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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

JUL 29 2016

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

**SC Court of Appeals**

Deandrea G. Benjamin, Circuit Court Judge

Appellant Case No. 2014-002126

The State, Respondent,

v.

Arthur William Macon, Appellant

**RECORD ON APPEAL**

Glenn Walters, Attorney at Law, PA  
R. Bentz Kirby  
Glenn Walters  
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Orangeburg, SC 29116  
803-531-8844  
Attorneys for Appellant

Other Counsel of Record:

Ranee Saunders  
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(803) 748-4785

ATTORNEYS FOR RESPONDENT

## INDEX

1.	Sentence Sheet	1
2.	Indictment for Armed Robbery	2
3.	Arrest Warrant	4
4.	Trial Transcript Excerpts	6
5.	Certification of Counsel	207

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE

INDICTMENT/CASE#: 2013 -GS- 40 - 579

vs Arthur William Macon

AW#: 2013A 4010200696

AKA: \_\_\_\_\_  
Race: Black Sex: Male Age: 30

Date of Offense: 8-30-12

DOB: 8-30-82 SS#: \_\_\_\_\_

S.C. Code §: 16-11-2330(A)

Address: 18 Flora Circle  
City, State, Zip: Columbia SC

CDR Code #: 0139

SENTENCE SHEET

DL# \_\_\_\_\_ SID# \_\_\_\_\_  
\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment, hereby now the Defendant who was TO: Armed Robbery

In violation of § 16-11-2330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] Solicitor SC Bar # 66485 [Signature] Defendant [Signature] Attorney for Defendant SC Bar # 72675

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 23 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 10 mos

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_ Substance Abuse Counseling

*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§47.12 (Public Def/Prob)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
§90.7(SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Clerk of Court/Deputy Clerk: Jeanette McBride  
Court Reporter: [Signature]  
Presiding Judge: [Signature]  
Judge Code: 2161  
Sentence Date: 10-3-14

ORIGINAL

**WITNESSES**

(S) Jason Williams – Richland County  
Sheriff

**ARREST WARRANT NUMBER**

2012A4010200696

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date:

JUL 16 2014

**VERDICT**

Guilty

Foreperson of Petit Jury

Date: 10-3-14

AMENDED

DOCKET NO. 2013GS40000579

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

67

THE STATE  
vs.

Arthur William Macon

**ORIGINAL**

Indictment for  
ARMED ROBBERY

SC Code: 16-11-0330(A)  
CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2



ARREST WARRANT

2012A4010200696

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

THE STATE 1208032230 -R3

against

Arthur William Macon

Address: 18 Flora Circle

Columbia, SC 29223-6906

Phone: (803)699-7220 SSN: 125-68-7518

Sex: M Race: B Height: 5 11 Weight: 172

DL State: SC DL #: 011481011

DOB: 9/30/1984 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Jason Williams - 1340

Offense: Armed Robbery

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

detain with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Arthur Macon on 8-31-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Personally appeared before me the affiant Jason Williams who

being duly sworn deposes and says that defendant Arthur William Macon

did within this county and state on or about 8/30/2012 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Richland Bond Court)

in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 8/30/12 while at 8850 Farrow Rd (TD Bank) in the Upper Township Magisterial District of RICHLAND COUNTY, one Arthur William Macon did commit the crime of Armed Robbery. It is believed the defendant committed the crime Armed Robbery because he did with the intent to permanently deprive TD BANK conspire with his Co-Defendant to rob the bank while using a weapon. The defendant served as a look out as his Co-defendant entered the bank and demanded the teller to put cash into a bag. Once the Co-defendant exited the bank with the money both fled the scene on foot and were later arrested and positively identified by eye witness. Affiant and others are witness to prove same

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/30/2012 defendant Arthur William Macon

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Richland Bond Court as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 8/30/2012

Signature of Issuing Judge (L.S.)

Josef Robinson

Judge Code: 7220

Judge's Address

Judge's Telephone (803)576-2341

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Vertical stamp: RICHLAND COUNTY FILED 2012 SEP 20 AM 11:05 JEANETTE W. HARRIDE C.C.P. & G.S.

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

AFFIDAVIT

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND ) COURT OF GENERAL SESSIONS  
2013-GS-40-00579  
2014-GS-40-03552-03555

State of South Carolina, )  
Plaintiff, )  
vs. ) TRANSCRIPT OF RECORD  
Arthur William Macon, )  
Defendant. )

September 29-October 3, 2014  
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a jury.

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

RICHARD C.R. CATHCART, ASSISTANT SOLICITOR  
JEREMIAH J. SHELLBERG, II, ASSISTANT SOLICITOR  
Attorneys for the Plaintiff

KRISTY G. GOLDBERG, ESQ.  
Attorney for the Defendant

DEBORAH M. McCURDY, RPR  
Official Court Reporter

1 THE COURT: All right, so the motion to  
2 sequester will be granted. Of course the four  
3 victims -- is it four or three?

4 MR. CATHCART: Four victims, three who will be  
5 here.

6 THE COURT: So the three victims, the  
7 investigator, and I am guessing if there is  
8 somebody that is a representative of the bank they  
9 have the right to be here too.

10 The next motion is to reveal the deal.

11 MS. GOLDBERG: And that is a pretty standard  
12 motion in these cases as well.

13 Mr. Colon is a Co-Defendant, and we just  
14 wanted to have put on the record any offers that  
15 have been made to him, any offers that are pending  
16 right now.

17 MR. CATHCART: Mr. Colon is the Co-Defendant  
18 in this case, and also the State will show somewhat  
19 of a victim as well. The deal that was made to him  
20 has always been the deal made to both of them,  
21 entering a bank with intent to steal and get rid of  
22 the kidnappings. That is the extent of the plea  
23 offer, Your Honor. And that was made before any  
24 agreement to testify.

25 THE COURT: All right. And then the motion in

1           limine?

2           MS. GOLDBERG: The Solicitor has informed me  
3           that the parents of the Co-Defendant may be  
4           testifying.

5           As I understand it, they don't have any  
6           factual information about what happened that day.  
7           Maybe I haven't been told that. But, as I  
8           understand it, they are going to testify for two  
9           purposes. One would be the general character,  
10          demeanor, personality, the issues regarding  
11          Mr. Colon related to his disability. The second  
12          would be a conversation that the woman, the mother,  
13          had with my client, Mr. Macon, a couple of weeks  
14          before telling him to not get her son in trouble.

15          Your Honor, those are -- I think all of those  
16          are objectionable evidence, but I do believe at  
17          this -- those issues are better argued later prior  
18          to the State calling those witnesses to determine  
19          whether in fact they are relevant at that time. I  
20          don't think the appropriate -- I wanted to put it  
21          as a pretrial motion so that I can make the Court  
22          and the State aware that I would object, but it may  
23          be more appropriate to proffer that evidence later.

24          THE COURT: All right. Yes, sir?

25          MR. CATHCART: Your Honor, Mr. Colon, the

1 Co-Defendant in this case, is the Defendant's  
2 cousin. When he was 16, the Defendant's cousin, he  
3 was shot by somebody in a -- I want to say a  
4 driveby shooting, but he was an innocent bystander  
5 and got shot in the brain. Because of that, his  
6 parents will be able to describe how he is able to  
7 act, him being the person who has been shot in the  
8 brain will have a harder time to explain what  
9 happened to him and how that has affected him. The  
10 parents are here mainly for the reason to just say,  
11 This is what happened to our son, and because of  
12 that this is how he reacts to people asking him to  
13 do things for them.

14 THE COURT: All right. We'll proffer the  
15 testimony.

16 MS. GOLDBERG: Thank you.

17 THE COURT: Just let us know when you are  
18 getting ready to call them, and we will send the  
19 jury out and proffer the testimony.

20 MS. GOLDBERG: Thank you, Your Honor.

21 THE COURT: All right. And then the next is  
22 the Biggers and the Denno, so whichever one you  
23 want to do first.

24 MR. CATHCART: I guess we will start with the  
25 Neil v. Biggers.

1 in the courtroom.

2 It will also be your duty to write the verdict  
3 on the verdict form, but I will give you further  
4 instructions regarding that at the conclusion of  
5 the case.

6 In order to preserve everyone's rights, I will  
7 give the parties an opportunity to object to  
8 anything that I said. Any exceptions to anything  
9 that I said to the jury? By the State?

10 MR. CATHCART: No, ma'am.

11 THE COURT: Anything by the Defense?

12 MS. GOLDBERG: No, ma'am.

13 THE COURT: All right. Ladies and gentlemen  
14 of the jury, as I stated, you will first hear  
15 opening statements from the State, and then you  
16 will hear from Ms. Goldberg on behalf of the  
17 Defendant.

18 MR. SHELLENBERG: Thank you, Your Honor. May  
19 it please the Court?

20 OPENING STATEMENT

21 MR. SHELLENBERG: On August 30th, 2012, Jason  
22 Colon walked into the TD Bank on Farrow Road. And  
23 he was in there long enough that the bank tellers  
24 and the manager started to think something was a  
25 little off, that he might be about to rob them.

1           And that is when he pulled out the black  
2 pellet gun and demanded money. They gave him just  
3 over \$6,000. And he walked out.

4           He walked out to go meet up with the man who  
5 planned this whole thing, Arthur Macon, his cousin.

6           You see, when Jason Colon was young, he  
7 suffered a traumatic brain injury and is easily  
8 manipulated. His cousin knew that. That is why  
9 his cousin drove him to the bank, gave him the gun,  
10 sent him inside, and he sat outside with a scanner  
11 set to the correct police frequency for the area.

12           Jason Colon was nothing more than another tool  
13 that Arthur Macon used to rob that bank. And that  
14 is why we're here today, ladies and gentlemen.  
15 Arthur Macon is charged with armed robbery and four  
16 counts of kidnapping, one for each of the people  
17 who were in the bank when the armed robbery  
18 occurred. Because in the State of South Carolina,  
19 the hand of one is the hand of all, which means  
20 when Arthur Macon drove Jason Colon to the bank  
21 that day, gave him a gun and sent him inside, it  
22 may as well have been Arthur Macon doing it. He  
23 was just as guilty of the crime.

24           Now, armed robbery is simply defined as taking  
25 the property of another by force or intimidation

1 with a deadly weapon or with an object the victim  
2 reasonably believed to be a deadly weapon.

3 Kidnapping is simply unlawfully confining  
4 someone by any means, not letting them go.

5 Now, ladies and gentlemen, you are going to  
6 get to hear from a lot of different people in this  
7 case. You are going to get to hear from the bank  
8 tellers and the managers that day who will tell you  
9 when Jason Colon came in things were a little off.  
10 They will tell you how he acted before the armed  
11 robbery, during the armed robbery, and then how  
12 when he finished he ran through the woods,  
13 according to the neighbor in the Hilton complex.  
14 You will get to hear a 9-1-1 call where that caller  
15 sees Jason Colon running to the -- next to the  
16 Hilton, and even goes as far as to say, It looks  
17 like he is looking for a ride.

18 Then you get to hear from the two employees at  
19 the Hilton who see both Jason Colon and Arthur  
20 Macon meet up. One of employees actually goes as  
21 far as to confront them. And when he confronts  
22 them, Jason runs off into the woods and Arthur  
23 Macon jumps in his black truck and speeds out of  
24 there.

25 Well, while that is going on, Diana Williams,

1           who you will hear from, sees all of this happen.  
2           She is driving by. And she sees -- Arthur Macon's  
3           car almost runs into her. So what does she do?  
4           There is sirens flashing, everything is going on,  
5           she knows something is wrong. So she follows  
6           Arthur Macon's car into the next complex to the  
7           BB&T.

8                       And she manages to call the police and give  
9           them a description of Arthur Macon, a description  
10          of his black truck with a dent in the side, and  
11          almost a complete license plate number, minus one  
12          obscured letter or number.

13                      So you'll get to hear all that. And then  
14          you'll get to hear from the investigators and  
15          officers on the scene.

16                      You will get to hear how there was a GPS thing  
17          put into the money and they tracked it and they  
18          found the money in the woods. They found Jason  
19          Colon's T-shirt in the woods. They found his hat.  
20          They found the gun. And they later apprehended  
21          Jason Colon.

22                      You will also get to hear how the  
23          identification made by Diana Williams allowed  
24          Arthur Macon to be pulled over shortly from where  
25          the armed robbery happened and arrested.

1           Actually you will get to see the Dash Cam  
2 video of the whole thing. And you'll get to see  
3 the scanner when he was pulled over, the scanner  
4 sitting right there next to him on the seat, set to  
5 the correct police frequency.

6           And you'll get to hear Diana Williams tell you  
7 how after they pulled him over she drove by and she  
8 confirmed that the man that they arrested down the  
9 road was the same man that she saw talking to Jason  
10 Colon in that parking lot.

11           And finally -- finally, ladies and  
12 gentlemen -- you are going to get to hear Jason  
13 Colon take the stand and tell you exactly what  
14 happened that day.

15           He'll tell you how he got in the car with  
16 Arthur Macon and it was Arthur's idea to go to the  
17 TD Bank. It was Arthur's idea to give him a gun.  
18 And it was Arthur's idea to send him in. And when  
19 he came out that is the man he was looking for.

20           And then finally you will get to hear how  
21 Arthur Macon, when he was arrested and the police  
22 asked him if he knew who his own cousin, Jason  
23 Colon, was, he had no idea until the police told  
24 him that Jason Colon was already cooperating. Then  
25 he knew who his cousin was.

1 Ladies and gentlemen, Jason Colon[sic] may  
2 have thought that he was a mastermind, but he is  
3 nothing more than a coward that used his  
4 easily-manipulated cousin to commit an armed  
5 robbery.

6 And at the end of this trial we want you to  
7 hold him accountable for his actions that day and  
8 find him guilty of armed robbery and four counts of  
9 kidnapping.

10 Thank you.

11 THE COURT: Yes, ma'am, Ms. Goldberg?

12 MS. GOLDBERG: Thank you, Your Honor. Beg the  
13 Court's indulgence.

14 (Pause.)

15 OPENING STATEMENT

16 MS. GOLDBERG: Ladies and gentlemen, this is  
17 my client. This is Arthur Macon. And he stands --  
18 or he sits at this table here before you today an  
19 innocent man. He has pled not guilty. He knows  
20 what he has been charged with. And he has told the  
21 Court he is not guilty of the charges.

22 The Court will tell you, and I think they  
23 already have instructed you briefly, that he is  
24 entitled to the presumption of innocence until such  
25 time as the State can prove to you otherwise. That

1 means he's the same as any other person out there,  
2 any person on the street. He is an innocent man.  
3 The State is required to prove to you that he is  
4 guilty beyond a reasonable doubt.

5 Now, they have brought forth five indictments.  
6 You will have copies of these indictments with you  
7 in the jury room when you start deciding this case.

8 And like the judge said, they are not  
9 evidence. They don't mean it is any more likely or  
10 less likely that he is guilty of anything. But  
11 they are what the State has brought forward to say,  
12 this is what we're going to try and prove him  
13 guilty of. This is our case.

14 So when you go back there, read the  
15 indictments. You know, don't just gloss over them  
16 because they are not evidence. Read them. And  
17 then think about what has been presented to you,  
18 think about the evidence, and see if it matches  
19 these indictments.

20 Now, the State, as I said, is required to  
21 prove him guilty beyond a reasonable doubt. You  
22 are all reasonable people. If you doubt at all  
23 that he is guilty, then you have to find him not  
24 guilty. That is just the way the jury system works  
25 here in the country. If you doubt at all --

1           because you are reasonable -- then you have to find  
2           him not guilty.

3           The State, the prosecutors here, have  
4           presented to you a story that they think they are  
5           going to be able to present through their witnesses  
6           a framework. But you are the finders of fact, as  
7           the judge already said. So you are entitled to  
8           believe -- when you hear all the evidence, you are  
9           entitled to decide, Is this story that they gave  
10          you, is it true? Is it partially true? Mostly  
11          true? Not true at all? That is your job. Nobody  
12          else gets to make that decision.

13          In making that decision, when you go back into  
14          that jury room and you decide what you think  
15          happened that day, then you compare it to these  
16          indictments. And that is how you decide what kind  
17          of verdict to render.

18          When you are deciding what happened that day,  
19          there are lots of things you can consider. One is  
20          the evidence, the testimony. The judge already  
21          talked to you a little bit about credibility of  
22          witnesses, but when we talk about credibility, we  
23          don't mean who is lying and who is telling the  
24          truth. It is a lot more complicated than that, as  
25          all of you know.

1           It may just mean, are they sure, like  
2 absolutely sure, or is that what they think? Are  
3 there any assumptions being made? Are there -- is  
4 it possible that a word or a phrase or the way  
5 something is said or asked could mean more than one  
6 thing to different people who are asked or  
7 different people's responses for all of the  
8 particular details out there?

9           So when we talk about credibility, we are not  
10 necessarily accusing any witness up here of lying,  
11 just what do they know and what is accurate based  
12 on what they have seen and what they have been  
13 exposed to.

14           Now, nobody is going to argue in this  
15 courtroom that an armed robbery didn't happen. An  
16 armed robbery happened that day. The only question  
17 that we're leaving up to you all to decide is  
18 whether Mr. Macon was involved in that robbery.  
19 And Arthur has pled not guilty. He has said he is  
20 not guilty.

21           You also can consider in deciding what all  
22 happened that day to think about the investigation  
23 that was done. Was all of the evidence that was  
24 available obtained? Was it all asked for? And of  
25 that evidence that actually exists, have they

1 brought it all to your attention or are they  
2 keeping something back? That is all important.

3 As I said, Mr. Macon has pled not guilty. He  
4 says he is not guilty. There is a lot to consider.  
5 I believe you all will. The trial shouldn't last  
6 all week. It shouldn't last that long.

7 There is going to be witnesses who were able  
8 to see certain things or not see certain things.  
9 Once you have listened to all of that, think about  
10 what they are truly saying, what they truly mean,  
11 and what they truly know and what they just don't.  
12 Compare everything that you find to these  
13 indictments. And we believe you will find him not  
14 guilty.

15 Thank you.

16 THE COURT: Thank you.

17 All right, I am going to ask the State to call  
18 their first witness.

19 MR. CATHCART: Your Honor, the State calls  
20 Marcella DeI Pino.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the  
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 full name.

2 THE WITNESS: Corporal Michael Autry, Richland  
3 County Sheriff's Department.

4 MICHAEL AUTRY,  
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHELLENBERG:

8 Q Good morning, Corporal.

9 A Good morning.

10 Q How long have you been with the Sheriff's  
11 Department?

12 A Almost seven years.

13 Q And what did you do before that?

14 A Retired military, 22 years.

15 Q So were you working with the Sheriff's Department  
16 in 2012?

17 A Yes, sir.

18 Q In what capacity?

19 A As a master deputy in Region 3.

20 Q And what does that entail?

21 A All the duties of a road supervisor, or as a road  
22 patrol officer, as well as assisting the shift  
23 leader with his duties.

24 Q So you were out patrolling on the road?

25 A Yes, sir.

1 Q And did you ever respond to a crime that day?

2 A I did, on the 30th of August, yes, sir.

3 Q 30th of August? And what was that?

4 A We got a tone out for a bank robbery that had just  
5 occurred at 8550 Farrow Road in Richland County at  
6 the TD Bank.

7 Q And were you already in the area?

8 A Yes, sir, I was up the road around Farrow and  
9 Rabon.

10 Q And so approximately how long did it take you to  
11 respond?

12 A Less than four minutes.

13 Q And once you got there, what did you?

14 A I parked at a corner of the building, did a quick  
15 scan to see if I saw anything. I went in the front  
16 door. I don't remember what teller it was, I just  
17 picked the first person I saw and said, Where did  
18 he go?

19 They said, Around the side of the bank.

20 So I went through the bank to the back doors.  
21 Went outside. I looked. I didn't see anybody  
22 running. I went ahead and came back inside, got on  
23 the radio, and started setting up a perimeter.

24 Q And were you first one on the scene?

25 A Yes, sir.

1 Q Now, when you said that they said that he went  
2 through -- around the bank and out back, where was  
3 he going towards?

4 A Towards -- there is a patch of woods between the  
5 bank and there is a hotel.

6 Q Okay.

7 Your Honor, may he step down?

8 THE COURT: Yes.

9 (Witness steps down.)

10 MS. GOLDBERG: Your Honor, if I may?

11 THE COURT: Yes, ma'am.

12 MS. GOLDBERG: Thank you.

13 (Repositions.)

14 BY MR. SHELLENBERG:

15 Q You said you responded to TD Bank?

16 A Yes, sir.

17 Q And do you see the location?

18 A Yes, sir.

19 Q Where is that?

20 A Right here(indicating).

21 Q Right here(indicating)? And where did the teller  
22 say that he had fled to -- the Defendant fled to?

23 A Around the side of the bank in this  
24 direction(indicating).

25 Q Through these woods(indicating)?

- 1 A Yes, sir.
- 2 Q And do you know what this building is(indicating)?
- 3 A This is the Hilton Garden Inn(indicating).
- 4 Q This is Hilton Garden Inn right here(indicating)?
- 5 A Yes, sir.
- 6 Q And do you recognize this building as
- 7 well(indicating)?
- 8 A Yes, sir, that is another bank, the BB&T.
- 9 Q That is the BB&T(indicating)? All right, so when
- 10 you responded, you set up a perimeter around TD
- 11 Bank?
- 12 A When I responded, I parked here(indicating). Came
- 13 in the front door, ran through, came out the back
- 14 and checked it to see if I saw anybody running to
- 15 possibly give pursuit. Did not. Went bank inside
- 16 the bank. I got on the radio. And then I started
- 17 setting up units as they were coming in. I know I
- 18 set up one over here(indicating). I told one to go
- 19 to the intersection of the railroad tracks and
- 20 Flint Lake. Another one at Farrow and Flint Lake.
- 21 I was basically trying to box in this entire area.
- 22 Q And why would you do that?
- 23 A So that when K-9 got there we could possibly
- 24 establish a track. The concept is to get everybody
- 25 in a perimeter with the blue lights and keep the

1 suspect hunkered down so the --

2 THE COURT REPORTER: I'm sorry, I can't hear  
3 you.

4 THE WITNESS: Ma'am?

5 THE COURT REPORTER: I couldn't hear you.

6 A The idea is to get everybody in a square perimeter  
7 to keep the suspect inside the perimeter and keep  
8 him hunkered down so the dog can track to him.

9 Q And at that point did you have any information  
10 about a second suspect?

11 A I was told --

12 MS. GOLDBERG: Objection.

13 A I'm sorry?

14 THE COURT: What is the question again?

15 MR. SHELLBERG: If he had any information  
16 about a second suspect.

17 THE COURT: And what is the objection?

18 MS. GOLDBERG: Hearsay.

19 THE COURT: All right. The objection will be  
20 overruled. He can say what information he had, but  
21 he can't say who told him what.

22 MR. SHELLBERG: Yes, ma'am.

23 BY MR. SHELLBERG:

24 Q So you did find a second suspect?

25 A Yes. We received information on a radio that a

1 black truck with a black male driver in a yellow  
2 shirt had spun out of this parking lot at a high  
3 rate of speed headed this way on Farrow Road.

4 Q No further questions about that. You can take the  
5 stand.

6 (Witness returns to witness stand.)

7 MR. SHELLENBERG: Beg the Court's indulgence,  
8 Your Honor.

9 (Pause.)

10 BY MR. SHELLENBERG:

11 Q So when you set up the perimeter, approximately how  
12 many deputies were coming in?

13 A There were multiple units. Farrow Road is actually  
14 the border between Region 3 and Region 2, so there  
15 were -- within five to six minutes there were  
16 probably seven, eight, nine units in the area,  
17 including K-9, who also responded to the tone out.

18 Q All right.

19 MR. SHELLENBERG: Beg the Court's indulgence.

20 (Pause.)

21 BY MR. SHELLENBERG:

22 Q When you did set up a perimeter, what did you tell  
23 people to look for at that point?

24 A I was given a description of a -- excuse me, I have  
25 to hold it out here, I don't have my glasses -- a

1 black male in blue jeans, white shirt, and a cap,  
2 with cornrows, approximately 6 foot 2, 160 pounds.

3 Q And where did you say this took place?

4 A 8550 Farrow Road in Richland County.

5 Q And --

6 MR. CATHCART: Your Honor, at this time -- we  
7 are waiting for the thing to work, it is locked up  
8 on the printing -- we are going to print out the  
9 picture of the map. We ask that be entered into  
10 evidence as -- what number?

