cheese?

7 A From the best of my memory, that's correct.

8 Q Okay. One of the things when you take -- the  
9 reason you take pictures is you want to show what  
10 the scene looked like before you collect the  
11 evidence, right?

12 A The great thing about photographs and video, I  
13 can lie, a defendant can lie, but photographs and  
14 video, they don't lie. They tell it just as it is.  
15 That's why I think it's very important that you  
16 photograph anything before you touch it and secure  
17 it. And if there is video available, that you bring  
18 it forth as evidence in a trial.

19 Q I'm going to hand you all your photographs  
20 again. Will you please tell the jury which picture  
21 depicts the cigarettes?

22 A I don't see one, but I can tell you, based on  
23 the report that I wrote soon after this incident,  
24 long before today, that the cigarettes were located  
25 in the closet on the top shelf along with the Vega

1 cigar wrapper. I don't want to speculate, but I can  
2 kind of give you an explanation of probably why  
3 there's not a photograph, if you like.

4 **Q** I don't have any questions as far as that goes.

5 The shorts that you collected you said were  
6 located underneath where Mr. Robinson was asleep?

7 **A** Two pair of black shorts located underneath the  
8 sleeping bag Robinson was sleeping on when arrested.

9 **Q** Sleeping on when arrested.

10 **A** And that was 8/1/2016 at 0730 hours is when I  
11 packaged it.

12 **Q** 0730 hours?

13 **A** When I actually filled it out and sealed it.  
14 Again, one-man department. I was conducting the  
15 investigation. It was secured personally by me  
16 until the time that I was able to put it in the bag,  
17 seal it and actually mark it. I try to mark stuff  
18 as the time that it occurred. Sometimes it happens,  
19 sometimes it's not.

20 **Q** And you had several other officers assisting  
21 you?

22 **A** No. I was the only officer working this case  
23 as far as it comes to evidence and doing the report.

24 The supporting agencies, which was Saluda  
25 County Sheriff's Office, Saluda Police Department,

1 helped me with securing the scene, doing a  
2 perimeter, looking for the suspect. They stood by  
3 for me at Merritt Avenue while I went to get the  
4 search warrant. They legally executed the search  
5 warrant where the evidence was discovered.

6 Beyond that, I collected evidence, I  
7 photographed it, I packaged it, this is all my  
8 handwriting. The followup investigation with me  
9 seeing the video, speaking with the manager, Shannon  
10 Molina, and her regional manager, speaking with  
11 William, I did.

12 I did have assistance from other agencies in  
13 the totality of the investigation. It was a big  
14 part and a big help. But because I was a one-man  
15 guy when it came to the paperwork -- everybody likes  
16 to play, but no one wants to do the paperwork -- it  
17 took me hours to get this completed that day to a  
18 point where I could stop, safely stop, and know that  
19 I had the bulk of what I needed to move forward.

20 **Q** You made another arrest?

21 **A** I did.

22 **Q** In this case?

23 **A** I did.

24 **Q** You -- I want to talk briefly about you said --  
25 you used words like preserve the scene and preserve

1 the integrity of the scene.

2 **A** Uh-huh.

3 **Q** Correct?

4 **A** Uh-huh.

5 **Q** And that's so that any -- any evidence can be  
6 gathered?

7 **A** It's made with the attempt to try not to  
8 disturb anything at the scene so nothing gets  
9 brought into the scene or nothing gets taken away  
10 from the scene, that way we can present it to a jury  
11 at a day like today as unfettered as possible to be  
12 fair.

13 **Q** And you also -- in addition to doing DNA, you  
14 can collect other types of scientific evidence,  
15 correct? Fingerprints?

16 **A** If you have a surface that is consistent with  
17 something you can capture fingerprints from, you  
18 could. In this case, looking at the video as fast  
19 and as what little was touched, there wasn't really  
20 anything to fingerprint other than the items that I  
21 took from the possession of the subject, which  
22 wouldn't make sense to me to fingerprint it if he  
23 was the one that was in possession of it.

24 **Q** In fact, money is a very good collector of  
25 fingerprints, correct?

1           **A**     No, because there's so many hundreds and  
2           thousands of people that touch currency. It's  
3           constantly exchanged, so you're going to have  
4           fingerprint layer on top of fingerprint layer. The  
5           chances of getting probably a clear fingerprint off  
6           of money, I would -- and I'm not an expert for  
7           latent prints, just basic information I learned at  
8           the academy -- I would think it would be pretty  
9           hard. There's probably thousands, if not millions,  
10          of DNA on any individual bill.

11          **Q**     You're familiar with touch DNA?

12          **A**     I am familiar now because with this case and  
13          learning from SLED that it is almost impossible to  
14          get touch DNA off money or cash drawers and the best  
15          thing to do was to steer completely clear of that.

16          **Q**     Do you have a copy of SLED's policy and Calea  
17          manuals?

18          **A**     I do not. This was what was relayed to me  
19          after my experience with trying to do the buccal  
20          swabs on Mr. Robinson and submitting that and the  
21          black T-shirt that you brought up a few minutes ago.

22          **Q**     So you never read the standards for law  
23          enforcement agencies in your 25 years?

24          **A**     I'm not a SLED employee. I don't know their  
25          policies or procedures.

1 Q Not for SLED, for law enforcement?

2 A I haven't seen what you're talking about, no.

3 Q Okay.

4 A We do yearly training through the academy after  
5 our initial appearance, we do legal updates, they  
6 advise us on any kind of changes with the  
7 Constitution and the rights of individuals. The  
8 agency is responsible to send officers to advanced  
9 training and stuff as that, but I'm not familiar  
10 with what you're referring to.

11 MS. ZMROCZEK: Beg the Court's indulgence.

12 (Pause.)

13 Q You watched the video?

14 A I did.

15 Q You lined up the time stamps? You would agree  
16 that the time stamps are correct on the video?

17 A I would agree that whatever the time stamp on  
18 any of the pictures, video is a fair and true  
19 representation of what was taken that night, but  
20 with time change and that kind of stuff -- I can  
21 tell you nothing was changed or altered. However it  
22 recorded at the time is how we're presenting it  
23 today.

24 Q So the suspect that had his face completely  
25 covered with a black T-shirt, which you found, and a

1 red bandanna, which you did not find, was in that  
2 store for exactly one minute and one second?

3 **A** I don't agree with your statement because the  
4 video shows just the opposite. His face was not  
5 completely covered. His face was actually exposed  
6 from about his eyebrows to his nose. He had two  
7 different pieces of apparel on his head. He had  
8 something over the top of his head that did not  
9 appear to be red in color to me and a black, what  
10 looked like, a T-shirt around the lower part of his  
11 mouth -- so, basically, this is how much was showing  
12 {indicating} -- and a pair of shorts. But the video  
13 itself depicts that.

14 **Q** And you said that you sat down with Mr. Houston  
15 to take a statement?

16 **A** Correct.

17 **Q** And you gave him the opportunity to make sure  
18 that that statement was complete?

19 **A** I did, but, again, it appeared to me, based on  
20 my experience, that he was under severe distress.  
21 And again -- and as an officer and having to not  
22 only protect the rights of a person that we charged,  
23 we're now tasked with protecting the rights of  
24 victims. It's under the Victims' Compensation Bill  
25 Act that was passed by South Carolina Legislature.

1 So it was my duty, as a chief and only member of the  
2 department, other than my part-time guy, I don't  
3 have my own victim advocate like the sheriff's  
4 office has or a General Sessions Solicitor's Office  
5 has or Saluda PD has, so that's my role.

6 So I stayed in contact with Mr. Houston over  
7 several months, really over a year. Found out he  
8 wasn't getting the services he needed through Circle  
9 K, got him in touch with the victim advocate with  
10 Saluda County who agreed to help my agency and the  
11 victim trying to get him some mental health help,  
12 because that's how severe this affected him.

13 **Q** And never once did he have an opportunity to  
14 expand on his statement?

15 **A** I went -- if you looked at the report that you  
16 have, it shows that I went back by his house --  
17 since you brought up the other suspect being  
18 arrested on the same charges -- and presented a  
19 photo lineup of the other suspect. He and I talked  
20 often. It wasn't always about the case; it was more  
21 or less checking on him. I tried to obtain a  
22 statement, but this is something, again, that  
23 adversely affected his ability to communicate with  
24 me. It was very emotional for him. I did not hound  
25 him for that reason.

1           The video to me, again, I can lie, the victim  
2           can lie, a defendant can lie, but a video tells the  
3           truth. You can't -- you can't hide the truth with  
4           video. The video is there for you to view.

5           **Q**     Agent Raffield -- excuse me -- Corporal  
6           Raffield, in your report, you didn't make any  
7           notation of any tattoos?

8           **A**     No, I did not, but, again, as the video --

9                   **MR. FENDER:** Judge, I would ask to approach and  
10           I would object to that.

11                   **THE COURT:** All right. Step up.

12                   (Whereupon, a bench conference was held off  
13           the record, in the presence of the jury, but out of  
14           the hearing of the jury.)

15           BY MS. ZMROCZEK:

16           **Q**     In your report, you did not make any notation  
17           of any tattoos?

18                   **THE WITNESS:** Am I free to discuss it, Your  
19           Honor?

20           BY MS. ZMROCZEK:

21           **Q**     It's a yes or no question and then you can  
22           explain.

23                   **THE COURT:** You can answer yes or no and then  
24           you're allowed to explain yourself. So the question  
25           is, In your report, did you make a notation of any

1 tattoos?

2 **THE WITNESS:** I would have to reread the  
3 report. I don't remember putting anything in the  
4 report specifically, but I do remember the  
5 investigation. I painstakingly went over the  
6 evidence, including the video, myself, slowing the  
7 video down, looking at it, trying to figure out  
8 what, if anything, I could see on the individual  
9 because of the fact that he wasn't covered  
10 completely in the face and he only had a pair of  
11 shorts on.

12 I could tell, by looking at the video with my  
13 own eyes, that there appeared to be tattoos on the  
14 individual. That's the reason I took the video to  
15 Joe West with SLED. And I asked him to enhance  
16 those photographs to the best of his ability so I  
17 could do a comparison between that video and  
18 Demarcus Robinson's tattoos, because I -- I can see  
19 on the video what is the outline of stars on the  
20 left arm, which is consistent with what's in that  
21 video in the still photographs that I asked Joe West  
22 to try to enhance so it could be seen better.

23 BY MS. ZMROCZEK:

24 Q You didn't ask Joe West to enhance any video of  
25 the open face?

1           **A**     I'm not an audio guy. I told Joe to try to  
2           enhance the tattoos or anything that he could find  
3           that would be beneficial to the case.

4           **Q**     You would agree with me that enhancing a  
5           picture of someone's face --

6           **A**     I would agree --

7           **Q**     -- would be beneficial?

8           **A**     -- but I also stipulated earlier that you can  
9           see this for yourself in the video. It doesn't  
10          matter what I say, it's readily available in the  
11          video.

12          **MS. ZMROCZEK:** Your Honor, I have no further  
13          questions.

14          **THE COURT:** All right. We'll do redirect in  
15          the morning.

16          Ladies and gentlemen, we're going to go ahead  
17          and break there for the evening. It's about 5:40.  
18          We pushed -- y'all have been through a long day  
19          today.

20          Now, Corporal Raffield, you will not be allowed  
21          to discuss your testimony with anyone in any way,  
22          shape or form. Tomorrow morning you'll be the first  
23          witness up and we'll start at 9:30. We'll start  
24          with his redirect at that time.

25          All right. So, ladies and gentlemen, I'm going

1 to let you break for the evening.

2 Go ahead and step down, Corporal Raffield,  
3 while I give the jury some instructions for tonight.

4 All right. First of all, I was doing -- I'm  
5 doing my best -- I was trying to get through that  
6 witness tonight, so I apologize for running late.

7 We're about to break for the night. So, at  
8 this point in time -- this is, really, your first  
9 break for overnight -- what I want to do is I want  
10 to remind you of your oath. So you took an oath  
11 when we started this case and that's your promise to  
12 yourself, to me, to each other, to the parties, to  
13 the lawyers in the case that you will not discuss  
14 this case with anyone in any way, shape or form.  
15 You will not go do any research on this case in any  
16 way, shape or form.

17 Go home tonight, enjoy your evening. I  
18 apologize for keeping you late. I take full and  
19 complete and total responsibility for that. Enjoy  
20 your evening, relax. Tomorrow morning come back  
21 refreshed, ready to go.

22 We're going to start right at 9:30. We'll be  
23 leaving from Columbia bright and early to make sure  
24 we're over here and don't have any traffic issues  
25 and we're ready to go at 9:30. We'll jump right

1 back into the testimony.

2 I appreciate everybody stayed awake today and  
3 paid attention. I sincerely appreciate that. I  
4 know the parties do. But as I leave you for the  
5 evening, you are not allowed to discuss this case  
6 with anyone in any way, shape or form. You are  
7 still to keep an open mind about the case. And  
8 we'll see you bright and early tomorrow morning at  
9 9:30, ready to go. Okay? Thank you very much.

10 Everyone else remain seated.

11 (The jury was excused for the day.)

12 **THE COURT:** All right. Anything from the State  
13 before we break?

14 **MR. FENDER:** Nothing from the State, Judge.

15 **THE COURT:** From the defense?

16 **MS. ZMROCZEK:** Nothing.

17 **THE COURT:** All right. Anymore exhibits that  
18 you have, I want you to give them to Stacy before  
19 you leave and mark them tonight, tonight. Let me  
20 say that again, tonight. Okay? We spent about 15  
21 minutes or maybe 20 minutes today marking exhibits.  
22 Let's get all those marked. I'm not saying they're  
23 admissible, just get a number on them so we don't  
24 have to stop to put a sticker on them and get a  
25 number on them.

1           Show them to Ms. Zmroczek. She may not even  
2 have an objection. We may be able to move even  
3 faster through them. Okay?

4           All right. 9:30, 9:30, 9:30. Thank you very  
5 much.

6                     (State's Exhibit Numbers 37 through 45,  
7 photographs, marked for identification.)

8                     (The proceedings were concluded for November  
9 7, 2017.)

10                    (The following proceedings were held on  
11 November 8, 2017.)

12           **THE COURT:** All right. We're back on the  
13 record. Anything from the State before we start?

14           **MR. FENDER:** Nothing from the State.

15           **THE COURT:** From the defense?

16           **MS. ZMROCZEK:** Nothing, Your Honor.

17           **THE COURT:** All right. Jury's all here?

18           **BAILIFF:** Yes, Your Honor.

19           **THE COURT:** Very well. Would you bring them  
20 in, please?

21                     And come on back up, Chief Raffield.

22                     (Witness resumes the witness stand.)

23                     (The jury enters the courtroom at 9:30 A.M.)

24           **THE COURT:** All right. Welcome back. Thank  
25 you very much for being on time. We're ready to go.

1 So we are on Chief Raffield's redirect.

2 And, Mr. Fender, you may question him.

3 **MR. FENDER:** Thank you, Judge.

4 **REDIRECT EXAMINATION**

5 **BY MR. FENDER:**

6 **Q** Good morning, Corporal Raffield. Just briefly,  
7 the defense attorney asked you yesterday if you made  
8 any documentation of tattoos in your booking report  
9 or incident report. Is that -- do you recall that  
10 question?

11 **A** I do.

12 **Q** And how did you respond to that question?

13 **A** Yesterday or during the actual investigation?

14 **Q** Yesterday, and you can explain --

15 **MS. ZMROCZEK:** Your Honor, I mean, I think  
16 that --

17 **THE COURT:** Just ask him what he did.

18 **THE WITNESS:** Okay. During the investigation  
19 and reviewing the video myself, I could tell that  
20 the person in the video had tattoos that appeared to  
21 be stars on one arm, certain characteristics. Based  
22 on that, I directed photographs to be taken of  
23 Demarcus Robinson's tattoos. I was present when  
24 they were taken.

25 The reason I took these is I thought it was

1 absolutely necessary, as a comparison to the video,  
2 to show that the person in the video had tattoos  
3 consistent with what Demarcus Robinson has. To me,  
4 they're unique.

5 **MS. ZMROCZEK:** Objection, Your Honor.

6 **THE COURT:** Sustained.

7 Don't give your opinion. Okay? You can go  
8 through what you did or you told somebody to take  
9 some pictures, but don't give your opinion.

10 **THE WITNESS:** Okay.

11 **MS. ZMROCZEK:** I move to strike that.

