

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable D. Craig Brown, Circuit Court Judge

TYKEEM KALANI MAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000524

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 11, 2014, Commencing at 12:16 p.m.

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PROCEEDINGS

1
2 THE COURT: Mr. Bell, could you tell me the
3 indictment numbers of the gentleman who is up for
4 trial?

5 MR. BELL: Yes, Your Honor.

6 The indictment numbers are 2014-GS-38-189,
7 that's the indictment for the armed robbery And
8 indictment number 2014-GS-38-190, that's the
9 indictment for possession of a weapon during the
10 commission of a violent crime.

11 Do you want my copy --

12 THE COURT: And his name is Tykeem May; correct?

13 MR. BELL: That's correct, Your Honor. I think
14 he's present in the courtroom.

15 THE COURT: And does Mr. May have any record?

16 MR. BELL: No, Your Honor.

17 THE COURT: And how old is Mr. May?

18 MR. BELL: Twenty-four.

19 THE COURT: And for the record, who is
20 representing Mr. May?

21 MR. STEVENS: I represent Mr. May, Your Honor.
22 Breen Stevens, public defender's office.

23 MR. BELL: Your Honor, would you like a copy of
24 the indictments?

25 THE COURT: That would be great.

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1 [Whereupon, Mr. Bell proffers documents to the
2 Court]

3 THE COURT: Thank you.

4 And it's my understanding that the State has
5 extended an offer to Mr. May?

6 MR. BELL: Yes, Your Honor, we did.

7 THE COURT: And what is the extent of that
8 offer?

9 MR. BELL: The offer was that we would recommend
10 a minimum ten-year sentence on armed robbery, fleet of
11 an armed robbery.

12 THE COURT: And what would you do with
13 possession of a firearm?

14 MR. BELL: And we'll nol-pros the possession of
15 a firearm.

16 THE COURT: And I assume the victim is in
17 agreement with that offer?

18 MR. BELL: Yes, Your Honor.

19 THE COURT: Mr. Breen -- I'm sorry. I always
20 want to call you by your last name -- by your first
21 name instead of your last name.

22 Mr. Stevens, have you had a full opportunity to
23 discuss this offer with your client?

24 MR. STEVENS: Yes, ma'am, I have.

25 THE COURT: And do you believe he understood --

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1 where is your client?

2 MR. STEVENS: He's right over here.

3 THE COURT: He needs to come sit at counsel
4 table.

5 [Whereupon, Mr. May complies]

6 THE COURT: Start over. Have you had a full
7 opportunity to discuss the scope of this offer with
8 your client?

9 MR. STEVENS: I have, Your Honor.

10 THE COURT: And do you believe he's understood
11 these discussions?

12 MR. STEVENS: I do, Judge.

13 THE COURT: And has he indicated whether he
14 wishes to accept or reject the offer?

15 MR. STEVENS: He has indicated to me, Your
16 Honor, that he wishes to reject the offer.

17 THE COURT: And is he doing that with, or
18 against, your advice?

19 MR. STEVENS: I believe it's actually against my
20 advice, Your Honor.

21 THE COURT: Sir, if you would stand for me,
22 please, and raise your right hand to be sworn. You
23 can raise your right hand.

24 [Whereupon, Mr. May is duly sworn by the Court
25 as follows: do you swear or affirm the testimony you
MIA PERRON, CVR-CM-M

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1 give will be the truth]

2 MR. MAY: Yes, ma'am.

3 THE COURT: You can put your right hand down.

4 Sir, state your full name for the record.

5 MR. MAY: Tykeem Kalam May.

6 THE COURT: Mr. May, I'm going to ask you some
7 questions. But I need to caution you, please don't
8 tell me anything that you would not want repeated, as
9 this is an open court room. Anything you say can be
10 used against you. Do you understand that?

11 MR. MAY: Yes, ma'am.

12 THE COURT: So I don't want you to tell me
13 anything that's privileged that's gone on in
14 conversations with your lawyer. Do you understand?