11 MR. SHELLBERG: That will be State's 24.

12 MS. GOLDBERG: No objection.

13 THE COURT: Any objection? All right.  
14 State's 24. That is a map, you said?

15 MR. CATHCART: Yes, ma'am, that he drew the  
16 locations.

17 MR. SHELLBERG: No further questions.

18 MS. GOLDBERG: May it please the Court?

19 CROSS-EXAMINATION

20 BY MS. GOLDBERG:

21 Q Deputy, you first heard about the armed robbery  
22 over the radio?

23 A Yes, ma'am.

24 Q And you arrived in less than four minutes; is that  
25 right?

1 A Yes, ma'am.

2 Q And when you got there, the bank robber was already  
3 gone?

4 A Yes, ma'am.

5 Q You didn't see him anywhere?

6 A No, ma'am.

7 Q You didn't see exactly which direction he went?

8 A No, ma'am.

9 Q You only know what you were told?

10 A Yes, ma'am.

11 Q Thank you.

12 MS. GOLDBERG: No further questions.

13 THE COURT: All right, any other questions  
14 from the State?

15 MR. SHELLBERG: No, Your Honor.

16 THE COURT: All right, thank you.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness steps down.)

19 THE COURT: So that is the actual document  
20 that needs to go in evidence?

21 MR. SHELLBERG: It is coming now. Yes,  
22 ma'am. Do you want to look at it?

23 MS. GOLDBERG: No, I'm good.

24 (WHEREUPON, State's Exhibit No. 24 was  
25 marked for identification and received

1 into evidence.)

2 MR. SHELLBERG: The State calls Kim Gathers.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the  
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the  
8 testimony you give in this case will be the truth,  
9 the whole truth, and nothing but the truth, so help  
10 you God?

11 THE WITNESS: I do.

12 THE CLERK: Please have a seat. State your  
13 full name for the record.

14 THE WITNESS: Kimberly Gathers.

15 KIMBERLY GATHERS,  
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHELLBERG:

19 Q Good morning.

20 A Good morning.

21 Q And where are you employed?

22 A I am employed at Columbia Richland 9-1-1.

23 Q And how long have you been there?

24 A I have been there for 29 years.

25 Q And what is your position there?

- 1 A My position is director.
- 2 Q And are you familiar with how 9-1-1 calls are kept  
3 and maintained?
- 4 A Yes.
- 5 Q And how is that done?
- 6 A All calls that come into the 9-1-1 center are  
7 digitally recorded. We have both a primary and a  
8 backup recording system, and they are maintained at  
9 the 9-1-1 center.
- 10 Q And are they kept in the ordinary course of  
11 business?
- 12 A Yes.
- 13 Q I want to show you what has been marked for  
14 identification as State's 25. Do you recognize  
15 that?
- 16 A Yes.
- 17 Q And have you had a chance to listen to that?
- 18 A Yes.
- 19 Q And was it created in the normal course of  
20 business?
- 21 A Yes.
- 22 Q And has the call in any way been changed since it  
23 has been created?
- 24 A No.
- 25 MR. SHELLENBERG: Your Honor, at this time I

1 move State's 25 into evidence.

2 THE COURT: Any objection?

3 MS. GOLDBERG: No objection, Your Honor. I  
4 just actually looked at it, though. I received it  
5 in discovery by e-mail, and I just wanted to see  
6 the CD, if there is a label on it.

7 (Pause.)

8 (WHEREUPON, State's Exhibit No. 25 was  
9 marked for identification and received  
10 into evidence.)

11 MR. SHELLBERG: Your Honor, at this time  
12 may I publish it to the jury?

13 THE COURT: Yes, sir. And that is 25.

14 (WHEREUPON, State's Exhibit 25 was  
15 played in open court.)

16 MR. SHELLBERG: No further questions, Your  
17 Honor.

18 THE COURT: All right. Yes, ma'am?

19 MS. GOLDBERG: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. GOLDBERG:

22 Q Ms. Gathers, the CD that was introduced into  
23 evidence -- I guess this is it right here -- is  
24 that your handwriting?

25 A No, this is not my handwriting.

1 Q Okay. So how do you recognize that?

2 A We have three individuals in our communications  
3 center that make recordings, and I recognize this  
4 as Ms. Richburg's handwriting.

5 Q Very good. Thank you very much. Now, do you know  
6 how that recording came to be requested from your  
7 office? Who requested it?

8 A It was requested by the Solicitor's Office.

9 Q By the Solicitor's Office?

10 A Uh-huh.

11 Q Do you know how many 9-1-1 calls were given to the  
12 Solicitor's Office in response to their request?

13 A I'm not certain of the number.

14 Q Okay. You don't have any information that was the  
15 only 9-1-1 call given to them?

16 A No.

17 Q It may have been two, three calls?

18 A Correct.

19 Q Do you have any knowledge about if any of them  
20 belonged to Diana Williams?

21 A No.

22 Q You don't know either way?

23 A No.

24 MS. GOLDBERG: Beg the Court's indulgence.

25 (Pause.)

1 MS. GOLDBERG: No further questions.

2 THE COURT: Anything else from the State?

3 MR. SHELLBERG: No, Your Honor.

4 THE COURT: All right, ma'am, you may step  
5 down.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 THE COURT: Any objection to this witness  
9 being excused?

10 MS. GOLDBERG: No, ma'am.

11 THE COURT: All right, ma'am, you are free to  
12 leave.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. CATHCART: Your Honor, at this time the  
16 State calls Kevin Whaley.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the  
19 Bible, and raise your right hand, please.

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the  
22 testimony you give in this case will be the truth,  
23 the whole truth, and nothing but the truth, so help  
24 you God?

25 THE WITNESS: I do.

1 THE CLERK: Please have a seat, and state your  
2 full name for the record.

3 KEVIN WHALEY,  
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CATHCART:

7 Q Mr. Whaley, where are you employed?

8 A At the Hilton Garden Inn Hotel.

9 Q Is that the one right beside the TD Bank?

10 A That's correct.

11 Q What is in between the Hilton and the TD?

12 A It is a forest. Bushes and trees. Not much,  
13 though.

14 Q A small forest?

15 A A small forest. Yes, thank you.

16 Q And were you employed there back on August 30th of  
17 2012?

18 A I was, yes.

19 Q In what capacity?

20 A In what capacity?

21 Q Yes. What do you do?

22 A Oh, I'm sorry.

23 Q Or did you do?

24 A I was the food and beverage director.

25 Q Okay.

1 A Uh-huh.

2 Q Did you come to work that day?

3 A That's correct, yes.

4 Q Do you recall around what time you came to work  
5 that day?

6 A It was about 4:30, close to 5:00. 4:30, close to  
7 5:00.

8 Q And what if anything did you observe out of the  
9 ordinary when you came to work that day?

10 A When I came to work that day, when I got out the  
11 car and I was headed towards the entrance of the  
12 building, I noticed there was a gentleman between  
13 two cars on both knees kneeling down.

14 Q Okay. And what did you do when you noticed him?

15 A I asked him what was he doing.

16 Q And why did you take it upon yourself to do that?

17 A Because in the past at that hotel we had several  
18 break-ins of automobiles of the hotel guests, and  
19 so it is just normal for the managers to kind of  
20 scan the area before we go in.

21 Q Okay. And what was he doing while he was kneeling  
22 there in between those two cars?

23 A It looked like he was trying to take off his shirt.  
24 Uh-huh.

25 Q And when you confronted him and asked him what he

- 1           was doing, what occurred at that point?
- 2    A    He didn't say anything. He looked at me
- 3           surprisingly.
- 4    Q    Okay.
- 5    A    But he didn't mention anything to me.
- 6    Q    And what occurred after that?
- 7    A    After that I walked towards him and I asked him
- 8           again loudly, What are you doing?
- 9           And that is when he got up and started to take
- 10          off.
- 11   Q    When you say *take off*, what do you mean exactly?
- 12   A    Running.
- 13   Q    Running?
- 14   A    Uh-huh.
- 15   Q    Which way did he run?
- 16   A    Towards the back of the hotel.
- 17   Q    Okay. Which -- is that towards Farrow Road?
- 18   A    The opposite.
- 19   Q    The opposite?
- 20   A    Yes.
- 21   Q    Towards -- what is out towards the back?
- 22   A    It is a vacant lot owned by a local construction
- 23          company.
- 24   Q    And is there anything going across that vacant lot
- 25          as well?

1 A Railroad tracks.

2 Q Okay. And so that is the direction he ran?

3 A That's correct.

4 Q Away from the hotel?

5 A Away from the hotel.

6 Q Did you lose sight of him at any point after he ran  
7 away from the hotel?

8 A No, sir.

9 Q Why is that?

10 A Because I was right behind him, running behind him.

11 Q And at some point did you notice that police were  
12 in the area as well?

13 A I did notice police at an intersection at the  
14 railroad track.

15 Q Okay.

16 A And I was yelling to get their attention. And  
17 finally one or two deputies came out and started  
18 running in our direction.

19 Q Okay. And then what occurred at that point?

20 A Well, I tried to grab the guy, became very close to  
21 him, and a little scuffle. He tried to get away  
22 from me. But at that time Richland County finally  
23 managed to get up and catch up with us.

24 Q Did you notice anything about him that was unusual?

25 A He was just like eyes bulging, like there was

1 definitely something going on, like he just got  
2 himself into something.

3 I heard police sirens going off in the  
4 background, so it wasn't hard to put two and two  
5 together.

6 Q And so when you saw him in between two cars, which  
7 side of y'all's parking lot was that on? Was that  
8 on the far side or on the hotel side?

9 A It was on the -- not on the hotel side, the far  
10 side nearest the bank.

11 Q Towards the bank?

12 A Towards the woods.

13 Q Towards the forest?

14 A Right next to the woods.

15 Q Okay. So he never had an opportunity, as far as  
16 you know, to get into the parking lot, you stopped  
17 him before that happened?

18 A That's correct.

19 Q Please answer any questions from Defense counsel.

20 THE COURT: Yes, ma'am?

21 MS. GOLDBERG: No questions. Thank you.

22 THE COURT: All right, sir, you may step down.

23 THE WITNESS: Okay.

24 (Witness steps down.)

25 MR. CATHCART: May this witness be excused,

1 Your Honor?

2 MS. GOLDBERG: No objection.

3 THE COURT: All right, sir, you are free to  
4 leave.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 MR. CATHCART: The State calls Ashish Desai.

8 (Witness approaches.)

9 THE BAILIFF: Place your left hand on the  
10 Bible, and raise your right hand, please.

11 (Witness complies.)

12 THE CLERK: Do you swear or affirm the  
13 testimony you give in this case will be the truth,  
14 the whole truth, and nothing but the truth, so help  
15 you God?

16 THE WITNESS: I do.

17 THE CLERK: Please have a seat, and state your  
18 full name for the record.

19 THE COURT: Yes, sir.

20 ASHISH DESAI,  
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CATHCART:

24 Q Mr. Desai, where are you employed?

25 A I am the general manager of the Hilton Garden Inn

1 on Farrow Road.

2 Q And was that your job back in August 30th, 2012?

3 A That is correct.

4 Q And on that date were you on duty at the hotel?

5 A That is correct.

6 Q What if anything did you notice unusual around 4:30  
7 to 5:00 on that day?

8 A Actually, I received a call from my food and  
9 beverage manager, Kevin Whaley, as he was going  
10 after someone. He said, Something is wrong. We  
11 don't know what is going on. Some guy is running.

12 So I left my office to see what was going on.  
13 And I just caught a black truck swerving out  
14 speeding through our parking lot.

15 Q And it was a black -- what kind of truck?

16 A A black pickup truck.

17 Q Okay. And when you saw it, what -- I guess what  
18 drew your attention to that black pickup truck?

19 A It was speeding, probably in excess of 45 to 50,  
20 through our parking lot.

21 Q Okay. And going where?

22 A Towards the main road. Towards the --

23 Q Okay. Did you see where it went after it went on  
24 the main road?

25 A I believe it turned right and it went to BB&T Bank,

1           which is on the east side of us.

2       Q     Were you able to get a tag?

3       A     No, sir.

4       Q     Were you able to see the driver?

5       A     No, sir.

6       Q     Please answer any questions from Defense counsel.

7           MS. GOLDBERG: Beg the Court's indulgence.

8           (Pause.)

9                           CROSS-EXAMINATION

10       BY MS. GOLDBERG:

11       Q     Mr. Desai, that is all you saw?

12       A     Yes.

13       Q     All right, thank you. No questions.

14       A     Okay.

15           MR. CATHCART: Nothing further from the State,  
16       Your Honor. I would ask that he be excused as  
17       well.

18           THE COURT: Any objection?

19           MS. GOLDBERG: No, ma'am.

20           THE COURT: You may be excused.

21           (Witness steps down and is excused.)

22           MR. CATHCART: At this time the State calls  
23       Diana Williams.

24           THE COURT: All right.

25           THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the  
4 testimony you give in this case will be the truth,  
5 the whole truth, and nothing but the truth, so help  
6 you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, and state your full  
9 name for the record.

10 THE WITNESS: Diana Williams.

11 DIANA WILLIAMS,

12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CATHCART:

15 Q Ms. Williams, where are you employed?

16 A I work for the South Carolina Athletic Commission.

17 Q And what do you do there?

18 A I run and handle all athletic combative sports for  
19 the state.

20 Q What --

21 A Combative sports, which include boxing, MMA,  
22 wrestling, TUFFMAN, office tree boxing, jiu-jitsu,  
23 MOITAI, kickboxing, any combative sport within our  
24 state, I run that department.

25 Q And -- that's cool -- were you -- what were you

1           doing on August the 30th of 2012?

2    A       Leaving a doctor's appointment at the Moncrief  
3           off-post medical center.

4    Q       Okay. And as you were leaving that doctor's  
5           appointment, what if anything did you observe that  
6           you found unusual?

7    A       Leaving the appointment, there were more police  
8           officers than usual that had passed my vehicle as I  
9           was making a right-hand turn onto Farrow Road.

10   Q       Okay. And what if anything occurred when you took  
11          that right turn onto Farrow Road?

12   A       I drove up a little bit further and I noticed all  
13          of the officers had pulled into a TD Bank parking  
14          lot, and they were pretty much surrounding the  
15          bank.

16   Q       Okay. And what else did you observe?

17   A       I drove up a little further. After I was able to  
18          drive past -- each time I had to pull over on the  
19          shoulder into the grass area to allow them to pass  
20          by. And as I drove up a little further, I noticed  
21          that there was a gentleman that was running from  
22          the bank lot into the wooded area that was between  
23          the TD Bank and the Hilton Garden Inn parking --  
24          or -- there is a common grassy, wooded area that is  
25          between the two buildings.

1 Q And is that where you saw that man?

2 A Yes.

3 Q Okay. And what if anything did you do after that?

4 A I -- he looked suspicious. So I picked up my cell  
5 phone and I called 9-1-1. And I figured the  
6 police -- everything happening at one time, it  
7 just -- common sense told me that something wasn't  
8 right. This gentleman was fleeing from an area  
9 while the police were parked in this area, and he  
10 did not look as if he should have even been there.

11 So I called 9-1-1 and told them that there was  
12 a gentleman that looked suspicious. I wasn't sure  
13 what had happened, but he may possibly be a person  
14 that they are looking for if they were looking for  
15 someone.

16 Q Okay. And what occurred after you called 9-1-1 and  
17 told them that?

18 A I drove up a little further, and I saw the  
19 gentleman coming out of the wooded area. And I at  
20 that time had already decided to pull into the  
21 parking lot because there were more officers that  
22 were driving past me. And so I pulled into the  
23 parking lot of the Hilton Garden Inn.

24 Q Okay.

25 A And there I saw the man that had ran into the woods

1           conversing with another gentleman in the parking  
2           lot of the Hilton Garden Inn Hotel.

3       Q     Can you describe how that gentleman looked?

4       A     He was a black gentleman, dark skin; he had an  
5           afro; and a yellow shirt on.

6       Q     Okay. What kind of yellow shirt?

7       A     A yellow T-shirt.

8       Q     Okay.

9       A     And they were conversing back and forth and seemed  
10           to be in a panic trying to figure out what they  
11           were going to do.

12                 I then saw the gentleman in the yellow shirt  
13           point towards the back of the parking lot of the  
14           hotel as if he was telling the gentleman in the  
15           white or tannish color shirt to go back that way.  
16           And he got in the vehicle.

17       Q     Who got in vehicle?

18       A     The gentleman in the yellow shirt.

19       Q     Okay. The guy in the yellow shirt got into the  
20           vehicle?

21       A     Yes.

22       Q     The same guy you saw conversing with the guy that  
23           had just come out of woods?

24       A     Yes.

25       Q     Okay.

- 1 A And then I saw him get into the vehicle and he went  
2 to back out and almost hit my vehicle.
- 3 Q Okay. And how far away were you when you saw this  
4 occur?
- 5 A I was -- as I -- which part, the part where I saw  
6 them conversing or when he got into his vehicle?
- 7 Q Okay, when he got into his vehicle?
- 8 A Close enough where I was right at his bumper.
- 9 Q Okay.
- 10 A So he would have hit my front tire, my front  
11 driver's tire backing up had he not stopped.
- 12 Q Okay. Did -- so he stopped before he hit you?
- 13 A Yes.
- 14 Q Did he -- I assume at that point -- see you?
- 15 A Yes.
- 16 Q Did you see him?
- 17 A Yes.
- 18 Q Did you see his face?
- 19 A Yes.
- 20 Q How did -- were you able to see his face?
- 21 A Because he turned around and looked at me. My  
22 window was down and his was as well.
- 23 Q Okay. And did y'all look eye to eye?
- 24 A Yes.
- 25 Q How far away were you from his face when you saw

1 him?

2 A A few feet because of where -- I drive a truck, or  
3 a sports utility vehicle, and it was a pickup  
4 truck. The bed of the truck was down, but he was  
5 close enough where he was already backing out of  
6 the space.

7 Q Okay. And so that is the same person with the  
8 yellow shirt?

9 A Yes.

10 Q The same person you saw conversing with the guy  
11 that popped out of the woods?

12 A Yes.

13 Q The same guy who was running through the woods when  
14 the police were arriving?

15 A Yes.

16 Q Describe the truck he was driving?

17 A It was a black pickup truck. It had a dent on the  
18 left side. And the bed of the truck -- pickup  
19 truck was down.

20 Q Okay. What did you do at that point when you -- he  
21 almost hit you?

22 A Well, the entire time I was still on the phone with  
23 the 9-1-1 operator, so I was actually telling her  
24 step by step everything that was happening that I  
25 saw. And I explained that it looked like these two

1 people were together.

2 She had stated that there was a bank robbery  
3 in the area and she was getting on the phone with  
4 the police to let them know where I was.

5 She asked me my type of vehicle, and I began  
6 giving her a detailed description of the pickup  
7 truck, of what I saw at that time.

8 I gave her as much of the license plate number  
9 as I could give her. The right side of the plate  
10 wasn't completely visible because the bed was down.  
11 The left side was more visible to me because that  
12 is the side I was closest to. So when he backed  
13 out of the parking space and I pulled up a little  
14 further, I didn't continue driving, I looked in my  
15 rearview mirror and actually turned around to try  
16 to see if I could get a clear view of the plate.

17 And he sped off and sped out, and she just  
18 instructed me not to follow the vehicle at that  
19 time. So I drove around the back of the hotel  
20 where I saw the gentleman that I initially saw  
21 running into the woods over by -- there is a sandy  
22 area next to the railroad tracks.

23 Q Uh-huh.

24 A And he was standing over there talking to another  
25 gentleman.

1 Q Okay.

2 A So they -- I was explaining to her I can see the  
3 police lights, wherever the police are these  
4 gentlemen are there as well, but I don't see where  
5 the police are catching them, but I see them there  
6 speaking with one another.

7 Q Okay.

8 A And as I was speaking with her, I saw the black --  
9 same black pickup truck in the parking lot next  
10 door at the BB&T Bank.

11 Q Okay.

12 A And it was parked in the side where the ATM teller  
13 machine is located, the outside teller machine.

14 Q Did you say you saw the police?

15 A I did. I could see the police lights.

16 Q Uh-huh.

17 A And I could see all the cars that had sped past me  
18 when I had pulled into the Hilton Garden Inn  
19 parking lot. But there is -- in between that area  
20 there is another small area of grass and trees.  
21 And then there is a side street that you can drive  
22 up that leads closer to where the tracks are.

23 Q Okay. That is where the police were at that point?

24 A That is where they were, yes.

25 Q Were they in the BB&T parking lot?

1 A No. The black truck was in the BB&T parking lot,  
2 but the police were not.

3 Q Okay.

4 A The police were only on that side street and in the  
5 parking lot of the TD Bank.

6 Q So that is the one place there was a free zone?

7 A Yes.

8 MS. GOLDBERG: Objection.

9 A Actually two places.

10 THE COURT: Hold on. Hold on one second.

11 MS. GOLDBERG: I withdraw it.

12 THE COURT: All right.

13 MS. GOLDBERG: I didn't hear him correctly.

14 THE COURT: Okay.

15 A Actually there were two places that were police  
16 free. Well, three if you include Farrow Road. The  
17 other area that was free of police was the Hilton  
18 Garden Inn parking lot and the second place was the  
19 BB&T Bank parking lot.

20 Q Okay. What did you do when you noticed that that  
21 pickup truck that almost hit you and sped away was  
22 now there at the BB&T?

23 A I told the 9-1-1 operator that I saw the pickup  
24 truck in that parking lot. And I drove out and  
25 drove over to BB&T to try to get a closer look at

1 the vehicle, but I -- to see if I could get the  
2 plate. And at the time I could see the driver  
3 looking back towards that area where the other two  
4 gentlemen were standing.

5 Q Okay. Looking back to where the guy who had popped  
6 out of woods before --

7 A Yes.

8 Q -- who you spoke to, got scared off --

9 A Yes.

10 Q -- and then he drove off?

11 A Yes.

12 Q You saw him looking back to them?

13 A Yes.

14 Q Okay. And then what occurred?

15 A I pulled in and tried to use my phone to see if I  
16 could take a picture of the license plate, to kind  
17 of zoom in, and I wasn't able to. It was coming  
18 out -- I think I was shaking, so it kind of came  
19 out blurry.

20 And then I was able to get a little closer and  
21 get the tag number, and I gave the 9-1-1 operator  
22 the possible two numbers that I thought that that  
23 license plate may have been.

24 Q Okay. And then what occurred after that?

25 A She said she had another officer on the line, and

1           asked me to turn out and drive -- I'm sorry, let me  
2           back up. The pickup truck finally pulled out of  
3           the parking lot and left and started driving down  
4           Farrow Road.

5    Q       Let me ask you this. Before he finally drove off  
6           and left, what if anything occurred to the guy who  
7           popped out of the woods?

8    A       He was -- I -- I wasn't paying attention to him any  
9           longer. At that time I was really -- I had taken  
10          my eyes off of the people that were in the area.

11   Q       Well, if you don't know, that's fine.

12   A       So I'm not sure. I just know that the last I  
13          looked in the area I did notice that there were two  
14          gentlemen that were standing by the wooded area,  
15          but I didn't know who those two gentlemen were or  
16          who the second person was. I just knew one of the  
17          people was definitely the gentleman that had come  
18          out of the woods.

19   Q       Okay. And the police were nearby?

20   A       The police were definitely nearby, yes.

21   Q       Okay. As he drove away, what did you do at that  
22          point?

23   A       The operator suggested that I drive out and that  
24          she was putting a notice out to the police to let  
25          them know the details that I had given them on the

1 pickup truck.

2 Q I mean, as to the pickup truck, did you also  
3 describe the driver to them?

4 A Yes, I did. I gave a complete description of the  
5 driver several times to the 9-1-1 operator. And I  
6 felt like I repeated myself more times than I  
7 probably needed to because I felt as if she -- when  
8 she was repeating back to me what I stated to her,  
9 it seemed as if she was leaving out really  
10 important details of the driver and the truck.

11 Q Okay.

12 A So I tried to be as detailed as possible, not just  
13 being vague that it was a black pickup truck, but  
14 making sure that I noted that there was a dent in  
15 the truck. And I don't even remember if I even may  
16 have mentioned what type of tires were on there. I  
17 was really looking at details, so --

18 Q You were talking about the type of shirt?

19 A Type of shirt.

20 Q About what the guy looked like?

21 A Yeah. Yes.

22 Q At that point did you have an opportunity to speak  
23 to any officers?

24 A Yes. She asked me to turn out and to turn onto the  
25 street where I did see the police officers. And I

1           drove down that side street. And there were tons  
2           of police cars out there.

3                     She asked that I get out and ask for a  
4           specific officer. I'm sorry, I don't remember the  
5           name of the officer she told me to speak with. But  
6           at that time all the officers started walking  
7           towards me. And I think they were a little  
8           confused as to what I was doing there. They  
9           weren't even aware that someone had called in to  
10          give them any details about the pickup truck at  
11          that time.

12    Q     Okay.

13    A     But because it had all transpired within minutes of  
14          me meeting up with them, Officer Mazerolle -- am I  
15          saying his name correctly?

16    Q     Uh-huh.

17    A     He walked over to me and asked me what was going  
18          on, what I needed. And initially he was telling me  
19          I needed to step back, until he realized that I had  
20          witnessed everything from the time the gentleman  
21          had left the parking lot.