12 **THE COURT:** Yeah, disregard that testimony.

13 BY MR. FENDER:

14 **Q** Corporal Raffield, what do these items appear  
15 to be?

16 **A** The first one, Number 37, is a tattoo of,  
17 appears to be, flames on the inside right arm of  
18 Mr. Robinson. On the right hand, the letters T-T-C.  
19 On the left arm, it's kind of like waves with stars,  
20 flames coming off the hand with the number 803. On  
21 the neck line, the letters L-G-G-B or 1-G-G-B,  
22 depending on -- it's kind of hard to tell what it's  
23 supposed to be.

24 43 shows a scar on the shoulder of  
25 Mr. Robinson, on his right shoulder, along with a

1           discoloration of the pigment, which is a lot darker  
2           than his skin tone.

3           These are the pictures that I directed to be  
4           taken. As I was stating, during the investigation,  
5           as I reviewed the evidence, I did observe in the  
6           video the person to have tattoos. They appeared to  
7           be consistent with the tattoos that I observed on  
8           Mr. Robinson. And based on that, I wanted to make  
9           sure I had a comparison between his tattoos and the  
10          video.

11          **Q**    And these were the photographs that you  
12          testified were taken as part of booking that day?

13          **A**    That's correct.

14          **Q**    Do they fairly and accurately depict what you  
15          observed?

16          **A**    They do.

17          **Q**    Do they appear to be altered or changed in any  
18          way?

19          **A**    They do not.

20                **MR. FENDER:** Judge, at this time, the State  
21                would move to enter into evidence what's previously  
22                been marked as State's 36 through 45.

23                **MS. ZMROCZEK:** No objection.

24                **THE COURT:** Without objection.

25                **MR. FENDER:** Excuse me. 37 through 45.

1           **THE COURT:** 37 through 45 admitted without  
2 objection.

3                   (State's Exhibit Numbers 37 through 45,  
4 photographs, admitted into evidence.)

5 BY MR. FENDER:

6       **Q**     And just going back to your cross-examination  
7 yesterday, Corporal Raffield, you found a T-shirt  
8 outside in the grass outside of the gas station; is  
9 that correct?

10       **A**     That's correct.

11       **Q**     And you submitted that to SLED for DNA testing?

12       **A**     I did.

13       **Q**     And that was just outside of the gas station?

14       **A**     Based on the witness' testimony, the  
15 investigation took us around the corner of the  
16 store, which is perpendicular at the intersection of  
17 Main Street and Pecan Grove. The money's in the  
18 front. We had money of a single five laying in the  
19 yard of 111 Pecan Grove Road just off the sidewalk  
20 in the grass just around the -- and that was in  
21 front of the single-wide.

22               As you went around the corner of the  
23 single-wide, that's where the black T-shirt was  
24 found just before you got to a fence that appeared  
25 to be freshly knocked down.

1 Q When you're doing your investigation, I mean,  
2 you collect all pieces of evidence that you find?

3 A Correct.

4 Q And what did you find at the house?

5 A When Demarcus Robinson was located in the  
6 house --

7 MS. ZMROCZEK: Objection, Your Honor. This has  
8 been asked and answered.

9 THE COURT: Sustained.

10 BY MR. FENDER:

11 Q Just going back to your cross-examination  
12 yesterday, the defense attorney asked, you know,  
13 about your interaction with the mother. And what --  
14 approximately, what time did she say Demarcus got  
15 home that night?

16 A Let me look back at the report. I got that  
17 wrong yesterday.

18 Q I believe the defense attorney had directed  
19 your attention to page eight on cross, and that's  
20 what we want to address here on redirect.

21 A Yes, at 2:30.

22 Q And that was, approximately, 2:30?

23 A It was.

24 Q Through the course of your investigation, what  
25 time did you determine this robbery approximately

1 happened?

2 **A** At 2:42.

3 **Q** And so -- but she did testify -- or your  
4 interaction led you to believe that he was out that  
5 night?

6 **A** Yes, based on what I was able to determine,  
7 based on the investigation at the house --

8 **Q** He had gotten home recently?

9 **A** Yeah. He had been out and he had just gotten  
10 home.

11 **Q** And her word's, approximately, 2:30?

12 **A** Correct.

13 **Q** Did she give you an alibi then?

14 **A** No. She said he had just gotten home,  
15 explained that he had play kicked his sister and  
16 cooked some kind of food and went upstairs.

17 **Q** Has she given you an alibi since then?

18 **A** She has not.

19 **Q** Has anybody given you an alibi?

20 **A** No, sir.

21 **MR. FENDER:** Thank you.

22 **THE COURT:** Ms. Zmroczek?

23 RECROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 **Q** She said he was there at 2:30 A.M.?

1       **A**     She said he was there at, approximately, 2:30  
2       when I asked.

3       **Q**     A.M.?

4       **A**     Yeah.

5       **Q**     Okay. And you stated that this occurred around  
6       2:45?

7       **A**     2:42, 2:43, looking at the CAD.

8       **Q**     2:42 A.M.?

9       **A**     But she said he was there, approximately, at  
10      2:30.

11      **Q**     Got you.

12      All right. You took these pictures?

13      **A**     They were taken at my direction during the  
14      booking process.

15      **Q**     They were taken at your direction?

16      **A**     Correct.

17      **Q**     When?

18      **A**     At the jail.

19      **Q**     When?

20      **A**     At sometime that day. I can't tell you the  
21      exact time.

22      **Q**     Sometime that day?

23      **A**     Correct.

24      **Q**     Okay. So that means that all of these tattoos,  
25      hands, neck, everything, were there that day?

1       **A**     Correct.

2       **Q**     Okay. That day, he, Mr. Robinson, wasn't  
3       afforded a haircut?

4       **A**     I don't understand your question.

5       **Q**     This is how he looked that day?

6       **A**     Correct.

7       **Q**     Okay. And I want to -- we don't have any  
8       pictures of the T-shirt or where it was located or  
9       the fence, right?

10      **A**     I'm confident we don't have a picture of the  
11      fence. I believe we have a picture maybe of the  
12      T-shirt. I'm not a hundred percent sure.

13      **Q**     In evidence?

14      **A**     I haven't seen it entered into evidence in the  
15      courtroom.

16      **Q**     All right. So you haven't seen it in evidence,  
17      right?

18      **A**     I took a photograph.

19      **Q**     Okay. But you didn't put it in evidence. I  
20      want to show you --

21      **A**     I turned everything over to the solicitor's  
22      office that I took. And one of the pictures I took  
23      was the T-shirt,, but I don't have control over  
24      what's entered in here or not entered.

25      **Q**     Okay. I'm showing you -- and I'll put it up

1 here, maybe you can step down. Just make sure you  
2 keep your voice up.

3 **A** (Witness leaves the witness stand.)

4 **Q** I'm going to show you what's first State's 19.  
5 Are you familiar with State's 19?

6 **A** Yes, ma'am.

7 **Q** Okay. So this is the Circle-K?

8 **A** That's the parking lot.

9 **Q** That's the parking lot, right? This is the  
10 Circle-K?

11 **A** Correct.

12 **Q** This is the church?

13 **A** That is correct.

14 **Q** And this is the single-wide?

15 **A** That is the 111 Pecan Grove Road address.

16 **Q** 111 Pecan Grove Road that way, right? This is  
17 Pecan Grove Road right here {indicating}?

18 **A** That's correct.

19 **Q** Okay. This is?

20 **A** That's Main Street.

21 **Q** Okay. I'm going to now put on -- oh, and the  
22 T-shirt you said was found -- and the money were  
23 found somewhere around here {indicating}?

24 **A** No, ma'am. I'll point because your laser thing  
25 is bouncing off all over the place.

1           The five-dollar bill -- the money that was in  
2           the front parking lot was here {indicating}. The  
3           five-dollar bill was right at the edge of the  
4           sidewalk, approximately a third, which is right  
5           there. And then the T-shirt was found on the corner  
6           of the house here. And the fence line, which was  
7           here, is where the fence was pushed down.

8           My investigation revealed that whoever it was  
9           was going back in this direction, which is back  
10          toward       Merritt Avenue.

11         **Q**     Okay. And State's 18, show the jury where  
12          Merritt Avenue is.

13         **A**     Merritt Avenue is right here {indicating}. It  
14          runs perpendicular to Main Street.

15         **Q**     Show them where        Merritt Avenue is.

16         **A**     This is the laundry mat. These are trees,  
17          large trees.        Merritt Avenue is right here in  
18          this area {indicating}.

19         **Q**     And show them on that map where the T-shirt was  
20          found.

21         **A**     The T-shirt was found right about on the side  
22          of this single-wide, along with the fence that was  
23          pushed down, the person going in this direction  
24          {indicating}.

25         **Q**     Thank you..

1 All right. You have -- and one of the  
2 important things that --

3 **A** Sit down?

4 **Q** Sure.

5 **A** (Witness resumes the witness stand.)

6 **Q** One of the important things that you do -- he  
7 said that I asked you about the documentation of the  
8 tattoo. So you took the pictures, right?

9 **A** They were taken at my direction.

10 **Q** Taken at your direction. They weren't put in  
11 your report. Nothing in your report, written  
12 report, says anything about tattoos, correct?

13 **A** I'll have to reread the report. It's like 12  
14 pages long.

15 On page nine -- hold on. I'm sorry. On page  
16 13, the first sentence, 8/4/2016 at 6:30 P.M., RO,  
17 which is me, sent the SLED photo -- it's a reference  
18 to a photo lineup, which was obtained from the  
19 Saluda County Detention Facility computer, and  
20 that's the time that the pictures were taken. I  
21 don't see where I wrote in the report that I had  
22 obtained the tattoos from the jail, but they were  
23 the tattoos -- the video that I took to Mr. West.

24 **Q** Thank you.

25 **MS. ZMROCZEK:** Nothing further, Your Honor.

1           **THE COURT:** All right. Have a nice day. You  
2 can step down.

3           Call your next witness.

4           **MR. FENDER:** Cathern Leslie -- or Leisy from  
5 SLED.

6                           CATHERN LEISY,

7           having been duly sworn, testified as follows:

8                           DIRECT EXAMINATION

9           BY MR. FENDER:

10          **Q**     Can you please just state your name for the  
11 record and tell us a little bit about your  
12 education, background and experience?

13          **A**     Sure. My name is Cathern Leisy. I'm a  
14 forensic scientist assigned to the DNA case work  
15 department at the South Carolina Law Enforcement  
16 Division, more commonly referred to as SLED. I've  
17 been with SLED for a little over 11 years. I was  
18 trained inhouse by other court-qualified analysts in  
19 all the different types of tests and analyses that I  
20 am required to perform.

21           And prior to my time at SLED, I spent,  
22 approximately, four years at a private testing  
23 facility known as Orchid Cellmark that was located  
24 in Germantown, Maryland, where I ran the same types  
25 of tests and analyses that I perform at SLED.

1 Q Have you testified in court before?

2 A I have.

3 Q Have other courts found you to be an expert?

4 A Yes, sir.

5 Q What subjects?

6 A In forensic DNA identification testing.

7 MR. FENDER: Judge, at this time, I'd offer  
8 this witness as an expert in forensic DNA.

9 THE COURT: Voir dire?

10 MS. ZMROCZEK: I have no objection, Your Honor.

11 THE COURT: Okay. All right. Ladies and  
12 gentlemen, normally, when a person testifies, that  
13 person is not allowed to give their opinion.  
14 Normally, when a person testifies, they have to  
15 testify as to what they saw, they heard, they did,  
16 they touched, they smelled, something of that  
17 nature.

18 There is an exception under the rules when  
19 someone is qualified because of education or  
20 experience, that person is permitted to give their  
21 opinion in certain areas if the Court qualifies them  
22 in that way. So this witness will be qualified as  
23 an expert in the area of -- say it again.

24 THE WITNESS: Forensic DNA identification  
25 testing.

1           **THE COURT:** Forensic DNA identification  
2 testing. She will be allowed to give opinion  
3 testimony in that area.

4           Now, that does not mean that you have to accept  
5 her opinion, but it is evidence for you to use in  
6 any way that you see fit and give it the weight and  
7 credibility that you believe is appropriate as you  
8 are required to do with each and every witness that  
9 appears before you.

10          BY MR. FENDER:

11          **Q**     Did you have the opportunity to examine a  
12 T-shirt that was found in the grass outside a gas  
13 station in Ridge Spring?

14          **A**     I performed DNA testing on items that were  
15 collected from that T-shirt. I was forwarded a swab  
16 that was taken from a scraping done on the inside  
17 collar and underarm area of the shirt, as well as a  
18 hair that was collected from that item.

19          **Q**     Can you tell us about the process and what your  
20 examination in this case entailed?

21          **A**     For particular items such as a T-shirt, what we  
22 do is perform what we call ownership testing. What  
23 we're trying to determine is who may have worn that  
24 particular article of clothing.

25                 So once it's submitted to the laboratory, one

1 of our evidence processing technicians process the  
2 shirt. So she took a sterile, basically a plastic  
3 spatulata, ran it along the inside collar area of  
4 the shirt and the underarm area of the shirt trying  
5 to remove any cells that may have been left by an  
6 individual who wore it. A sterile swab is then used  
7 to swab both the spatula or scraper, as well as the  
8 area that was underneath that T-shirt to try and  
9 collect any cells that may have been removed during  
10 the scraping.

11 Using that material, I tried to develop a DNA  
12 profile that could have been used to compare to the  
13 profile of the known individual to determine whether  
14 or not their DNA may have been present on that  
15 shirt.

16 There was also a hair collected from the item  
17 that was forwarded for the same purpose, to try and  
18 develop a DNA profile suitable for comparison.

19 **Q** Can you tell us about what the results were or  
20 how that examination was?

21 **A** What was identified as SLED item 1.1 was the  
22 swab from the scraping of the interior of the shirt.  
23 From that item, a partial DNA profile was developed  
24 that was a mixture of at least two individuals. And  
25 due to the inability to calculate a statistic, no

1 further interpretation will be offered.

2 And, unfortunately, no DNA profile was  
3 developed from the hair, which was identified as  
4 SLED item 1.2.1.

5 **Q** So if the sample's mixed, you can't say with  
6 scientific certainty either way?

7 **A** Well, for the swab from the scraping of the  
8 shirt, again, there is a mixture, and that's just an  
9 indication that there's DNA from more than one  
10 individual present. This particular mixture was  
11 very low level, meaning there was not much DNA  
12 there. And based on the guidelines and protocols  
13 that I'm required to follow, it's not suitable for  
14 any type of comparison to any known individual. So  
15 I can't make a determination as to who may have been  
16 in contact with that item.

17 **Q** So you can't say that it was or it wasn't?

18 **A** That's correct.

19 **Q** Is that unusual?

20 **A** It's not. This is really very typical. When  
21 we test items of clothing for ownership, we do  
22 typically see mixtures. And if we're just looking  
23 for who may have been in contact, it's not unusual  
24 for there to be such a limited amount of DNA that we  
25 can't make a determination.

1       **Q**     I mean, essentially, you're looking to confirm  
2       or deny; is that fair to say?

3       **A**     We're just looking for the presence of a known  
4       individual, some type of identification that can be  
5       made. And, again, with this particular profile,  
6       it's just not suitable for that type of  
7       interpretation.

8       **Q**     Why do you have such rigorous standards?

9       **A**     We are required to have guidelines and  
10      protocols set in place that meet accreditation  
11      requirements. And accreditation is a voluntary  
12      program that we participate in to show that we meet  
13      standards and guidelines that have been set forth to  
14      ensure quality and consistency in forensic testing.  
15      And we're required to follow those guidelines and  
16      protocols with all of our testing to ensure that  
17      it's, again, consistent and that it's done  
18      correctly.

19           **MR. FENDER:** Thank you.

20           **THE COURT:** Cross-examination?

21           **MS. ZMROCZEK:** Thank you.

22                           **CROSS-EXAMINATION**

23           **BY MS. ZMROCZEK:**

24           **Q**     Good morning, Agent.

25           **A**     Good morning.