15 MR. MAY: Yes, ma'am.

16 THE COURT: Sir, has your lawyer, Mr. Stevens,
17 gone over the plea offer with you?

18 MR. MAY: Yes, ma'am.

19 THE COURT: And did you understand your
20 discussion with him?

21 MR. MAY: Yes, ma'am.

22 THE COURT: Did you understand the scope of the
23 offer?

24 MR. MAY: Yes, ma'am.

25 THE COURT: Tell me what you understand the

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1 offer to be.

2 MR. MAY: Ten years confinement and the
3 possibility of eight and a half at time served or
4 seven -- I mean, for -- for seven and a half -- or
5 seven years and six months, or something close to
6 that.

7 THE COURT: And then what is your understanding
8 of what would happen with the possession of a firearm
9 charge -- weapon, rather.

10 MR. MAY: I wasn't aware of that. But I thought
11 it would run consecutive.

12 THE COURT: Do you understand now that it's
13 going to be dismissed if you were to plead guilty?

14 MR. MAY: Yes, ma'am.

15 THE COURT: Do you wish to accept or reject that
16 offer?

17 MR. MAY: I would like to reject that offer.

18 THE COURT: And are you doing that freely and
19 voluntarily and of your own will?

20 MR. MAY: Yes, ma'am. Freely and voluntarily.

21 THE COURT: Has anybody forced you to do that?

22 MR. MAY: No, ma'am.

23 THE COURT: Do you feel that you've been under
24 any duress?

25 MR. MAY: No, ma'am.

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1 THE COURT: Are you suffering from any mental
2 disabilities or under the influence of any drugs or
3 alcohol?

4 MR. MAY: No, ma'am.

5 THE COURT: Have your lawyers fully explained to
6 you the elements of the crime of armed robbery?

7 MR. MAY: Yes, ma'am.

8 THE COURT: And have they fully explained to you
9 the minimum and maximum penalty for armed robbery?

10 MR. MAY: Yes, ma'am.

11 THE COURT: Do you understand that if convicted
12 that you could get a maximum sentence of thirty years?

13 MR. MAY: Yes, ma'am.

14 THE COURT: And do you understand that in South
15 Carolina that is day for day?

16 MR. MAY: Yes, ma'am.

17 THE COURT: And as a young man you understand
18 that means basically that's 28.5 years?

19 MR. MAY: Yes, ma'am.

20 THE COURT: And my math might be off. That's
21 why I went to law school. So bear with me. Within a
22 certain variance, I might be right, wrong.

23 MR. BELL: It is 25.5, Your Honor.

24 THE COURT: I told you my math was off, that's
25 why I went to -- if I knew a little math, I might have

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1 been a doctor. But it just didn't work out that way
2 for me.

3 MR. MAY: Excuse me, Your Honor.

4 THE COURT: Yes, sir.

5 MR. MAY: I wasn't aware of the day for day, but
6 I --

7 THE COURT: And is that in any way -- well, I'm
8 going to finish discussing that with you. So twenty-
9 five and twenty-four, that means you would about
10 forty-nine, fifty years old when you got out, worse
11 case scenario. Do you understand that?

12 MR. MAY: Yes, ma'am.

13 THE COURT: We have something in South Carolina
14 called truth in sentencing, which means if you are
15 convicted of something and it's in a most-serious
16 classification or classified in a violent
17 classification, which armed robbery is both of those
18 categories, then you basically serve your sentence day
19 for day before you are eligible for any type of
20 release.

21 So I need -- although I have no idea of the
22 strength of the State's case. I'm not an advocate.
23 It doesn't really matter to me one way or the other
24 whether we try the case or whether you plead. But I
25 do this for PCR purposes so that in the event the

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1 worse case happens, which I always have to look at
2 worse-case scenarios, if you're convicted and you
3 receive thirty years I need you to know the worse
4 possible scenario so that later on you can't say, my
5 lawyer didn't tell me, the Court didn't tell me, and I
6 wasn't fully advised of what I was doing.