22                     I quickly explained to him, I can tell you all  
23          of that later, but allow me to at least let you  
24          know about this truck.

25                     And he immediately got on the phone with other

1           dispatch officers and started to give the same  
2           description that I gave, along with the license  
3           plate number.

4       Q     Okay.

5       A     And I told him what I had seen and what had  
6           happened.

7           He then a few minutes later told me that they  
8           had pulled over a vehicle and if I could just hold  
9           on and wait.

10          And then a few minutes later he asked if I  
11          would be willing to make an ID of the person who I  
12          saw in that parking lot.

13       Q     Okay. And how is that performed?

14       A     He stated -- we were in the middle of traffic on  
15          Farrow Road, so he asked that I drive behind him  
16          slowly. It was kind of impossible not to go slow  
17          anyway during that traffic. He suggested that I  
18          not slow down and just go with the flow of traffic  
19          and I would be able to see everyone that was  
20          outside, and to just look. And then I should not  
21          pull over until he pulled over.

22          So we drove down Farrow Road and there were a  
23          lot of police cars. I saw the pickup truck. And I  
24          saw the gentleman that I saw driving the pickup  
25          truck standing outside, along with several other

1 people that were in plain clothes, as well as  
2 uniforms.

3 Q Okay.

4 A We got about almost a mile up the road, and he  
5 pulled over on the side of the road and walked back  
6 to my vehicle. And he asked me if I had seen the  
7 gentleman I saw driving. I told him yes. He asked  
8 me to give him a description. I gave him the same  
9 description that I had given him as well as the  
10 9-1-1 operator. And he walked away from my vehicle  
11 and then he came back. He walked away and he was  
12 speaking on his -- what do you call it?

13 Q Walkie-talkie?

14 A Walkie-talkie. And he came back and said he would  
15 need me to come to the Police Department to make a  
16 statement if I could.

17 Q And did you do that as well?

18 A Yes. I asked him if I could leave. I needed to  
19 pick my children up, so I left to pick my children  
20 up. And then I drove directly to the Police  
21 Department.

22 Q When you drove by him, was there anybody in the car  
23 with you?

24 A No. I was by myself.

25 Q Did anybody point to him and say, This is the guy?

1 A No. It was just me. I was the only person. I was  
2 leaving a doctor's appointment, and there was no  
3 one else in the vehicle with me. And the next time  
4 I had someone in the vehicle with me is when I  
5 picked my children up.

6 Q Is the person that you saw after the traffic stop  
7 the same person that you saw at the Hilton Inn?

8 A Yes.

9 Q The same -- he was wearing the same shirt?

10 A Yes.

11 Q Same driver?

12 A Yes.

13 Q Same pickup truck?

14 A Yes.

15 Q Same dent?

16 A Yes. Same bed down. Same license plate.

17 Q That is the same person that you saw conversing  
18 with the guy who was fleeing the bank?

19 A Correct.

20 MR. CATHCART: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. CATHCART:

23 Q Please answer any questions from Defense counsel.

24 THE COURT: Yes, ma'am?

25 MS. GOLDBERG: Thank you.

CROSS-EXAMINATION

1

2 BY MS. GOLDBERG:

3

4 Q Good morning, Ms. Williams.

5

6 A Good morning.

7

8 Q So the first thing that alerted your attention was  
9 the number of police cars in the area?

10

11 A Well, the number of police that were driving past  
12 me, yes.

13

14 Q And you saw them go into the bank?

15

16 A Yes, they pulled into the bank parking lot.

17

18 Q They all had blue lights and sirens going?

19

20 A Yes, ma'am.

21

22 Q How many officers -- how many cop cars do you think  
23 were at the bank parking lot?

24

25 A I can't answer that question. There were a lot.

26

27 Q A lot?

28

29 A And usually when you see a lot of lights the cars  
30 really don't matter because you just see a lot of  
31 lights.

32

33 Q Right. Understood.

34

35 A So --

36

37 Q A lot going on?

38

39 A More than usual.

40

41 Q Right. And then you saw someone who you believed  
42 looked suspicious?

43

44

- 1 A Yes.
- 2 Q In the bank parking lot?
- 3 A Running from the bank parking lot.
- 4 Q From the bank parking lot?
- 5 A Into the common wooded area, yes.
- 6 Q Was he going in a particular direction or was he  
7 kind of going in circles? Or how would you  
8 describe how he was acting?
- 9 A He ran at an angle. He was running from the bank  
10 itself. There is not much room. There is a small  
11 parking area, I guess, where you can do the  
12 drive-through on the side of the bank.
- 13 Q Uh-huh.
- 14 A So your options are either you run to the back of  
15 the bank or you run to the front of the bank or you  
16 run across the bank parking lot in the opposite  
17 direction. But this gentleman was actually fleeing  
18 from the lights in -- in an attempt to get away  
19 from the police that were in the parking lot.
- 20 Q So which direction, the back corner?
- 21 A No, towards the woods. Towards the Hilton Garden  
22 Inn Hotel.
- 23 Q Okay. And then you pulled into the hotel parking  
24 lot eventually?
- 25 A Initially I pulled on the side of the -- the side

1 street, because there were cars that -- police cars  
2 that were speeding past me.

3 Q Right.

4 A That were going in another direction, seemed to go  
5 towards the -- on that side street that I mentioned  
6 earlier.

7 And so at that time when I was pulled over,  
8 that is when I saw the gentleman come out of the  
9 woods and conversing with another gentleman.

10 Q Did you see him run out of the woods or walk out of  
11 the woods?

12 A Run out of the woods.

13 Q And where did he and this gentleman meet up?

14 A They were --

15 Q In the parking lot or where?

16 A In the parking lot of the Hilton Garden Inn Hotel.

17 Q In just the main part of the parking lot where you  
18 drive through?

19 A No, it was on the side of the building right next  
20 to the grass -- wooded common area.

21 Q But next to the building?

22 A Well, it is not really next to the building because  
23 next to the building is a parking lot.

24 Q Right.

25 A And then next to the parking lot is the wooded

1 area. So it was in that wooded area. If you have  
2 a picture of it I could make it very clear --

3 Q I do.

4 A -- to where exactly they were located.

5 Q I do. This is State's Exhibit 24. I know it is  
6 much smaller now than it was on the video earlier.

7 MR. CATHCART: Ms. Grafton, we can pull it up.

8 MS. GOLDBERG: Absolutely. That would be  
9 great.

10 (Complies.)

11 BY MS. GOLDBERG:

12 Q Ms. Williams, if you could, step down and show me  
13 where you saw them talking.

14 (Witness steps down.)

15 A So this is the bank(indicating). The pickup truck  
16 has to be parked about right here(indicating),  
17 maybe the third or fourth parking space because it  
18 was on the side of the building. And the gentleman  
19 ran into the woods and ran out of the woods, and  
20 they were meeting about right in this area  
21 here(indicating).

22 Q Okay.

23 A So as I mentioned to you guys before, there are two  
24 sets of parking spaces on the side. You could  
25 actually see them meeting, but there were no cars

1 on this side here(indicating).

2 Q Very good. All right, you can have a seat. I am  
3 going to leave that up, but you can have a seat.

4 (Witness returns to witness stand.)

5 Q And they were -- when you saw them, that was when  
6 you were coming in the parking lot? Or on the  
7 road? Which one?

8 A When I saw them -- as I was pulled over on that  
9 side shoulder area -- I think it looked like there  
10 may be a bush.

11 Q Right here(indicating)?

12 A Yes. A little bit further back.

13 Q Here(indicating)?

14 A Yes, right in that area. I was on the side  
15 shoulder area. There is nothing but grass. And  
16 that is where I saw the gentlemen talking.

17 Q Right there(indicating)?

18 A The side grass area. And then I pulled into the  
19 parking lot. And as I pulled around, during that  
20 time they were still conversing. And that is when  
21 the gentleman ran and got into the pickup truck.

22 Q So they stood there and talked for long enough for  
23 you to drive -- continue driving down the road and  
24 then into the parking lot?

25 A Yes.

1 Q And you weren't able to hear what they said?

2 A No. And I wasn't trying to either. I didn't want  
3 to be that close.

4 Q Right. But you weren't close enough to hear  
5 everything?

6 A I wasn't close enough to hear, no, ma'am.

7 Q And when they -- so then when they finished  
8 talking, obviously the guy in the yellow shirt --  
9 he wasn't in the car, he was standing outside the  
10 car?

11 A Correct.

12 Q So he had to walk across the parking lot?

13 A Well --

14 Q To get to his truck? Is that right?

15 A Yes. But it is not -- he was already standing in  
16 the parking lot. So he walked several feet over to  
17 his pickup truck.

18 Q So he was more in the middle?

19 A Correct.

20 Q Out in the open?

21 A Correct.

22 Q And walked over to the parking lot -- truck?

23 A Yes.

24 Q And then turned it on; is that right?

25 A I don't know whether he turned it on or it was

- 1           already on.
- 2    Q    That's fair. And then when he backed up he -- you
- 3           said he started to back up but your car was right
- 4           behind him so he would have hit your vehicle?
- 5    A    He would have ended up hitting my tire, yes.
- 6    Q    But he did look behind him?
- 7    A    Yes. And as I thought about it more, I did -- I
- 8           had to have honked my horn. There was no other way
- 9           that he would have known I was there. At the time
- 10          that he backed out he didn't look anywhere.
- 11   Q    Okay.
- 12   A    He just backed out.
- 13   Q    And then when you honked he turned around?
- 14   A    Recognized my vehicle, yes.
- 15   Q    And he stopped?
- 16   A    Yes.
- 17   Q    Did you then continue on past?
- 18   A    I continued driving past to let him go past, and
- 19          that is when I looked to try to see if I could get
- 20          a better sight of the license plate.
- 21   Q    Right. Because the problem with the license plate
- 22          was that the tailgate was down?
- 23   A    That's correct.
- 24   Q    And that is why you couldn't see part of the
- 25          number?

- 1 A The last two numbers of the license plate were not  
2 visible.
- 3 Q And you are positive the tailgate was down?
- 4 A I'm positive, yes.
- 5 Q Now, then you went around -- you said you went  
6 around to the back of the hotel, so you would have  
7 been driving back here(indicating)?
- 8 A That's correct.
- 9 Q And you saw the first man, the one who had been  
10 running, the one that was suspicious, talking to a  
11 third individual?
- 12 A Yes. There was someone else that initially when  
13 the two gentleman were talking in the parking lot,  
14 the one in the yellow shirt was pointing towards  
15 the back, towards that sandy area that you see, it  
16 was as if he was telling him --
- 17 Q Right here(indicating)?
- 18 A Further back. Further back. No, come all the way  
19 back towards the railroad tracks.
- 20 Q This(indicating)?
- 21 A Yes. All of that sand area is what is visible from  
22 the parking lot of the hotel.
- 23 Q Okay.
- 24 A So I was able to see him pointing to tell him to  
25 run in that direction.

- 1 Q Well, you didn't hear what he said?
- 2 A No, but pointing.
- 3 Q You just saw him point?
- 4 A Right, pointing in that direction.
- 5 Q And then you saw the individual that you thought  
6 was suspicious come back here and talk to a third  
7 person?
- 8 A No.
- 9 Q Where did you see him talking to a third person?
- 10 A In the grass -- or in that sandy area.
- 11 Q Back here(indicating)?
- 12 A Yes, ma'am.
- 13 Q Okay. And --
- 14 A And I don't know if that third person -- who that  
15 third person was, I just know I happened to see  
16 someone back there.
- 17 Q You don't know anything about him?
- 18 A Right. And by reading body language you can tell,  
19 if I'm not saying anything to you and I'm pointing,  
20 you know, Go that way, you know to go that way.
- 21 Q Well, now --
- 22 A So.
- 23 Q And those two people back here, they stood there  
24 and had a conversation?
- 25 A No, I didn't see -- I saw him going back in that

1 direction where there was another person standing  
2 back there, but I don't know if they had a  
3 conversation because I -- at the time when I drove  
4 around the back of the hotel --

5 Q Uh-huh.

6 A -- that is where I noticed that that pickup truck  
7 was now parked in the BB&T parking lot.

8 Q I think you testified that you saw them back there  
9 talking?

10 A It looked like -- as if they were conversing, but I  
11 can't be sure that they were conversing.

12 Q Okay.

13 A Because, I mean, it is difficult to tell from here,  
14 but if you are sitting in a parking lot, there was  
15 quite a bit of distance.

16 Q Okay.

17 A So it would not be a sure thing for me to be able  
18 to tell how close they were even to one another.  
19 But it looked as if they had to have known each  
20 other because if me being a person, common sense  
21 would tell me if someone is running towards me and  
22 I have nothing to do with something and there are  
23 police cars everywhere, I am not going to stay and  
24 try to figure out if this person is part of it or  
25 not.

1 Q So then you saw the truck in the BB&T parking lot?

2 A Correct.

3 Q And you said the truck was actually parked at the  
4 ATM?

5 A Yes, in that drive-through area. Not at the ATM,  
6 but in the drive-through area on the side of the  
7 BB&T.

8 Q Would that be right here(indicating)?

9 A I do not -- if that is where that ATM is, then,  
10 yes, ma'am. It wasn't towards the back, it was  
11 more towards the middle as if they were driving  
12 through the ATM, but enough where they could still  
13 have a visual of what was going on behind them.

14 Q Okay. And it was parked?

15 A It was parked, yes.

16 MS. GOLDBERG: Beg the Court's indulgence.

17 (Pause.)

18 BY MS. GOLDBERG:

19 Q And you didn't see any bank robbery; correct?

20 A No.

21 Q All right.

22 MS. GOLDBERG: No further questions.

23 THE COURT: Yes, sir?

24 MR. CATHCART: Just a couple of questions.

25 REDIRECT EXAMINATION

1 BY MR. CATHCART:

2 Q After you saw the pickup truck drive away --

3 A Uh-huh.

4 Q -- from the BB&T, how long was it until you saw  
5 that pickup truck again?

6 A I can't give a definite time, but I could probably  
7 say possibly 20 minutes or so. I can tell you the  
8 events that took place in between that.

9 Q Uh-huh.

10 A Which may help to give a time.

11 Q Let me ask you this. Are you familiar with pickup  
12 trucks?

13 A I am.

14 Q Have you ever used one?

15 A No.

16 Q Have you ever seen how a tailgate works?

17 A No. I'm a mid-westerner. We don't drive pickup  
18 trucks, let's put it that way. I'm sorry.

19 Q I thought you did. Well, have you shut a door?

20 A Okay.

21 Q Have you?

22 A Yes.

23 Q Okay. Does it take 20 minutes to shut a door?

24 A No.

25 Q How many seconds does it take to shut a door?

1 A Less than a second.

2 Q Okay. So in between the time -- the last time you  
3 saw that pickup truck until you saw it again, was  
4 there time to shut a door?

5 A Absolutely.

6 Q Okay.

7 MR. CATHCART: No further questions.

8 MS. GOLDBERG: No more questions. Thank you.

9 THE COURT: All right, ma'am, you may step  
10 down.

11 (Witness steps down.)

12 THE COURT: Any objection to this witness  
13 being excused?

14 MS. GOLDBERG: No, ma'am.

15 MR. CATHCART: Please.

16 THE COURT: All right, ma'am, you are free to  
17 leave.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 MR. SHELLBERG: The State calls Lieutenant  
21 Frieda Wyatt.

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the  
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the  
2 testimony you give in this case will be the truth,  
3 the whole truth, and nothing but the truth, so help  
4 you God?

5 THE WITNESS: I do.

6 THE CLERK: Please have a seat, and state your  
7 full name for the record.

8 THE WITNESS: Frieda Wyatt.

9 FRIEDA WYATT,  
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SHELLENBERG:

13 Q How are you?

14 A Good. How are you?

15 Q Doing well. And what do you do for Richland  
16 County?

17 A I am currently the lieutenant over the Fugitive  
18 Task Force.

19 Q And were you working for Richland County back on  
20 August 30th, 2012?

21 A I was.

22 Q And in what capacity?

23 A At that time I was the supervisor over the Drug  
24 Suppression Team.

25 Q And were you working that afternoon?

- 1 A Yes.
- 2 Q And did you hear a call that afternoon?
- 3 A Yes, sir.
- 4 Q And what was that about?
- 5 A A bank robbery had just taken place on Farrow Road.
- 6 Q And did they give a description of the suspect?
- 7 A They gave the description of a suspect inside the  
8 bank and then a vehicle that had left the bank.
- 9 Q And do you remember what that was? What the  
10 description was?
- 11 A It was a black male inside the bank, and the  
12 vehicle was a black pickup truck, Dodge Dakota.
- 13 Q If I gave you your incident report would it help  
14 refresh your memory?
- 15 A Yes, sir.
- 16 (Complies.)
- 17 A Thank you.
- 18 Q And what description did they give out of the  
19 suspect and the truck?
- 20 A Of the suspect?
- 21 Q Yes?
- 22 A It was a black male wearing a yellow collared  
23 shirt.
- 24 Q And was he driving?
- 25 A He was driving.

1 Q Did they give you a tag number in your incident  
2 report?

3 A They did. It was BNA-593.

4 Q And did you come in contact with this vehicle?

5 A I did.

6 Q And how did you come in contact with the vehicle?

7 A After they had BOLO'd the description of a black  
8 Dodge Dakota pickup truck, one just happened to  
9 pull in front of me on Hardscrabble Road.

10 Q Now, I am going to stop you.

11 MR. SHELLBERG: Your Honor, can she step  
12 down?

13 THE COURT: Yes, sir.

14 (Witness steps down.)

15 BY MR. SHELLBERG:

16 Q Okay. And where did you come in contact with the  
17 vehicle?

18 A On Hardscrabble Road just before the first street  
19 on the right, which is --

20 THE COURT REPORTER: I'm sorry, can I get the  
21 witness to face me?

22 MR. CATHCART: Just turn around. You get on  
23 this side, she get on that side, so she is facing  
24 the court reporter.

25 (Complies.)

1 A I was on Hardscrabble Road just before William  
2 Hardin.

3 Q And you drove -- and what direction did you follow?

4 A I was traveling outbound towards Blythewood on  
5 Hardscrabble.

6 Q And which road did you follow?

7 A When I came in contact?

8 Q Uh-huh?

9 A The black pickup truck was in front of me on  
10 Hardscrabble Road. It made a quick left turn  
11 onto -- it was either Everett or Dolly Street.

12 Q And then where did you go?

13 A Once we made this left onto the side street, we hit  
14 the stop sign at the end of the paved road onto --  
15 I believe it is Mt. Pisgah Church Road, which is a  
16 dirt road, and from there we made a right.

17 Q And did you initiate blue lights at this time?

18 A Not immediately, I did not. I made contact with  
19 dispatch to confirm the description of the truck,  
20 as well as the license plate, as well as the  
21 description of the driver in that vehicle.

22 And while traveling down the dirt road I  
23 requested a K-9 unit to head my way in case he was  
24 to run on foot.

25 Q And why did you request a K-9 unit?

- 1 A So I wouldn't have to run after him should we stop  
2 and he runs.
- 3 Q And at that point did you -- was that the suspect?  
4 Did you confirm it was --
- 5 A Yes, that was the correct vehicle, the vehicle that  
6 had been BOLO'd.
- 7 Q And did you see the shirt that the person driving  
8 was wearing?
- 9 A Yes, sir.
- 10 Q And what color was that shirt?
- 11 A It was a yellow collared shirt.
- 12 Q Okay. And the tag matched the description?
- 13 A The tag was the tagged BOLO'd.
- 14 Q Okay. And then where did you go?
- 15 A We followed the dirt road down to Sloan Road, which  
16 is right here(indicating).
- 17 Q Uh-huh.
- 18 A And from there we took a left. We took a left on  
19 Sloan Road. And my camera equipment was initiated.  
20 Once units advised me that they were close, we were  
21 taking a left onto North Brickyard Road, which  
22 is --
- 23 Q Right here(indicating)?
- 24 A This yellow road.
- 25 Q Right there(indicating)?

1 A Yes. We made a left at that intersection. And  
2 units advised me that they were in the area. And  
3 because of the time of day there was a lot of  
4 traffic on Farrow Road, and I initiated a traffic  
5 stop right on the railroad tracks.

6 Q And why did you do that?

7 A So then there was not going to be a vehicle pursuit  
8 and hopefully not a foot pursuit.

9 Q And you had called on the K-9 unit. Where was the  
10 K-9 unit?

11 A The K-9s had approached from the front of the  
12 vehicle.

13 Q Okay. So you essentially had him boxed in at that  
14 point?

15 A Yes, sir.

16 Q And where was the actual robbery location compared  
17 to this?

18 A Right down there(indicating) at the TD Bank.

19 Q Okay. You can get back on the stand.

20 A Thank you.

21 (Witness returns to witness stand.)

22 BY MR. SHELLENBERG:

23 Q And you said you made a vehicle stop at that point?

24 A Yes, sir.

25 Q And after you placed him under arrest did you

1 identify the man?

2 A I identified him by his ID as Arthur Macon.

3 Q Okay. Did you have a chance to look into his  
4 vehicle?

5 A I did.

6 Q Did you see anything?

7 A There was a handheld radio on -- right in the front  
8 cab.

9 Q Right in the front cab?

10 A Uh-huh.

11 Q I am going to show you what has been marked as  
12 State's 1.

13 MS. GOLDBERG: No objection.

14 Q Do you recognize that?

15 A Yes, sir.

16 Q Do you know what that is?

17 A I think it is my traffic stop.

18 Q And you said a radio? Was it an actual radio or  
19 what -- it was sitting on the cab?

20 A It looked to be a handheld radio. I didn't take it  
21 out of the vehicle and examine it.

22 Q Okay. And what do you recognize this as?

23 A I'm sorry?

24 Q What do you recognize this as?

25 A My vehicle traffic stop.

1 MR. SHELLENBERG: Your Honor, at this time I  
2 would move State's 1 into evidence.

3 MS. GOLDBERG: No objection.

4 THE COURT: All right. It will be entered  
5 without objection.

6 (WHEREUPON, State's Exhibit No. 1 was  
7 admitted into evidence.)

8 MR. SHELLENBERG: Your Honor, may I publish  
9 this to the jury?

10 THE COURT: Yes, sir.

11 (Exhibit played in open court.)

12 BY MR. SHELLENBERG:

13 Q What street are you turning on?

14 A Right there I am making a left turn.

15 Q You are still trying to identify him?

16 A Yes, sir. And I am waiting for the K-9 and other  
17 units to get there.

18 Q At that point you saw what color shirt he was  
19 wearing?

20 A Yes, sir.

21 Q Who is that on the ground?

22 A The driver, Mr. Macon.

23 Q At this point what are y'all doing to the car?

24 A We were checking the vehicle. As you heard on the  
25 video, it appeared that there was a second subject

- 1 in the car, and that is why I went to the  
2 passenger's side. We were checking the vehicle  
3 waiting for units from the incident location to  
4 come by.
- 5 Q Now, you said after you arrested him you went to  
6 the car?
- 7 A I took a quick look inside the vehicle.
- 8 Q And what did y'all do with the car after he was  
9 placed under arrest?
- 10 A I had the vehicle towed to our compound.
- 11 Q And do you make any notes of what was in the  
12 vehicle? I'm sorry, I am showing you what is  
13 marked as State's 16.
- 14 A Yes, sir.
- 15 Q And what did you find in that vehicle?
- 16 A I had a cell phone, a car seat, miscellaneous  
17 clothes, a suitcase, a Radio Shack weather scanner.
- 18 Q So it wasn't actually a radio, it was a scanner?
- 19 A Yes, sir.
- 20 Q Okay. And did you find any damage to that car?
- 21 A There was a dent on the rear door.
- 22 Q Is the color the same as dispatch told you?
- 23 A Yes, sir. Black.
- 24 Q Is the dent the same as dispatch told you?
- 25 A Yes, sir.

1 Q Is the license plate number the same as dispatch  
2 told you?

3 A Yes, sir. BNA-593.

4 MR. SHELLENBERG: Beg the Court's indulgence.

5 (Pause.)

6 MR. SHELLENBERG: Thank you. No further  
7 questions.

8 THE COURT: Yes, ma'am?

9 MS. GOLDBERG: Thank you, Your Honor. May it  
10 please the Court?

11 CROSS-EXAMINATION

12 BY MS. GOLDBERG:

13 Q Good morning, Lieutenant.

14 A Hey.

15 Q So you first found out about this, found out what  
16 to do, what was going on, by listening to the radio  
17 over dispatch; is that right? Or how did you get  
18 the information about the truck?

19 A A bank robbery had just occurred. And over  
20 dispatch it goes across all the channels. The  
21 description of the suspect and vehicles involved  
22 are put out.