- 1 Q You work at SLED?
- 2 A Yes, ma'am.
- 3 Q You have accreditation?
- 4 A Yes.
- 5 Q You have rules that you're supposed to follow?
- 6 A Correct.
- 7 Q How evidence is submitted?
- 8 A Correct.
- 9 Q How it's tested?
- 10 A That's correct.
- 11 Q Agent, you test items for DNA?
- 12 A I do.
- 13 Q You find DNA on multiple different items?
- 14 A We do test a wide variety of items, yes.
- 15 Q If a shirt was given to you that has more than
- 16 one DNA profile on it, you're not going to test it?
- 17 A Well, this is the typical testing that we do
- 18 for ownership. We scrap or swab either the interior
- 19 of the collar or the armpit area, which is most
- 20 common.
- 21 Q Okay. That was my question.
- 22 A Yes, ma'am.
- 23 Q So there's possible that more than one DNA can
- 24 be on an item?
- 25 A That's correct.

1 Q And you test that?

2 A We do test the item and we can sometimes  
3 interpret mixtures. It depends on the amount of  
4 information present and the quality of the profile.

5 Q Okay. And so you get an item, you get a  
6 T-shirt, you find two DNAs on it. Sometimes,  
7 sometimes, you can have a major contributor and a  
8 minor contributor, right?

9 A That's correct.

10 Q And the way that you were able to determine  
11 that is that you have alleles. You have 17  
12 different alleles that you test, correct?

13 A This particular item's actually tested at 23  
14 different locations in the DNA, in addition to a  
15 gender marker that helps determine whether male or  
16 female DNA is present.

17 Q And when you do that in the 23 -- the only time  
18 that you can find a match is if the 23 and 23 have  
19 the same numbers, right?

20 A That's correct. To determine a match, if the  
21 entire DNA profile at all of those locations from  
22 the evidence profile matches the information that's  
23 the known standard profile, then we can develop a  
24 match and make an identification to the contributor.

25 Q And if any number of those -- if the numbers

1 that you have on your questioned item and the  
2 numbers that you have on your known DNA sample, if  
3 any of those don't match, you're going to have to  
4 exclude somebody, right?

5 **A** That's correct.

6 **Q** Okay. You got your report?

7 **A** Yes, ma'am.

8 **Q** Fantastic.

9 The first allele that you tested, D3S1358, do  
10 you have that in front of you?

11 **A** Yes.

12 **Q** What was the allele marker to Mr. Robinson?

13 **A** The allele marker at that particular location  
14 for Mr. Robinson was a 15.

15 **Q** What were the allele markers found on the shirt?

16 **A** Developed from the shirt, there was a 14 and a  
17 16.

18 **Q** So no 15?

19 **A** No, ma'am.

20 **Q** Scrolling down to D2S441 allele.

21 **A** Yes, ma'am.

22 **Q** What was Mr. Robinson's allele?

23 **A** He's a 10.

24 **Q** Okay. What were the alleles on the shirt?

25 **A** 11 and 12.3.

1 Q Scrolling down to allele FTA, what was  
2 Mr. Robinson's allele?

3 A Mr. Robinson's a 24, 25.

4 Q And what was found on the shirt?

5 A 20.

6 Q Scrolling down to D7S820 what was  
7 Mr. Robinson's allele?

8 A He's a 10.

9 Q What was the shirt's allele?

10 A 8.

11 Q So in at least four of these, no match, right?

12 A That's correct.

13 MS. ZMROCZEK: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. FENDER:

16 Q What would happen if a family washed all of  
17 their clothes together in the same washing machine?

18 A You could potentially have some mixture of DNA  
19 because you have different contributors on different  
20 articles of clothing. And as those articles of  
21 clothing come in contact with each other, you could  
22 have transfer.

23 Q And you couldn't make a determination with  
24 scientific certainty in this case; is that correct?

25 A Again, the mixture developed in this case does

1 not meet what our protocol sets forth as being  
2 suitable for interpretation. I can't make a formal  
3 comparison using this mixture to any known  
4 individual because it doesn't meet our guidelines.

5 **Q** So is real life like CSI?

6 **A** Not quite, no.

7 **MR. FENDER:** Thank you.

8 **MS. ZMROCZEK:** Just briefly, Your Honor.

9 | RE-CROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 **Q** Does your report indicate that that shirt was  
12 found in a washing machine?

13 **A** It does not.

14 **MS. ZMROCZEK:** Thank you.

15 **THE COURT:** All right. Have a nice day. Thank  
16 you very much.

17 You may call your next witness.

18 **MR. FENDER:** The State's case, Your Honor.

19 **THE COURT:** All right. Ladies and gentlemen,  
20 the State has rested its case. I have some matters  
21 of law that I have to take up outside of your  
22 presence. You are still not allowed to discuss the  
23 case. You are still to keep an open mind. We'll be  
24 back with you in just a few moments. Retire to your  
25 jury room, please.

1 (The jury retires to the jury room.)

2 **THE COURT:** Motions?

3 **MS. ZMROCZEK:** Your Honor, at this time, we  
4 would move for a directed verdict on -- on all three  
5 charges, actually, Your Honor. I know that the  
6 evidence standard used to be scintilla of the  
7 evidence, but I know that that's changed over the  
8 last few years.

9 And, Your Honor, under Rule 19 and the case  
10 law, what it -- what it asks you to do is to examine  
11 the evidence to see not only what was submitted --  
12 actually -- only what is submitted to the jury and  
13 what you are to consider. Your Honor, we say that  
14 in this case, the State has not met their burden  
15 under the -- under the rule and we would seek a  
16 directed verdict on all three.

17 **THE COURT:** All right. Mr. Fender.

18 **MR. FENDER:** Just very briefly, Your Honor.  
19 You've heard officers testify that this was in  
20 Saluda, in Ridge Spring to be specific, at the  
21 Saluda K -- Circle K. You know, you've got your --  
22 that for you. And we've got kidnapping, armed  
23 robbery and possession of a weapon. You can see on  
24 the video, as well on the stills, you know, the  
25 victim, you know, being confined. You can see using

1 the gun for intimidation purposes to take the money.  
2 And you can also see the gun, possession of that  
3 weapon.

4 In the light most favorable to the State, you  
5 know, we've presented evidence of a description of  
6 somebody matching the characteristics of the  
7 defendant, additionally items recovered from the  
8 crime scene -- or from the defendant that matched  
9 what was used in the crime scene.

10 **THE COURT:** All right. Taking the evidence in  
11 the light most favorable to the State, which is the  
12 standard before me at this point, under Rule 19 of  
13 the South Carolina Rules of Procedure, also  
14 considering the existence of the evidence and not  
15 the weight of the evidence, the State has presented  
16 more than sufficient evidence for this case to go  
17 forward to the jury.

18 There is direct evidence by testimony of the  
19 victim in this case as to the fact that Mr. Robinson  
20 is the accused and that he committed an armed.  
21 robbery, which is, essentially, entirely captured on  
22 video. Furthermore, the testimony of law  
23 enforcement and the proximity to where they found  
24 him and the items that they found him which -- which  
25 would corroborate the video and corroborate the

1 victim's testimony. The evidence, at this point,  
2 given the standard that's before me is considered in  
3 the light most favorable to the State. The evidence  
4 to go forward to the jury is more than sufficient.

5 All right. Mr. Robinson, stand up, please.

6 DEMARCUS L. ROBINSON,

7 having been duly sworn, testified as follows:

8 **THE COURT:** Okay. Have you understood  
9 everything I've said throughout this trial?

10 **DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Do you understand me okay?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Great. I'm going to have a  
14 conversation with you. Okay? And anytime that you  
15 don't understand something or you want to ask a  
16 question, you just let me know. Okay? It won't  
17 bother me at all. All right?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. At this time, I need to  
20 explain to you some of your rights. If you do not  
21 understand anything that I say, just let me know.  
22 If you want me to explain anything in more detail,  
23 just let me know. Do you understand?

24 **DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** Okay. We have now reached the

1 stage of the trial where you may present your  
2 defense. You have the right to claim the  
3 protections given to you by the Fifth Amendment to  
4 the Constitution of the United States. This  
5 amendment states in part that no person shall be  
6 compelled in any criminal case to be a witness  
7 against himself.

8 What that means is that you cannot be required  
9 to testify in this case. You have the right to  
10 testify on your own behalf; however, no one can make  
11 you. This is a personal right, and no one can waive  
12 or give up this right except you.

13 If you decide to testify, you'll be subject to  
14 the same rules that govern other witnesses, and you  
15 may be examined and cross-examined on any relevant  
16 issue in this case. In addition, if you have a  
17 conviction for a crime that involves dishonesty or  
18 false statements or for crimes that are punishable  
19 by imprisonment for more than one year and I  
20 determine that the probative value of admitting this  
21 evidence outweighs its prejudicial effect, the  
22 solicitor will be able to introduce your record to  
23 attack your credibility.

24 If you decide to testify, this decision on your  
25 part must be made freely, voluntarily and

1 intelligently with the knowledge of the protections  
2 given to you by the Fifth Amendment and the  
3 consequences of your decision to testify. If you  
4 decide not to testify, I will tell the jurors that  
5 they cannot give the fact that you did not testify  
6 any consideration whatsoever and that there is to be  
7 absolutely no prejudice to you because you did not  
8 testify.

9 It is left entirely up to you whether or not  
10 you testify. You may talk with your attorney or  
11 your family or anyone else, but the final decision  
12 is entirely yours.

13 Do you understand what I have explained to you  
14 so far?

15 **DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Do you have any questions about  
17 what I have explained to you so far?

18 **DEFENDANT:** No, Your Honor.

19 **THE COURT:** All right. Prior to today, and I  
20 don't need to know the details of the conversation,  
21 but prior to today, have you and your attorney  
22 discussed whether or not you should testify?

23 **DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Okay. And do you wish to talk to  
25 your lawyer anymore at this time?

1           **DEFENDANT:** No, Your Honor.

2           **THE COURT:** Okay. And do you want to testify?

3           **DEFENDANT:** No, Your Honor.

4           **THE COURT:** Okay. Thank you very much.

5           All right. And, Ms. Zmroczek, do you have  
6 witnesses to call or what's the plan?

7           **MS. ZMROCZEK:** No, Your Honor. The plan is to  
8 rest when the jury comes out.

9           **THE COURT:** All right. Is everybody ready to  
10 go forward into closing arguments?

11          **MS. ZMROCZEK:** We are, Your Honor. May we  
12 discuss charges?

13          **THE COURT:** Uh-huh. All right. I'm listening.

14          **MS. ZMROCZEK:** Thank you.

15          Your Honor, I never mentioned the word alibi.  
16 The solicitor brought it up five times today. The  
17 testimony was, is that a witness states that my  
18 client was home at 2:30, that came from the witness  
19 stand. The evidence is that the crime occurred at  
20 2:42.

21          Your Honor, we believe that the State has  
22 established the -- they're the ones who brought it  
23 up. They have introduced the concept of alibi. I  
24 think we are now entitled to an alibi. The rules  
25 say that -- that, you know, any -- any testimony.

1 And I believe that with the testimony that they  
2 brought out today, that that qualifies, so we would  
3 ask that charge be added.

4 In addition to your standard charges, the only  
5 changes, Your Honor -- not changes -- we would ask  
6 -- I know that Your Honor charges the Logan  
7 circumstantial evidence charge, so we would --

8 **THE COURT:** That's the new one.

9 **MS. ZMROCZEK:** The new one. We would ask that  
10 you do that.

11 **THE COURT:** That's in.

12 **MS. ZMROCZEK:** And the multiple counts, the  
13 multiple charges.

14 **THE COURT:** That's in.

15 **MS. ZMROCZEK:** I believe that there's  
16 eyewitness and credibility, but I believe there's a  
17 separate charge on identification. Your Honor, we  
18 would ask that that be added.

19 **THE COURT:** Okay. The identification charge is  
20 in the standard charge, but is completely and  
21 totally appropriate, so that's in.

22 **MS. ZMROCZEK:** And then stricken testimony, I  
23 think is the only --

24 **THE COURT:** I tell them that.

25 **MS. ZMROCZEK:** And then you have the expert

1 witness, failure to testify, I'm sure. Those are  
2 all the specific ones.

3 (Pause.)

4 **MS. ZMROCZEK:** And under Beaty, Your Honor, we  
5 would like to exercise our right to open in full and  
6 then rebut -- or close in full and then they close  
7 and then we rebut.

8 **THE COURT:** I don't think that's what Beaty  
9 says.

10 **MR. FENDER:** I think it's the opposite, Judge.

11 **THE COURT:** Hold on. We'll deal with Beaty in  
12 a second.

13 **MR. FENDER:** Judge, I'd like to be heard on the  
14 alibi --

15 **THE COURT:** Hold on. Calm down. I'm reading.

16 (Pause.)

17 **THE COURT:** Did the State serve a reciprocal  
18 Rule 5 in this case?

19 **MS. ZMROCZEK:** They did not, Your Honor.

20 **MR. FENDER:** We didn't, Judge.

21 **THE COURT:** Why not?

22 **MR. FENDER:** During the cross-examination, she  
23 directed --

24 **THE COURT:** No. My question is why did the  
25 State not serve a reciprocal Rule 5?

1           **MR. FENDER:** I don't have a good answer for  
2 that, Judge.

3           **THE COURT:** All right. So what do you want to  
4 say on alibi, Mr. Fender?

5           **MR. FENDER:** Judge, during the  
6 cross-examination, the defense attorney directed  
7 Michael Raffield's attention to page eight and  
8 that's where the approximately 2:30, that she opened  
9 the door in regards to where he had been in the  
10 mother's testimony. That's not something that we  
11 brought out on direct. So alibi's been open by the  
12 defense and we're --

13           **THE COURT:** Right. But she asked a question  
14 which elicited hearsay, which you didn't object to.  
15 I mean, she asked a question that elicited what the  
16 defendant's mother told him and there was no  
17 objection. The objection was hearsay. She's  
18 offering it to prove the truth of the matter  
19 asserted because she's offering it to prove he was  
20 home at 2:30, and the State never objected. And  
21 then the State got back up on redirect and went  
22 through all of it with him this morning.

23           **MR. FENDER:** Judge, I'd object to her drawing  
24 stars and stuff on her hands.

25           **THE COURT:** What?

1           **MR. FENDER:** Her, like, drawing tattoos on  
2 herself for purposes of closing. That's not in  
3 evidence. That's unfairly prejudicial. The State  
4 has a right to a fair trial.

5           **THE COURT:** We're on jury charges. Stay on one  
6 thing at a time.

7           Okay. All right. The State did not serve a  
8 reciprocal Rule 5; therefore, the defense was not  
9 required to put anybody on notice of an alibi  
10 defense because the State failed to follow its  
11 responsibilities under the South Carolina Rules of  
12 Criminal Procedure in filing a reciprocal Rule 5.

13           If they had filed a reciprocal Rule 5 and  
14 Ms. Zmroczek had not given the proper notice under  
15 Rule 5, I would not be giving the alibi charge. But  
16 since they did not, I will be giving the alibi  
17 charge because, at this point, there is evidence in  
18 the record, considering the existence of the  
19 evidence and not the weight of the evidence, that  
20 his mama said he was home at 2:30 and that the crime  
21 occurred at 2:42. So I will be giving the alibi  
22 charge.

23           Now, what is this about drawing tattoos on your  
24 arms?

25           **MS. ZMROCZEK:** Your Honor, I'm entitled to use

1 demonstrative evidence.

2 **THE COURT:** Actually, no, you're not. You have  
3 abused that in Richland County repeatedly and no one  
4 in Richland County has objected to it, but you  
5 drawing tattoos on yourself is not admissible.

6 **MS. ZMROCZEK:** All right. I will make sure  
7 that they are not available. So I need to use the  
8 restroom, obviously, if we can take a break  
9 before --

10 **THE COURT:** Okay.

11 All right. The verdict form will say -- it  
12 will just list the three crimes of guilty or not  
13 guilty under each.

14 All right we're going to need to print this,  
15 Madame Clerk. So can we e-mail it to you and get it  
16 printed?

17 **THE CLERK:** Yes, sir.

18 **THE COURT:** All right. Let me look at it one  
19 more time, and then we'll take a break so everybody  
20 can get set up.

21 **MR. FENDER:** Judge, can you clarify Beaty for  
22 us?

23 **THE COURT:** Yeah. I'm about to. I've got to  
24 pull it up.

25 **MS. ZMROCZEK:** While you do that, Your Honor,

1           may I step to the restroom?

2           **THE COURT:** Yeah.

3           (Pause.)

4           **MR. FENDER:** Judge, may I examine what's in  
5 evidence?

6           **THE COURT:** Yes, sir, you may. Y'all review  
7 the evidence.

8           (Pause.)

9           **THE COURT:** So failure of the defendant to  
10 testify is in.