7 So knowing the things that I have explained to
8 you, does that in any way affect your decision to
9 accept or reject the offer? In other words, do you
10 still wish to reject the offer?

11 MR. MAY: Yes, ma'am.

12 THE COURT: Do you have any -- I think there was
13 a motion, as well?

14 MR. STEVENS: Yes, ma'am.

15 At this time my client, Mr. Tykeem May would
16 like to address the Court. I believe he wishes to
17 fire me as counsel and he wishes to go forward himself
18 or request other counsel to be appointed. I believe
19 he wants to address the Court.

20 THE COURT: Sir, I'll be glad to hear from you.

21 And these charges have been pending since
22 September 8th of 2013; correct?

23 MR. MAY: Yes, ma'am.

24 THE COURT: So we're approaching almost a year.

25 Let me ask these questions of you first,

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1 Mr. Stevens. Have you fully investigated this case?

2 MR. STEVENS: Yes, ma'am, we have.

3 THE COURT: Have you explained to him the
4 elements of this offense?

5 MR. STEVENS: Yes, ma'am, I have.

6 THE COURT: Have you explained to him the range
7 of penalty and his constitutional rights?

8 MR. STEVENS: Yes, ma'am, I have.

9 THE COURT: And do you believe you're prepared
10 for trial?

11 MR. STEVENS: Yes, ma'am, I am.

12 THE COURT: Okay. You can take your seat.

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Motion to Relieve Counsel by Mr. May
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MOTION TO RELIEVE COUNSEL

THE COURT: Yes, sir. I'll be glad to hear from you.

MR. MAY: All right, ma'am. I feel that --

THE COURT: You're very soft-spoken. I need you to speak up a little bit more for me.

MR. MAY: I feel that my legal aid, Mr. Stevens, is a very good lawyer but I feel as if he didn't have my best interest in mind due to the fact I had a couple of little things that I asked him to investigate, to look into, dealing with my case and he has yet to do those things. He has told me they were under subpoena.

And I told him about these things about in March, and now it is about time for me to go to trial and he still has not done these things -- those things which help to show my innocence and prove that I'm not guilty and clear accusations, but he has failed to do those things. I also --

THE COURT: Have -- go ahead. I'm sorry. I didn't mean to interrupt you. I apologize.

MR. MAY: I'm also under the knowledge that it was a breach of client-lawyer confidentiality that was made. And I'm not aware if Mr. Stevens knew that I knew that, but I --

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1 THE COURT: How did he breach confidence?

2 MR. MAY: I was told by another inmate that my
3 case was being discussed around him and that -- I was
4 told, before I met with Mr. Stevens, that --

5 THE COURT: Let me ask you a question. How well
6 do you know this inmate?

7 MR. MAY: Just as well as a brother in Christ.
8 And he --

9 THE COURT: Well, you need to define that for
10 me, because I know some folk at church that I would
11 consider a sister or a brother in Christ but I don't
12 see them, I don't speak with them, I don't hang out
13 with them, so I really don't know.

14 MR. MAY: I see him -- well, I see him every
15 day. And we talk --

16 THE COURT: You've seen him every day for how
17 long?

18 MR. MAY: For about two or three months. We
19 fellowship every-other day.

20 THE COURT: And you feel like that's enough to
21 formulate a relationship of trust?

22 MR. MAY: I'm not basing it off of our
23 relationship of knowing each other. I'm basing it off
24 of what he said to --

25 THE COURT: Well, yeah, but in order to do that

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1 -- see, people tell me a lot of things, but I've got
2 to trust you to believe you. I believe very little of
3 what I hear. I believe very little of what I see or
4 read, because I recognize that people can manipulate
5 what you see and hear. I also recognize people have
6 their own motives. And I also recognize that they may
7 have a reason to tell me something to mislead me or to
8 make me believe something that isn't true.