23 Q It goes out over all of the Sheriff's Department  
24 channels?

25 A Yes.

1 Q Okay. So you heard it on your radio, your  
2 frequency?

3 A Yes.

4 Q Is there a better way to describe that than what I  
5 am saying?

6 A No.

7 Q Okay. And when you got behind the truck in the  
8 video, you were talking; is that right?

9 A Yes, ma'am.

10 Q And could everybody listening to the radio hear  
11 what you were saying?

12 A Yes, if they were on that channel.

13 Q That channel?

14 A Uh-huh.

15 Q Do you know what channel that was?

16 A I believe it was TAC 3, Channel 3.

17 Q You were driving a marked patrol car; correct?

18 A Yes.

19 Q And it had -- it was a equipped with Dash Cam, we  
20 know?

21 A Yes.

22 Q And as I understand it, those cameras turn on one  
23 of two ways: Either you just turn it on yourself,  
24 or when you turn on the blue lights they  
25 automatically come on?

1 A Yes.

2 Q Which of those happened in this case?

3 A Well, initially when I ran into the vehicle I  
4 turned my camera on just in case he were to jump  
5 before I actually initiated the traffic stop and to  
6 catch any movements if anything else were to  
7 happen. But normally it is what you say, it is  
8 blue lights, or you can turn it on yourself.

9 Q Right. So you just manually turned it on?

10 A Yes.

11 Q To catch what we are looking at?

12 A Yes, ma'am.

13 Q And so for a large portion of that video, you  
14 didn't have your blue lights and siren on?

15 A Correct.

16 Q You were just watching, monitoring the situation?

17 A Yes.

18 Q Did you ever turn your blue lights and siren on?

19 A I did.

20 Q Okay. He wasn't just stopped by the car that came  
21 towards him?

22 A No.

23 Q All right. Do you know at what point you turned  
24 your blue lights and siren on?

25 A Right before we got to the railroad tracks.

- 1 Q Right before you stopped him?
- 2 A Yes, ma'am.
- 3 Q So as soon as you activated those he stopped?
- 4 A Yes. He -- there was no way he could go any  
5 further.
- 6 Q And you told him to get out of the car?
- 7 A I did.
- 8 Q Now, the reason -- as you were following him, he  
9 wasn't breaking any -- I guess I should say -- he  
10 wasn't speeding; is that fair?
- 11 A Correct .
- 12 Q He wasn't -- he was stopping at intersections, he  
13 was stopping at stop signs; is that right?
- 14 A He was, yes.
- 15 Q You weren't pulling him over for a traffic  
16 violation, you were pulling him over because you  
17 had heard that he was a suspect in a robbery?
- 18 A I had conducted a felony traffic stop, yes, ma'am.
- 19 Q Right. And because it was a felony traffic stop,  
20 that is why instead of walking up to the car you  
21 yelled out, Get out of the car?
- 22 A Yes, ma'am.
- 23 Q Because you don't know -- if they are a suspect in  
24 an armed robbery, you don't know if they have a  
25 gun; right?

- 1 A Correct.
- 2 Q So you stayed back for your own safety and you say,  
3 Get out of the car?
- 4 A Yes, ma'am.
- 5 Q And he got out of the car; correct?
- 6 A Yes, ma'am.
- 7 Q Hands up?
- 8 A Yes, I believe he did. I know I gave him  
9 directions to get on the ground.
- 10 Q And he got on the ground?
- 11 A He did.
- 12 Q He complied with your directions?
- 13 A He did.
- 14 Q Did Mr. Macon have a weapon on him when he was  
15 pulled over?
- 16 A No.
- 17 Q There wasn't one in the car or anything either?
- 18 A No.
- 19 Q The video -- why did the video shut off? Did you  
20 have to manually turn it off?
- 21 A Yes. I was done with my traffic stop and he was  
22 released to investigators.
- 23 Q And the Solicitor showed you a copy of the tow  
24 report that they had submitted for identification  
25 purposes. I'll hand that to you again. Is the

1 entire form written in your handwriting?

2 A It is not.

3 Q And there are two different handwritings there; is  
4 that correct?

5 A Correct.

6 Q Can you -- do you know who the other handwriting  
7 is?

8 A No.

9 Q And what is not in your handwriting?

10 A Everything in the -- I don't want to say sloppy,  
11 but the light-colored ink.

12 Q The only -- the light-colored ink is your  
13 handwriting?

14 A It is not.

15 Q Is not. Your handwriting is the darker?

16 A The nicely printed, yes.

17 Q And what does that say, your handwriting?

18 A It has on here the reason for towing, which I  
19 marked that he was driving under suspension and  
20 felony use, and I marked bank robbery. And then  
21 for the -- and my name. And vehicle inventory I  
22 listed the black -- or, I'm sorry, the Radio Shack  
23 weather alert scanner.

24 Q You listed that?

25 A Yes, I did.

1 Q Did you take that item into evidence?

2 A I did not.

3 Q You just wrote it on there?

4 A I did.

5 MS. GOLDBERG: Beg the Court's indulgence.

6 (Pause.)

7 MS. GOLDBERG: No further questions.

8 MR. SHELLENBERG: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. SHELLENBERG:

11 Q So he didn't have a gun, but he did have a scanner?

12 A Yes, sir.

13 MR. SHELLENBERG: No further questions.

14 THE COURT: All right, you may step down.

15 (Witness steps down.)

16 THE COURT: All right, ladies and gentlemen of  
17 the jury, it is about 11:15. And what we'll do is  
18 go ahead and take our morning break. That way  
19 you'll have an opportunity to refresh yourselves  
20 and then we will have you back in for more  
21 testimony after that.

22 Remember that you are not to discuss the case  
23 with your fellow jurors during any break.

24 We'll take about 10 or 15 minutes.

25 All right, thank you.

1 (WHEREUPON, the jury retires to the jury  
2 room at 11:15 a.m.)

3 THE COURT: We will take about 10 or 15  
4 minutes.

5 (WHEREUPON, a break was taken.)

6 THE BAILIFF: Bring them in?

7 THE COURT: Yes, sir.

8 (WHEREUPON, the jury came into open  
9 court at 11:40 a.m.)

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: We'll continue with the State's  
12 case.

13 MR. SHELLBERG: The State calls Sergeant  
14 Michael Mazerolle.

15 (Witness approaches.)

16 THE BAILIFF: Place your left hand on the  
17 Bible, and raise your right hand, please.

18 (Witness complies.)

19 THE CLERK: Do you swear or affirm the  
20 testimony you give in this case will be the truth,  
21 the whole truth, and nothing but the truth, so help  
22 you God?

23 THE WITNESS: I do, Your Honor.

24 THE CLERK: Please have a seat, and state your  
25 full name for the record.

1                   THE WITNESS: Sergeant Michael Mazerolle,  
2                   Richland County Sheriff's Department.

3   MICHAEL MAZEROLLE,  
4           after being duly sworn, testified as follows:

5   DIRECT EXAMINATION

6           BY MR. SHELLENBERG:

7           Q     Sergeant Mazerolle, how long have you been a cop?

8           A     Approximately 18 years.

9           Q     Were you working on August 30th, 2012?

10          A     Yes, I was.

11          Q     And did you respond to a bank robbery at TD Bank?

12          A     I did.

13          Q     And what was your involvement with that case?

14          A     During the course of that day I was instructed that  
15                there was a witness that --

16          Q     Do you remember -- I'm sorry, do you remember the  
17                witness's name?

18          A     I know her last name as Ms. Williams.

19          Q     Okay, continue.

20          A     And I was instructed that she had seen an  
21                individual in a yellow shirt, a black vehicle --  
22                and she also gave the tag number to dispatch --  
23                flee the scene of the crime. And I was instructed  
24                where she was at because I was informed that they  
25                had stopped a vehicle matching that description

1 with the also license plate she had given out and  
2 the individual also matched the description that  
3 was in the vehicle.

4 Q Now, where did you make the contact with  
5 Ms. Williams?

6 A It was a road adjacent to the bank itself.

7 Q Okay.

8 A And I was instructed where she was at. Now, I  
9 cannot remember the exact road, but it wasn't at  
10 the bank.

11 Q Okay. And how close was it to where the second  
12 arrest -- the second traffic stop had been made?

13 A You mean where they stopped the vehicle?

14 Q Yes?

15 A Okay.

16 Q But you couldn't have seen it from the bank parking  
17 lot?

18 A Oh, no, no. And I can't -- mileage, you know, I  
19 mean -- it was just -- you know, from what I can  
20 remember, it was less than a mile away, but, I  
21 mean, I couldn't give you exact mileage.

22 Q That's fine. That is absolutely fine. So you --  
23 what happened with you and Ms. Williams from there?

24 A You know, at that point, you know, once I was  
25 informed that they were out with the, you know, the

1 individual, I went over and I basically, you know,  
2 asked her if she wanted to do a driveby  
3 identification. And she said she had no problem  
4 doing that.

5 Traffic was pretty congested.

6 Q Now, when you went to do the driveby  
7 identification, was she in your car?

8 A Negative.

9 Q Was she in her own car?

10 A She was in her own car.

11 Q And did you tell her anything about who to choose,  
12 what to do?

13 A Negative.

14 Q Okay.

15 A Negative.

16 Q So you are both in your own cars. And then you can  
17 continue from there.

18 A Yes. And the traffic was pretty congested because  
19 of the time of day. And we were driving between  
20 five to ten miles an hour, okay? And I kept her in  
21 my sight.

22 Q And what road were you on at this point?

23 A On Farrow Road on our way there. Okay. And I kept  
24 her in my sight because I didn't want to lose sight  
25 of her. And because the traffic was so slow, that

1 was really easy for me to keep her behind my  
2 vehicle and be able to keep glancing through the  
3 rearview to make sure she was still back there and  
4 to keep that buffer zone where no one could get in  
5 between me and her vehicle.

6 Q Okay. And when you got to the traffic stop, what  
7 happened from there?

8 A From there we just, you know, we just kept driving  
9 by, slow pace. Okay. And we drove, not -- maybe a  
10 mile, maybe a little less past, and we pulled over  
11 on the side of the road.

12 At that point I exited the vehicle and went  
13 back and asked her, you know, Was that the  
14 individual you seen. And she told --

15 Q Did she make a positive identification?

16 A She said yes.

17 Q Okay.

18 MR. SHELLENBERG: Beg the Court's indulgence.

19 (Pause.)

20 MR. SHELLENBERG: No further questions, Your  
21 Honor.

22 MS. GOLDBERG: No questions.

23 THE COURT: All right, sir, you may step down.

24 THE WITNESS: Thank you, ma'am. Thank you,  
25 Your Honor.

1 (Witness steps down.)

2 MR. CATHCART: The State calls Deputy Frazier.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the  
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the  
8 testimony you give in this case will be the truth,  
9 the whole truth, and nothing but the truth, so help  
10 you God?

11 THE WITNESS: I do.

12 THE CLERK: Please have a seat, and state your  
13 full name for the record.

14 MIKE FRAZIER,  
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CATHCART:

18 Q State your full name for the record, please.

19 A Master Deputy Mike Frazier.

20 Q Master Deputy Frazier, where are you employed?

21 A Richland County Sheriff's Department.

22 Q In that capacity did you go to a armed robbery  
23 which occurred at the BB&T on -- at the TD Bank at  
24 Farrow Road?

25 A I did.

1 Q On August 30th of 2012?

2 A I did, sir.

3 Q In what capacity?

4 A Just another responding unit. At the time I got  
5 there we went ahead and set up and started -- set  
6 up the perimeter.

7 Q Okay. And during that setting up the perimeter and  
8 afterwards, did y'all have the occasion to search  
9 for evidence in the case?

10 A We did.

11 Q Okay. And did y'all find some evidence in the  
12 case?

13 A We did.

14 Q And when you found it, did you take pictures of the  
15 evidence as well?

16 A I did.

17 Q Let me show you what has been marked as State's  
18 Exhibit Number 20, 21, 22, and 23. Can you  
19 describe what these are?

20 A Yes, that is Deputy Allen Derrick. He is holding  
21 up his finger -- his first finger showing we found  
22 evidence here, because it was so -- so many weeds  
23 and everything, it was kind of hard to see.

24 Q Okay. That would be 20. This would be 21. What  
25 does that show?

1 A It is the same, where he is standing up showing  
2 what the next item is, pointing down in the weeds.

3 Q Is it the exact same location as the first one?

4 A It is in the same area, yes, sir.

5 Q Okay. And that would be 21. This would with  
6 State's Exhibit Number 22.

7 A Yes, sir, it is a hat that was recovered.

8 Q Okay. And State's Exhibit Number 23?

9 A And we thought it was a pistol. I think it was  
10 plastic, if I recall correctly, but, yes.

11 Q That was what was found there at the scene as well?

12 A Yes, sir.

13 Q Okay. Let me show you what has been marked as  
14 State's Exhibit Number 18. Would that be the  
15 plastic pistol you are talking about?

16 A Yes, sir.

17 MR. CATHCART: Your Honor, at this time the  
18 State seeks to introduce State's Number 20, 21,  
19 22, 23, and 18.

20 MS. GOLDBERG: Without objection.

21 THE COURT: All right, it is 21 through --

22 MR. CATHCART: 20 through 23, and 18.

23 THE COURT: All right, they will be entered  
24 without objection.

25 MR. CATHCART: Thank you.

1 (WHEREUPON, State's Exhibit Nos. 20-23  
2 were marked for identification and  
3 received into evidence.)

4 (WHEREUPON, State's Exhibit No. 18 was  
5 marked for identification and received  
6 into evidence.)

7 BY MR. CATHCART:

8 Q These were found where exactly?

9 A It was actually in between the TD Bank and the  
10 Marriott Motel. There was a --

11 Q Marriott or a --

12 A It is a motel. I can't remember.

13 Q Maybe a Hilton?

14 A It could be a Hilton. I'm sorry.

15 Q That's fine. It was found in the wooded area in  
16 between that?

17 A There is, sir. There is a parking lot that kind of  
18 weaves in around the back, and there is a woodline  
19 through there, and that is where we found it.

20 Q Okay. Please answer any questions -- oh, yes.

21 MR. CATHCART: If I may publish these to the  
22 jury, Your Honor? The pictures?

23 THE COURT: Yes.

24 (Exhibits published to jury.)

25 BY MR. CATHCART:

1 Q And please answer any questions from Defense  
2 counsel.

3 THE COURT: Yes, ma'am?

4 MS. GOLDBERG: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. GOLDBERG:

7 Q Deputy, I am just going to pull up a map here, and  
8 I am just going to let you point out for us where  
9 they were found. And that is all I'm going to do.

10 A Sure. No problem.

11 (Complies.)

12 Q Deputy, if you would like to get down and point it  
13 out? Would that be easier? Would that be the  
14 easiest thing for you to do?

15 A Sure.

16 MS. GOLDBERG: Your Honor, can the witness  
17 have permission to step down?

18 THE COURT: Yes.

19 MS. GOLDBERG: Thank you.

20 (Witness steps down.)

21 A This is TD Bank. This is the motel. This parking  
22 lot area coming around the back here, we found him  
23 over in this area here. (Indicating.)

24 Q All right, thank you.

25 MS. GOLDBERG: No further questions.

1 MR. CATHCART: Nothing else from the State,  
2 Your Honor.

3 THE COURT: All right. Any objection to this  
4 witness being excused?

5 MS. GOLDBERG: No objection, Your Honor.

6 MR. CATHCART: No.

7 THE COURT: All right, sir, you are free to  
8 leave.

9 MR. CATHCART: Thank you, Your Honor.

10 (Witness steps down and is excused.)

11 MR. SHELLBERG: The State calls Lieutenant  
12 Tom Amaro.

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the  
15 Bible, and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you solemnly swear or affirm  
18 the testimony you give in this case will be the  
19 truth, the whole truth, and nothing but the truth,  
20 so help you God?

21 THE WITNESS: I do.

22 THE COURT: Have a seat, and state your full  
23 name for the record.

24 THE WITNESS: My name is Thomas M. Amaro, Jr.

25 THOMAS M. AMARO, JR.,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SHELLBERG:

4 Q Investigator Amaro, how long have you been with the  
5 Richland County Sheriff's Department?

6 A Going on 33 years.

7 Q And did you become involved in a robbery at TD Bank  
8 on August 30th of 2012?

9 A Yes, I did. I was one of the supervisors on duty  
10 at the time a call came in from the desk sergeant.

11 Q And what was your involvement from there?

12 A I contacted the evening shift investigator, who at  
13 that time it was Jason Williams. I'm sorry, I  
14 contacted -- I called Michael Autry, who was the  
15 master -- the officer on the bank at the scene to  
16 tell me about the bank robbery that had occurred  
17 around 4:40, 4:41, somewhere around that time. The  
18 person who had actually allegedly robbed the bank  
19 exited the bank with a bag of money.

20 Q And, now, was there something inside of the bag of  
21 money?

22 A Yes, over \$6,000 was in the bag of money given by  
23 the cashier.

24 Q Any sort of tracking device?

25 A Yes, there was a tracking device in the bundle of

1 the money.

2 Q And did you become involved in the tracking of that  
3 money?

4 A Yes, I did. We had one of our -- at that time our  
5 Captain Stewart was at the scene at the Hilton  
6 Motel, which is on Farrow Road in Richland County.  
7 He had indicated there was a tracking device at  
8 Sergeant McDonald's office, and I went and  
9 retrieved it. I drove over to the scene in a  
10 wooded area where the suspect was seen running  
11 through to the other location.

12 Q And, now, what kind of tracking device is this? Is  
13 it like a car tracking device or is it more like  
14 a -- I guess a metal detector type tracking device?  
15 How did it actually work?

16 A Well, from what I understand, it is like a little  
17 thing. It is -- I guess it is a tracking device.  
18 It is flat. It has electronics in it. And it is  
19 GPS enabled. And it also has a RF tracker in it,  
20 or beacon in it. And --

21 Q And what is that exactly?

22 A Well, a beacon, if you can think about it -- I use  
23 the analogy of a metal detector. Same thing. If  
24 you can think of that. As you approach you use the  
25 device and the closer you get to the metal it will

1 go off. Same thing with this. It is RF tracker,  
2 radio frequency. And this tracker had two  
3 different frequencies on it, so you had a  
4 selection, two selection button on it. Hit the  
5 frequency that the beacon was in the cash or the  
6 money was taken, set it to that, and within about,  
7 I'd say between five and ten minutes was able to  
8 locate the plastic bag in a creek, wooded area near  
9 the Hilton Motel.

10 Q And is this -- I'm showing you State's 14. Is that  
11 what the tracking device looked like?

12 A Yes, sir. Yes, sir.

13 Q And that is with the bag of money that you found?  
14 I'm showing you State's 12. And what is that?

15 A Yes, sir, that is the plastic bag that we found  
16 with the money inside the bag.

17 Q And that was found where?

18 A It was in a wooded area just down in the gully,  
19 like a little creek, on Farrow Road, around about  
20 the 8500 block of Farrow Road.

21 Q After that, did you return to headquarters?

22 A Yes. I was advised there was a witness who was  
23 taken to our headquarters, Ms. Williams, who I went  
24 to go ahead and interview.

25 MR. SHELLBERG: Beg the Court's indulgence.

1 (Pause.)

2 Q No further questions. Thank you.

3 A Thank you.

4 MS. GOLDBERG: No questions.

5 THE COURT: All right, sir, you may step down.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 MR. SHELLENBERG: The State calls Investigator  
9 Jason Williams.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the  
12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you solemnly swear or affirm  
15 the testimony you give in this case will be the  
16 truth, the whole truth, and nothing but the truth,  
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Please have a seat, and state your  
20 full name for the record.

21 THE WITNESS: Jason Williams.

22 JASON WILLIAMS,  
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SHELLENBERG:

1 Q Investigator, how long have you been with the  
2 Sheriff's Department?

3 A Going on ten years.

4 Q And how did you become involved in the bank robbery  
5 at TD Bank on August 30th, 2012?

6 A I was working evening shift on that particular day,  
7 and a call came out about a bank robbery and had a  
8 couple of suspects. So immediately when you have a  
9 bank robbery you call for an investigator or  
10 on-call investigators to respond to the scene as  
11 well.

12 Q And did you -- what scene did you respond to first?

13 A The first place I went to was -- the first location  
14 I went to was where deputies feel that they had  
15 already apprehended one of the suspects.

16 I made contact with the deputies first, and  
17 then talked with the suspect for a brief second  
18 while he was in the back of the car. I didn't  
19 question him, or anything like that. However, I  
20 did Mirandize him before I told him who I was, and  
21 stuff like that.

22 Q And which suspect was this?

23 A That would have been a Jason Colon.

24 Q And where did you apprehend him -- or what did  
25 you -- what scene did you go to out there?

1 A It was a scene -- it was a street over from the  
2 BB&T just up -- deputies' cars were there close to  
3 the train tracks. He was in the back seat of a  
4 patrol car. He was sweating really bad and he was  
5 kind of nervous.

6 Q And where did you go from there?

7 A From there I told deputies to transport him back to  
8 headquarters and wait for my arrival. And I left  
9 there and went to the bank.

10 Q And who did you speak with at the bank?

11 A The bank manager at the time.

12 Q And did you get a chance to talk to the tellers?

13 A Yes, I talked to pretty much everybody. I had a  
14 conversation with everybody and asked them were  
15 they okay.

16 She was able to get me pictures of the  
17 individual inside. She was working on getting  
18 video, but she was able to give me the pictures.  
19 She had to e-mail them to me. She had to go  
20 through their corporate and get them to me.

21 Q And did you get a chance to talk to the fourth  
22 teller that is not here today?

23 A Yes, sir.

24 Q And do you know where she is?

25 A Her husband is in the military, so she had to

1           uproot and leave with her husband. I believe he is  
2           overseas right now.

3       Q     And then from the bank, where did you actually go  
4           next?

5       A     After that I went straight to headquarters and I  
6           started -- got Mr. Colon out of the D Cell and took  
7           him to Sergeant Donald Robinson's office due to the  
8           fact that he has a door and you can shut the door  
9           and you can talk.

10      Q     And did you read him his Miranda rights?

11      A     Yes, I read him his Miranda rights, got him a drink  
12           of water, asked him was he all right, which he  
13           waived and agreed to talk.

14      Q     That is the -- the fourth teller was Brittany  
15           Ellison?

16      A     Yes.

17      Q     Okay. And so Mr. Colon agreed to talk to you?

18      A     Yes.

19      Q     And -- well, did they bring in any other suspects?

20      A     Yes. There was another suspect that was brought  
21           up. He was talking to Investigator Kerry Johnson.  
22           They told me it was Arthur Macon.

23      Q     And could you identify him?

24      A     Yes.

25      Q     Is he in the courtroom today?

1 A Yes, he is sitting right there(indicating).

2 Q Can you tell me what he is wearing?

3 A He is wearing -- I guess it is a green in color  
4 jacket, a green-colored tie, glasses, short  
5 haircut.

6 MR. SHELLENBERG: Your Honor, let the record  
7 reflect he did identify Arthur Macon.

8 THE COURT: All right. Yes, sir.

9 BY MR. SHELLENBERG:

10 Q And did you go out to the impound yard?

11 A Yes, I went to the impound yard.

12 Q And what did you do out there?

13 A I went out there and saw the vehicle that was put  
14 out on a BOLO as the vehicle that was taken. I  
15 also retrieved a scanner from that vehicle that was  
16 listed on the inventory. With that scanner I did  
17 cut it on and see that it was tuned in to Richland  
18 County.

19 Q I am going to stop you right here. I am going to  
20 show you what is marked as State's 19. Do you  
21 recognize that?

22 A Yes. This is the scanner I got out of the car.

23 Q Is it in the same -- substantially the same shape  
24 as when you got it?

25 A Yes, except the battery is dead.

1 Q Fair enough. And you said when you got it you  
2 turned it on and checked the frequency?

3 A Yes.

4 Q And when you checked the frequency, how did you  
5 know it was set to the proper police frequency?

6 A If you hear a scanner it will call out through  
7 dispatch, it picks up different frequencies on  
8 dispatch if it is not on a secure channel, and it  
9 said Richland -- I can't remember the actual number  
10 that they called out, but it was Richland. So that  
11 is the call sign for some of our road deputies, it  
12 is Richland, whatever, whatever, whatever.

13 Q And did they give you a specific -- was it a  
14 specific area they were talking about in dispatch?

15 A It was 300 series, so it was Richland 300 whatever,  
16 so that is Region 3, which would be the Farrow Road  
17 area, which is in Richland County and same area of  
18 the TD Bank.

19 Q The TD Bank is located in Region 3?

20 A Yes.

21 MR. SHELLBERG: Beg the Court's indulgence.

22 (Pause.)

23 MR. SHELLBERG: Your Honor, at this time I  
24 move to admit State's 19 into evidence.

25 THE COURT: Any objection?

1 MS. GOLDBERG: No objection.

2 (WHEREUPON, State's Exhibit No. 19 was  
3 marked for identification and received  
4 into evidence.)