11          **MS. ZMROCZEK:** Thank you.

12          **THE COURT:** Statement of the defendant is out  
13 because there's no evidence that he gave any  
14 statement to law enforcement. Everybody agree with  
15 that?

16          **MS. ZMROCZEK:** That's correct.

17          (Pause.)

18          **MR. FENDER:** Judge, may I step out briefly?

19          **THE COURT:** Yes, sir.

20          (Brief Recess.)

21          **THE COURT:** All right. What's your position on  
22 Beaty?

23          **MR. FENDER:** Judge, I defer to Your Honor.

24          **THE COURT:** And you wouldn't rather just have  
25 them open and then you just give one --

1           **MS. ZMROCZEK:** I can do that, that's fine.

2           **THE COURT:** I mean, I'm just saying.--

3           **MS. ZMROCZEK:** I mean, I don't -- I've never  
4 done it this way because, as you know, I generally  
5 put up a case.

6           **THE COURT:** Right.

7           **MS. ZMROCZEK:** And so I don't know, but --

8           **THE COURT:** Well, I mean, I guess my thought  
9 process is wouldn't you rather just give one instead  
10 of have to worry about whether or not it's in reply  
11 to something and you be able to reply to anything  
12 they said?

13          **MS. ZMROCZEK:** Yeah. And if I go --

14          **THE COURT:** Because if I made them give one  
15 closing argument and then give you the last closing  
16 argument, then it's over, and then you can -- you'll  
17 have a full opportunity to reply to everything they  
18 say and we won't have to get into, She can't bring  
19 that up or she can bring that up or anything like  
20 that.

21          **MS. ZMROCZEK:** No, I think that that's -- I  
22 think that's appropriate, Your Honor.

23          **THE COURT:** Okay.

24          **MR. FENDER:** Judge, for clarification, what are  
25 you asking us to do?

1           **THE COURT:** You're going to get to give one  
2 closing argument and you're going first.

3           **MR. FENDER:** But no reply?

4           **THE COURT:** No. You, clearly, do not get a  
5 reply. The law on that is clear as day.

6           **MR. FENDER:** Judge, if I could get a moment  
7 just to --

8           **THE COURT:** Yeah. We're going to take a break  
9 so I can get this printed off and y'all can put  
10 together your thoughts and get everything set up the  
11 way you want to, but you'll need to open -- you'll  
12 need to do your full closing argument and then you,  
13 Ms. Zmroczek, will get to go second. She'll get to  
14 kind of -- the way we used to do it when there was  
15 no defense up and that way the State will not be  
16 allowed any reply.

17           **MS. ZMROCZEK:** Okay. And, Your Honor, as far  
18 as a ruling on demonstrative evidence, am I allowed  
19 to at least use a big giant notepad to write stuff  
20 on?

21           **THE COURT:** Yes. Marking up your body and  
22 bringing in other items that are not in evidence,  
23 but using a board to go through what is in evidence  
24 is, you know, makes sense.

25           Okay. All right. Let's take about a

1 ten-minute break.

2 (Brief Recess.)

3 **THE COURT:** All right. Let's go back on the  
4 record real quick. One thing on the charge, one  
5 thing I want to go through -- and I charge Victor  
6 versus Nebraska for the State, just so you know  
7 that.

8 One thing on the charge, on the armed robbery  
9 charge, instead of saying a pistol, a shotgun, a  
10 rifle, a dirk, a dagger, a knife, a slingshot, metal  
11 knuckles, a razor, gasoline, a fire bomb, Molotov  
12 cocktail or lighter fluid, I'm just going to say, A  
13 pistol is an instrument which may be -- which may be  
14 a deadly weapon. A gun may be a deadly weapon even  
15 if it is not operating. I'm not going to go through  
16 all of those 15 different kinds of deadly weapons.

17 **MS. ZMROCZEK:** Thank you.

18 **THE COURT:** And then on the verdict form, what  
19 I had changed on it, so number one will be armed  
20 robbery, number two will be kidnapping. And then  
21 I've added a line that says, Only if you find the  
22 defendant guilty of question one and/or question two  
23 are you allowed to proceed to question three.

24 So under the law, they cannot find him guilty  
25 of a firearm charge if they find him not guilty of

1 both armed robbery and kidnapping. So I put that in  
2 there to make sure that's clear.

3 Okay. Anything else from the State?

4 **MR. FENDER:** Judge, can you clarify that last  
5 point?

6 **THE COURT:** Yeah. So on the weapons charge, he  
7 cannot be convicted of the weapons charge if he's  
8 found not guilty on both the armed robbery and the  
9 kidnapping. So what I don't want to do is to get --  
10 they go in there and they say, Well, he's not guilty  
11 on these two, but he's guilty of the gun. The way  
12 the gun is charged, a -- he cannot be guilty of that  
13 unless he's guilty of either armed robbery or  
14 kidnapping or both. That's all it says.

15 **MR. EARGLE:** And/or?

16 **THE COURT:** Yes, sir. If I didn't say and/or,  
17 it does. It says, Only if you find the defendant  
18 guilty of question one and/or two, either one. And  
19 I'll explain that to them when I --

20 **MR. EARGLE:** And I apologize. I just don't  
21 hear the "or".

22 **THE COURT:** That's okay.

23 Then you can go to question three and make that  
24 determination. And I'll explain that to them when I  
25 come to that part.

1           Okay. Anything else from the State before we  
2 start?

3           **MR. FENDER:** Nothing from the State, Judge.

4           **THE COURT:** From the defense?

5           **MS. ZMROCZEK:** Nothing, Your Honor. So I'm not  
6 distracting, I understand he's going to use some  
7 stuff, so I'm just going to go ahead and position  
8 myself.

9           **THE COURT:** That's perfectly fine.

10           (Pause.)

11           **THE COURT:** Let's bring them in. When they  
12 come back in, just rest.

13           **MS. ZMROCZEK:** Yes.

14           (The jury returns to the courtroom.)

15           **THE COURT:** All right. Ladies and gentlemen,  
16 welcome back. Thank you very much.

17           Ms. Zmroczek, do you wish to call any  
18 witnesses?

19           **MS. ZMROCZEK:** We do not, Your Honor. The  
20 defense rests.

21           **THE COURT:** Okay. Ladies and gentlemen, the  
22 defense has rested its case. At this point, we are  
23 ready for closing arguments.

24           Now, as with every single thing that happens in  
25 this courtroom, there's an order into which things

1 go. So the order of the arguments will be that the  
2 State will be required to give their closing  
3 argument first, and then the defense will be allowed  
4 to give their closing argument second. When that  
5 finishes, I will then charge you on the law in South  
6 Carolina as it pertains to the issues that have  
7 arisen in this case.

8 Now, I don't put time limits on attorneys.  
9 Okay? Sometimes I wish I did, but some judges do,  
10 but I do not. This is their case and they've lived  
11 with this case and they know this case. This is  
12 their opportunity to present the case to you from  
13 their respective points of view. And I want you to  
14 give them your undivided attention.

15 You all have done very well during this trial  
16 staying awake, staying with us, paying attention.  
17 And this is the attorney's final opportunity to  
18 speak to you, so I ask that you, please, give them  
19 your undivided attention.

20 Depending on how long their arguments take, we  
21 may take a break in between them; we may not. We'll  
22 just kind of play it by ear. Okay? But, please,  
23 give the attorneys your undivided attention.

24 Mr. Fender.

25 **MR. FENDER:** Thank you, Judge.

## 1 CLOSING ARGUMENT

2 MR. FENDER: Good morning. First of all, I  
3 just want to thank you again for your jury service.  
4 I know that this is not fun. You've probably been  
5 bored at times. You've gone through days that may  
6 have felt long, but what you're doing is very  
7 important. You know, this is real life Saluda  
8 County.

9 And, you know, I've watched and each of you has  
10 been paying attention to the witnesses, you all have  
11 been looking at the evidence, and I really  
12 appreciate that. You couldn't ask for more when it  
13 comes to a jury.

14 In a few minutes, you're going to be asked to  
15 give a verdict. And verdict is just a really old  
16 Latin word, and all it means is to speak the truth.  
17 The job as a juror is to speak the truth about the  
18 facts and to speak the truth about the evidence.  
19 But if you could, just give me a few minutes, I'm  
20 not going to need a time limit or anything like  
21 that, but if we can just look back briefly on the  
22 evidence, you know, what you saw in this case.

23 Now, let's think about the first witness that  
24 you heard from, Mr. William Houston. He was the  
25 cashier. He was the clerk. He was working that

1 night at the Circle K. You know, he was bent over  
2 at the shelf, stocking, cleaning, that kind of  
3 stuff.

4 And then what happened? Well, in comes a man  
5 with a gun. What did he describe it as? Gray or  
6 silver with this black handle. What did that man  
7 do? Well, he pointed it at Mr. William. He walked  
8 him over to that cash register, emptied it out, took  
9 the money, ones and fives, took the cigarettes and  
10 then he took off on foot.

11 Now, if you think back to Mr. Houston's  
12 testimony, his major focus was this gun that was  
13 pointed at him. He was scared, he was afraid, and  
14 rightfully so. But let's think about some of the  
15 other stuff that he said.

16 He talked about how that cash register worked  
17 at the Circle K. You know, it's late night, they're  
18 not going to keep hundred dollar bills or anything  
19 like that in there. They had a policy where they're  
20 putting those large bills in a secure box, and  
21 they're keeping in the drawer ones and fives, ones  
22 and fives, ones and fives. What was found with the  
23 defendant? Think about it.

24 And what were the other things that, you know,  
25 that Mr. Houston observed? He talked about seeing

1           this unique scar on the shoulder of that arm that  
2           had a gun pointed at him. A scar or a  
3           discoloration, I believe, is how he described it. I  
4           think he may have said a dark spot or something  
5           along those lines.

6           Well, let's look back at these pictures. And,  
7           you know, the great thing about this is you're going  
8           to get to take all of this back into the room with  
9           you so you can take a really close look at it, you  
10          know, looking for things like that dark scar on the  
11          shoulder, comparing that to that dark scar on the  
12          defendant.

13          And then there were these tattoos. You know,  
14          you can -- this isn't 4K. I think we -- 4K 1080p.  
15          It's not that, right? But if you look closely at  
16          these photos, you're seeing them. You're seeing  
17          them. Folks, these discolorations, these tattoos,  
18          that matches what Mr. William Houston had to say,  
19          that matches what you got to see right here with  
20          your own eyes on the defendant.

21          And, additionally, we also have these photos  
22          that were taken of him from that day that show these  
23          tattoos, that show these things that Mr. William  
24          Houston described, discolorations on the hand, the  
25          hand that held that gun, the gun that he pointed at

1 him.

2 Ladies and gentlemen of the jury, I'm asking  
3 you to consider all of the evidence in this case,  
4 take a look at everything, because everything here  
5 is pointing towards one truth. Remember that word  
6 verdict, looking for truth. And there's one truth  
7 in this case and that's a verdict of guilty.

8 Now, just to tell you a little bit more, you  
9 know, Mr. Houston, he described the robber as  
10 someone who matched the description of William  
11 Houston or -- excuse me -- of Demarcus Robinson.  
12 You see Demarcus here in these, matching  
13 description, matching, matching, matching. Video,  
14 you can watch that as well as part of your  
15 deliberations.

16 But, you know, what else did he tell you?  
17 Well, he said, Hey, I know Demarcus. This is a guy  
18 that I met when I first moved to Ridge Spring. You  
19 know, the defendant, Demarcus, he was in and out of  
20 that store.

21 Our victim, he knew him because he was a  
22 regular customer. He knew him because when he  
23 walked to work sometimes, he saw him out there  
24 playing football with no shirt on.

25 Folks, why do you think he covered his face up?

1 Use your common sense, folks. That's, you know,  
2 more or less what we've heard from William Houston  
3 in this case. We've got videos. We've got  
4 pictures.

5 And I want to, you know, go back to what we  
6 heard from Corporal Raffield, who's with us today in  
7 court. And I know it was pretty late in the day  
8 yesterday, but let's just think back to what he  
9 testified to and this evidence that he entered in to  
10 you and to the courtroom.

11 You know, Corporal Raffield, he's a veteran law  
12 enforcement guy. You heard him, over 20 years  
13 experience, decorated law enforcement officer. He  
14 does investigation, and he did an investigation in  
15 this case, a thorough one, one that found the  
16 defendant just hours after the crime was committed.  
17 But let's look back at what he had to say.

18 So he goes there to Demarcus' house. It's  
19 about a half a mile away, give or take, from the  
20 crime scene, knocks on the door and there's mom.  
21 How does she respond? Well, with a shrug. Yeah,  
22 he's upstairs. Demarcus has been out that night,  
23 hadn't been home long. There was testimony,  
24 approximately 2:30 A.M.

25 You know, approximately is a give or take

1 thing, it's not a term of art. But the bottom line  
2 is he'd been out, he had recently gotten home, home  
3 to a place very close to where this happened, home  
4 to a place where he had these items.

5 So what does Corporal Raffield do? Well, he  
6 goes upstairs and that's where he finds the  
7 defendant, Demarcus, in the bedroom. And what's he  
8 find in there, in that bedroom? Ones and fives,  
9 folks, ones and fives, small bills. What did our  
10 clerk testify was taken? What did Corporal Raffield  
11 find with the defendant? Follow the money. Simple  
12 as that.

13 What else did he find, folks? It's right here.  
14 This gun with Demarcus. Take a look at these  
15 photos. They're not 4K. They're not 1080p. You'll  
16 see a gun that matches what was found with the  
17 defendant, match, match, match.

18 We've also got these cigarettes that if you  
19 look closely on that video, you can have a look at  
20 these as well taken from the store.

21 What does your common sense tell you? What  
22 does the trail of evidence tell you? What does your  
23 sense of right and wrong tell you? Evidence points  
24 to one truth, points to one conclusion and that is  
25 of guilty of robbery. The clerk's ID, Demarcus

1 found just hours later, mom said, Yeah, been out  
2 that night, just got home, with the cash, with the  
3 cigarettes, with the gun.

4 Ladies and gentlemen of the jury, you know, you  
5 took an oath yesterday and that oath was to decide  
6 this case, you know, based on the facts, not based  
7 on speculation, not based on theory, but facts and  
8 evidence. And the evidence in this case, that came  
9 from this witness stand right here {indicating}.  
10 The evidence in this case comes from these items  
11 that you're looking at today, that you'll have the  
12 opportunity to take with you back into that jury  
13 room.

14 But if you would hear me out for a moment, I  
15 know you've heard some different points from the  
16 defense attorney and whatnot, I just kind of wanted  
17 to talk about those defense arguments. You heard a  
18 lot of big deal about this timing, the timing, the  
19 timing, the timing, but why are we hearing about  
20 this timing? There's misdirection here.

21 The defense wants you to focus on the time of  
22 that statement not the content, saying  
23 approximately, but approximately is not exactly.  
24 Think about that when someone says approximately,  
25 but it was around the same time of the robbery. But

1 what's the content of it, though? The content is  
2 that he was out, that he'd recently gotten home,  
3 half a mile from the scene of the crime.

4 Folks, this is real life Saluda County. What  
5 you're doing is tremendously important.

6 And then we've got, you know, this random shirt  
7 that was found out in the grass, right? You heard  
8 about it. DNA. You know, and that's true, you  
9 know, there's that shirt out there.

10 You know, when you listen to Corporal Raffield,  
11 he's not trying to hide anything from you. You  
12 know, the State presented our SLED expert about what  
13 happened with this shirt. And, you know, you heard  
14 testimony that, you know, this shirt was found  
15 outside the gas station. They tested it. There was  
16 multiple samples of DNA in there, so they really  
17 couldn't say anything one way or the other. They  
18 couldn't say that it did match. They couldn't say  
19 that it didn't. They couldn't even say that this  
20 was even related to this robbery or was just perhaps  
21 some random piece of litter. So I just would,  
22 please, ask you, don't get distracted by this shirt.

23 This is real life. This is not CSI. This is  
24 not a gas station with a 4K 1080p high resolution  
25 deal, but this is good evidence. This is evidence

1           that you'll have the opportunity to examine. You'll  
2           find consistencies.

3           Like I said in opening, it's not a Hollywood  
4           movie, but we are very lucky because we do have  
5           these photos, things that show that the defendant  
6           was there, things that show that the defendant is  
7           guilty. But, again, what does your common sense  
8           tell you? You've got eyewitness identification.  
9           You've got the defendant found briefly after with  
10          the same items from the crime scene. Folks, use  
11          your common sense here.