9 So I'm a little different, see, because when
10 folk tell me stuff, I'm evaluating things from every
11 angle. I'm thinking, what do you have to gain out of
12 this, a dog that brings the bone carries one, why are
13 you telling me this. See, I look at things very --
14 maybe a little differently because I'm a lawyer.
15 That's why I'm asking these questions, which is can
16 you really trust what somebody said to you.

17 MR. MAY: Yes, ma'am.

18 I trust it on the basis that he has no motive to
19 lie. And I also base it off the things that he told
20 me, which no one would know except for me and Mr.
21 Stevens because I didn't discuss my case with anyone
22 else.

23 THE COURT: All right. So, now, is there
24 anything else you want to tell me about Mr. Stevens'
25 representation?

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1 MR. MAY: [No response]

2 THE COURT: And who is this fellow inmate that
3 you're referring to?

4 MR. MAY: His name is Mr. Spike, I believe it
5 is.

6 THE COURT: S-P-I-T-E-S?

7 MR. MAY: It's Sykes. I'm sorry. Sykes.

8 THE COURT: S-Y-K-E-S?

9 MR. MAY: Yes.

10 THE COURT: Yes, sir. Is there anything further
11 you want to share with me?

12 MR. MAY: No. Just -- on the basis that I was
13 on earlier that Mr. Stevens has been a very good
14 lawyer from the beginning. But midway through my
15 case, I just felt like he didn't have my best interest
16 in mind, like he was more pressuring me into you
17 should take this plea and --

18 THE COURT: You understand sometimes lawyers
19 have to tell you difficult things?

20 MR. MAY: Yes, ma'am.

21 THE COURT: Do you understand that they have to
22 be objective, they can't always have your -- in other
23 words, a lawyer has to be objective. They can't get
24 caught up in your emotion and what you think. They
25 have to be very sterile in the way they look at a

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1 case. Which means that even if -- sometimes it might
2 come across that because they don't agree with you,
3 they don't believe in you. But they have to remain
4 objective because they have to look at the whole
5 picture. So sometimes lawyers have to tell you stuff
6 you don't want to hear. That doesn't mean that they
7 aren't doing their job. As a matter of fact,
8 sometimes telling you what you don't want to hear
9 means they are doing their job.

10 And sometimes lawyers and clients are at odds
11 because as a layperson you look at the system a
12 certain way and you think it should play out a certain
13 way. But knowing the rules and the procedure and
14 otherwise, a lawyer has to objectively evaluate that
15 and then tell you what they know the system to be and,
16 within certain variances, how things are going to play
17 out.

18 Because to a certain extent, because we all have
19 done this so long -- and probably more me than the
20 lawyers -- I look at a situation from the end to the
21 beginning, not the beginning to the end, because
22 pretty much I already know how it's going to play out.
23 I've done it enough. Within certain variables, I can
24 kind of tell you how things are going to play out.
25 Not a hundred percent, but based on certain variables

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1 and the way I know how the system works, I can pretty
2 much, within a certain percentage, tell you how
3 something is going to play out.

4 And that's how lawyers are, as well, because
5 they've done it so much that they kind of know how
6 it's going to play out. And even though it's the
7 first time for you and it's difficult to hear, it's
8 even more difficult that they get to how they know
9 it's going to play out and you're facing really
10 catastrophic circumstances and they didn't tell you
11 that.

12 As a matter of fact, the law and the ethics
13 require Mr. Stevens to tell you the things you don't
14 want to hear. If he doesn't and then you get to the
15 end of the process and you say, he never told me that,
16 then ethically he can be held accountable for that
17 because as difficult as it is to tell a client certain
18 things, he is ethically bound to tell you. Whether he
19 -- even if he just --

20 The funny thing about the law is there are lots
21 of things that we disagree with morally that we would
22 like to turn out differently. But in our objective
23 place we have to take ourselves -- in our heads, we
24 kind of know how it's sort of going to turn out. So
25 as difficult as that is, we have to share that with

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1 clients. I said we. Having practiced law many, many
2 years ago -- but you have to tell your clients that.
3 So ethically, he has to walk that fine line where I
4 really would like, on a moral standpoint, for it to
5 turn out like this but I know from a lawyer's
6 standpoint how this is going to play out and I have to
7 disclose that to you. And it may really sound like in
8 that process that I'm not for you. But that's really
9 not what he's doing. He has an ethical obligation to
10 share those things with you, good, bad or indifferent.