5 BY MR. SHELLBERG:

6 Q You said you got a chance to interview Jason Colon?

7 A Yes, I did.

8 Q And what was your impression when you sat down to  
9 interview him?

10 A His interview took kind of a while because it  
11 seemed like he wasn't all the way there. I don't  
12 want to say the wrong terminology for it, but it  
13 seems like he was a little mentally challenged.  
14 And it took a while because we had to talk and, you  
15 know, he was really nervous and sweating real bad,  
16 stuff like that. But I think most of it was  
17 because he was -- he has got a little mental  
18 challenge. He was a little mentally challenged.

19 Q But were you able to talk to him?

20 A Yes, I was able to get a statement from him.

21 Q Okay.

22 A And he did confess to what he did.

23 MR. SHELLBERG: Beg the Court's indulgence.

24 (Pause.)

25 MR. SHELLBERG: Thank you. No further.

1 questions.

2 MS. GOLDBERG: May it please the Court?

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. GOLDBERG:

6 Q Investigator Williams, you ended up being the lead  
7 investigator on this case; correct?

8 A Yes, ma'am.

9 Q And what is the job of the lead investigator?

10 A The lead investigator collects all the paperwork,  
11 gets as many statements as they can, redoes -- you  
12 know, they make sure that the follow-up of the case  
13 is done and, you know, everything is in order.

14 Q As the lead investigator, I'm sure, especially on  
15 the day of the incident, it would be a rather busy  
16 job; is that fair?

17 A Yes.

18 Q But for that reason, you can actually ask other  
19 investigators, other deputies to do things for you;  
20 right?

21 A Right.

22 Q That is not unusual?

23 A No, that is not uncommon.

24 Q But you can ask another investigator to take a  
25 statement for you?

1 A Yes.

2 Q Or a deputy take a statement for you?

3 A Usually we get investigators. We usually don't --  
4 if we have to use a deputy, we will, and we try to  
5 use a ranking deputy. But usually we will try to  
6 get an investigator.

7 Q Sometimes in investigating a case investigators  
8 will issue subpoenas; is that fair? For documents,  
9 phone records --

10 A Yes.

11 Q -- 9-1-1 tapes --

12 A Yes.

13 Q -- different types of evidence?

14 A Yes.

15 Q Investigators do that sometimes?

16 A Sometimes they do.

17 Q In this particular case, did you ever obtain any  
18 statements from anyone inside the bank?

19 A No.

20 Q Did you ever ask any of them to give you a  
21 statement?

22 A I believe I did. I think I put a deputy in charge  
23 of that.

24 Q Okay. Did they ever give any statements?

25 A No. They gave verbal statements. That is pretty

- 1           much it.
- 2   Q    Did you ever go over to the Hilton Garden Inn and  
3        talk to employees there?
- 4   A    No, I was not aware that individuals at the Hilton  
5        Garden Inn were even involved.
- 6   Q    Did you ever ask the bank for any documents they  
7        may have had about the robbery, other than the  
8        photographs?
- 9   A    I got the photographs.
- 10   Q    But that is it?
- 11   A    That's it.
- 12   Q    Did you -- were you the one that asked for the  
13        9-1-1 tapes?
- 14   A    No, the Solicitor's Office requested those.
- 15   Q    Okay. So you didn't do that?
- 16   A    No.
- 17   Q    Did you ever try and get any surveillance footage  
18        from outside the hotel?
- 19   A    No. I was not aware that there was any  
20        surveillance videos out there.
- 21   Q    Did you ever try and get any surveillance footage  
22        from outside the BB&T?
- 23   A    No.
- 24   Q    Are you aware if that exists?
- 25   A    I'm not sure if it exists or not.

1 Q But you know that banks typically have video  
2 outside of their tellers and ATM machines?

3 A Yes.

4 Q You interviewed Mr. Colon, Jason Colon; right?

5 A Yes, ma'am, I did.

6 Q What time do you think that interview was?

7 A I'd have to see the report.

8 Q You read him his Miranda rights?

9 A Yes.

10 Q Did he sign stating he understood?

11 A Yes, he did.

12 Q Did you have any question that he understood that  
13 he was agreeing to speak with you?

14 A No, I had no question.

15 Q Okay. You thought he had the ability to waive his  
16 right to an attorney?

17 A Yes, I did.

18 Q And talk with you?

19 A Yes.

20 Q He had the ability to freely and voluntarily tell  
21 you whatever he wanted to tell you?

22 A Yes.

23 Q And you thought -- you were comfortable that he  
24 made that decision -- that he made that --

25 A Yes.

1 Q Did he originally start out -- did he originally  
2 start out with a different story than he later  
3 gave?

4 A Not to my knowledge. He tried to talk about that  
5 check that he had in his hand, but, I mean, I poked  
6 holes in that quickly.

7 Q Okay. You don't think he was telling the truth  
8 about that?

9 A No, I don't think so.

10 MS. GOLDBERG: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. GOLDBERG:

14 Q And you actually took the warrant out for Mr. Colon  
15 and Mr. Macon?

16 A Yes, ma'am.

17 Q You didn't arrest Mr. Macon for kidnapping;  
18 correct?

19 MR. SHELLBERG: Objection.

20 THE COURT: What is the objection?

21 MR. SHELLBERG: Your Honor --

22 MR. CATHCART: Your Honor, basically --

23 THE COURT: Let me see you all.

24 (WHEREUPON, a bench conference was held  
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 MS. GOLDBERG: No further questions.

3 THE COURT: All right, the objection is  
4 sustained.

5 REDIRECT EXAMINATION

6 BY MR. SHELLBERG:

7 Q Investigator Williams?

8 A Yes, sir.

9 Q Are the witnesses that were at the scene here to  
10 testify today in front of the jury?

11 A Yes.

12 Q Tellers?

13 A Yes.

14 Q The employees of the Hilton?

15 A Yes, sitting right there(indicating).

16 MR. SHELLBERG: No further questions.

17 THE COURT: All right, sir, you may step down.  
18 (Witness steps down.)

19 MR. CATHCART: Our next witness I believe  
20 Defense counsel would have a motion about.

21 THE COURT: All right, ladies and gentlemen of  
22 the jury, I am going to send you all out for  
23 probably about ten minutes, then I'll have you back  
24 in for our next witness.

25 All right, thank you.

1 (WHEREUPON, the jury retires to the jury  
2 room at 12:11 p.m.)

3 THE COURT: All right. The next witness is --  
4 what was the motion again?

5 MR. CATHCART: It is the Co-Defendant's  
6 father.

7 THE COURT: All right. You want to proffer  
8 his testimony?

9 MR. CATHCART: Yes, Your Honor.

10 THE COURT: All right.

11 MR. CATHCART: Your Honor, my understanding  
12 is, despite our best efforts since we got it from  
13 the Defense -- his -- Mr. Jason Colon's attorney,  
14 the father's last name is not Colon. As a matter  
15 of fact, I don't know what it is, but Ricky Colon  
16 something else.

17 MS. GOLDBERG: Obviously, Your Honor, once we  
18 get that, if he does present testimony in front of  
19 the jury, we'll need to ask them about his name,  
20 because it wasn't presented.

21 THE COURT: All right. You can bring him in.  
22 (Witness enters courtroom.)

23 THE BAILIFF: Place your left hand on the  
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you solemnly swear or affirm  
2 the testimony you give in this case will be the  
3 truth, the whole truth, and nothing but the truth,  
4 so help you God?

5 THE WITNESS: Yes.

6 THE CLERK: Have a seat, and state your full  
7 name for the record.

8 RICKY WOODBERRY,  
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION(PROFFER)

11 BY MR. CATHCART:

12 Q State your full name for the record, please.

13 A Excuse me?

14 Q Your full name for the record, please?

15 A Ricky Woodberry.

16 Q Woodberry?

17 A Yes.

18 Q Mr. Woodberry, what is your relationship to Jason  
19 Colon?

20 A He is my son.

21 Q And is it Colon? Collin?

22 A Colon(pronounced "Cologne").

23 Q Colon(pronounced "Cologne").

24 A Yes.

25 Q Sorry. And where are y'all originally from?

- 1 A Brooklyn, New York.
- 2 Q And how long did y'all live in Brooklyn?
- 3 A We lived there all our life until we came here.
- 4 Q Okay. And what if anything occurred to your son  
5 about when he was 16 years old?
- 6 A He was shot in the head.
- 7 Q How did that occur?
- 8 A He was standing in front of the building holding  
9 the door open. He had just come downstairs. And  
10 two guys came running through the building shooting  
11 at each other. And he happened to get struck.
- 12 Q And so he was just a bystander and got shot in the  
13 head?
- 14 A Yes.
- 15 Q And what -- where did the bullet hit, other than in  
16 the head, I understand?
- 17 A The front -- frontal lobe of his head.
- 18 Q Okay. So it went through his frontal lobe?
- 19 A Yes. And came out the other side.
- 20 Q And he was obviously able to survive this?
- 21 A Yes, he did.
- 22 Q But did it change him in some way?
- 23 A Yes, it did.
- 24 Q In what way?
- 25 A He became schizophrenic, very passive. You know,

1 and the doctor informed us that he will always have  
2 a mind of a 13-year-old.

3 Q Okay. And if someone asks him to do something,  
4 what does he do?

5 A He is very easygoing. Most of the time he will say  
6 yes.

7 Q Okay. Is he easily led?

8 A Yes, he is.

9 Q Do you know the Defendant in this case, Arthur  
10 Macon?

11 A Yes.

12 Q How do you know him?

13 A He is a cousin.

14 Q Okay. How is he a cousin?

15 A On Jason's mother's side.

16 Q And does Jason know Mr. Macon?

17 A Yes, he does.

18 Q Did they hang out together?

19 A They didn't at first.

20 Q Okay.

21 A When we first came down.

22 Q And that was about 11 years ago?

23 A It was about 11 years ago.

24 Q When did they start hanging out?

25 A It was recently, about two years ago, just before

1 the incident happened.

2 Q Just before this occurred?

3 A Yes.

4 Q About how long before this incident occurred?

5 A Maybe about two months.

6 Q Okay.

7 A He started coming around.

8 Q Okay. Did they start -- that two months he started  
9 coming around, did they start doing things together  
10 a lot more or just -- I mean, how -- when he would  
11 come around, what do you mean?

12 A He would come around maybe two, three times a week,  
13 you know, for an hour, couple of hours he would  
14 take Jason out and, you know, but not a long period  
15 of time.

16 Q Okay.

17 MR. CATHCART: Basically that is all I am  
18 going to be asking for him to testify to, Your  
19 Honor.

20 MS. GOLDBERG: Your Honor, I have maybe two  
21 follow-up questions, and then I do have some legal  
22 arguments.

23 THE COURT: Okay.

24 CROSS-EXAMINATION(PROFFER)

25 BY MS. GOLDBERG:

1 Q Mr. Woodberry, you testified as to what happened to  
2 your son when he was 16 years old; correct?

3 A Yes.

4 Q And you testified about him being in a -- down  
5 stairs holding a door open, two guys came by, and  
6 the facts of what happened?

7 A Yes.

8 Q Were you present?

9 A No, I wasn't.

10 Q You didn't observe any of that?

11 A No.

12 Q You only know what you have been told?

13 A Yes.

14 Q And do you know if Mr. Macon and your son ever  
15 worked together?

16 A No.

17 Q Not to your knowledge?

18 A No.

19 Q Okay.

20 MS. GOLDBERG: No further questions. I do  
21 just have a follow-up. You are welcome to stay on  
22 if you want.

23 THE COURT: All right, anything else from the  
24 State?

\*-25 MR. CATHCART: No, Your Honor. That is all

1 we're proffering to as to Mr. Colon's  
2 Co-Defendant's condition, his capacity, and also  
3 his relationship to his Co-Defendant.

4 THE COURT: All right. You can step down,  
5 sir.

6 (Witness steps down.)

7 THE COURT: Ms. Goldberg?

8 MS. GOLDBERG: Thank you, Your Honor.

9 As to the testimony as to what happened when  
10 his son was 16, obviously he has personal knowledge  
11 that his son was shot and the degree of the injury  
12 and the type of injury, granted. But the testimony  
13 as to how the shooting took place and the  
14 circumstances of it, he wasn't present. He doesn't  
15 have direct knowledge of that, only what he has  
16 been told. I would submit that that is hearsay.

17 As to the remainder of his testimony, the  
18 witness testified that Mr. Colon will usually say  
19 yes; he is easily led; he is passive. I submit  
20 that that is all character evidence.

21 Rule 404(3) states that: Character evidence  
22 of a witness is only allowed under certain  
23 circumstances. Prior convictions to attack their  
24 credibility or if their character has already been  
25 attacked for truthfulness or untruthfulness. None

1 of those are the case here. Essentially all this  
2 is doing is bolstering Mr. Colon's testimony making  
3 it seem more or less likely that he may be passive,  
4 may be cooperative with police, may be telling the  
5 truth.

6 Anything else would be irrelevant. We're not  
7 here to decide why Jason Colon did what he did if  
8 this is all about Arthur Macon, so any intent on  
9 his part would be irrelevant to this trial.

10 So I guess to summarize, my grounds would be  
11 hearsay, improper character evidence of a witness,  
12 and relevance.

13 THE COURT: I will be glad to hear from the  
14 State.

15 MR. CATHCART: It is not character evidence,  
16 it is just evidence of the Defendant's condition as  
17 a medical issue. It is not that he is a good  
18 person or a bad person, it is that he had a frontal  
19 lobotomy from a bullet. It is not going to the  
20 truth of what he is saying or not saying. It is  
21 just who he is. That is all the testimony is.

22 As to the hearsay, his father is just saying  
23 how he got shot. If he wants to say he was shot  
24 between -- obviously there is a reason -- he was  
25 shot in the head. He wasn't there. I'm assuming

1           somebody told him. I don't know, maybe that is  
2           going to be -- fine. I mean, the kid just got shot  
3           in the head when he is 16 years old outside of his  
4           house. I mean, I don't see how --

5           THE COURT: I know you are saying it is  
6           hearsay. How is that for the truth of the matter  
7           asserted?

8           MS. GOLDBERG: I'm sorry?

9           THE COURT: You said it was hearsay.

10          MS. GOLDBERG: It is.

11          MR. CATHCART: Only as to --

12          MS. GOLDBERG: I don't know any other purpose  
13          it would be offered for, other than that it is  
14          true. And if they are not offering any of this to  
15          prove his character or his truthfulness, I don't  
16          know the relevance at all. He wasn't there. And  
17          Mr. Colon's intent isn't a part of this trial.

18          MR. CATHCART: Mr. Colon's condition is. And  
19          his use of that condition is. It is not character  
20          evidence, truthfulness, or non-truthfulness. It is  
21          as he is as a person, not in his mindset, but how  
22          this man used him.

23          THE COURT: I am trying to remember the  
24          testimony. As far as the hearsay, I don't think  
25          that that is hearsay, him saying what happened to

1 his son. So I'm going to allow that part in, the  
2 details of what happened to him when he was 16  
3 years old.

4 The issue regarding his mental capacity, are  
5 you objecting to that, or are you just objecting to  
6 the part where he says, Yes, he does what he is  
7 told?

8 MS. GOLDBERG: What I wrote down is that he  
9 testified -- I think to be fair, his father  
10 testified that he was shot -- the testimony was  
11 that he was shot and as a result of this he will  
12 usually say yes; he is easily led; he is passive.  
13 That is all character evidence. I don't know how  
14 that is not character evidence. It is not evidence  
15 of the robbery occurring or not occurring. That  
16 all has to do with his character. I don't even  
17 know of another phrase to use.

18 MR. CATHCART: His medical condition.

19 MS. GOLDBERG: He is not a doctor.

20 MR. CATHCART: He is a father who observed his  
21 child.

22 MS. GOLDBERG: Right. But as far as a medical  
23 condition --

24 THE COURT: Hold on one second.

25 (Pause.)

1 THE COURT: I was looking at 405(b), but that  
2 is a specific instance of conduct.

3 MS. GOLDBERG: Yes, Your Honor. And I don't  
4 even think you get to Rule 405 unless -- Rule  
5 404(a)(3) explains exactly when the character of a  
6 witness is allowed.

7 THE COURT: Yes, but you have got to look at  
8 607.

9 MS. GOLDBERG: Agreed. And my argument is  
10 that it doesn't fall within any of those  
11 exceptions.

12 THE COURT: All right. I will be glad to hear  
13 from the State.

14 MR. CATHCART: Again, Your Honor, this is not  
15 as to character, this is talking about the medical  
16 condition of his child. It is not anything to do  
17 with Mr. Macon, it is only as to what occurred to  
18 him and how that frontal lobotomy he got from a  
19 bullet affects his child.

20 THE COURT: All right. I am going to let him  
21 talk about 16, what happened to him, and the  
22 incident surrounding that.

23 Based on the testimony I find that, although  
24 he is not -- he was not there with his child in the  
25 incident and that he is aware of it, so I think he

1 can testify to that.

2 He can testify to his mental -- his perception  
3 of him mentally, but I don't know if he will be  
4 able to -- I will not let him get into, He is  
5 easily led, that last sentence, or whatever he  
6 said. I'll allow him to testify as to everything  
7 else except for that portion about -- what was it  
8 again? He is easily led --

9 MR. CATHCART: Easily led. But as to the  
10 doctor indicated about how he will always have the  
11 brain of a 13-year-old be okay? I just don't want  
12 to overstep.

13 THE COURT: If he knows that, yes, he can  
14 testify to that. He can testify to that. But I  
15 don't know him being able to say he is easily led.

16 MR. CATHCART: Who better than the father of a  
17 person who is easily led?

18 THE COURT: All right. Well, I will allow  
19 that with the exception of that last little  
20 sentence he said.

21 MR. CATHCART: You will allow easily led, but  
22 not -- wait, hold on.

23 THE COURT: What is it again that you were  
24 objecting? Mental capacity of a 13-year-old.

25 MR. CATHCART: Okay. Let me make sure he

1 understands that.

2 THE COURT: Okay. What was the sentence again  
3 that he used?

4 MS. GOLDBERG: What I wrote down was: Shot in  
5 the frontal lobe; became schizophrenic; passive;  
6 mind of a 13-year-old; usually will say yes; easily  
7 led.

8 THE COURT: He can testify about being 13 and  
9 that he is passive, but the last portion.

10 MS. GOLDBERG: Okay.

11 (Pause.)

12 THE COURT: You have already talked to him?

13 MR. CATHCART: It would probably be better if  
14 you talked to him, direct him as to what he can or  
15 cannot say.

16 THE COURT: All right. Yes, ma'am?

17 MS. GOLDBERG: The only thing I was going to  
18 ask and remind you to do is as soon as the jury  
19 comes in just to let them know that his last name  
20 was incorrect, what was read to them, before he  
21 begins.

22 THE COURT: I'll do that. And you are going  
23 to have to call him to the stand.

24 Mr. Woodberry?

25 THE WITNESS: Yes.

1 THE COURT: I am not allowing in the testimony  
2 about him being easily led or --

3 MS. GOLDBERG: Or usually saying yes.

4 THE COURT: Or usually saying yes. The other  
5 testimony will be able to come in regarding his --  
6 how old is he?

7 MR. CATHCART: Twenty-eight.

8 THE WITNESS: Twenty-eight.

9 THE COURT: And capacity of being a  
10 13-year-old, what happened to him. Is that  
11 everything?

12 MR. CATHCART: That is pretty much it.

13 THE COURT: Okay. All right. You can just  
14 have a seat over there, and then when the jury  
15 comes back in we'll call you.

16 Yes, sir.

17 (Witness steps down.)

18 (WHEREUPON, the jury came into open  
19 court at 12:31 p.m.)

20 THE COURT: I would ask the State to call  
21 their next witness.

22 MR. CATHCART: The State would call Ricky  
23 Woodberry.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you solemnly swear or affirm  
4 the testimony you give in this case will be the  
5 truth, the whole truth, and nothing but the truth,  
6 so help you God?

7 THE WITNESS: Ricky Woodberry.

8 THE COURT: Ladies and gentlemen of the jury,  
9 on yesterday when we went through the list of  
10 potential witnesses -- this is Ricky Woodberry. On  
11 the list he was listed as Ricky Colon. And so I  
12 just want to make sure -- just find out from any of  
13 you if you are familiar with Mr. Woodberry. His  
14 name is Woodberry, not Colon.

15 (WHEREUPON, there was no response.)

16 THE COURT: All right. Yes, sir, you may  
17 continue.

18 MR. CATHCART: Thank you.

19 RICKY WOODBERRY,  
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CATHCART:

23 Q Mr. Woodberry, how are you related to Jason Colon  
24 -- Cologne(pronounced "Cologne")?

25 A I'm his father.

1 Q And y'all are originally from where?

2 A Brooklyn, New York.

3 Q Okay. And how long had y'all been in Brooklyn?

4 A All our life until we came here.

5 Q Okay. And what if anything occurred that made  
6 y'all come here?

7 A My son was shot in the head.

8 Q Okay. How did that occur?

9 A He was standing in front of the building where we  
10 resided at, and two gentleman came running through  
11 the building, you know, one was chasing the other,  
12 and they were shooting at each other. And my son  
13 happened to be standing there, and he caught a  
14 stray bullet.

15 MS. GOLDBERG: Your Honor, I would renew my  
16 previous objection.

17 THE COURT: All right. Objection sustained.

18 BY MR. CATHCART:

19 Q And where did the bullet exactly hit him?

20 A In his temple in his head, frontal lobe.

21 Q Okay. And when -- did the bullet stay in there?

22 A No, it went in and came out the other side.

23 Q Through the temple lobe?

24 A Yes.

25 Q Frontal lobe?

- 1 A Yes.
- 2 Q So he basically got a lobotomy from a bullet?
- 3 A Yes.
- 4 Q Did the doctors indicate -- well, did that change  
5 him in any way?
- 6 A Yes, it did.
- 7 Q Okay. Did it make him in what way? How -- did he  
8 become what?
- 9 A He was diagnosed with schizophrenia. He started  
10 talking to hisself. He became passive.
- 11 Q Did the doctors indicate his mind would be that of  
12 what?
- 13 A A 13-year-old.
- 14 Q Okay. And he is how old now?
- 15 A He is 28.
- 16 Q And has he improved in the past couple of years?
- 17 A No. No. While he is on medication he has gotten a  
18 little better.
- 19 Q Okay. But he still has the mind of 13-year-old?
- 20 A Yes, he does.
- 21 Q Please answer any questions from Defense counsel.
- 22 MS. GOLDBERG: Beg the Court's indulgence.
- 23 THE COURT: Yes, ma'am.
- 24 (Pause.)
- 25 MR. CATHCART: I'm sorry, Your Honor, can I

1 start back since she hasn't started?

2 THE COURT: Yes, sir.

3 BY MR. CATHCART:

4 Q Do you know Arthur Macon?

5 A Yes, I do.

6 Q Okay. How do you know him?

7 A He is a cousin of Jason's mother.

8 Q Okay. And y'all moved down here 11 years ago?

9 A Yes, we did.

10 Q How long before this incident -- well, did they  
11 hang out before this incident occurred?

12 A They only started hanging out like two months  
13 before the incident.

14 Q So y'all had been here like 11 years beforehand.  
15 And so two months before this occurred, they  
16 started hanging out together?

17 A Yes.

18 Q Okay. About how much?

19 A Maybe twice a week, three times a week he would  
20 come by.

21 Q And would he ever take Jason off too?

22 A Yes, he would.

23 MR. CATHCART: Thank you. No further  
24 questions?

25 THE COURT: All right. Yes, ma'am?

1 MS. GOLDBERG: Beg the Court's indulgence.

2 (Pause.)

3 MS. GOLDBERG: Nothing for this witness.

4 THE COURT: All right, sir, you may step down.

5 Any objection to this witness being excused?

6 MS. GOLDBERG: No, ma'am.

7 (Witness steps down and is excused.)

8 MR. CATHCART: At this time the State calls

9 Jason Colon.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the

12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you solemnly swear or affirm  
15 the testimony you give in this case will be the  
16 truth, the whole truth, and nothing but the truth,  
17 so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Have a seat, and state your full  
20 name for the record.

21 THE WITNESS: Jason Colon.

22 JASON COLON,

23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CATHCART:

- 1 Q Mr. Colon, how old are you?
- 2 A Twenty-eight.
- 3 Q You are from originally where?
- 4 A New York.
- 5 Q And you moved down here about 11-odd years ago?
- 6 A Yes.
- 7 Q Do you remember why you moved down here?
- 8 A Because of my wound, gunshot wound.
- 9 Q Okay. That gunshot wound affected you?
- 10 A Yes.
- 11 Q Do you know the Defendant in this case, Mr. Macon,  
12 over there?
- 13 A Yes.
- 14 Q How do you know him?
- 15 A My family.
- 16 Q Okay. Is he related to you?
- 17 A Yes.
- 18 Q Do you recall going into the TD Bank back in  
19 August 30th of 2012?
- 20 A Yes.
- 21 Q Do you remember why you went there?
- 22 A Yes.
- 23 Q Why?
- 24 A To go cash a check.
- 25 Q Cash a check?