12          The defense is going to try to tell you that  
13          this is some personal vendetta about Demarcus and  
14          William Houston, but did you hear any witness on  
15          this stand testify to that? She talked about it in  
16          her opening. Did you hear any witness talk about  
17          some personal beef? No, you didn't. Did William  
18          Houston say, yes, law enforcement, it was Demarcus;  
19          he's over here, go find him? No, he didn't. All he  
20          said was that it was Demarcus, and then they found  
21          Demarcus just shortly after. Do you think he was  
22          able to go plant all of this, this elaborate  
23          conspiracy theory?

24          Folks, it's not. There's no conspiracy.  
25          There's no crazy aluminum foil hat and stuff. This

1 is evidence. This is real life. Put these pieces  
2 of evidence together, put them together to reach  
3 that verdict, guilty. What you've got here is  
4 match, match, match, match.

5 I think that -- just a little bit more to that  
6 -- what Your Honor, you know, told us about  
7 yesterday, he talked about the toothbrush business.  
8 Remember that? He was talking about, you know,  
9 having a kid, your son or your daughter, and it's  
10 your job to decide whether or not they brushed their  
11 teeth. Now, you weren't in there in the bathroom  
12 with them. You weren't standing beside the sink,  
13 but you -- it's, ultimately, it's up to you to make  
14 that decision. And this is the same thing in many  
15 ways.

16 What did the Judge ask you to do? How did he  
17 ask you to make your decision? Well, he asked you  
18 to look at clues. You know, did you see any pieces  
19 of teeth -- or pieces of food in the toddler's  
20 teeth? Was the mouth, you know, red from candy or  
21 blue or anything like that, you know?

22 Even though you weren't there standing at the  
23 sink, you look for clues like that and you also look  
24 for credibility, credibility of witnesses. You  
25 know, do you have a kid that fibs a little bit or do

1 you have a child who's very vain who would never  
2 leave the house without brushing their teeth?

3 So it goes down to evidence and it goes back to  
4 credibility. You know, in life, we don't know  
5 anything -- there's very few things that we know  
6 towards an absolute certainty, but like determining  
7 if our child brushed their teeth, we look at clues,  
8 we look at evidence, and that's how we reach  
9 conclusions.

10 You know, the fact of the matter is you're all  
11 reasonable people. You had to go through quite a  
12 selection process just to even get put on this jury.  
13 But you were put on this jury for a reason, because  
14 you are reasonable, because you care, you care about  
15 this community, you care about the truth. And you  
16 all make reasonable decisions in your personal and  
17 family life every day whether you realize it or not.  
18 You do them based on your common sense, based on  
19 evidence, what you observe, what you see.

20 Today's no different. You'll be making this  
21 decision based on what you observed, what you saw  
22 right here on this witness stand, these items right  
23 here that you're going to take back with you into  
24 the jury room.

25 Where was this found? Where was this found?

1           Where was this found? What did the Circle K people  
2           testify was taken out of there? Ones and fives,  
3           ones and fives. And you've got a bedroom with this  
4           loose cash.

5           Ladies and gentlemen of the jury, what does  
6           your common sense tell you? You're putting one and  
7           one together and that's how you reach your verdict,  
8           that's how you reach your conclusion, that's how you  
9           reach the truth.

10          Again, I submit to you that while none of you  
11          may have ever served on a jury before, you all  
12          brought with you the only tool that you need, that's  
13          your common sense. All you need is your common  
14          sense to look at this evidence. All you need is  
15          your common sense to know what happened. And all  
16          you need is your common sense to find the defendant  
17          guilty of all of these counts.

18          Armed robbery. What does that mean under the  
19          law? Your Honor's going to instruct you on it, but,  
20          basically, using something like this, a gun, to take  
21          money by force or threat or intimidation.

22          Kidnapping. What does that mean? Well, that's  
23          when you take somebody, you force them against their  
24          will, you confine them. You see here in these  
25          pictures that gun against his back, he's telling him

1 what to do. You can see it on the video.

2 And then lastly, possession of this weapon  
3 during these crimes. Ladies and gentlemen, this  
4 video shows you the defendant with this gun in his  
5 hand.

6 These are the laws that he has broken. Under  
7 our law, justice requires that you return a guilty  
8 verdict on them. Again, I would ask you to base  
9 your decision on all of this evidence. I would ask  
10 you to find the defendant guilty of these charges.  
11 Thank you.

12 **THE COURT:** All right. Thank you very much,  
13 Mr. Fender.

14 **MS. ZMROCZEK:** Your Honor, I need just a few  
15 minutes to clear off...

16 **THE COURT:** Okay. We're going to take a real  
17 quick break, under five minutes. Do not discuss the  
18 case, keep an open mind. We'll be back with you in  
19 just a couple minutes. Okay? All right. Thank you  
20 very much.

21 (The jury retires to the jury room.)

22 (Brief Recess.)

23 **THE COURT:** All right. Let's bring them back  
24 in.

25 (The jury returns to the courtroom.)

1           **THE COURT:** All right. Thank you. Welcome  
2 back.

3           Ms. Zmroczek, the floor is yours.

4           **MS. ZMROCZEK:** Thank you. May it please the  
5 Court.

6           **THE COURT:** Yes, ma'am.

7           **MS. ZMROCZEK:** Good morning. Just yesterday I  
8 said a picture is worth a thousand words, video must  
9 be worth a million, but what we see depends mainly  
10 on what we are looking for. And how I've broken  
11 down my closing arguments, I want to first talk a  
12 little bit about the law -- excuse me, let me get  
13 some water.

14           **THE COURT:** Do you need some water?

15           **MS. ZMROCZEK:** I apologize for that.

16           **THE COURT:** No problem.

17           **MS. ZMROCZEK:** But how I've tried to break down  
18 my arguments is like this: I want to talk about the  
19 law. Obviously, the Judge is going to charge you on  
20 the law. What the Judge says the law is, the law  
21 is.

22           I want to talk about -- a little bit about the  
23 testimony and what inferences can be made from that.  
24 You rely specifically on what you heard from each  
25 witness. So if I say something different, it's what

1       you've said, it's what you heard, it's what you  
2       believe. Individually each of -- all 14 of you and  
3       the 12 that will deliberate, you rely on what you  
4       hear. And then I want to talk a little bit -- I  
5       want to respond a little bit to the State's  
6       arguments. And then I want to close with just a few  
7       common sense.

8               There's one thing that Mr. Fender and I agree  
9       on and that is common sense, and so I'm going to  
10      talk about that.

11             So, first, I want to talk about the law, and  
12      the Judge will charge you about elements and how  
13      each element has to be required. There are three  
14      separate charges in this case that you'll consider.  
15      And he'll tell you that you'll have to consider the  
16      kidnapping and the armed robbery, and those are  
17      considered violent crimes.

18             So you have to determine, individually, on each  
19      of those charges before you can even get to the gun  
20      charge. And that's important because, sure, there  
21      was a gun found at the house where Demarcus Robinson  
22      stayed. And if you recall the testimony from  
23      Mr. Houston, he said silver gun, he didn't say  
24      revolver. But what they want you to do is make  
25      those in -- those -- not inferences, they want you

1 to speculate that it's the same gun.

2 I want to tell you that if you don't find him  
3 guilty because they have not proven him guilty of  
4 the kidnapping and the armed robbery, then you can't  
5 even get to the gun charge. And the Judge will  
6 explain that to you.

7 He'll talk to you about direct and  
8 circumstantial evidence. Direct evidence is  
9 evidence presented to you directly, eyewitness  
10 testimony, actual physical items. And then he'll  
11 talk about circumstantial evidence, things that can  
12 be inferred.

13 But the important thing about what can be  
14 inferred, and he's going to instruct you that this  
15 is the law, to the -- to the degree that the  
16 government relies on circumstantial evidence, all of  
17 those circumstances have to point conclusively to  
18 the guilt of Demarcus. The Judge will tell you the  
19 law says if it just raises the suspicion of guilt or  
20 portrays his behavior as suspicious, the proof has  
21 failed. The proof has failed in every ounce of this  
22 case.

23 One thing that Mr. Fender said in his opening,  
24 and I was going to object, I did not take exception  
25 to because I wanted to address it in closing, and he

1       said, The Judge is going to tell you about this  
2       legal theory of beyond a reasonable doubt.

3               Beyond a reasonable doubt is not a legal  
4       theory. It is the law. It is not defined. It's  
5       going to be defined as we can't know things to all  
6       certainty, but there's no 50 percent, 60 percent.  
7       There's no percentage. But beyond a reasonable  
8       doubt is the highest requirement of proof in a  
9       criminal case, and it's done that way for a very  
10      good reason. You're here today to decide important  
11      questions of fact, apply the appropriate law to make  
12      a determination on what happened.

13             Well, how do you define a reasonable doubt?  
14      The Judge will give you the legal definition. This  
15      has been a struggle, I think, since our system began  
16      about how I define it or how you define it. So when  
17      I look at words, I say, Reasonable doubt. So what  
18      that says to me is can I list a reason to doubt? So  
19      your job as jurors is to ask yourselves individually  
20      and then discuss collectively what reasons do we  
21      have to doubt guilt in this case? And I want to  
22      talk about those at the end.

23             First, I want to talk a little bit about the  
24      State's presentation. They, you know, said match,  
25      match, match, match, match, match. And the

1 beauty of this is is that you'll get to take these  
2 back there. You recall yesterday Officer -- or  
3 Corporal Raffield said, Pictures can't lie, video  
4 can't lie, people can lie. Those were his words,  
5 which I typically don't like to call people liars.  
6 I like to -- I like to assume and presume that most  
7 people are telling the truth.

8 And when we talk about presumption, the Judge  
9 is going to talk to you about presumption of  
10 innocence. So it's a really hard concept to grasp  
11 and people also call that a legal theory, but it's  
12 the best part of our system. It means that  
13 Mr. Robinson is not guilty until all 12 of you  
14 decide that all of this evidence proves beyond a  
15 reasonable doubt, so you have no reason to doubt,  
16 that he's guilty. And that presumption is important  
17 because it's something that should be applied in the  
18 way that we investigate a case.

19 You recall Corporal Raffield, who was Chief  
20 Raffield at the time, said they're in charge of  
21 everything, dog cases, murder cases, burglary, armed  
22 robbery -- I think he said murder and armed robbery,  
23 those were his big cases -- and that he's been in  
24 law enforcement for 25 years, so he knows what he's  
25 doing. I submit, ladies and gentlemen, that when

1 Mr. Hollaway (sic) gives a name and it's three in  
2 the morning, that Officer Raffield doesn't have to  
3 bother doing any investigation because he's going to  
4 make things fit.

5 The fact that -- that they put in these two  
6 pair of black shorts and they want to say, Oh, but  
7 that matches, there's been no testimony. They just  
8 want you to make that determination, as you should.  
9 And if you can't make that determination beyond a  
10 reasonable doubt, then it doesn't match. But it's  
11 fascinating to me that two pairs of black shorts in  
12 a 20 year old's room is what makes him guilty of  
13 this crime.

14 Oh, but there was a gun, a revolver found in  
15 his closet, but it matches. You heard from SLED.  
16 SLED has DNA experts. Oh, you heard from the video  
17 expert -- or not expert, but a video technician that  
18 works at SLED. Is it reasonable to assume that SLED  
19 does gun analysis or fingerprints or any of that?  
20 But that wasn't done in this case.

21 And an argument that Corporal Raffield kept  
22 making was, Well, we're just a small town. The  
23 beauty of small town America is that the  
24 Constitution still applies, the rules apply.

25 And you heard the SLED agent up here today.

1           And one thing that was prevalent in the State's  
2           closing was match, match, match, match, match, but  
3           then you heard the alleles that she did run against  
4           the shirt, and there were four that didn't match.  
5           That was not a complete profile, but had it been a  
6           complete profile, any one of those would have  
7           excluded him.

8           I want to talk a little bit -- and I know that  
9           the TV is there. We're going to watch the video in  
10          just a moment because -- and you'll -- the good  
11          thing is is you'll get to take, what we call, a  
12          clean computer. So you'll get to take a computer  
13          back there and you'll get to watch all of the video,  
14          because, really, this case boils down to the video,  
15          because the testimony that we heard was that you can  
16          see face, you can see him pointing the gun at my  
17          face.

18          And I want to talk about this, the tattoos and  
19          the gun and -- I'm not pointing this at anybody.  
20          But let's say that the gun was pointed at me and I  
21          said, what was your focus? The gun. Well, a hand  
22          holds the gun. Mr. Robinson stood up here in front  
23          of you. And these pictures show these very dark  
24          tattoos on his hand, and you get to look at the  
25          pictures. And he said, Oh, I want you to compare,

1       you know, I want you to compare the pictures to the  
2       images. And do that.

3               At this very low pixelation, I would submit  
4       that you're not going to be able to find any match.  
5       In fact, the distortion is so low that you can't  
6       speculate that those are tattoos.

7               But what was really important is the only  
8       tattoo that Mr. Houston kept saying was star, saw  
9       star or stars. But he could see his neck. I was  
10      very clear about that. You've got a tattoo. You  
11      saw it. There's pictures of it, but he stood up  
12      here and he showed you his tattoo on his neck. He  
13      showed you the tattoos on his hand and both arms,  
14      but we didn't hear about any of that.

15              Reports -- and I got on people about their  
16      reports and their statements. And I'm not doing  
17      that to attack people or to make people appear that  
18      they're being untruthful, but I do that for a  
19      reason. It's a year later, you heard, Well, I can't  
20      remember; I have to look back at my report or I need  
21      to see my statement.

22              The reason that those statements and those  
23      reports are important is because you write them as  
24      soon as they happen. You put everything that's  
25      important in them. And not one time did they

1 identify all these tattoos. They did reference that  
2 they went to the jail, did a photo lineup or took  
3 some pictures.

4 If y'all don't mind turning your chairs and I  
5 -- I want to make sure y'all can all see. If you  
6 can't, please let me know.

7 So I've done a little timeline from the  
8 testimony. All right. 10:00 P.M. is what time  
9 third shift starts. So this is in August at 10:00  
10 P.M. And remember Mr. Houston testified that he  
11 walks to work, and he walks to work because he lives  
12 within a half mile. And he goes down Piney {sic}  
13 Grove Road. Okay? And some time before -- he said  
14 it probably takes 11, 15 minutes, guesstimation.

15 But the point is -- so some time between 9:00  
16 and 10:00, from 2 or 20 feet away, he's watching  
17 Demarcus play football. And you'll get to look at  
18 the aerial pictures to see if there are any light  
19 poles or where the sidewalks are. And you -- and  
20 the Judge is going to charge you on credibility  
21 because this case really does boil down to  
22 credibility, consistency and corroboration.

23 You heard the word alibi, alibi, alibi. The  
24 Judge is going to instruct you what the word alibi  
25 means. And a lot of times the word alibi comes with

1 a real negative connotation, and -- and -- and it's  
2 not. Today, 14 of you have an alibi for why you're  
3 not at work or not doing the laundry or not going to  
4 kid's doctors or not doing your homework. You have  
5 an alibi. Your alibi is you are somewhere else.  
6 That's what that word means, somewhere else.

7 2:30 A.M., that was a number that was important  
8 enough to make it into this report. 2:30 A.M., she  
9 tells him, Macaroni, play kicks his sister and goes  
10 upstairs.

11 So I said corroboration is an important -- I  
12 think, an important element in this case. So you  
13 get to make that determination. If that's a  
14 container of macaroni, does that support or  
15 corroborate what the alibi is?

16 2:40, the robber enters the store. And we're  
17 going to watch the video because, if you recall, I  
18 asked Corporal Raffield, You would agree with me  
19 that this is one minute? And the beauty of these  
20 videos is that they're time stamped and the time  
21 clicks and clicks and it clicks and you get to see  
22 what happens. So if I'm wrong about him being in  
23 the store for a minute and one second, the video  
24 will show that. Okay?

25 And recall that it will also show you the

1 angles where Mr. Houston was faced the whole time.  
2 It'll show you his hands up in the air. And  
3 remember, I used kind of this corner area as where  
4 the cash register was, and I did that for a reason  
5 because there's a window there.