11 MR. MAY: I understand that.

12 But the basis I was touching on was from the
13 beginning it was just -- like you said, you examined
14 it from the end to the beginning. In the beginning
15 everything was good. Up to the middle, everything
16 still was good. It got to a certain point where I
17 felt like things were being rushed a little and
18 everything wasn't being -- like I said previously,
19 everything wasn't being examined, like the plans that
20 I felt as if looked into and researched that would
21 prove my innocence. Those things weren't being done.

22 Also, every time I would give him something that
23 I felt would help the defense in my case, he would try
24 to find loopholes and stuff, and which I didn't feel
25 it to be true. And I would look up the things myself

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1 in the law books and in other cases that I refer to,
2 and I didn't find those things to be true. And I
3 didn't feel in my heart that that was the best
4 decision to me to make and that he wasn't making the
5 best decisions.

6 There's nothing against Mr. Stevens. Because
7 it's been times when he thought that I didn't like him
8 and everything like that. And that's not the case.
9 Like I said, he's a very good lawyer. But this is my
10 life that I'm looking at. I don't want to risk my
11 life because I feel like the person that's
12 representing me didn't have my best interest at heart.

13 THE COURT: So do you plan to hire a lawyer if I
14 were to relieve him? Because I haven't heard anything
15 up to this point that would have me appoint somebody
16 else. And it wouldn't be good for you to represent
17 yourself. I'm a lawyer. I've had a law degree for
18 twenty-five years. But if I ever got in trouble, I
19 wouldn't be representing myself. I would be calling
20 somebody to represent me.

21 MR. MAY: I don't plan on representing myself.
22 But I thought it would be possible for another lawyer
23 to be appointed. Or I had a lawyer that I was looking
24 into that was planning on taking -- or helping
25 Mr. Stevens and be a partner in the case. But --

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1 THE COURT: What do you mean? Another public
2 defender?

3 MR. MAY: No. It was a private lawyer.

4 THE COURT: You would have to pay him for him to
5 help Mr. Stevens. And he's not going to likely help
6 Mr. Stevens. Either you're going to pay him -- I'm
7 sure he's told you how much it would cost and gave you
8 a deadline.

9 MR. MAY: Actually, he didn't. I heard it
10 through a friend of mine. And they reassured me that
11 he was going to look into the case behind Mr. Stevens.
12 But I was also told that --

13 THE COURT: Let me let you in on something.
14 Lawyers don't look behind other lawyers. That's
15 unethical. So he wasn't ever going to do that. And
16 even if he was going to talk to Mr. Stevens, he wasn't
17 going to talk to Mr. Stevens until you wrote him a
18 check and officially retained him. So that's nice
19 that somebody may have wanted to represent that to
20 you, but it's unlikely.

21 Another lawyer can't technically look behind
22 another lawyer like that. Technically, they can't
23 even talk to you while you're represented by somebody.
24 That's unethical. So he would have to come to Mr.
25 Stevens and talk to him and say, listen, I'm thinking

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1 about taking this case over. And it's all in or all
2 out. Pound for a penny. He can't say, I'm going to
3 help you, because the regulations of the statutes
4 aren't going to allow it. Either you're going to pay
5 him a fee and he's going to take over your case and
6 he's going to investigate it --

7 And he would have to be ready to try it right
8 now. So it's unlikely that a lawyer would get into a
9 case at this late stage. Now, if you had contacted
10 somebody about six or seven months ago, they may have
11 taken it over. But it's unlikely at this late stage
12 of a case, once it's already developed, that a lawyer,
13 a private -- member of the private bar is going to
14 come in unless you've paid their fee or some
15 substantial portion of it, in order for them to be
16 able to sort of, you know -- not sort of, but to be
17 able to get up to speed and be ready to try it.
18 Because they're not going to walk into a courtroom
19 unprepared.