- 1 A Yes.
- 2 Q Did anybody tell you to go there?
- 3 A Yes.
- 4 Q Who?
- 5 A Arthur Macon.
- 6 Q I'm sorry?
- 7 A Arthur Macon.
- 8 Q Arthur Macon told you to go there?
- 9 A Yes.
- 10 Q Did he give you anything before you went there?
- 11 A Yes.
- 12 Q What?
- 13 A A fake gun.
- 14 Q A fake gun?
- 15 A Yes.
- 16 Q Let me show you what is marked as State's Exhibit  
17 Number 18. Is that the gun that he gave you?
- 18 A Yes.
- 19 Q Okay. Did he -- was he the one who colored the  
20 little orange part in to make it look real?
- 21 A Yes.
- 22 Q Why did he send you in there with a gun?
- 23 A To demand the money.
- 24 Q Demand the money?
- 25 A Yes.

- 1 Q Okay. And what were you supposed to do after you  
2 demanded the money and got the money?
- 3 A Go back to him.
- 4 Q Where was he supposed to be?
- 5 A In front of the hotel.
- 6 Q Front of the hotel?
- 7 A Yes.
- 8 Q Would you have to go through somewhere to get to  
9 the hotel?
- 10 A The woods.
- 11 Q The woods?
- 12 A Yes.
- 13 Q Is that what you did?
- 14 A Yes.
- 15 Q Was it tough to get through those woods?
- 16 A Yes.
- 17 Q What kind of vehicle was he driving?
- 18 A A black pickup truck.
- 19 Q Black pickup truck?
- 20 A Yes.
- 21 Q Okay. When you got to him, were you supposed to  
22 get into the passenger's side of the pickup truck?
- 23 A Yes.
- 24 Q Yes?
- 25 A Yes.

- 1 Q Not into anywhere else?
- 2 A Oh, the back of the pickup truck.
- 3 Q Well, you tell me, which one?
- 4 A The back.
- 5 Q The back?
- 6 A Yes.
- 7 Q Where the tailgate is?
- 8 A Yes.
- 9 Q Was that bed covered?
- 10 A Yes.
- 11 Q So you were to hide in there?
- 12 A Yes.
- 13 Q Did he give you a mask when you went to the bank?
- 14 A No.
- 15 Q Did he tell you to hide your face in any way?
- 16 A No.
- 17 Q I show you what has been marked as State's Exhibit
- 18 Number 3. Do you recognize that person?
- 19 A Yes.
- 20 Q Who is that?
- 21 A That is me.
- 22 Q Okay. Is that the gun he gave you?
- 23 A Yes.
- 24 Q Is that the piece of paper that you had in your
- 25 hand?

- 1 A Yes.
- 2 Q Is that a check?
- 3 A Yes.
- 4 Q Is that what he gave you?
- 5 A (Nods affirmatively.)
- 6 Q Did he say it was a check?
- 7 A Uh-huh.
- 8 Q He told you this was a check?
- 9 A Yes.
- 10 Q When you went through the woods, were you
- 11 confronted -- or when you get to the parking lot,
- 12 did a stranger confront you?
- 13 A Yes, sir. Yes.
- 14 Q Okay. And what did that make you do?
- 15 A I just ignored him.
- 16 Q You just ignored him?
- 17 A Yes.
- 18 Q At what point did you leave that parking lot -- or
- 19 did you leave the parking lot?
- 20 A When I headed home.
- 21 Q Okay. Headed home?
- 22 A Yes, before the police arrived.
- 23 Q Okay. Did you hear the police coming?
- 24 A Yes.
- 25 Q Did you see your ride at that point?

- 1 A No.
- 2 Q Okay. He left you?
- 3 A Yes.
- 4 Q I show you what has been marked as State's Exhibit  
5 Number -- let me find it -- 12. Do you recognize  
6 what that is?
- 7 A Yes.
- 8 Q Is that the -- what?
- 9 A Bag of money.
- 10 Q Is that the money that you got?
- 11 A Yes.
- 12 Q What did you do with that bag of money?
- 13 A I dropped it.
- 14 Q Why?
- 15 A Because of the police coming.
- 16 Q The police were coming?
- 17 A Yes.
- 18 Q So you were going to do what instead?
- 19 A Dropped it.
- 20 Q Just drop it?
- 21 A Uh-huh.
- 22 Q And then what were you going to do?
- 23 A Go home.
- 24 Q Just go on home?
- 25 A Yes.

- 1 Q How long did you and Mr. Macon talk about doing  
2 this?
- 3 A A few months -- a few months before it happened.
- 4 Q Decided to do a bank robbery?
- 5 A Yes.
- 6 Q Just -- you were going to be the one going in?
- 7 A Yes.
- 8 Q Did he ever say, I'll do it?
- 9 A No.
- 10 Q Just always you?
- 11 A Yes.
- 12 Q Was he going to step back with something to listen  
13 to the police?
- 14 A Yes.
- 15 Q Was that the idea?
- 16 A (Nods affirmatively.) Yes.
- 17 Q So he would be able to know what is going on?
- 18 A Yes.
- 19 Q Let me ask you this. You took -- when -- if you  
20 recall, when you walked in there, you sat there for  
21 almost 20 to 30 minutes?
- 22 A Yes.
- 23 Q Just sitting by the door; right?
- 24 A Yes.
- 25 Q What were you waiting on?

1 A I was just waiting for the right time to demand the  
2 money.

3 Q Okay.

4 MR. CATHCART: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. CATHCART:

7 Q You gave a statement to the police; correct?

8 A Yes.

9 Q Basically confessing to this?

10 A Yes.

11 Q And you also -- you said who did it with you;  
12 correct?

13 A Yes.

14 Q What did you call him on the statement? Do you  
15 remember?

16 A Ace.

17 Q Ace?

18 A Yes.

19 Q Is that his nickname?

20 A Yes.

21 Q Is Ace in the courtroom today?

22 A Yes.

23 Q Could you please point him out for me?

24 A (Indicating.)

25 MR. CATHCART: Let the record reflect he is

1 pointing to Arthur Macon.

2 THE COURT: All right. Yes, sir.

3 BY MR. CATHCART:

4 Q No further questions. Thank you. Answer any  
5 questions from Defense counsel, okay?

6 A All right.

7 Q Thank you.

8 CROSS-EXAMINATION

9 BY MS. GOLDBERG:

10 Q Good afternoon.

11 A Good afternoon.

12 Q All right. You said you testified that you went in  
13 the bank to cash a check; is that right?

14 A Yes.

15 Q That is what you were going to do?

16 A Yes.

17 Q Was it your unemployment check?

18 A Yes.

19 Q You were getting unemployment at the time?

20 A Yes.

21 Q So when you went in the bank, that was your plan?

22 A Yes.

23 Q To cash the check?

24 A (Nods affirmatively.)

25 Q And then while you were standing in the bank, you

1           were trying to decide whether you wanted to rob it  
2           or not; is that right?

3    A    Yes.

4    Q    You hadn't made up that decision before you went  
5           inside?

6    A    Yes.

7    Q    And then after you left the bank -- well, let me --  
8           strike that.

9    A    Uh-huh.

10   Q    You said that your cousin and you talked about  
11          robbing a bank for months -- months prior?

12   A    Yes.

13   Q    In general?

14   A    Yes.

15   Q    Is back then when he gave you the gun?

16   A    Yes.

17   Q    After the robbery you got rid of the money?

18   A    Yes.

19   Q    You got rid of the gun?

20   A    (Nods affirmatively.)

21   Q    Because you didn't want to get caught by police?

22   A    Yes.

23   Q    Did anyone tell you to do that?

24   A    No.

25   Q    Did you see your cousin after the robbery?

1 A No.

2 Q Did he drive you away?

3 A No.

4 MS. GOLDBERG: Beg the Court's indulgence.

5 (Pause.)

6 MS. GOLDBERG: No further questions.

7 THE COURT: All right. Yes, sir?

8 REDIRECT EXAMINATION

9 BY MR. CATHCART:

10 Q Who brought you to the bank that day?

11 A Ace.

12 Q Ace?

13 A Yes.

14 Q Mr. Macon?

15 A Yes.

16 Q Who told you where to run to that day?

17 A Ace.

18 Q Mr. Macon?

19 A Yes.

20 Q Who was driving a black pickup truck that day?

21 A Yes.

22 Q Is that him?

23 A (Nods affirmatively.)

24 Q Who gave you this that day?

25 A Ace.

1 Q Who told you to rob the store -- the bank?

2 A Ace.

3 Q Ace?

4 A Yes.

5 Q That day?

6 A Yes.

7 MR. CATHCART: No further questions.

8 THE COURT: All right.

9 MS. GOLDBERG: I just have one follow-up.

10 THE COURT: Yes, ma'am.

11 RECROSS-EXAMINATION

12 BY MS. GOLDBERG:

13 Q Mr. Colon, Arthur Macon dropped you off at Sonic;  
14 right?

15 A Yes.

16 Q Okay. Thank you.

17 THE COURT: All right. You can step down,  
18 sir.

19 (Witness steps down.)

20 THE COURT: All right, let me see you all.

21 (WHEREUPON, a bench conference was held

22 in the presence of the jury but out of

23 the hearing of the jury.) *What was this about?  
Was it really bench?*

24 THE COURT: All right, ladies and gentlemen of  
25 the jury, we are trying to decide if we are going

1 to go ahead and take lunch. So I think what we'll  
2 do is go ahead and take our lunch break and start  
3 back at 2:00 o'clock.

4 All right. Thank you.

5 (WHEREUPON, the jury is excused for  
6 lunch at 12:48 p.m.)

7 THE COURT: We will start back at 2:00. Just  
8 for scheduling purposes, if you had one more  
9 witness, I'm guessing then we'll -- I just don't  
10 know if we will be able to argue and charge today.

11 MR. CATHCART: That's fine.

12 THE COURT: That might put us into tomorrow  
13 morning, of course, and then that might -- with  
14 your issue. But I just don't want to waste an  
15 entire day.

16 MS. GOLDBERG: Absolutely. And I guess I  
17 would ask if we come back tomorrow morning to argue  
18 and charge, maybe you can tell them to come back at  
19 9:00 instead of 9:30. Maybe that will help speed  
20 things along.

21 THE COURT: Yes. Let's just see how far -- I  
22 mean, she's been working on the jury charge. So I  
23 think it will probably put us at that time period,  
24 3:00 o'clock, 3:30 by the time we hear motions. I  
25 don't know if he is going to testify at this point.

1 And I'll ask you to go ahead and talk to him about  
2 it over lunch.

3 MS. GOLDBERG: Yes, ma'am.

4 THE COURT: Or if he has any witnesses he  
5 wants to present.

6 MS. GOLDBERG: Yes, ma'am.

7 THE COURT: Because that will come up shortly  
8 thereafter.

9 MS. GOLDBERG: Yes. We'll be ready.

10 THE COURT: All right. Thank you.

11 (WHEREUPON, a lunch break was taken at  
12 12:50 p.m.)

13 THE COURT: Are you ready to bring them in?

14 MR. CATHCART: Yes, ma'am.

15 THE COURT: All right, y'all can bring them  
16 in.

17 (WHEREUPON, the jury came into open  
18 court at 2:16 p.m.)

19 THE BAILIFF: Your Honor, the jury is present.

20 THE COURT: All right, ladies and gentlemen, I  
21 hope you had a good lunch.

22 At this time we will continue with the State's  
23 case.

24 I would ask the State to call their next  
25 witness.

1 MR. CATHCART: May it please the Court, Your  
2 Honor? The State calls Kerry Johnson.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the  
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you solemnly swear or affirm  
8 the testimony you give in this case will be the  
9 truth, the whole truth, and nothing but the truth,  
10 so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please have a seat, and state your  
13 full name for the record.

14 THE WITNESS: My name is Kerry Johnson,  
15 K-E-R-R-Y.

16 KERRY JOHNSON,  
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CATHCART:

20 Q Investigator Johnson, where are you employed?

21 A I am employed with the Richland County Sheriff's  
22 Department as an investigator.

23 Q And how long have you been doing that?

24 A Been with the Sheriff's Department nine years.  
25 Been with investigations a little more than three

1 years.

2 Q Okay. And as part of your duties, were you  
3 involved in an investigation of a bank robbery at  
4 the TD Bank at 8850 Farrow Road here in Richland  
5 County?

6 A I was.

7 Q And in what capacity were you involved in that  
8 investigation?

9 A I was working the evening shift, so I was there  
10 after 5:00 o'clock. And I was notified by  
11 Investigator Williams. And I had been listening to  
12 the units respond to the robbery over the radio.  
13 And I knew that some arrests had been made.

14 I was contacted by Investigator Williams, who  
15 asked me to interview one of the suspects that was  
16 being brought to headquarters.

17 So I waited on the road unit to bring what  
18 turned out to be Mr. Macon, who is sitting there at  
19 the table. I took Mr. Macon back into an office.

20 At that time, because he was under arrest and  
21 because I was going to question him about a crime,  
22 I read him his Miranda rights.

23 We have a form, a standardized form, called  
24 the Advice of Rights form. And I read from that  
25 form to make sure he understood what his rights

1           were.

2       Q     And can you tell the jury what the rights that you  
3           read him were?

4       A     You took my form.

5       Q     This has been marked State's Exhibit 17 for  
6           identification. Is that a copy of the form?

7       A     This a standardized form that we use. There is no  
8           other form that the Sheriff's Department uses other  
9           than this form right here.

10           And at the top it is called: Richland County  
11           Sheriff's Department Interrogation Advice of  
12           Rights. And it reads:

13           Before we ask you any questions, you must  
14           understand your rights.

15           You have the right to remain silent.

16           Anything you say can be used against you in  
17           court.

18           You have the right to talk to a lawyer for  
19           advice before we ask you any questions and to have  
20           a lawyer with you during any questioning.

21           If you cannot afford to hire a lawyer, one  
22           will be appointed for you before any questioning if  
23           you wish.

24           If you decide to answer questions without a  
25           lawyer present, you still have the right to stop

1           answering at any time, and you also have the right  
2           to stop answering at any time until you talk to a  
3           lawyer.

4           And there is a place here to sign. There is a  
5           place to witness. And up underneath that is the  
6           Waiver of Rights, which Mr. Macon did sign, not on  
7           this particular form, but he did sign. And it  
8           says:

9           I have read this statement of my rights.

10          I understand what my rights are.

11          I am willing to talk and answer questions.

12          I understand and know what I am going.

13          No promises have been made to me, and no  
14          pressure or coercion of any kind has been used  
15          against me.

16          And it is standard for us to make sure the  
17          person that we're interviewing understands what  
18          pressure and coercion is. And sometimes we give  
19          them examples so there is no misunderstanding.

20    Q       Okay. And you went through all those rights with  
21           him?

22    A       That's correct.

23    Q       And he signed, then you signed the form?

24    A       Yes. And he agreed to answer questions.

25    Q       Okay. And just talk to you about what occurred?

1 A Yes.

2 Q Okay. And when he came in, did he and his cousin  
3 come into the lobby together when they were  
4 arrested?

5 A No. We came through the back door with Mr. Macon,  
6 and Mr. Colon was in the -- what they call the D  
7 Cell at the Sheriff's Department, which is a cell  
8 near investigations where we put people until we  
9 get a chance to talk to them or transport them to  
10 the jail.

11 Q Okay. And at some point Mr. Colon was transferred  
12 over to Investigator Williams to talk to him;  
13 correct?

14 A That's correct.

15 Q And what if anything did you and Mr. Macon have to  
16 talk about?

17 A Well, I explained to Mr. Macon that although his  
18 initial arrest -- he had also been charged with a  
19 traffic offense.

20 I asked him at that time, Do you have any idea  
21 what else you might be charged with?

22 And he mentioned that he saw a lot of police  
23 cars at the bank and that he thought that any other  
24 charge might have something to do with that.

25 Before I went on any further, I called

1           Investigator Williams by phone to get some of the  
2           details because I didn't have a whole lot of  
3           details at the time. He let me know that Mr. Macon  
4           was driving a black truck that matched the  
5           description along with the tag that was seen  
6           leaving the scene at a high rate of speed at one  
7           point, and also seen talking to what turned out to  
8           be Mr. Colon, who was arrested.

9           Once I had that information, I simply asked  
10          Mr. Macon just to tell me about his day.

11          He said that he had been with his girlfriend's  
12          house who he has a daughter with, and that he left  
13          her house somewhere around 12:30. Now, keep in  
14          mind, this was about 10 till 6:00 when I got the  
15          call from Investigator Williams. He said his day  
16          started around 12:30, but he went back to his  
17          grandmother's house where he lives at 18 Flora  
18          Circle and he stayed there until that afternoon.  
19          He left later in the afternoon and went to the  
20          Hilton Hotel on Farrow Road, which is right near  
21          the bank. He said that he went inside to ask how  
22          much a room was. Then he went back out in the  
23          parking lot and he talked to someone out in the  
24          parking lot. He identified that person as an  
25          employee of the hotel. But then he decided to go

1 back in to get a job application. He said he left  
2 and then headed back to his house and was on the  
3 way back to his house when he was stopped by the  
4 police officer.

5 Q Okay. Let me ask you this. In that rendition of  
6 facts that he gave right then, did at any point he  
7 mention Mr. Colon?

8 A No. As a matter of fact, I asked him was anybody  
9 with him, and he said no.

10 Q Okay. At any point during his rendition of facts  
11 did he say, Oh, well, here is the application?

12 A No.

13 Q Please continue.

14 A Because there was obvious discrepancies in his  
15 story and what had happened, I wanted to go talk to  
16 Mr. Colon or Cologne(pronounced "Cologne").

17 The day that Mr. Macon was arrested he had on  
18 a bright yellow or goldish shirt, so I went back  
19 into the D Cell --

20 Q Let me ask you this. I'm going from your notes.  
21 Do you have your notes with you as well?

22 A Yes.

23 Q These are notes you wrote right after this all  
24 occurred? Right after you spoke with him you did  
25 your follow-up investigation of notes right here?

1 A That's correct.

2 Q Okay. And so the paragraph above what you are just  
3 talking about, did you ask Mr. Macon specifically  
4 if he knew the other guy that was arrested?

5 A Yes.

6 Q Okay. And what did he tell you?

7 A I said, Hey, do you have any idea who that other  
8 guy was that was arrested?

9 And he said he didn't have any idea about  
10 anybody being arrested or any knowledge of any  
11 other person being arrested.

12 Q Okay. And at that point what did you do?

13 A Went back to the D Cell and spoke to Mr. Colon.  
14 And I said, How do you know the guy that we brought  
15 in with the yellow shirt -- or the gold shirt?

16 And he identified him as his cousin, but would  
17 not really offer a name at that point, but said, He  
18 was my cousin.

19 And from there I went back and sat down with  
20 Mr. Macon again. And I said, Your quote cousin  
21 just told me that you dropped him off over there at  
22 the bank<sup>ie!</sup> that he just robbed.

23 And his response was, You mean Colon? And  
24 then he explained that he was confused by my  
25 questions and because he was confused by what I was

1 asking him he quote forgot to tell me about Colon,  
2 who had been riding in the car with him.

3 Q So the questions he was confused about, Was anybody  
4 with you that day?

5 A (Nods affirmatively.)

6 Q And also, Do you know that guy that got arrested  
7 for the robbery?

8 A Right. And only after Colon admitted that they  
9 were cousins did he say, Yes, I do know him, and,  
10 Yes, he was in the car with me.

11 Q Okay. Please continue.

12 A He went on to tell me that Colon was his cousin. I  
13 don't know if they are biological cousins or what.  
14 But that earlier in the day they had met up in the  
15 Summit and Mr. Colon -- or Cologne -- asked him for  
16 a ride to his quote to his homeboy's house. Macon  
17 said that he didn't actually want to take Mr. Colon  
18 to his homeboy's house, so he dropped him off at  
19 the bus stop at Farrow Road, which happened to be  
20 right near the Hilton Hotel and of course right  
21 near the TD Bank. He said he didn't know that  
22 Colon went to go rob the bank, he didn't know that  
23 Colon had planned to rob the bank, that he just --  
24 he denied any knowledge of Mr. Colon robbing the  
25 bank; however, he could not offer a reason why he

1 was still in the area right after the robbery.

2 From then -- as I'm asking him questions just  
3 pointing out discrepancies in his story, I was  
4 notified that Lieutenant Amaro had a witness with  
5 him that had actually identified Mr. Colon's  
6 vehicle and him, what they call I think a ride-by.

7 Q Excuse me, whose vehicle?

8 A Beg your pardon?

9 Q Whose vehicle did she identify?

10 A Mr. Macon's.

11 Q Okay.

12 A The black truck that he was driving that day and  
13 the one that he was in when he was stopped by  
14 Lieutenant Wyatt.

15 Once I talked to Lieutenant Amaro about the  
16 positive identification -- and obviously what  
17 Mr. Colon had said -- I went back and confronted  
18 Mr. Macon with all these facts, at which time he  
19 didn't talk -- he said he didn't talk to Colon  
20 after dropping him off. And then he went to the  
21 BB&T to check his balance on his ATM, but they  
22 asked him did he have an account. He really  
23 couldn't give me an answer there and shut down  
24 pretty much after that and didn't want to talk  
25 anymore.

1 Q So after you confronted him as to his story  
2 continuing to change, he finally gave up? He did?

3 A Yes. He didn't want to talk anymore after that.

4 Q Okay. As you stated earlier, you went through the  
5 Advice of Rights form with him?

6 A That's correct.

7 Q And that Advice of Rights form has been misplaced  
8 since then; correct?

9 A It has.

10 Q And you are sure that you went through a form with  
11 him, though?

12 A No doubt about it, yes, sir.

13 Q And you wrote in your report right after this all  
14 occurred what you did?

15 A Correct.

16 Q And then you indicated in your report that you did  
17 go through the Advice of Rights form with him?

18 A That is correct.

19 Q And then the statement that he gave you, he never  
20 admitted to doing anything; correct?

21 A He did not.

22 Q He just gave you multiple stories as to what he  
23 didn't do?

24 A He was being very deceptive about what he had done  
25 and where he had been. Obviously the facts that I

1 was getting from the witness and not only --  
2 Investigator Williams -- were totally conflicting  
3 with what we was telling me.

4 Q Thank you. Answer any questions from Defense  
5 counsel.

6 MS. GOLDBERG: May it please the Court?

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. GOLDBERG:

10 Q All right. Investigator Johnson, you interviewed  
11 Arthur Macon, that is what you have been talking  
12 about; correct?

13 A That's correct.

14 Q And then immediately after that interview you wrote  
15 up a report?

16 A Yes, what we call an investigative follow-up.

17 Q Okay. And it was right after you talked to him?

18 A Did I put him in a cell and immediately type it up  
19 or did I do it within 30 minutes to an hour, I  
20 don't rightly know, but it was --

21 Q Right.

22 A When we have weekend duty --

23 Q Uh-huh.

24 A -- and have a major event or on-call, we're  
25 required to do that investigative report as soon as

1 possible, and then we put it in what we call the  
2 hot box.

3 Q Right. And you have a copy of that in front of  
4 you?

5 A Yes.

6 Q Okay. Very good. So at some point -- you  
7 understood -- you said, I believe, that Mr. Macon  
8 was arrested for a traffic offense. He was  
9 actually arrested for driving under suspension.  
10 That would be the correct --

11 A I knew that he had been placed under arrest by  
12 Lieutenant Wyatt for driving under suspension when  
13 he was brought in.

14 Q Right.

15 A And I also knew that he was a suspect in the  
16 robbery when he was brought in.

17 Q Okay. And then you decided to ask Mr. Macon about  
18 the events of his day?

19 A Yes.

20 Q Okay. And he told you about what had happened that  
21 day?

22 A Yes.

23 Q And then you summarized that in your report?

24 A I guess you could say summarize, yes.

25 Q Well, did you include as many details of that as

- 1           you could?
- 2    A    Probably not.
- 3    Q    Probably not? So you left information out?
- 4    A    I will put in exactly what was relevant to this  
5           particular case.
- 6    Q    Okay.
- 7    A    Had there been any discrepancy in what he told me,  
8           I would have put that in there also, yes.
- 9    Q    If there had been a discrepancy, that would have  
10           been important?
- 11   A    Yes.
- 12   Q    Okay. So he told you that he was at his  
13           girlfriend's house, I think is what you testified  
14           to?
- 15   A    That's correct.
- 16   Q    And that was in the Summit; correct?
- 17   A    He stated that he had spent the night with his  
18           girlfriend, Ashley Wylie, that lives in the Summit,  
19           yes.
- 20   Q    All right. And then at some point went to his  
21           grandmother's house?
- 22   A    According to my report, he stated that he left  
23           Ashley's house around 12:30 and went back to his  
24           grandmother's house, which is where he lives, at 18  
25           Flora Circle.