6 And so he -- and you'll get to see him and hear  
7 him on the phone with 9-1-1 and see if he's looking  
8 out the window to see people running around, tossing  
9 money and then going down Pecan Grove where -- which  
10 to me is interesting because when you get these back  
11 there, and the store is right here and he lives over  
12 here, Merritt Avenue, and Pecan Grove Road is this  
13 way.

14 But more importantly than that, Pecan Grove  
15 Road is this way, so if you're looking -- you don't  
16 leave the store and you're looking out the window,  
17 how are you going to know that somebody goes down  
18 Pine {sic} Grove Road? .

19 2:41, you'll see the robber leaves the store.  
20 You'll see him call 9-1-1 and then you'll see him  
21 squat down. Okay? And then we hear about how  
22 distraught and shook he was, but you get to see him  
23 outside the store talking to an officer, getting the  
24 video and then he calls 9-1-1. We didn't get to  
25 hear the 9-1-1 call, but he did admit that he

1 described somebody as five nine to six foot. Well,  
2 is he taller or shorter than you is my question.

3 Well, I don't know. Well, he knows Demarcus.

4 2:57 to 3:00 A.M., they arrive; Houston gives  
5 that name. We don't have to worry about dog cases  
6 or any other cases because now we just know where to  
7 go, and whatever we find, we're going to make it  
8 fit.

9 3:00 to 4:00 A.M., they find the money and the  
10 shirt. And they say that I'm going to make a big  
11 deal about the shirt. Well, yeah, I'm going to make  
12 a big deal about the shirt because the person that  
13 you're going to see on the video has their head  
14 wrapped in a bandana, which is never found even  
15 though a perimeter is established immediately, and  
16 this shirt is wrapped around somebody's face where  
17 DNA comes, saliva, neck where people wear shirts,  
18 underarms where people are sweating. They have this  
19 around their face.

20 And -- and it was stated in the government's  
21 closing that it's not a big deal, but remember, to  
22 the officer, it was a very big deal because it was  
23 in the line of where someone would have hopped the  
24 fence to go to their house.

25 This picture is important too, State's 14,

1 because here's the window. You'll get to see where  
2 the window is, and this is the -- and Pecan Grove  
3 Road is here. So from this vantage point, he sees  
4 somebody turn left down Pecan Grove Road.

5 Then we have going to the house of Demarcus and  
6 his mom. And his mom lowers his {sic} head, but his  
7 mom says 2:30. So now what they want you to assume  
8 or speculate is that mom knows that a robbery has  
9 been committed at 2:42, but happens to give him an  
10 alibi ahead of time. But because a lot of planning  
11 is going into this, they have to also make sure that  
12 he eats some macaroni and falls asleep before the  
13 police get there. He takes money and he folds it  
14 up, hides the gun, supposedly hides a carton of  
15 cigarettes.

16 You'll get to take these pictures back here,  
17 because that testimony from that stand was, I  
18 photograph every piece of evidence before I move it.  
19 Look for those cigarettes, look for the carton,  
20 because he had to have gotten rid of the carton  
21 along with the bandanna, taken the shirt, put it in  
22 the washing machine, washed it with some other DNA,  
23 taken it back to the thing and made it up to his  
24 room and in bed before the police got there. Is it  
25 reasonable that it wasn't him?

1           They talked about being a small agency. We had  
2 SLED availability, we had Town of Saluda, we had the  
3 County of Saluda. This isn't a one-man show. And  
4 even if it were a one-man show, it doesn't lessen  
5 the requirements and the integrity, their words, of  
6 the investigation.

7           All right. So I want to talk a little bit, as  
8 I finish -- I want to talk a little bit about two  
9 scenarios:

10           One, let's say that Demarcus {sic} is right,  
11 that he has this ideal body type, even though he  
12 can't remember what side the scar was on and even  
13 though the scar was in the back and he's pointing  
14 the gun at his face, that he can identify that,  
15 let's say that that's true and let's interject some  
16 common sense.

17           If this is someone who goes into a store, I  
18 think the testimony was, at least 30 times,  
19 frequents the store frequently -- that's what it  
20 was, frequently -- frequently in the store, lives a  
21 half a mile away and knows the cashier, has a body  
22 full of tattoos, but they're going to cover their  
23 face and leave all of their tattoos exposed, does  
24 that make any sense? You get to answer that.

25           He has to hide the carton. Remember, we have a

1 perimeter that's been set up by all of these  
2 additional agencies and they're finding money on the  
3 ground and in fields, at 111 Pine Drive (sic) and  
4 somewhere they find the shirt. But Mr. Robinson is  
5 so good that he somehow destroys the carton and the  
6 other cigarettes that were in there, tosses a few  
7 dollars here, a five dollar here, and then organizes  
8 the money and folds it politely and puts it where  
9 he's sleeping, but also makes sure to get rid of the  
10 other money somewhere, because it was \$110 that was  
11 testified to that was lost.

12 They want you to convict Demarcus because he's  
13 a 20-year-old boy that has shorts -- black shorts  
14 and underwear and a gun in his house and some  
15 cigarettes. And they want to take all that evidence  
16 and make you make it fit and just disregard the  
17 stuff that doesn't make sense.

18 Consistently -- consistency, credibility and  
19 corroboration. You'll get to watch this -- these  
20 videos several, several different times, as many as  
21 you want the Judge will tell you.

22 (Pause.)

23 **MS. ZMROCZEK:** I can't get it to play. You  
24 will.

25 Look at all the camera angles, look at the

1 times, test the evidence. They've given you clear  
2 instructions on how to run the computer, and make  
3 sure that each of you gets to see it. And you watch  
4 it from all angles because the State showed you two,  
5 but there are four different angles into evidence.  
6 And look at them closely and watch where Mr. Houston  
7 is looking, where his hands are, where he's  
8 positioned and how long it takes.

9 He said that he -- it was fuzzy after a year,  
10 which is why I asked him about that statement. And  
11 then he got to go back and make some corrections.  
12 And there was nothing in there about a tattoo in  
13 those statements. This tattoo theory comes after  
14 they want to look at these pictures, after they've  
15 arrested Mr. Robinson, and they want to try to make  
16 this fit. Okay?

17 So let's just make it fit. Each of you look at  
18 this picture individually, holding the gun in your  
19 hand and see where the tattoo is, because they say  
20 it's clear, but you get determination on what's  
21 clear because what we see depends mainly on what we  
22 look for. And the law requires you not to look in a  
23 box, but to look at all the evidence.

24 Growing up in Louisiana with my sisters, and I  
25 was the oldest, I would get blamed for everything

1           because I'm the oldest. You range from 45 to 22.  
2           My dad just wanted a boy, so we all do sports. I  
3           did swimming. My sister did gym -- one of my  
4           sisters did gymnastics, but we were in and out all  
5           over the place.

6           My mom said, after the first three years of all  
7           of us being able to be in different events, That's  
8           it. I am not a short-order cook. Dinner is made.  
9           Plate, plate, plate, plate, plate. You come home,  
10          you eat it. That's how it's going to work.

11          So -- and we would come home at different times  
12          depending on who could drive, who could ride. And I  
13          came home early one day from swim practice, ate my  
14          dinner. And you have to eat all your dinner to get  
15          to the dessert because that's the best part. And  
16          I'm talking spinach and things that I just wouldn't  
17          eat, but if I didn't eat it, I couldn't have my  
18          dessert. And I fed the dog spinach sometimes. This  
19          dog, I'm surprised that she lived this long because  
20          she ate so much food.

21          But I always loved banana pudding, my favorite  
22          dessert, especially when I got home early because  
23          the vanilla wafers weren't squishy yet, they had  
24          just been put on. Got home, I ate mine. And I was  
25          like, Oh, my gosh. And all six of everybody else's

1       desserts are sitting in that fridge. And I'm like,  
2       Man. But I didn't do it.

3       Allison comes home from basketball practice.  
4       And then she says, I left my shoes at the gym; I'll  
5       be right back. So she goes to the gym. April comes  
6       home from gymnastics practice. April eats her food,  
7       eats her dessert. And she was like, I'm eating  
8       another dessert. She eats Allison's dessert. And  
9       I'm sitting back laughing because I know this time  
10      I'm not getting in trouble.

11      And then my crafty sister takes the second bowl  
12      that has a tiny little bit of the banana pudding  
13      right at the bottom, she calls Lucy at the table and  
14      she squishes it on her face, on her nose. This dog  
15      is trying to lick it off, but she can't lick it all  
16      off.

17      Allison comes home and she says, Where's my  
18      dessert? With a straight face, I watch April say,  
19      The dog ate it. Well, the dog's got banana pudding  
20      all over his -- all over her face. And my sister  
21      was like, Mom. And the dog gets in trouble, she  
22      gets her dessert, April gets off scot-free.

23      Ladies and gentlemen, that's what the  
24      government's trying to do. They're trying to take  
25      these tiny items, these common household items --

1 and I say household. You get to make the  
2 determination if this revolver is a commonly gun  
3 used in self-defense. You get to make that  
4 determination. You get to hear that it was a silver  
5 gun with a black handle. He never said revolver,  
6 they said revolver because that's what matched. You  
7 get to make the determination if these cigarettes,  
8 only four or five, but not the ten that are in a  
9 carton, corroborate beyond a reasonable doubt their  
10 theory.

11 Because, ladies and gentlemen, what they're  
12 trying to do is what April did to that dog and  
13 that's take that pudding, smear it on their face and  
14 ask that you not follow the law, and the Judge will  
15 instruct you that you can't do that.

16 I talked at the beginning about how important  
17 this duty was. It's important for the government,  
18 it's important for the defense, but it's important  
19 to us as United States Citizens because when we're  
20 talking about determinations, that's life and  
21 liberty, that burden is beyond a reasonable doubt.

22 And when you go back there and you discuss what  
23 your individual thoughts are, ask yourselves what  
24 doubts are reasonable? Is it reasonable that  
25 Mr. Houston, who testified that he has a child by

1 somebody who just few days earlier had gotten into a  
2 friend-altering fight, would name somebody? Is it  
3 reasonable? Is it reasonable that a 20 year old,  
4 who plays football apparently, would have black  
5 shorts and gray underwear? Is gray underwear not  
6 common? Is there any possibility that he was home  
7 at 2:30 when this crime was committed at 2:45?

8 You make those determinations, ladies and  
9 gentlemen, and I submit when you do and when you  
10 test the evidence that's been presented to you  
11 against the facts, that you will be proud to render  
12 your verdict of not guilty because they have not  
13 proven this case beyond a reasonable doubt. Thank  
14 you.

#### 15 CHARGE OF THE COURT

16 **THE COURT:** All right. Ladies and gentlemen,  
17 you have heard the closing arguments and it is now  
18 my responsibility to charge you the law in the case  
19 that is applicable to the case.

20 Now, I will tell you that jury charges are not  
21 the most exciting thing in the world. Okay? No one  
22 really wants to hear me listen -- or hear me talk  
23 for this long, but I do ask that you give me your  
24 undivided attention as I'm going to explain the law  
25 to you that you must apply to this case.

1           So the indictments have charged the defendant  
2 with armed robbery, kidnapping and possession of a  
3 firearm during the commission of a violent crime. I  
4 remind you that the fact that the defendant was  
5 arrested, charged and indicted in this case is not  
6 evidence, and it cannot be considered by you as  
7 evidence of guilt nor does it create any presumption  
8 or inference of guilt.

9           The indictments, as I told you yesterday, are  
10 just the documents that allow this Court to hear  
11 this case. They're the formal documents by which  
12 the case is brought into court.

13           Now, you have three charges before you, so the  
14 indictments have alleged several different offenses  
15 against the defendant, armed robbery, kidnapping and  
16 possession of a weapon during the commission of a  
17 violent crime. So each indictment charges a  
18 separate and distinct offense. You must decide each  
19 indictment separately on the evidence and the law  
20 applicable to it uninfluenced by your decision on  
21 any other indictment.

22           The defendant may be convicted or acquitted on  
23 any or all of the offenses charged. You will be  
24 asked to write a separate verdict of guilty or not  
25 guilty for each indictment, and I'll explain that to

1           you at the very end.

2           Now, during this trial, you and I have had  
3           certain duties to perform. It has been my  
4           responsibility to preside over the trial of the  
5           case, and I've also had the duty to rule on the  
6           admissibility of the evidence. You are to consider  
7           only the competent evidence before you. If there  
8           was any testimony that was ordered stricken in this  
9           case, you must disregard it.

10          You are also only to consider the testimony  
11          which has been presented from this witness stand and  
12          any exhibits which have been made a part of the  
13          record in the case.

14          I have the additional duty to charge you the  
15          law. As the presiding judge, I am the sole judge of  
16          the law. And it is your duty, under your oath, to  
17          accept the law and apply the law as I now give it to  
18          you. If you have an idea as to what you think the  
19          law is or what you think the law ought to be and it  
20          does not agree with what I now tell you the law is,  
21          you must abandon your own idea because, under your  
22          oath, you are sworn to accept the law and apply it  
23          exactly as I give it to you.

24          Now, in every case tried in this court before a  
25          jury, the jury becomes the sole and exclusive judge

1 of the facts. I cannot state, comment on or make  
2 any statement to you about the facts in a case. You  
3 are the sole judge of the facts.

4 You are not to infer from anything that I have  
5 said during the progress of this trial or anything  
6 that I say now that I have any opinion about the  
7 facts. You and you alone control the facts. The  
8 law does not allow me to have an opinion about the  
9 facts. This is a matter for you to determine. It  
10 is your duty to determine the effect, the value and  
11 the weight of the evidence presented during this  
12 trial.

13 Now, to these charges, the defendant has pled  
14 not guilty. This plea puts the burden of proof upon  
15 the State to prove the defendant guilty. A person  
16 charged with a criminal offense in South Carolina is  
17 never required to prove himself innocent.

18 I charge you that it is an important rule of  
19 law that the defendant in a criminal trial, no  
20 matter what the seriousness of the charge may be,  
21 will always be presumed to be innocent for the crime  
22 for which the indictment was issued unless guilt has  
23 been proven by evidence that satisfies you of that  
24 guilt beyond a reasonable doubt.

25 This presumption of innocence doesn't end when

1       you begin your deliberations, but it accompanies the  
2       defendant throughout the trial until you reach a  
3       verdict of guilt based upon evidence that satisfies  
4       you of that guilt beyond a reasonable doubt.

5             The presumption of innocence is like a robe of  
6       righteousness placed about the shoulders of the  
7       defendant which remains with the defendant until it  
8       has been stripped from the defendant by evidence  
9       that satisfies you of the guilt beyond a reasonable  
10      doubt.

11            The presumption of innocence isn't just a mere  
12      legal theory. It's not just some legal phrase that  
13      we say. It is a substantial right to which every  
14      single defendant is entitled, unless you are  
15      convinced from the evidence of the defendant's guilt  
16      beyond a reasonable doubt.

17            So what is beyond a reasonable doubt? The  
18      State has the burden of proving the defendant guilty  
19      beyond a reasonable doubt.

20            Some of you may have served as jurors in civil  
21      cases where you were told that it is only necessary  
22      to prove that a fact is more likely true than not  
23      true, such as by the greater weight or the  
24      preponderance of the evidence. In criminal cases,  
25      the State's proof must be more powerful than that;

1 it must be beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that  
3 leaves you firmly convinced of the defendant's  
4 guilt.

5 There are very few things in this world that we  
6 know with absolute certainty and, in criminal cases,  
7 the law does not require proof that overcomes every  
8 possible doubt. If, based upon your consideration  
9 of the evidence, you are firmly convinced that the  
10 defendant is guilty, you must find the defendant  
11 guilty. If, on the other hand, you think there is a  
12 real possibility that the defendant is not guilty,  
13 you must give him the benefit of the doubt and find  
14 him not guilty.

15 Now, some things that you have heard during  
16 this trial are not evidence, and you are not allowed  
17 to consider them as evidence: Number one, the  
18 statements and the arguments of the attorneys are  
19 not evidence. Number two, the questions and the  
20 objections of the attorneys are not evidence.  
21 Number three, anything that I told you to disregard.

22 As I told you yesterday, there are two types of  
23 evidence, direct evidence and circumstantial  
24 evidence. Direct evidence directly proves the  
25 existence of a fact and does not require any

1 deduction. Circumstantial evidence is proof of a  
2 chain of facts and circumstances that indicate the  
3 existence of a fact.

4 Crimes may be proven by circumstantial or  
5 direct evidence. The law makes no distinction  
6 between the weight or the value to be given to  
7 either one.