20 MR. MAY: So the ethics of my case being
21 discussed with another inmate, that --

22 THE COURT: I don't know if that actually
23 happened, and I'll tell you why. Again, I'm just
24 jaded. I believe very little of what someone would
25 bring to me along those lines. I would be looking at

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1 what is it they have to gain from this. And you
2 really don't know him that well. You've been
3 incarcerated, but you haven't seen him outside of that
4 environment. So you really don't know him. You don't
5 know what his morals are, you don't know what his
6 ethics are. You don't know what he has to gain from
7 this or not gain from it. And there are some people
8 that to bring news, they don't have to have something
9 to gain. Sometimes some people just like to stir the
10 pot. And so do you even know how he gets along with
11 Mr. Stevens and whether he's -- you know, see, there's
12 just too many moving parts for me to believe what he's
13 -- I don't have any way of judging his credibility.

14 MR. MAY: Yes, ma'am.

15 Well, I just believe because of the facts that
16 were presented to me. The facts were that -- exactly
17 what he told me -- Mr. Stevens told me the day after I
18 -- after he -- I was informed and I met with Mr.
19 Stevens and I was told the same thing, and that is
20 just I was told the same thing.

21 THE COURT: The same kind of advice?

22 MR. MAY: No. I was told the same exact -- it
23 wasn't really advice. It was contacting of a witness.
24 I was told by --

25 THE COURT: Are y'all involved in something

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1 that's similar?

2 MR. MAY: No. Well, his case isn't similar to
3 mine but --

4 THE COURT: Y'all all know the same people?

5 MR. MAY: No. I just met him like --

6 THE COURT: Okay.

7 MR. MAY: -- and he just informed me that he
8 knew that Mr. Stevens contacted somebody or was trying
9 to contract somebody. I was just kind of thrown off
10 because --

11 THE COURT: He could have overheard Mr. Stevens
12 telling his paralegal or somebody -- if he was meeting
13 -- let's say he was trying to do something and tell
14 his paralegal to talk to a witness and then started
15 having a conversation with this person you're talking
16 about. That wouldn't be a breach of confidentiality.

17 MR. MAY: But I just wanted to know how did he
18 know it was me? Because he came directly to me and
19 said --

20 THE COURT: Because you never know in jail who
21 knows who, who's connected to who, and what their
22 motives are.

23 Again, I'm jaded, so the way I look at things is
24 a little different. I'm just not that accepting of --
25 you know, I would just be wondering like what would be

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1 his motive to tell you that.

2 MR. MAY: Yes, ma'am.

3 And, also, I wanted to check into -- I mean, I
4 wanted to go back to what I was speaking of about the
5 things that I asked Mr. Stevens to do.

6 THE COURT: I don't want you to tell me too much
7 because I don't want you to divulge anything that's
8 privileged.

9 Mr. Stevens, did you, in fact -- did he give you
10 witnesses and other folk to contact in the
11 investigation of this case? And, again, I'm trying
12 to handle that very delicately and very broadly so
13 that --

14 MR. STEVENS: Yes, ma'am.

15 THE COURT: -- nothing is disclosed within
16 privilege.

17 MR. STEVENS: I was given several witnesses that
18 trickled out through my representation. We've hired a
19 private investigator who's followed down those
20 witnesses to the furthest extent that we could. Those
21 that could be found were found and spoken to. Those
22 that could not be found could not be found.

23 THE COURT: And did you share all of this with
24 Mr. May?

25 MR. STEVENS: Yes, ma'am.

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1 THE COURT: Mr. May, is that correct?

2 MR. MAY: Yes, ma'am.

3 THE COURT: Did he follow through on all the
4 leads you gave him?

5 MR. MAY: No, not all of the leads.

6 THE COURT: Well, I mean, now, some of these
7 lead to a dead-end.

8 MR. MAY: The witness leads he did.

9 But it was not as far as the witnesses. I was
10 talking about more of the physical leads that would
11 prove -- I don't know that you want to go into detail.