1 Q And then at some point went to the Hilton on Farrow  
2 Road?

3 A That's correct.

4 Q [ You did not put in your report that he ever said if  
5 someone was in the car with him or not in the car  
6 with him; right? ]

7 A That is not in the report.

8 Q So that is not in the report. And that summary  
9 that you provided of that conversation, that is  
10 just a few sentences of your report; correct?

11 A It is a few paragraphs, yes.

12 Q But were encompassing what happened between the  
13 morning whenever he woke up and 4:30 that  
14 afternoon?

15 A Yes.

16 Q At some point in the conversation you asked him if  
17 he knew the other guy who had been arrested; right?

18 A Yes, I asked him -- I'm not sure if they were  
19 brought in at the same time, but I had knowledge  
20 that they had seen each other or was aware of each  
21 other. So I asked him if he knew the other guy  
22 that was arrested, yes.

23 Q Well -- and that goes to my question. What -- they  
24 weren't arrested at the same place; correct?

25 A I don't know. They were arrested out on the road.

1 I'm not sure.

2 Q So what reason would you have to believe that  
3 Arthur would know anyone else was arrested?

4 A Because the information that I had was that they  
5 had been seen by a witness talking to each other.

6 Q But not at the time they were arrested; correct?

7 A That was not my understanding. I didn't -- not  
8 really sure of that, no.

9 Q So if Arthur said he didn't know anyone else was  
10 arrested, that could be perfectly reasonable and  
11 true; correct?

12 A Give me one moment.

13 (Pause.)

14 A He stated that the other guy -- when I went back to  
15 the D Cell, spoke to Jason Colon, and asked him how  
16 he knew quote the guy in the gold shirt.

17 And he stated that the other guy was his  
18 cousin, but didn't know his name. He stated that  
19 his cousin had dropped him off before the robbery.

20 So I went back to my cubicle and told Macon  
21 that his quote cousin had just told me that he  
22 dropped him off.

23 And Macon said, Do you mean Colon?

24 I'm not sure how many cousins Mr. Macon has,  
25 but he obviously knew exactly who I was talking

1 about.

2 Q He did. And Mr. -- that is all Mr. Colon told you;  
3 right?

4 A Yes.

5 Q And so that still doesn't answer the question, why  
6 Arthur would -- how Arthur would know that Mr.  
7 Colon had been arrested?

8 A Apparently because they were involved in a crime  
9 together and that he had seen the police out there.

10 Q But not arresting anybody?

11 A I think he apparently assumed that an arrest had  
12 been made because he knew who I was going to talk  
13 to back in the cell, obviously, because there was  
14 no -- when I said his cousin, he said, You mean  
15 Colon?

16 Again, I'm not sure how many cousins he has,  
17 but he knew exactly who I was talking about.

18 Q The person who you dropped off earlier; right?  
19 Basically that was it: I talked to your cousin who  
20 you dropped off earlier? That is what you said?

21 A Repeat that question.

22 Q You said to Mr. Macon: I talked to your -- the guy  
23 in the cell back there who has been arrested is  
24 your cousin, he said that you dropped him off?

25 A I went back to my cubicle and told Macon that his

1           cousin had just told me that he dropped him off,  
2           and Macon said quote you mean Colon, yes.

3       Q     And then --

4       A     Then he said he was confused by the question I was  
5           asking and forgot to tell me about him because --  
6           it is not in my report here, but we did talk about  
7           somebody being in the car with him. I asked him  
8           was he by himself or did he have one in the car --  
9           or did he have anybody riding with him on that day.  
10          And he said that he did not.

11       Q     But that is not in your report?

12       A     It is not.

13       Q     And you included everything you thought was  
14           important in your report?

15       A     Yes.

16       Q     And when you told Mr. Macon that you had talked to  
17           Mr. Colon, Mr. Macon told you that he had no idea  
18           that Mr. Colon was going to rob the bank; correct?

19       A     He did say that.

20       Q     And then at some point you found out that Mr. Macon  
21           had been seen at BB&T?

22       A     Yes.

23       Q     And you confronted him with that information?

24       A     I did.

25       Q     And Mr. Macon responded, Oh, I stopped at the BB&T

1 and checked my balance on the ATM; correct?

2 A He said that, yes.

3 Q And I believe on testimony when you asked him --  
4 you just testified that when you asked him about if  
5 he had an account, he stopped talking and didn't  
6 give you an answer; right?

7 A He mentioned something about his girlfriend's car,  
8 but it was not anything definitive. And, again,  
9 any time I would ask him a question, he was getting  
10 so confused with his answers that really none of it  
11 was making sense.

12 Q He told you that he was using his girlfriend's car,  
13 and that is your typo; is that correct?

14 A That he had his girlfriend's car. That may be a  
15 typo.

16 Q So he did answer your question?

17 A I asked him if he had an account, and he said that  
18 he had his girlfriend's car -- card -- typo. Could  
19 be a typo.

20 Q And, again, denied knowing that Colon did anything?

21 A He did deny that, yes.

22 MS. GOLDBERG: Beg the Court's indulgence.

23 (Pause.)

24 MS. GOLDBERG: Nothing further.

25 REDIRECT EXAMINATION

1 BY MR. CATHCART:

2 Q At what point did he pull out his girlfriend's BB&T  
3 card?

4 A At no point.

5 MR. CATHCART: No further questions.

6 THE COURT: All right, sir, you may step down.

7 (Witness steps down.)

8 MR. CATHCART: Your Honor, that is the State's  
9 case.

10 THE COURT: All right, ladies and gentlemen of  
11 the jury, the State has rested. There is a matter  
12 of law that I need to take up outside of your  
13 presence, so I am going to send you all out for a  
14 break, and we will have you back in shortly.

15 Thank you.

16 (WHEREUPON, the jury retires to the jury  
17 room at 2:37 p.m.)

18 THE COURT: All right, so the State has  
19 rested. I am going to have the Defendant stand at  
20 this time.

21 (Defendant stands.)

22 THE COURT: And, Mr. Macon, let me have you  
23 raise your right hand.

24 (Complies.)

25 THE COURT: Do you swear or affirm to tell the

1 Ms. Goldberg, on behalf of the Defendant.

2 I ask that you pay close attention to them,  
3 and then I will give you a charge on the law.

4 Thank you.

5 All right. Yes, sir.

6 MR. CATHCART: If it please the Court?

7 CLOSING STATEMENT

8 MR. CATHCART: Good morning.

9 THE JURY: Good morning.

10 MR. CATHCART: I want to thank y'all first for  
11 the attention that you gave me and Mr. Shellenberg,  
12 and most importantly the attention you gave all the  
13 witnesses, especially the victims, especially the  
14 Co-Defendant in this case.

15 But for that man there, Jason Colon would not  
16 have been there. He never would have done this.  
17 He couldn't conceive of doing it but for what he  
18 did and led him there.

19 We are here today because on October 30th,  
20 2012, Mr. Colon followed his instructions, took a  
21 toy gun that was provided to him, altered by him,  
22 into the bank.

23 He sat there awkwardly for about 20 or 30  
24 minutes, waiting for everyone else to finish their  
25 business, politely, and then he walked up to the

1 teller and held up the gun and said, Give me all  
2 the money.

3 At that point he committed an armed robbery.  
4 The Defense has stipulated that the armed robbery  
5 occurred. She is not arguing that there was an  
6 armed robbery. But in doing so, when he held that  
7 gun up for everyone to see, for everyone to know  
8 that an armed robbery is taking place, everybody  
9 had to freeze in their tracks. Nobody gets to  
10 leave. It is an armed robbery. Everybody has to  
11 stay. And at that point the kidnapping occurred as  
12 well.

13 Now, Mr. Colon was the only one in there as  
14 part of this crime, because he was sent in there by  
15 this man, this man who is sitting in his car with  
16 his radio listening to Region 3 waiting for his  
17 cousin to come back.

18 He told him what to do, gave him the gun, and  
19 said, I'll be over there at the hotel -- and, by  
20 coincidence, exactly where Mr. Colon runs to -- my  
21 tailgate down with the top over my bed of my  
22 pick-up truck that you are supposed to crawl into.

23 Because, sure, I sent you in there with a gun,  
24 I sent you in there with instructions how to do it,  
25 no mask, no way to hide his identity. He is to go

1 into the bottom of the pick-up truck, slam him in,  
2 and drive away.

3 But it didn't work out that way. Because  
4 sometimes when you pick people to do your job for  
5 you, especially when you pick a vulnerable adult,  
6 he doesn't do it quite right. And he didn't get  
7 there fast enough.

8 And when Mr. Whaley stopped Mr. Colon as he  
9 was in the parking lot and he ran the wrong way,  
10 his plan didn't work out too well.

11 For that reason he is charged with two crimes.  
12 Mr. Colon is charged with them as well, and  
13 Mr. Macon. The armed robbery, as we stated. Armed  
14 robbery -- and we'll do this real quickly. I will  
15 explain the law, but that is the judge's job. The  
16 judge is going to explain the law again to you, and  
17 if I say anything different than what she says,  
18 take her word for it, she is the judge of the law.

19 Armed robbery is basically just taking  
20 something from the presence of another person by  
21 use of force, that force being a deadly weapon. Or  
22 in this case what is perceived as a deadly weapon.

23 And in this case it is a toy gun. But he sure  
24 made it look real. Just like a 6-dollar  
25 .40-caliber. And the little orange part that is

1           supposed to make it so you can tell it is not a  
2           real gun has been blacked out. I won't point it at  
3           y'all, even though it is not real. But it has been  
4           blacked out so that people will be fooled by it.  
5           So it makes it an armed robbery.

6                     Jason went in there, based upon his  
7           instructions, did what he had to do, took \$6,500  
8           belonging to the TD Bank with him. It is armed  
9           robbery. And that, as Ms. Goldberg indicated, that  
10          happened.

11                    Kidnapping is whoever shall unlawfully seize,  
12          confine, inveigle, decoy, kidnap, abduct, carry  
13          away any other person by any means whatsoever  
14          without the authority of law shall be guilty of  
15          kidnapping.

16                    I want you to specifically listen to the  
17          judge's charge as to confined, because when you  
18          make people stay in one place for even a second, at  
19          that point you have confined them. If you are  
20          doing that without the authority of law, such as a  
21          police officer stopping somebody, that is called  
22          kidnapping. You can confine somebody for a year,  
23          you can confine somebody for two seconds.

24                    Now, Mr. Colon went to the bank, held up this  
25          gun. Nobody gets to leave. Nobody gets to leave.

1 They are confined to that bank. And that includes  
2 the people who saw the gun specifically, or the  
3 lady who was at the driver's part, who got  
4 informed, Oh, by the way, we're being robbed right  
5 now. And she took the GPS out of her till. At  
6 that point she knows she can't go anywhere. There  
7 is a man in the bank with a gun.

8 And what makes this a unique case is that  
9 there is only one person in the bank. But there is  
10 two people who are involved in this. There is  
11 Mr. Colon, the vulnerable adult, and his cousin,  
12 who is sitting just at the next building away  
13 waiting for him with his radio tuned in to Region 3  
14 so he could listen to what is going on.

15 That is why in South Carolina there is the  
16 law of the "hand of one is the hand of all." This  
17 is kind of small, so I'm going to read it.

18 If the crime is committed by two or more  
19 people who are acting together in committing a  
20 crime, the act of one is the act of all.

21 Everything that Jason did, he did. Everything  
22 that -- God forbid, if he provided him with a real  
23 gun and Jason panicked and shot somebody, he would  
24 be just as guilty of shooting that person.

25 A person who joins in and then commits an

1 unlawful act is criminally responsible for  
2 everything done by the other person which happens  
3 as a probable or natural consequence of the act  
4 done that carried out the common plan or purpose.

5 For example, as I just stated, two people can  
6 be guilty of killing one person when only one of  
7 those people had a gun, there is only one bullet  
8 there is only one of the two who fired a shot. If  
9 two or more people act together assisting each  
10 other in committing the offense, the act of one is  
11 the act of all, or as is sometimes said, the hand  
12 of one is the hand of all.

13 And in this case, it is a little different  
14 because one hand is really directing the other.  
15 Jason wouldn't have been there. He wouldn't have  
16 had that gun. He wouldn't have committed this  
17 crime, but for his family.

18 Now, to prove this case, the State has to  
19 prove this beyond a reasonable doubt. And that is  
20 the standard in criminal cases, and that is the way  
21 it should be. Proof beyond a reasonable doubt is  
22 proof that leaves you all firmly convinced that he  
23 is guilty. You don't have to prove it beyond any  
24 doubt whatsoever because that is an impossible  
25 standard. I can't tell you that the sun is out

1 right now. That is not beyond any doubt, but it is  
2 proof beyond a reasonable doubt that it is probably  
3 out there.

4 Proof beyond a reasonable doubt is merely the  
5 proof that leaves y'all firmly convinced that he  
6 did these things, that he sent Jason in there, that  
7 he gave him the gun, and that he was waiting for  
8 him, listening to the radio with the truck bed  
9 down.

10 We proved this by putting forward evidence in  
11 this case. The evidence comes from this stand. It  
12 is from the witnesses you heard from and the  
13 evidence that came in through those witnesses.

14 Anything said outside of that box is not  
15 evidence. What I say is not evidence, what Defense  
16 counsel said was not evidence, only the answers  
17 that came off of this stand.

18 And you heard from the witnesses as to the  
19 armed robbery and as to the kidnapping.

20 Now, when you look at the witnesses, you look  
21 to their credibility, whether they are believable  
22 or not. Did they have a dog in this fight. Is  
23 there any reason that they would lie. Any reason  
24 they wouldn't be telling the truth.

25 I ask that you go back through the witnesses

1 that you listened to and see if you feel there is  
2 any reason that they would tell not the truth or  
3 have a reason to lie.

4 Defense counsel said an armed robbery took  
5 place, so I am not going to really go that much  
6 into it.

7 As to the witnesses of the armed robbery, the  
8 clerks -- the bank employees -- they didn't see  
9 Mr. Macon, so obviously they had no reason to lie  
10 about Mr. Macon. They didn't even know he existed  
11 until they found out what occurred.

12 The reporting officer showed up at the scene.  
13 He had no idea there was a third person around. He  
14 just got to the scene, saw somebody run by.

15 So I guess the first person we need to talk  
16 about as to a witness who maybe had some connection  
17 to Mr. Macon would be the guy on the 9-1-1 tape,  
18 who had the present sense impression said, This is  
19 what I see is going on. I see the guy running away  
20 from the bank. He is stuck in the woods. He looks  
21 like he is looking for his ride.

22 Then you heard from Mr. Whaley, who is the  
23 employee from the Hilton, who is walking up there.  
24 He sees Mr. -- Jason, crouched down, trying to take  
25 off another shirt. He confronts him. He says that

1 Mr. -- that Jason looks confused and panics and  
2 runs down towards the back, towards the train  
3 tracks, away from the parking lot.

4 You hear from Ms. Williams, Diana Williams,  
5 who says, I saw the bank robber, Jason, run into  
6 the woods. I turned into the Hilton. I see him  
7 talk to a guy in the yellow shirt. I see that guy  
8 in the yellow shirt get into a pick-up truck. That  
9 guy backs up to my car. I'm that close to him. I  
10 honk my horn. He turns around involuntarily  
11 because I have just got my horn on right behind  
12 him, and we locked eyes and look at each other.  
13 The guy in the yellow shirt, I see his face this  
14 far away. I knew something was going on because I  
15 just saw him talk to the bank robber. Obviously he  
16 is involved. So I try to get his tag. I can't get  
17 his tag right yet, can't get it completely, even  
18 though I'm this close, because his tailgate is  
19 down.

20 She gets a bit of it, gets out of his way, the  
21 truck drives away at a high rate of speed.  
22 Remember, she points out, he is driving DUS at this  
23 point, so something that you probably don't want to  
24 attract attention to yourself driving at a high  
25 rate of speed. That is the only thing he thinks he

1 did, or what he told the police; right?

2 He said, Oh, it must have been because I was  
3 driving DUS.

4 She then sees the car at the BB&T a short  
5 distance away, same car, same yellow shirt, same  
6 guy. Again, she goes over there. Doesn't want to  
7 get too close because she is starting to get -- you  
8 know, this is probably not the best idea. But,  
9 again, she cannot get the full tag completely  
10 because the tailgate is down.

11 Why is the tailgate down? Jason told you:  
12 The plan was I jump into the back of the truck,  
13 close the tailgate, and nobody sees me. Just a  
14 single guy driving a pick-up truck, no bank  
15 robbery.

16 He is wearing a bright yellow shirt. The guy  
17 who robs the bank, the other guy was wearing a tan  
18 shirt. So why would anybody stop him?

19 She gets finally most of the tag and sees him  
20 continue to look back towards where Jason is and  
21 sees Jason get caught.

22 At that point, game over. He drives away.  
23 Drives away and leaves his cousin to his fate. I  
24 assume the worst thing in his mind as he washes his  
25 hands of the whole thing is Thanksgiving is going

1 to be a little awkward this year.

2 Ms. Williams then says a short time later,  
3 within maybe 20 minutes or so, I get a call -- I  
4 mean, I talk to the police and they say that the  
5 guy who matches the description, matches the  
6 description of the truck down to the dent on the  
7 side and matches the tailgate number, or the tag  
8 number, has been apprehended.

9 And they ask her to drive up by that scene.  
10 Nobody is pointing out to it. She is in the car  
11 alone. She drives by and says, That is the man I  
12 saw talking to the bank robber, that is the man who  
13 was driving that truck, that is the man whose  
14 tailgate was down.

15 Now, again, remember, he is driving under  
16 suspension. And we know that is true because he  
17 was arrested for it. And she said -- I mean, she  
18 admits that that is what he was arrested for.

19 I will submit to you as a person who has  
20 driven a pick-up truck, you are not supposed to  
21 drive with your tailgate down. Why? Because it  
22 obscures your tag. If you are driving under  
23 suspension, you pop that thing up as soon as you  
24 can, especially if you don't want to be stopped by  
25 the police.

1           So when he stopped him, when they get behind  
2 him, yes, the tailgate is back up, as it would be,  
3 because he knows the police are all around him.

4           You heard from the general manager who also  
5 says, my employee, Mr. Whaley, said he was chasing  
6 the guy. And as I see -- as he is chasing him, I  
7 see a pick-up truck that spun out of our parking  
8 lot, a black pick-up truck, heading towards the  
9 BB&T.

10           He is subsequently arrested. Inside the  
11 vehicle is a scanner, as we just pointed out. And  
12 as was pointed out also, this scanner was tuned to  
13 Region 3. With scanners you can't talk to people  
14 on them, but you can listen to stuff. You can  
15 listen to NASCAR events, you can listen to the  
16 weather. And one of the cool things you can listen  
17 to, especially if you plan on doing something in  
18 Region 3, is where everybody is in Region 3.

19           Now, I'm assuming Defense counsel brought out  
20 the fact that he was driving under suspension  
21 because that is why he had this. Does that make  
22 any sense whatsoever? So he would be the first one  
23 to know somebody got behind me and they are getting  
24 ready to pull me for DUS? Or does it make sense  
25 that while my cousin is in the bank I, being the

1           mastermind, the brains of this outfit, is sitting  
2           there controlling everything and knowing when the  
3           police are going to arrive. And if per some chance  
4           he doesn't do it right, at least I will be able to  
5           get away.

6           You heard from Investigator Williams. They  
7           talked to Jason. And obviously it was a bit  
8           different with Jason. But Jason told them what he  
9           did. He told them who set him up for it. He told  
10          them that it was this man here, the man in the gold  
11          shirt, the man in D Cell. He didn't want to give  
12          his name because that was his cousin. He didn't  
13          want to give him up. That is his family.

14          You heard from Investigator Johnson. And he  
15          asked, Mr. Macon, how about the dude that got  
16          arrested with you?

17          He washed his hands. What dude? I don't know  
18          what you are talking about. He said, I was driving  
19          all that day alone. I left my girlfriend's house.  
20          I went to the Hilton to -- I don't know, it is odd  
21          to me -- but it is close to my house but I want to  
22          check room rates. That is why I was there. Oh,  
23          wait, no, no, I was getting a job application --  
24          which does not exist.

25          And then when he is confronted with the fact

1       that, Well, your cousin just said he is your  
2       cousin: Oh, Jason. You should have said. I was  
3       confused. That guy. Yes, he was with me all day.  
4       And I dropped him off. And then I did this  
5       hotel-rate-seeking, job-application-doing,  
6       going-to-BB&T banking with a card that does not  
7       exist.

8               Every time he is confronted with a lie, he  
9       changes his story. Why? Because he's a liar. Not  
10      a good one. And that is what they do when they are  
11      caught.

12             And finally, as you get caught after lie after  
13      lie, you do what he did. You shut down. I'm done.  
14      Because he is just digging it deeper.

15             Every bit of evidence in this case is  
16      consistent. Now, I know she pointed out that we  
17      don't have the Advice of Rights form. Investigator  
18      Johnson said, We filled it out, signed it, we did  
19      it, and it is missing. That is true. It is. That  
20      is why I brought it up. Missing. We don't have  
21      it.

22             But I would submit to you, ladies and  
23      gentlemen, if Investigator Johnson was trying to  
24      say anything that was untrue, the statement that  
25      they would have said he made was, Yes, I'm guilty;

1           yes, I'm guilty.

2           That is not what he said. He said everything  
3 but he's guilty. He disavowed every bit of action  
4 in this case. He disavowed his cousin, who he put  
5 into the scene. Every piece of evidence.

6           The only other witness in this case as to  
7 consistency was Jason. He came up and he told what  
8 happened. As he is my witness, I have to ask  
9 direct questions. As part of direct exam I can't  
10 ask leading questions. I can't lead him.

11          So I asked him, Who put you up to this?

12          He said -- I asked him, Who gave you the gun?

13          He said, Him.

14          Now, the difference is in cross-examination  
15 you get to lead. And so if you notice  
16 Ms. Goldberg's questions were, He did this, didn't  
17 he?

18          And Jason said, Yes.

19          He gave you the gun a month ago; right?

20          Did you ever hear Jason ever say no? He'll  
21 do -- say anything with, Yes. Yes. Yes.

22          I guarantee you if she said, You still love  
23 your cousin; right?

24          Yes.

25          Because that is who he is now.

1           But the questions I asked him were open-ended  
2           for him to answer and he did. He told y'all what  
3           he did, and what he did, and who set him up.

4           Now, that is the evidence in this case. Those  
5           are the charges in this case.

6           I just want to point out, this is a fairly  
7           unique kind of case, because Jason Colon was 16  
8           years old and got shot in the head and it changed  
9           his life forever. They brought him down here to  
10          South Carolina to be amongst family and be safe.  
11          Not to be taken advantage of.

12          Armed robbery and kidnapping are heinous  
13          crimes. It is not a good thing to do. But what he  
14          did is despicable. I ask that you find him guilty  
15          of all the charges.

16          THE COURT: Thank you. Yes, ma'am?

17          MS. GOLDBERG: Thank you. May it please the  
18          Court?

19          THE COURT: Yes, ma'am.

20                                    CLOSING STATEMENT

21          MS. GOLDBERG: Good morning.

22          THE JURY: Good morning.

23          MS. GOLDBERG: So the prosecutors want you to  
24          believe -- they told you the story at the  
25          beginning, they told you the story now -- that what

1           happened is that my client, Arthur, was the  
2           mastermind of this robbery. It was planned out.  
3           It was agreed to. He went and parked at the hotel.  
4           He sat in the car. He listened to this Radio Shack  
5           weather alert weather radio. And he sent his  
6           cousin in to do all of the work and rob the bank.  
7           And then left.

8           And maybe I'm naive, but I kind of usually  
9           think that the point of a robbery is money, to get  
10          away with money. But, anyway, that is what they  
11          want you to believe.

12          So, as I said before trial, they have to prove  
13          that to you with evidence. We can't make  
14          assumptions. There have been so many assumptions  
15          made during this trial.

16          What you find today, finding him guilty or not  
17          guilty beyond a reasonable doubt, it has to be  
18          based on evidence, not assumptions.

19          As the Court will tell you, as the Prosecutor  
20          I believe said in opening, you know, guilty beyond  
21          a reasonable doubt means that you all reasonable  
22          people believe that he is guilty beyond your own  
23          doubt.

24          And the definition, as the Court will tell  
25          you, is that it tends to make a reasonable person

1           hesitate to act.

2                   What that means is, later, when you go and you  
3           make your deliberations, if you are trying to  
4           decide what to write down or what to say when you  
5           are going to decide guilty or not guilty, if you  
6           hesitate, then you have to find him not guilty.  
7           That is what that means. What makes a person, a  
8           reasonable person, hesitate to act. That is what  
9           he is entitled to.

10                   Now, how do you come up with what your  
11           decision is going to be? Let's go over what we  
12           actually know. Not what we assume, but what we  
13           actually know. And we'll just go over it in  
14           chronological order.