8 To the extent -- however, to the extent that  
9 the State relies on circumstantial evidence, all of  
10 the circumstances must be consistent with each  
11 other, and when taken together, point conclusively  
12 to the guilt of the accused beyond a reasonable  
13 doubt. If the circumstances merely portray the  
14 defendant's behavior as suspicious, the proof has  
15 failed.

16 The State has the burden of proving the  
17 defendant guilty beyond a reasonable doubt. This  
18 burden rests with them regardless of whether they  
19 rely on direct evidence, circumstantial evidence or  
20 some combination of the two.

21 Now, let me give you an example of  
22 circumstantial evidence. Okay? So let's say we're  
23 not in November and it was 80 degrees this week, but  
24 let's say we're in January. Okay? We're in January  
25 or February and at nine or ten o'clock at night, you

1 look outside and the sky is perfectly clear, and you  
2 look out upon your grass, which is all brown because  
3 it's in the middle of winter, and there's nothing on  
4 your grass. Okay? You go to bed and you wake up  
5 the next morning and the ground outside is covered  
6 with snow. All right?

7 So did you see it snow? No.. Did you hear it  
8 snow? No. But can you wake up the next morning and  
9 say it snowed during the night? Yes.. Right? You  
10 went to bed with no snow and you woke up in the  
11 morning with snow. That's circumstantial evidence.  
12 Okay?

13 Now, credibility of the witnesses. So you must  
14 determine the credibility of the witnesses.  
15 Credibility just means believability. It becomes  
16 your duty to analyze and to evaluate the evidence  
17 and consider which evidence convinces you of its  
18 truth.

19 So in determining the believability of the  
20 witnesses, you may believe one witness over many or  
21 many over one; you may believe a part of the  
22 testimony of a witness and reject the rest of that  
23 witness' testimony; you may believe testimony of a  
24 witness entirely or reject it entirely; you may  
25 consider whether the witness has exhibited to you

1 any interest or bias or motive or prejudice in the  
2 case; you may also consider the appearance and the  
3 demeanor of the witness stand while on -- of the  
4 witness while on the witness stand.

5 Now, you've heard from an expert witness in  
6 this case. The rules of evidence ordinarily do not  
7 permit witnesses to give opinions or conclusions.  
8 An exception to this rule exists for expert  
9 witnesses. This is a witness who, by education and  
10 experience, has become an expert in some art,  
11 science or profession or calling. They're allowed  
12 to give their opinion as to relevant and material  
13 matters in which they claim to be an expert and they  
14 can state their reasons for their opinion.

15 You should consider any expert opinion received  
16 in this case, and like any other evidence, give it  
17 the weight that you believe is appropriate.

18 If you decide that the opinion is not based  
19 upon sufficient education and experience or if you  
20 conclude that the reasons given in support of the  
21 opinion are not sound or that the opinion is  
22 outweighed by other evidence you believe, you can  
23 disregard the opinion entirely.

24 An expert witness' testimony is to be given no  
25 greater weight than that of another witness -- than

1 that of other witnesses simply because they're an  
2 expert. Further, you are not required to accept an  
3 expert's opinion even though it's not contradicted.

4 Now, I instruct you and emphasize to you that  
5 the fact that the defendant did not testify is not a  
6 factor to be considered by you in any way in your  
7 deliberation and in your consideration on the  
8 question of the guilt or the innocence of the  
9 defendant. It must not be considered by you in any  
10 manner whatsoever. A defendant has a constitutional  
11 right to remain silent, and the assertion of this  
12 right must not be considered by you in any way,  
13 shape or form.

14 I repeat, under your oath, you are to draw no  
15 conclusion whatsoever from the fact that the  
16 defendant in this case did not testify. The fact  
17 that this defendant did not testify should not even  
18 be discussed in the jury room.

19 The burden of proof, as I have told you from  
20 the very beginning of this trial, is on the State.  
21 The defendant is not required to prove his  
22 innocence. The burden of proof remains on the State  
23 to prove guilt beyond a reasonable doubt.

24 Now, an issue in this case is the  
25 identification of the defendant as the person who

1 committed the crime. The defendant has -- excuse  
2 me, strike that. The State has the burden of  
3 proving identity beyond a reasonable doubt. You  
4 must be satisfied beyond a reasonable doubt of the  
5 accuracy of the identification of the defendant  
6 before you may convict.

7 Identification testimony is an expression of  
8 belief or impression by a witness. You must  
9 determine the accuracy of the identification of the  
10 defendant. You must consider the believability of  
11 each identification witness in the same way as any  
12 other witness. You may consider whether the witness  
13 had an adequate opportunity to observe the offender  
14 at the time of the offense. This will be affected  
15 by things like how long or how short a time was  
16 available, how far or how close the witness was, the  
17 lighting conditions, and whether the witness had the  
18 chance to see or know the person in the past.

19 Once again, I instruct you the burden of proof  
20 on the State extends to every element of the crimes  
21 charged. And this specifically includes the burden  
22 of proving beyond a reasonable doubt the identity of  
23 the defendant as the person who committed the  
24 crimes. If, after examining the testimony, you have  
25 a reasonable doubt as to the accuracy of the

1 identification, you must find the defendant not  
2 guilty.

3 Now, we're going to talk about the crimes that  
4 are charged. So the -- in order to establish  
5 criminal liability, criminal intent is required.  
6 For example, the mental state required to be proven  
7 might be purpose, intent, knowledge, recklessness or  
8 criminal negligence.

9 Criminal intent must be proven by the State  
10 beyond a reasonable doubt.

11 Criminal intent is always a matter that must be  
12 determined by the jury from the circumstances  
13 surrounding the situation.

14 There's no way to prove it to a mathematical  
15 certainty. There is no way medical science can  
16 dissect a person's brain and determine what that  
17 person had in mind. So the law says that you may  
18 infer criminal intent from the circumstances that  
19 existed. This is how you make a determination of  
20 whether or not the element that requires intent was  
21 present.

22 It is not necessary to establish intent by  
23 direct and positive evidence, but intent may be  
24 established by inference in the same way as any  
25 other fact by taking into consideration the acts of

1 the parties and the facts and circumstances of the  
2 case.

3 Criminal intent is a mental state. It is a  
4 conscious wrongdoing. It is up to you to determine  
5 what the defendant intended to do based upon the  
6 circumstances shown to have existed.

7 Criminal intent can arise from an action or a  
8 failure to act. It may arise from negligence,  
9 recklessness or an indifference to duty or to  
10 consequences that is considered by the law to be the  
11 equivalent of criminal intent.

12 So the first charge that you are to consider is  
13 armed robbery. The defendant is charged with armed  
14 robbery. In order to prove this offense, the State  
15 must prove beyond a reasonable doubt that the  
16 defendant took personal property from the person or  
17 the presence of another person.

18 Property is in the presence of a person if it  
19 is within the person's reach, inspection,  
20 observation or control so that the person could, if  
21 not overcome with violence or prevented by fear,  
22 keep possession of the property.

23 The State must also prove beyond a reasonable  
24 doubt that the defendant carried the property away  
25 intending to permanently deprive the owner of the

1 property and to keep the property for the  
2 defendant's own use. The slightest removal of the  
3 property or the complete possession of the property  
4 even for an instant by the defendant is sufficient  
5 to show a taking and carrying away of the property.  
6 The taking and carrying away of the property must  
7 have been done with violence or by putting the owner  
8 of the property in fear of violence.

9 Finally, the State must prove beyond a  
10 reasonable doubt that the defendant was armed with a  
11 deadly weapon during the robbery. A deadly weapon  
12 is any article, instrument or substance which is  
13 likely to cause death or great bodily harm.

14 Whether an instrument has been used as a deadly  
15 weapon depends on the facts and circumstances of  
16 each case. A pistol is an instrument which may be a  
17 deadly weapon. A gun may be a deadly weapon even if  
18 it is not operating.

19 Second offense charged, kidnapping. The  
20 defendant is charged with kidnapping, so the State  
21 must prove beyond a reasonable doubt that the  
22 defendant knowingly and unlawfully seized, confined,  
23 inveigled, decoyed, kidnapped, abducted or carried  
24 away another person without authority of law.

25 To do a thing unlawfully is to do it willfully

1 against the law. Knowingly means with knowledge,  
2 consciously, not accidentally. Seize means to take  
3 hold of suddenly or forcibly. Confine means to  
4 limit or restrict or enclose within bounds,  
5 imprisoned or shut or keep in. Inveigle means to  
6 lure, entice or lead astray by false  
7 representations, promises or other deceitful means.  
8 Decoy means to lure by or as if by. A decoy is  
9 something to entice a person into a trap. Kidnap is  
10 to remove a person against his will by unlawful  
11 force or fraud. Abduct means to carry off secretly  
12 or by force for an illegal purpose. Carry away  
13 means to remove.

14 Now, the State does not have to prove that the  
15 defendant did all of these things; instead, if you  
16 find beyond a reasonable doubt that the defendant  
17 did any of these things, you may find the defendant  
18 guilty of kidnapping.

19 Something done without authority of law is  
20 something which the law does not sanction, permit,  
21 allow, condone or provide justification for. The  
22 kidnapping does not have to be for any personal or  
23 monetary gain, for any illegal purpose, but may be  
24 for any reason whatsoever.

25 The last crime charged is possession of a

1        weapon during the commission of a violent crime. So  
2        the defendant is charged with possession of a weapon  
3        during the commission of or attempt to commit a  
4        violent crime. The State must prove beyond a  
5        reasonable doubt that the defendant was in  
6        possession of a firearm or visibly displayed what  
7        appeared to be a firearm during the commission of a  
8        violent crime.

9                A firearm means any machine gun, automatic  
10       rifle, revolver, pistol or any weapon which will or  
11       is designed to or may be readily converted to expel  
12       a projectile.

13               In order to find the defendant guilty of this  
14       charge, you must first find the defendant guilty of  
15       either committing a violent crime or attempting to  
16       commit a violent crime. Armed robbery, kidnapping  
17       are both violent crimes. The State must prove  
18       beyond a reasonable doubt that the weapon furthered,  
19       advanced or helped in the commission of the crime.

20               The defendant has raised the defense of alibi.  
21       In order to establish an alibi, it must be shown  
22       that the defendant was at another specified place at  
23       the time the crime was committed and that it was,  
24       therefore, impossible for the defendant to have been  
25       at the scene of the crime. Mere denial or presence

1 at the scene of a crime does not constitute an  
2 alibi.

3 There is no burden on the defendant to prove an  
4 alibi. The burden is on the State to prove beyond a  
5 reasonable doubt that the defendant was actually  
6 present at the scene of the crime, actually  
7 participated in it and was not somewhere else. In  
8 other words, the State has the burden of disproving  
9 the defendant's alibi defense.

10 All right. I'm almost done. Let me talk to  
11 you about deliberating. Deliberation is defined as  
12 a careful consideration weighing up with a view to a  
13 decision. The genius of this system is that it  
14 allows 12 good men and women from 12 totally  
15 different backgrounds, life experiences and  
16 perspectives to consider the evidence, talk about it  
17 and reach a verdict.

18 We call them deliberations for a reason. You  
19 are to consider the evidence in this case carefully  
20 and deliberately and discuss it in a calm, thorough  
21 and courteous manner. You are not a partisan. You  
22 are not an advocate for either side. You do not  
23 favor one side or the other. You are a judge. You  
24 are a judge of the facts.

25 Listen to the views of your fellow jurors,

1 consider other people's points and points of view  
2 and talk through and discuss the evidence. And  
3 remember, if you're doing something deliberately,  
4 you're not in a big hurry, and you should not be in  
5 a hurry here. This case is very important to both  
6 sides. This is their only day in court to resolve  
7 this matter.

8 When you retire to the jury room, you should  
9 discuss the case with each other to reach agreement,  
10 if you can. Your verdict must be unanimous. Each  
11 of you must decide the case for yourself, but only  
12 after you have impartially considered the evidence,  
13 discussed it fully and listened to each other's  
14 views.

15 Do not be afraid to change your opinion if the  
16 discussion persuades you that you should, but do not  
17 come to a decision simply because everyone else  
18 thinks it's right. It's important that you attempt  
19 to reach a unanimous verdict, but only if each of  
20 you can do so after having made your own decision.  
21 Do not change an honest belief about the weight and  
22 the effect of the evidence simply to reach a  
23 verdict. In other words, don't change your opinion  
24 simply solely for the sake of reaching a unanimous  
25 verdict.

1           Okay. . . I'm going to explain this verdict form  
2           to you and then I'm going to send you back to your  
3           jury room. Okay?

4           So rule number one, your verdict must be  
5           unanimous. That means you all 12 must agree. Okay?

6           When I send you back to your jury room here in  
7           just a minute, you're still not allowed to discuss  
8           the case. Okay? The sign that you may begin  
9           deliberating is when the evidence, the exhibits,  
10          come in. So when the bailiffs bring in the  
11          exhibits, that is your cue, Mr. Foreman, that the  
12          deliberations can begin. So the alternates will  
13          come out, the exhibits will go in, then you can  
14          start deliberating. Okay?

15          Your lunch -- I told them to have your lunch  
16          here between 12:00 and 12:30. When your lunch  
17          comes, if you want to deliberate and eat, you can.  
18          If you want to stop and start again after you eat,  
19          you can. That's entirely up to you. Okay?

20          Don't tell me the count. So you never need to  
21          send me a note that says the count is X. Your count  
22          is your count, and I don't ever need to know it.  
23          Okay?

24          Next thing: Now, there are some videos in this  
25          case, so we'll provide what we call a clean computer

1 to you to play those videos on if you want to watch  
2 them. If you have technical difficulty in using  
3 that, just send out a note that says, We need some  
4 help playing the videos. I'll send in my law clerk,  
5 and she can get them running for you. Okay?

6 Now, the other thing is you all 12 must be in  
7 the room to deliberate. So if somebody needs to go  
8 call home or if somebody needs to go to the restroom  
9 or if somebody needs to go take a smoke break,  
10 deliberations have to stop unless all 12 people are  
11 in the room. Okay?

12 All right. So this is your verdict form. I  
13 tried to make this as simple as possible. So what  
14 it says is: We, the jury, by unanimous consent,  
15 find the defendant -- and that's his name -- number  
16 one, as to the charge of armed robbery, guilty or  
17 not guilty; number two, as to the charge of  
18 kidnapping, guilty or not guilty.

19 Now, the next line is: Only if you find the  
20 defendant guilty of question one and/or question  
21 number two can you consider question number three,  
22 which is the weapons charge. Okay?

23 There is no significance to guilty being first  
24 and not guilty being second. I have to put one  
25 first; I have to put one second. So I usually

1 switch it up every jury trial I do as to which goes  
2 first and which goes second. Okay?

3 This is your verdict form. I'm going to send  
4 you back to your jury room. You're still not  
5 allowed to discuss the case. When the evidence  
6 comes -- the exhibits come in, you can then begin.  
7 Okay? Thank you very much.

8 (The jury retires to the jury room.)

9 **THE COURT:** All right. Any exceptions to the  
10 charge from the State?

11 **MR. FENDER:** Nothing from the State, Judge.

12 **THE COURT:** From the defense?

13 **MS. ZMROCZEK:** None from the defense.

14 **THE COURT:** All right. Do we know what's going  
15 back? Make sure the right stuff goes back. We got  
16 a computer to go back?

17 **MR. EARGLE:** Yes, sir.

18 **THE COURT:** Okay. We've got a computer to go  
19 back.

20 And then make sure -- if you're going to leave  
21 this general area, make sure the clerk has your  
22 phone number. So when the evidence goes in, pull  
23 the two alternates out, and I'll come out there and  
24 talk to them, please.

25 (The Judge excused the alternates off the

1 record.)

2 (The jury commences its deliberations at  
3 12:20 P.M.)

4 (A recess transpired.)

5 **THE COURT:** All right let's bring them in.

6 (The jury returns to open court to report  
7 its verdict at 1:48 P.M.)

8 **THE COURT:** All right. Welcome back, ladies  
9 and gentlemen.

10 Mr. Foreman, it's my understanding you have a  
11 verdict; is that correct?

12 **FOREMAN:** Yes, sir.

13 **THE COURT:** All right. Would you hand it to  
14 Madame Clerk right here? Thank you very much.

15 (The Clerk hands the verdicts to the Judge.)

16 **THE COURT:** All right. I find the verdict is  
17 in its proper format, and the Clerk may publish.