12 THE COURT: Yeah. Why don't we -- can we clear
13 the courtroom for a minute so I can have a bit of a
14 private conversation with Mr. May so that he can be a
15 little more open with me about what he's talking
16 about. And I appreciate y'all indulging us.

17 [Off the record momentarily]

18 MR. MAY: Can I approach the bench? Can I
19 approach the bench so I can talk --

20 THE COURT: You're going to have to tell me now,
21 in front of everybody, yeah. Because these people
22 can't -- these people can't testify against you.

23 MR. MAY: I just didn't want to speak so loudly,
24 but all right.

25 I asked Mr. Stevens to look into my work records

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1 and some other things that vouched that I had no
2 motive in this incident.

3 I also asked him to look into the lies told by
4 the public safety officials during my preliminary
5 hearing, to prove that perjury was also -- perjury
6 also occurred.

7 I also asked Mr. Stevens to look into Walmart's
8 video surveillance to prove that I was at Walmart and
9 needed to prove my alibi.

10 Also, to look into the phone talk -- I mean,
11 Straight Talk phone service, which was my provider,
12 and the Straight Talk company would verify that I
13 purchased and activated my phone on that day, which
14 would also coincide with my alibi.

15 THE COURT: And is there anything else you
16 wanted him to look into?

17 MR. MAY: I also asked him to look -- other than
18 the prelim and the transcripts or recordings from the
19 prelim to prove that perjury was committed. Pull
20 personnel file, my work records, Walmart's video, for
21 a receipt purchase to prove that I purchased the
22 phone, the phone card, like I said, and the phone
23 records.

24 THE COURT: Now, Mr. Stevens, did you look into
25 all of these things?

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1 MR. STEVENS: Yes, Judge.

2 Just to go on down: regarding his work records,
3 we did actually file subpoenas on Straight Talk.
4 Point of fact, it's not really Straight Talk.
5 Straight Talk is actually just a copyright of Track
6 Phone. We did file a subpoena on that one. Today's
7 the date for it.

8 However, when it comes to the work records --

9 THE COURT: So you haven't gotten --

10 MR. STEVENS: -- not the work records, but the
11 phone records.

12 THE COURT: -- the subpoena back from Straight
13 Talk yet?

14 MR. STEVENS: No, not yet, ma'am.

15 However, when it comes to the Straight Talk
16 records, I believe he is talking about when his phone
17 minutes were activated. I believe he said to me he
18 already had a phone. He's talking about adding more
19 minutes to it.

20 THE COURT: Oh. Okay.

21 MR. STEVENS: He indicated that it was purchased
22 at Walmart on the day. But according to our
23 conversations, that would have occurred later on after
24 the time of --

25 THE COURT: The incident.

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1 MR. STEVENS: -- the offense itself.

2 So when it comes to an actual alibi

3 corroboration --

4 THE COURT: That's not going to provide --

5 MR. STEVENS: Yes, ma'am.

6 THE COURT: -- because the alibi has to be the
7 exact date and time of the incident.

8 MR. STEVENS: Yes, ma'am.

9 THE COURT: So this would have been after the
10 alleged time of the incident?

11 MR. STEVENS: Yes, ma'am. That's my
12 understanding.

13 Second of all, when it comes to subpoenaing work
14 records, we have subpoenas out to Dollar General.
15 I've spoken with the general manager there at the
16 local store. I've also spoken with a person with whom
17 he used to work. He indeed did work there. I do not
18 intend to enter the work records into evidence anyway,
19 for a number of reasons.

20 THE COURT: Well, what would they serve to
21 prove?

22 MR. STEVENS: It would only really serve to
23 prove that he was actually employed during the time
24 frame.

25 THE COURT: But not that he was at work at the

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1 time and date of this incident?