15                   We know for a fact that Jason Colon came to  
16           the bank from across the street. We know that  
17           because the customer in the bank told us that, he  
18           saw him come from across the street. And even  
19           Jason said that he had been dropped off at Sonic  
20           earlier. So we know that is where he came from.

21                   We know that he went in the bank. And that  
22           he, when he went in the bank, he didn't know what  
23           he was going to do.

24                   The one thing that he was very consistent on  
25           in his testimony is that he went in the bank with

1 the intent to cash a check.

2 Mr. Cathcart said, Why did you go in the bank?

3 He said, To cash a check.

4 I said, You went in the bank to cash a check;  
5 correct?

6 He said, Yes.

7 I said, You didn't know -- you hadn't decided  
8 you were going to rob it before you went inside?

9 He said, Yes. He said that in direct  
10 testimony; he said that in the cross-examination.  
11 It never changed. He had not decided to rob the  
12 bank until he went inside. And he was inside  
13 alone. Nobody made that decision for him. He made  
14 that decision.

15 Unfortunately, we know this robbery happened.  
16 All of the tellers were telling the truth. They  
17 have no reason to lie. Like Mr. Cathcart said, the  
18 robbery happened. And that is what all of this  
19 proves. All of the evidence here proves that the  
20 robbery happened. So none of this has anything to  
21 do with Mr. Macon's responsibility.

22 We know that Mr. Colon walked in. After he  
23 was in there for a while, after he made up his  
24 mind, he handed this -- pointed this gun in the  
25 air, but he directly walked to one teller and made

1 commands of that person. Commanded that person to  
2 give him money. Made that person not free to  
3 leave.

4 She then walked over to another teller who you  
5 didn't even hear from, she didn't even testify,  
6 Ms. Ellison, who didn't even know the robbery was  
7 going on. So I'm not entirely sure why there is an  
8 indictment for her kidnapping -- but there is --  
9 that you'll have to consider as well. So we know  
10 that is what Mr. Colon does.

11 We know that he -- we know that as soon as the  
12 money with the GPS tracker was taken out of the  
13 drawer, that a silent alarm came on, and that  
14 contacted 9-1-1. That is what the tellers told us.  
15 So we know that 9-1-1 was contacted by remote  
16 source while Mr. Colon was still in the bank;  
17 right? We know that for a fact.

18 We know that the call went over dispatch to  
19 all radio stations. Lieutenant Frieda Wyatt told  
20 us that. When those calls go out for a bank  
21 robbery it goes over all stations.

22 We know that Mr. Colon calmly walked out and  
23 calmly walked through the parking lot and hits the  
24 woods. That is what the tellers told us.

25 We know that when the first police officer got

1 on the scene, which was four or five minutes later,  
2 that he was gone. He was in the woods, gone  
3 somewhere else, he couldn't be seen in the parking  
4 lot.

5 So we know that. There is really no dispute  
6 as to much of that -- or any of that.

7 But then what happens next chronologically?  
8 We have witnesses to the action. We have  
9 Ms. Williams.

10 Ms. Williams states that when she drives up  
11 there are, in her words, a lot of cop cars in the  
12 bank parking lot or going into the bank parking  
13 lot, all blue lights and sirens. And that when she  
14 sees that, she slows down and she sees a suspicious  
15 man running through that bank parking lot.

16 Now, I'm not sure how she saw that when none  
17 of the police officers did and everybody else  
18 testified that Mr. Colon was already gone, but I  
19 don't know why -- I don't know how to reconcile  
20 that. But that is what she said. So, fine. She  
21 sees that. She slows down. Pulls onto the side of  
22 the road. She pulls on the side of the road. She  
23 can see him come out of the woods and talk to a  
24 man.

25 And I'm going to turn this on. Bear with me

1 one second, but I'm going to pull up the map,  
2 because I think it is going to help explain  
3 everything here.

4 (Pause.)

5 MS. GOLDBERG: Would you pull up the map that  
6 is actually in evidence? I don't want to -- it is  
7 not my equipment.

8 MR. SHELLBERG: I don't know how to use it  
9 either.

10 (Pause.)

11 MS. GOLDBERG: Thank you.

12 All right. So Ms. Wheeler states that she is  
13 somewhere over here on the side of the road and  
14 that she sees these two individuals talking in the  
15 parking lot somewhere right around here. That is  
16 what she said.

17 She said that the black truck was parked right  
18 about here. Mind you, that is the front -- this is  
19 Farrow Road, so that is the front side of the  
20 hotel. She sees these individuals.

21 I said, Well, did the guy in the yellow shirt  
22 have to walk all the way across there to get back  
23 into his truck?

24 She said, No, he wasn't all the way on this  
25 side, he was more out in the middle. So they are

1 just in the middle, out in the middle of nowhere  
2 talking, allegedly. She can't hear what they are  
3 saying. She doesn't know what they are saying.

4 She does see the man in the yellow shirt  
5 point, she testified, but what that means -- she is  
6 making assumptions.

7 So she goes in. Comes on in. The guy goes in  
8 the black truck. Backs up. Almost hits her, but  
9 she hits her horn. He stopped. He lets her pass.  
10 And then he speeds out of the parking lot to just  
11 immediately turn to the right into the next parking  
12 lot and stop at the BB&T ATM.

13 So she continues around. She sees Mr. Jason  
14 Colon go way back here. And her testimony was she  
15 saw him stop and talk to another individual, who,  
16 again, she assumed that he knew. I don't know who  
17 this other individual is. The Solicitor hasn't  
18 mentioned anything about another individual. But  
19 she is making assumptions as to that.

20 So, anyway, she sees the bank robber talk to  
21 two individuals. Then she sees the black truck at  
22 the BB&T. So she goes back out, comes back in,  
23 looks.

24 Now, she does try and get her -- his tag  
25 number. She tries very hard. She tries to get his

1 tag number here. She tries to get his tag number  
2 here. And she mostly gets it, but she has a very  
3 hard time because the tailgate is down. And she is  
4 absolutely sure of that, the tailgate is down.

5 So then that is pretty much all she sees.  
6 That is all she knows. She lets the police  
7 officers know, This is what I have seen. It looks  
8 suspicious.

9 So what else do we know as far as witnesses  
10 after the fact? There is the 9-1-1 call of the man  
11 who -- that CD is in evidence. I believe the Court  
12 is going to give you a laptop if you want to listen  
13 to it again. He has his eyes on Jason Colon, which  
14 seems like a pretty long time. He never sees him  
15 talk to someone else. He sees him running around,  
16 looking like he is trying to evade police.

17 He actually said -- you can hear on the 9-1-1  
18 that, He looks like he is looking for someone, like  
19 he is looking for his ride.

20 Well, if he has already talked to the man in  
21 the black truck apparently and didn't get a ride,  
22 so who is he looking for?

23 You also heard the testimony from standing  
24 here of the Hilton employee who saw Mr. Colon stuck  
25 in between two cars trying to take his shirt off,

1 looking like he was trying to evade police. He  
2 tried to stop him. He runs after him. And I  
3 didn't get real clear on if he actually caught him  
4 or if he almost caught him, but he never saw him  
5 talking to someone else.

6 Like I told you in the beginning, I'm not --  
7 credibility, especially in cases like this, is not  
8 about who is lying, who is telling the truth. That  
9 is one example. Mr. Cathcart mentioned that. But  
10 sometimes it is about what are the assumptions  
11 people are making? What do people see that could  
12 be interpreted more than one way? What do they  
13 think they are seeing but it didn't actually  
14 happen?

15 I don't know how you reconcile those three  
16 witness opinions -- statements. I don't think they  
17 are necessarily consistent. But I have no reason  
18 to say any particular one of them is lying, because  
19 they are completely individual people. Maybe some  
20 of them are more accurate than others. Maybe  
21 memories fade over time.

22 But that is why the judge will tell you in her  
23 instructions that you have the right to believe one  
24 witness over several. You can believe several  
25 witnesses over one. You can believe part of a

1 witness's testimony, or all of it. That is your  
2 choice. That is your province as the jury.

3 So what do we know happens next?  
4 Chronologically the next thing that happens is  
5 Mr. Macon was stopped by police.

6 So Ms. Wyatt, Lieutenant Frieda Wyatt,  
7 testified about this. She testified -- I'm not  
8 sure if you caught it, but she was told that she  
9 was to be looking for -- or that whoever was on  
10 duty was to be looking for a particular black truck  
11 because it was seen leaving a robbery.

12 Well, that is not true. But aside from that,  
13 she is looking for this black truck because it is a  
14 suspect. We know a witness mentioned the truck.  
15 So it is fair. I have got no problem with anything  
16 Ms. Wyatt did.

17 She follows the truck. And I'm going to play  
18 this video for you again. Now, when it was played  
19 for you the first time the Prosecutor and the  
20 witness kind of kept talking about some questions,  
21 talking over it, but I'm not going to do that  
22 because I want you to listen to it really  
23 carefully. And I want you to watch for these  
24 things.

25 Number One, they are driving on back roads.

1           There are no other cars around. There is a marked  
2 patrol deputy car -- because that is what  
3 Lieutenant Frieda Wyatt said she was driving --  
4 behind Mr. Macon at a relatively close pace.

5           He knows there is a police car behind him. He  
6 drives the speed limit, as she testified to. He  
7 drives -- he stops at every stop sign. He stops at  
8 every intersection. He uses his turn signal.

9           I asked her, He wasn't speeding, was he?

10          No.

11          You can hear her say on dispatch in the video,  
12 He is not driving recklessly. She blue lights him.  
13 She stops him.

14          He immediately gets out of the car. He  
15 complies with all commands.

16          After that, you will hear -- if you listen  
17 carefully you will hear Mr. Macon's voice. You  
18 will hear him say, What is going on? What are you  
19 doing? You will hear him. He almost sounds like  
20 he is crying and he doesn't know what is going on.

21          And then if you watch carefully -- and I'll  
22 point this out silently -- you will see the police  
23 officers celebrate their victory.

24          (Video played in open court.)

25          MS. GOLDBERG: So, congratulations, guys, we

1 got the bad guy. They celebrate.

2 Mind you, all they know at this time is that  
3 this car was basically seen nearby. I don't know  
4 that officers at the scene even know that Mr. Colon  
5 and the guy in the black truck had been seen  
6 talking. But, Job well done. Take it from there.

7 And, I mean, what else do we know about how  
8 the investigation proceeded? No witness  
9 statements, not even from the tellers. No  
10 surveillance footage asked for from any of the  
11 surrounding areas. No subpoenas for phone records.  
12 Even the 9-1-1 call, the investigator didn't try  
13 and get them, the Solicitor's Office had to do  
14 that. And they only played you one.

15 The 9-1-1 operator said that more than one was  
16 produced, she doesn't know how many. We know that  
17 Ms. Williams called 9-1-1, and we don't have that.

18 That is how the investigation works in this  
19 case. And I don't know if you also noticed when  
20 Mr. Macon was originally pulled over the tailgate  
21 was up. The officer had to pull it down to make  
22 sure that there wasn't anything inside, any people,  
23 any property, anything that he shouldn't have. The  
24 tailgate was up on the car. We'll talk about that  
25 more later.

1           So what happened next chronologically? Well,  
2 we know that Mr. Macon was arrested. Mr. Colon was  
3 arrested. Separate locations. Not together. No  
4 indication from anyone that they knew each other  
5 was arrested. That they were ever -- nobody said  
6 they were in the same car. Nobody said they were  
7 in the same cell. No indication of that.

8           So Mr. Macon goes back to give a statement to  
9 Investigator Johnson. Mr. Cathcart said a minute  
10 ago that the Advice of Rights form was a big deal  
11 that I brought up. I didn't even ask one question  
12 about that. The statement was voluntary. I don't  
13 think there is any question. But the investigator  
14 asked Mr. Macon, Tell me about your day.

15           Mr. Macon said, I woke up at my girlfriend's  
16 house in the Summit, I went to my grandma's house,  
17 then I went to the Hilton.

18           I asked the investigator, Your summary of what  
19 he said happened over the day's events, there is  
20 just a couple of sentences; right?

21           Right.

22           So it wasn't every single detail about what  
23 happened all day?

24           Right.

25           Which is true. He didn't say who was at each

1 house. He didn't say what he watched on TV. He  
2 didn't say who he talked to on the phone. It was  
3 just a brief, Tell me about your day.

4 Well, these are the places I went.

5 Okay.

6 So who, Mr. Macon, who was the other guy that  
7 was arrested?

8 He says, Someone else was arrested? I don't  
9 know anything about someone else arrested.

10 So the investigator goes back, talks to Jason  
11 Colon, who tells him -- and he says, Who is the guy  
12 in the gold shirt?

13 Well, that is a little bit more obvious, a  
14 little bit -- a better question.

15 And Jason says, Oh, that is my cousin. He  
16 dropped me off earlier. And that is all he tells  
17 him.

18 So the investigator goes back to Mr. Macon,  
19 confronting him with this information, Oh, well he  
20 says he is your cousin and that you dropped him  
21 off.

22 And he says, Who, Colon? Yes, I did. He rode  
23 with me from the Summit, and then I dropped him off  
24 at the Hilton.

25 That doesn't change anything he said before.

1 It is not inconsistent. Still Summit, still  
2 grandma's house, still Hilton.

3 The only reason the officer says it is  
4 inconsistent is because, Oh, wait -- all of a  
5 sudden -- I did specifically ask Mr. Macon if  
6 someone was in the car with him earlier, and he  
7 said no one. Even though that is not in his report  
8 that he drafted within 30 minutes after this  
9 interview. Maybe he is just remembering that  
10 information two years later? But he put everything  
11 important and everything relevant in his report.  
12 That is what he testified to.

13 So then the investigator gets some more  
14 information, finds out that there is this witness,  
15 Ms. Williams, who saw Arthur Macon at the BB&T.  
16 Comes back, confronts him with this information.

17 Well, a witness saw you at the BB&T.

18 And he said, Oh, right. I checked my balance  
19 with my girlfriend's card. Which I would submit,  
20 it is pretty reasonable if you are telling someone  
21 about all the places you have been that day and you  
22 go to a place where you don't even get out of the  
23 car, maybe it slips your mind, especially if you  
24 haven't been doing anything wrong.

25 So that is it. That it is the whole

1 statement.

2 He does say specifically, I dropped him off.  
3 I never knew he was going to rob anyone. He does  
4 say specifically, I don't know anything about a  
5 bank robbery. I don't know anything about it. He  
6 denied it from Day One. He has pled not guilty.  
7 He is still denying it today. Nothing has changed  
8 about the statement. Nothing is inconsistent  
9 within his statement.

10 So then they go -- he hasn't confessed. They  
11 go talk to Jason Colon. That happens at the same  
12 time or next. And the investigator tells you he is  
13 talking to Mr. Colon, he has a hard time getting  
14 information out of him, it takes a while, probably,  
15 he believes, because of his disability.

16 Well, how do investigators try and get  
17 information out of a person if it is hard to get  
18 that information out of them?

19 They do the same thing they did with Arthur  
20 Macon. They confront them with information as they  
21 believe it. Is this true? Is this true? Did that  
22 man send you in there? This isn't your fault;  
23 right?

24 Now, there is two ways to look at Mr. Jason  
25 Colon. And it is not for me to decide, it is for

1 you to decide.

2 The first way you can look at it is, Well, he  
3 went in the bank. He hadn't made up his mind yet.  
4 He made a decision to rob the place all on his own.  
5 He decided to run from the police all on his own.  
6 He made the decision to ditch his shirt, ditch his  
7 hat, ditch the money, ditch the gun.

8 And then he went back to police headquarters,  
9 and the investigator felt, regardless of the  
10 disability, that he was intelligent enough to make  
11 the decision to waive his right to counsel, waive  
12 his right to remain silent, and give a statement.

13 So if you look at it that way, then he made  
14 that decision as he went -- after he went in the  
15 bank, which nobody has said anything otherwise.

16 And if that is the case, Arthur Macon is not  
17 guilty, because in order to have him guilty of  
18 "hand of one hand of all," there has to be an  
19 agreement, there has to be a mutual intent to  
20 commit a crime. And that doesn't exist.

21 Now, if you don't think that is what  
22 happened -- Mr. Cathcart said that Mr. Colon was  
23 very agreeable on the stand. And I'm not going to  
24 deny that. He did say yes a lot. He did say no  
25 once.

1 I said to him, Did you see Arthur Macon after  
2 you robbed the bank?

3 And he said, No.

4 Now, when he got the gun -- I asked if he got  
5 the gun a month prior.

6 He said, Yes.

7 Mr. Cathcart asked if he got the gun the day  
8 of.

9 He said, Yes.

10 I agree that is inconsistent.

11 If you think he got the gun months prior and  
12 just decided to do it on this day, then Arthur  
13 Macon is not guilty. The judge will tell you that  
14 if you know a crime is going to happen, if you  
15 think a crime might happen, you are not guilty.  
16 You have to be an active participant. You have to  
17 do an overt act in assistance of that crime.

18 If you think he got it the day of -- well, the  
19 problem is that if he just says yes to everything,  
20 like Mr. Cathcart said, then it is probably pretty  
21 likely that that is what happened when he gave the  
22 statement to police the first time.

23 Did he send you in there?

24 Yes.

25 Did he ask you to do this?

1 Yes.

2 We have already arrested Mr. Macon. We have  
3 already put him -- pulled him out of -- asked him  
4 to get out of his car forcefully. Have him down on  
5 the ground. Arrested him. Told him he is a  
6 suspect for armed robbery.

7 So you can look at it either way. It is your  
8 decision. I'm not going to put that decision -- my  
9 opinion of that decision on you. But, either way,  
10 I don't think there is evidence of Arthur Macon's  
11 guilt.

12 I think there is either clear evidence that he  
13 is not guilty or there is really no evidence as to  
14 what happened because we don't know what Mr. Colon  
15 really is saying. He just agrees with whatever  
16 anyone tells him to say.

17 So that is what we have.

18 Now, let's talk about what does not make sense  
19 about this case. That is all we pretty much know.  
20 This is what doesn't make sense.

21 If Arthur Macon is the getaway driver, why  
22 didn't he drive anyone away?

23 Ms. Williams says they were standing there  
24 talking in the parking lot. Mr. Macon had time to  
25 drive away. Why didn't Jason get in the car? If

1 he was the getaway driver and Jason had the money,  
2 why didn't he take the money and get that away  
3 faster? He didn't drive anything away. So if he  
4 is the getaway driver, why didn't anything get  
5 away?

6 If he is the mastermind of this plan, why did  
7 he wear a super distinctive yellow shirt that day?  
8 Why did he park in the front corner of the hotel  
9 where anybody on Farrow Road could see his car, him  
10 talking to Jason as Jason came up? Why wouldn't  
11 they have parked in the back? That doesn't make  
12 any sense.

13 If Mr. Macon -- Arthur -- was sitting in the  
14 car the whole time listening to this weather alert  
15 radio that you can buy at Radio Shack that lots of  
16 people have, then why didn't he just -- and he was  
17 going to leave his cousin all along, why didn't he  
18 just leave when he first heard it come over 9-1-1,  
19 or over the dispatch?

20 Frieda Wyatt said it was over all police radio  
21 stations. So if they are going to allege that he  
22 was listening to a police radio station and he was  
23 going to leave, why didn't he leave? Or after he  
24 talked to his cousin and got out on Farrow Road,  
25 why didn't he leave then? Why did he go to BB&T

1 and go to the ATM? That doesn't make any sense.

2 Later he is driving. He has got a marked  
3 patrol car behind him. Why didn't he do anything  
4 then? Why didn't he try and run and try and leave  
5 if he is guilty?

6 Mr. Cathcart said in his closing that Mr.  
7 Macon was arrested for DUS, and we know that  
8 because he was arrested for it. That is the  
9 mentality we have here. Assumptions. But that is  
10 not the standard that we have in court. That may  
11 be the standard that police work with sometimes  
12 where they just assume people are guilty because it  
13 sounds like it, but we need more than that. We  
14 need proof. We need evidence in order to actually  
15 convict them of a crime.

16 Assumptions. Exaggerations. Flat police  
17 report. That is what this case is about.

18 Now, soon you are going to get to go  
19 deliberate. And then once you are done, once you  
20 come up with a verdict, you are finally going to  
21 get to go home and tell your family and friends  
22 about this. And you can tell them that you sat  
23 through the case of the getaway driver who didn't  
24 drive anyone away.

25 I think that you are all reasonable people and

1 that you will understand that the State has an  
2 important burden here that they have to prove.

3 There is no proof that Mr. Macon did anything,  
4 assisted Mr. Colon in any particular way. There is  
5 no reasonable proof, there is nothing to rely on to  
6 be firmly convinced. There is a lot here that  
7 would make you hesitate to act before you convict a  
8 man on these facts.

9 I ask you to consider all that. And I ask you  
10 to listen to the judge's instructions on the law,  
11 because that is just as important as everything we  
12 have said here today.

13 Thank you, very much.

14 JURY CHARGE

15 THE COURT: All right, ladies and gentlemen,  
16 you have heard all of the evidence, you have heard  
17 the arguments of the parties. Now it is my  
18 responsibility to charge you as to the law.

19 I remind you that, during this trial, you and  
20 I have certain duties to perform. As the trial  
21 judge, it is my responsibility to preside over the  
22 trial of this case, and I also have the duty to  
23 rule on the admissibility of the evidence offered  
24 during this trial.

25 You are to consider only the competent

1 I do appreciate you taking your civic duty  
2 seriously, as you all have. I hope that you have a  
3 wonderful weekend.

4 If there is anyone -- she will give you  
5 instructions -- that wishes to stick around and  
6 remain and hear the sentencing in this case, you  
7 may do so. She will direct you as to where to sit.  
8 But she has some paperwork for you to sign. If  
9 not, if you don't want to and you are ready to  
10 leave, you are free to go. Have a wonderful  
11 weekend.

12 Thank you again.

13 THE CLERK: I'll have them go to the jury  
14 room, and then if they wish to come back in.

15 (Jury excused.)

16 THE COURT: I just need to wait on the clerk.

17 MS. GOLDBERG: I will need to do post-trial  
18 motions.

19 THE COURT: Well, we can do that now.

20 MS. GOLDBERG: Yes, that's fine.

21 THE COURT: Yes, ma'am?

22 MS. GOLDBERG: Thank you, Your Honor. May it  
23 please the Court?

24 At this time I would like to renew all  
25 objections made during trial. Specifically I would

1 . renew my objection as to Mr. Woodberry's testimony  
2 and the relevance of that and any pretrial  
3 objections that were made.

4 I was going to renew my directed verdict  
5 regarding the kidnapping, but that is a moot point  
6 at this time.

7 I would also renew my directed verdict and  
8 request a new trial based on insufficient evidence  
9 as there was no consistent evidence of any  
10 agreement between the parties as to any armed  
11 robbery.

12 That would be my motion for a new trial, Your  
13 Honor.

14 THE COURT: Okay.

15 MR. CATHCART: Your Honor, I think the facts  
16 speak for themselves. And obviously the jury  
17 deliberated on this long and hard. I think all the  
18 elements have been met as to the armed robbery.

19 THE COURT: I didn't hear the last part.

20 MR. CATHCART: All the elements have been met  
21 as to the armed robbery. I won't argue the other  
22 ones since they found him not guilty as to those.

23 THE COURT: All right. Mr. Woodberry was the  
24 father?

25 MR. CATHCART: Jason's father.

1 THE COURT: I just wanted to make sure.

2 THE CLERK: They are all coming in.

3 THE COURT: All right. I am going to deny the  
4 motion for new trial and directed verdict.

5 MS. GOLDBERG: Renew directed verdict, motion  
6 for a new trial.

7 THE COURT: All right. I am going to deny the  
8 motions. I believe that there was sufficient  
9 evidence presented to the jury, that they  
10 deliberated, considered the evidence, and came back  
11 with a verdict. And for that reason, the motions  
12 will be denied: The motion for a new trial, and  
13 the motion for directed verdict.

14 MS. GOLDBERG: Thank you, Your Honor.

15 THE COURT: All right. Yes, sir, Mr.  
16 Cathcart?

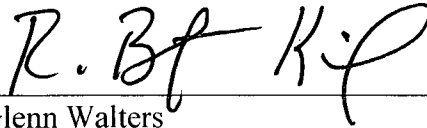
17 MR. CATHCART: May it please the Court, Your  
18 Honor? You heard the facts already before you. I  
19 was just going to say this was a short trial and a  
20 long deliberation. We are thankful to the jury for  
21 their hard work.

22 Mr. Macon does have a prior record. It is six  
23 separate counts of strong armed robbery, three of  
24 which used to be armed robbery that were pled down  
25 because of his age at that time. He received a

The undersigned hereby certifies the Record on Appeal contains all materials proposed to be included by any of the parties and no other material.

Respectfully submitted this the 29<sup>th</sup> day of July, 2016.

Glenn Walters, Attorney at Law, PA

A handwritten signature in black ink, appearing to read "R. Bentz Kirby". The signature is written in a cursive style and is positioned above a horizontal line.

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