18 VERDICT OF THE JURY

19 **THE CLERK:** The State of South Carolina, County  
20 of Saluda in the Court of General Sessions. The  
21 State of South Carolina versus Demarcus L. Robinson,  
22 indictments number 2016-GS-41-310, as to the charge  
23 of kidnapping, on indictment -- we find the  
24 defendant guilty.

25 As to the charge of armed robbery, on

1 indictment 2016-GS-41-311, we find the defendant  
2 guilty.

3 As to the charge of possession of a firearm  
4 during the commission of a violent offense, on  
5 indictment 2016-GS-41-312, we find the defendant  
6 guilty. Foreperson, Robert Michael Watson. Dated  
7 November 8th, 2017.

8 **THE COURT:** All right. Mr. Foreman, is this  
9 your verdict and the verdict of the jury?

10 **FOREMAN:** Yes, sir.

11 **THE COURT:** All right. Does either side  
12 request polling?

13 **MS. ZMROCZEK:** We do, Your Honor.

14 **THE COURT:** Okay. Ladies and gentlemen, what  
15 we're going to do is we're going to call out your  
16 juror numbers and the question -- as your juror  
17 number is called, the question will be, Is this your  
18 verdict and is it still your verdict? And just  
19 answer out loud for us. Okay?

20 **THE CLERK:** Mr. Robert Watson, is this your  
21 verdict and still your verdict?

22 **FOREMAN:** Yes, ma'am.

23 **THE CLERK:** Ms. Kathy Miles, is this your  
24 verdict and still your verdict?

25 **JUROR:** Yes, it is.

1           **THE CLERK:** Ms. Evelyn Shell, is this your  
2 verdict and still your verdict?

3           **JUROR:** Yes, it is.

4           **THE CLERK:** Ms. Cressie Brooks, is this your  
5 verdict and still your verdict?

6           **JUROR:** Yes, it is.

7           **THE CLERK:** Ms. Chaquita Minick, is this your  
8 verdict and still your verdict?

9           **JUROR:** Yes, it is.

10          **THE CLERK:** Kenneth West, is this your verdict  
11 and still your verdict?

12          **JUROR:** Yes, it is.

13          **THE CLERK:** Mr. Casey Maloney, is this your  
14 verdict and still your verdict?

15          **JUROR:** Yes, it is.

16          **THE CLERK:** Ms. Delfuni Glover, is this your  
17 verdict and still your verdict?

18          **JUROR:** Yes, it is.

19          **THE CLERK:** Ms. Shirley Diane Gibson, is this  
20 your verdict and still your verdict?

21          **JUROR:** Yes, it is.

22          **THE CLERK:** Mr. James R. Shealy, is this your  
23 verdict and still your verdict?

24          **JUROR:** Yes, it is.

25          **THE CLERK:** Mr. Jonathan M. Roof, is this your

1 verdict, and still your verdict?

2 **JUROR:** Yes, ma'am.

3 **THE CLERK:** And, Mr. Ovidio Aguirre, is this  
4 your verdict and still your verdict?

5 **JUROR:** It is.

6 **THE COURT:** All right. The jury's been polled.

7 All right. Ladies and gentlemen, I want to say  
8 thank you very much for your service this week. I  
9 know this was not a rather lengthy case, but it was  
10 an important case. And I want to say on behalf of  
11 all the parties and the lawyers in the case, thank  
12 you very much for your service.

13 I know there are a million other places you  
14 would rather be this week. I hope this week was  
15 educational for you so that you can see what we do  
16 up here each time that we hold court. And you  
17 realize that trials are not like TV and they're not  
18 like movies and they're not like books -- books that  
19 you may read. This is real life with real witnesses  
20 and real things that happen. And I just want to say  
21 thank you very much for your service this week.

22 You have all been very attentive. You have all  
23 been very prompt. You've all been very  
24 professional. And I want to say a personal thank  
25 you to you.

1 I travel all over this state and try cases.  
2 And you all have been a great jury. And everybody's  
3 been on time, and we just have had no issues at all.  
4 And I want to say a personal thank you to you.

5 You have a jury exemption for all of next year  
6 and for the following year. So if you get called  
7 again for jury duty in circuit court, just tell them  
8 that you served this week with me and they will go  
9 ahead and excuse you from that term of court.

10 Now, the prohibition about discussing the case  
11 with anyone is hereby lifted from you. You are free  
12 to discuss the case with anyone that you want to.  
13 Sometimes attorneys like to call jurors and say,  
14 Hey, what did we do wrong; what did we do right;  
15 what made sense; what didn't make sense? If you  
16 want to speak with them, you can. If you don't want  
17 to, just politely tell them you don't want to and  
18 they'll leave you alone and not bother you.

19 But I wanted to say thank you very much for  
20 your service. You'll retire to your jury room.  
21 Does anyone need a work excuse?

22 Okay. We've got some work excuses and we'll  
23 get -- the Clerk can get those for you. And let's  
24 send them back into your jury room, you can gather  
25 your belongings and we'll take your name tags from

1           you. Okay? Thank you very much.

2                   (The jury was excused.)

3           **THE COURT:** Okay. I'll be right back for  
4 post-trial motions and sentencing.

5                   (Pause.)

6           **THE COURT:** All right. Post-trial motions?

7           **MS. ZMROCZEK:** Your Honor, at this time, we  
8 would renew all of our previous motions and move to  
9 set aside the verdict just based on the short time  
10 of deliberation.

11           **THE COURT:** All right. I find -- I'm going to  
12 deny those motions. I find that my rulings upon the  
13 previous motions, I stick with those rulings and the  
14 reasons that I stated forth at that time.

15                   Further, I find that the jury spent, you know,  
16 almost, from my calculation, probably about an hour  
17 to an hour and a half in actual deliberations. This  
18 was, essentially, a six-witness case. And I find  
19 that there was no significant issues that would have  
20 caused a long period of delay in deliberations. So  
21 I will deny the motion for a new trial based upon  
22 that.

23                   All right. Have y'all got sentencing sheets?

24           **MR. FENDER:** Judge, we're completing that right  
25 now.

1           **THE COURT:** Okay. All right. And does  
2 Mr. Houston need to be heard from?

3           **MR. FENDER:** Judge, can I beg the Court's  
4 indulgence?

5           **THE COURT:** Sure.

6           **MR. FENDER:** And, Judge, just briefly, if we  
7 would allow Corporal Raffield to address the Court  
8 just a little bit on sentencing and also his prior  
9 record as well?

10          **THE COURT:** Sure.

11          **MR. FENDER:** Did you want to do that at this  
12 time, Judge?

13          **THE COURT:** Please.

14                   (Pause.)

15          **THE COURT:** And does the defendant have any  
16 criminal history?

17          **CORPORAL RAFFIELD:** Yes, sir, Your Honor, a  
18 former assault and battery third degree, petit  
19 larceny, receiving stolen goods, and shoplifting.

20           Your Honor, I have personal knowledge of  
21 Mr. Robinson being that I was the chief there for  
22 the two-year period. Shannon Molina, the manager,  
23 and I have conferred. Mr. Robinson had been in the  
24 store numerous times, issues with shoplifting. Two  
25 to three weeks prior to this, there was another

1 incident.

2 This incident, being the fact that Ridge Spring  
3 is such a small town, a lot of elderly people,  
4 caused a lot of stress not only to the victim that  
5 actually had the gun pointed at him, but the  
6 residents within Ridge Spring itself. So I'd like  
7 just to convey that to you. Thank you.

8 **THE COURT:** Thank you very much. And thank you  
9 for being here.

10 **MR. FENDER:** Judge, if I could just reiterate  
11 for the record just how dangerous these situations  
12 are. I mean, we saw someone who was shot earlier  
13 this week. We have a defendant here who went in  
14 there, loaded handgun, pointed it at the clerk.  
15 Again, Judge, I just ask that you take all of that  
16 into account as you hand down sentencing.

17 **THE COURT:** Okay. Thank you.

18 Ms. Zmroczek.

19 **MS. ZMROCZEK:** Thank you.

20 Your Honor, my client is 20 years old. He is a  
21 -- he finished 11th grade, but he did get his GED,  
22 Your Honor. His family is from here. They are  
23 hardworking people.

24 He is a young man. Obviously, there's no  
25 questions about his competence, but the Court's

1 familiar with, Your Honor, with the formation of an  
2 adolescent brain and just making poor decisions.

3 I know they did make another arrest in this  
4 case, and I can't say what -- how that affected this  
5 case, Your Honor. My client has always maintained  
6 his innocence with me and so I can't say anything.  
7 We respect the jury's verdict, but I can't say  
8 anything that could possibly affect his case later  
9 on except for, with me, Your Honor, he has always  
10 been respectful and polite.

11 And, obviously, he has these minor issues on  
12 his record, but, Your Honor, we would certainly  
13 think that a sentence in between a 10 and 20 range  
14 would be appropriate. Obviously, 10 is the  
15 mandatory minimum for armed robbery anyway. We  
16 would ask the Court to consider all of those things  
17 in its assessment.

18 **THE COURT:** All right. Mr. Robinson, you  
19 certainly do not have to say anything if you do not  
20 want to, but you are given the opportunity to if you  
21 would like to address the Court. Is there anything  
22 that you would like to say?

23 **DEFENDANT:** No, Your Honor.

24 **MS. ZMROCZEK:** And I've advised him not to.

25 **THE COURT:** That's fine, but I have to give you

1 the opportunity to if you want to, and I just wanted  
2 to give that opportunity to you. I understand that  
3 you don't want to speak, and I respect that.

4 You will have ten days from today's date to  
5 appeal this charge. If you want to do that, you  
6 need to let your attorney know that. Okay?

7 **DEFENDANT:** (Defendant nodded head.)

8 **THE COURT:** All right. You got your sentencing  
9 sheets?

10 **MR. FENDER:** Yes, sir.

11 **THE COURT:** And I am going to make a specific  
12 finding that he is not to be placed on the South  
13 Carolina Sex Offender Registry that comes with a  
14 kidnapping charge. I saw no elements or intent of  
15 any type of sexual nature or any type of sexual  
16 behavior in the incident. Does the State agree with  
17 that?

18 **MR. FENDER:** Yes, Judge.

19 **THE COURT:** Okay. All right. So one thing  
20 that usually happens automatically, Mr. Robinson, is  
21 because of a kidnapping charge, the legislature has  
22 seen fit to make that automatic sex offender  
23 registry unless I make a specific finding that there  
24 is no element of any type of sexual nature in the  
25 offense. I am going to make that specific finding,

1 so you should not be placed on the sex offender  
2 registry.

3 I will write that on the sentencing sheet, but  
4 I am making that specific finding on the fact in  
5 case the department of corrections messes that up,  
6 you do have a record of me saying it and I do it on  
7 this written order that states that. Okay?

8 **DEFENDANT:** Yes, Your Honor.

9 (Pause.)

10 **THE COURT:** Do you know how long he's been in  
11 jail, Ms. Zmroczek?

12 **MS. ZMROCZEK:** Your Honor, he has been in since  
13 August 1st, 2016.

14 **THE COURT:** Since August 1st, 2016?

15 **MS. ZMROCZEK:** Correct.

16 **MR. FENDER:** If I may, Judge?

17 **THE COURT:** Yes.

18 **MR. FENDER:** He also has a pending felony DUI.  
19 And I wouldn't be opposed, if he wanted to plea to  
20 that today, to running that in with whatever  
21 sentence Your Honor holds.

22 **THE COURT:** Do you represent him on that,  
23 Ms. Zmroczek?

24 **MS. ZMROCZEK:** I do.

25 **THE COURT:** Do you want to talk about it with

1 him tonight and have him brought back over tomorrow  
2 if he wants to do it?

3 **MS. ZMROCZEK:** If he wants to do -- yeah.

4 **THE COURT:** I don't know that he has enough  
5 information to make that decision right on the spot.

6 **MS. ZMROCZEK:** I don't either.

7 **THE COURT:** But if you want to talk about it  
8 with him afterwards and he wants to do that, I'll be  
9 over here tomorrow morning at 9:30. I'm going to  
10 have one plea and one bond setting, so be here at  
11 9:30 if you want to do it and we can get it done.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** Do you have victim notification  
14 issues on that?

15 **MR. FENDER:** We would need to get the victim,  
16 Judge. The victim's local, though.

17 **THE COURT:** All right. Well, you and  
18 Ms. Zmroczek discuss that later today. If y'all  
19 want to do it tomorrow, I'll be here and happy to do  
20 it. And if not, I understand. No harm, no foul.

21 SENTENCE OF THE COURT

22 **THE COURT:** All right. The sentence of the  
23 Court on the possession of a weapon charge is five  
24 years. The sentence on the armed robbery and the  
25 kidnapping is 25 years. They're all to run

1 concurrent. He's to be given credit for time  
2 served. He's to have no contact with the victim.  
3 He is not to be placed on the South Carolina Sex  
4 Offender Registry. And he's to be given credit back  
5 to August the 1st of 2016. Thank you very much.

6 **MS. ZMROCZEK:** Thank you, Your Honor.

7 **MR. FENDER:** Thank you, Judge.

8 END OF PROCEEDINGS  
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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 6th - 8th of November, 2017.

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

May 7, 2018

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR  
Official Court Reporter

DOCKET NO. 2016-GS-41-312

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0549

Indictment for

POSSESSION OF FIREARM DURING  
COMMISSION OF VIOLENT OFFENSE

DONALD V. MYERS, SOLICITOR

WITNESSES

RSPD

RAFFIELD

ARREST WARRANT NUMBER

2016A4110100115

ACTION OF GRAND JURY

JURY BILL

*Quater S*

Foreperson of Grand Jury

Date:

NOV 01 2016

VERDICT

*Guilt*

*Ernest Michael Watson*

Foreperson of Petit Jury

Date:

11/8/2017

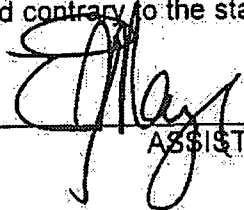
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SALUDA )

INDICTMENT FOR  
POSSESSION OF FIREARM DURING  
COMMISSION OF VIOLENT OFFENSE

At a Court of General Sessions, convened on November 1, 2016, the Grand Jurors of Saluda County present upon their oath:

That DEMARCUS L. ROBINSON, did in Saluda County on or about August 1, 2016, willfully and unlawfully displayed a firearm, during the commission of the violent crime of armed robbery, in violation of and with penalties provided for in §16-23-490, South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

WITNESSES

RSPD

RAFFIELD

ARREST WARRANT NUMBER

2016A4110100114

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
Foreperson of Grand Jury  
Date:

NOV 01 2016

VERDICT

*[Signature]*

*[Signature]*  
Foreperson of Petit Jury  
Date:

11/8/2017

DOCKET NO. 2016-GS-41- 311

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

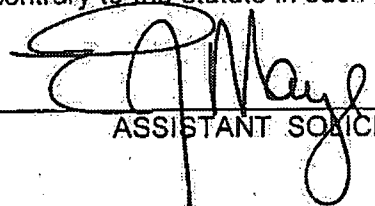
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SALUDA )

INDICTMENT FOR  
  
ARMED ROBBERY

At a Court of General Sessions, convened on November 1, 2016, the Grand Jurors of Saluda County present upon their oath:

That DEMARCUS L. ROBINSON, (ALONG WITH OTHERS) on or about August 1, 2016, in Saluda County at Circle-K located at 300 East Main Street, Ridge Spring, South Carolina, while armed with a firearm, described as grey in color, feloniously, take from William Houston, store clerk, the victim, by means of force or intimidation the goods and/or monies of the victim in that he along with others did threaten the victim with the representation of a firearm, taking goods and/or monies being described as follows: approximately \$69.00 in US currency and/or a carton of Newport cigarettes and/or carbonated beverages with intent to deprive the owner permanently of such property, in violation of § 16-11-330(A), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

WITNESSES

RSPD

RAFFIELD

ARREST WARRANT NUMBER

2016A4110100116

ACTION OF GRAND JURY

FILED

*[Signature]*

Foreperson of Grand Jury

NOV 01 2016

Date:

VERDICT

*GUILTY*

*[Signature]*

Foreperson of Petit Jury

Date: 11/8/2017

DOCKET NO. 2016-GS-41- 310

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0095

Indictment for

KIDNAPPING

DONALD V. MYERS, 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,

*Lara M. Caudy*

Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of June, 2018.

**RECEIVED**

JUN 04 2018

SC Court of Appeals