2 MR. STEVENS: Correct. And, therefore, it would
3 not go to alibi. It would simply be used to possibly
4 -- however, what the records would show would not be
5 as -- I wouldn't want those hard numbers in front of
6 the jury because it would not show full-time
7 employment. It would not show a large salary. And so
8 --

9 THE COURT: So you don't think it would be
10 beneficial and show --

11 MR. STEVENS: No, I don't.

12 I think that we can get that information out
13 through other witnesses without having to, number one,
14 enter documents into evidence and potentially losing
15 last argument, and, number two, because I don't want
16 hard copies of paperwork in the jury room indicating
17 that it was not full-time employment and it was not a
18 bank-breaking salary.

19 Regarding preliminary hearing transcripts: as
20 we know, preliminary hearings are held in summary
21 court. Held in summary court for a reason: because
22 there is no court reporter. My office has tried twice
23 to contact the city court about that. To date, we do
24 not have any --

25 THE COURT: So they --

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1 MR. STEVENS: -- recordings from them.

2 THE COURT: They didn't record it? Most of the
3 time they don't, though. Yeah.

4 What is it that he claims was perjured? I guess
5 that's --

6 MR. STEVENS: My understanding is that when I
7 was cross-examining the officer at the time, a
8 Corporal Kevin Dukes of the Orangeburg Department of
9 Public Safety --

10 THE COURT: So you actually did the preliminary
11 hearing?

12 MR. STEVENS: Yes, ma'am.

13 THE COURT: Okay.

14 MR. STEVENS: -- I asked him specifically about
15 different types of evidence utilized. He indicated
16 that he previously went to the store locker -- I'm
17 sorry. It was not store -- but evidence locker room
18 and reviewed the evidence before the hearing and that
19 he was -- also indicated that when he reviewed the
20 evidence, he indicated that jeans were present or that
21 he did see jeans and I believe a shawl.

22 When we actually looked at the evidence
23 collected itself, there were no jeans in the evidence
24 locker, nor a shawl. There was -- the only evidence
25 of that would be photographic evidence from the search

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1 of his abode, although -- at least for the jeans. And
2 when it comes to the shawl, that was I believe
3 information provided in a statement by his girlfriend,
4 Ms. Emonie Ford.

5 THE COURT: So you don't see that as anything
6 that's impeachable? Or is it? Is it inconsistent,
7 something you can use to impeach him?

8 MR. STEVENS: The only way it would be
9 inconsistent is if he actually testifies at trial that
10 they did collect these items --

11 THE COURT: So you just have to see --

12 MR. STEVENS: -- when they did not.

13 THE COURT: -- how it plays out.

14 MR. STEVENS: Yes, ma'am.

15 THE COURT: So you have fully investigated that
16 and if he testifies inconsistently, you'll be able to
17 impeach him?

18 MR. STEVENS: Yes, ma'am.

19 THE COURT: And the records do not benefit
20 Mr. May --

21 MR. STEVENS: No, ma'am.

22 THE COURT: -- his work records?

23 MR. STEVENS: I don't believe so.

24 THE COURT: And the Straight Talk phone does not
25 corroborate --

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1 MR. STEVENS: No.

2 THE COURT: -- that he was someplace else at the
3 time of this incident?

4 MR. STEVENS: No, ma'am.

5 Based on my conversations with my client, it
6 would be information that was -- from what he told me,
7 he actually obtained it afterward anyway, and in the
8 afternoon, from Walmart, which was after the time of
9 the alleged incident at the little corner store.

10 THE COURT: What time is it alleged that this
11 took place, because I don't have a time on this. It
12 just says September 8th, 2013.

13 MR. STEVENS: Yes, ma'am.

14 The video from the -- the surveillance cameras
15 for the corner store, called the Keg, actually has
16 indoor and outdoor cameras. There is a time
17 difference on the cameras. The cameras there indicate
18 9:47 to 9:49 is about when the incident --

19 THE COURT: A.m. or p.m.?

20 MR. STEVENS: That shows a.m., yes, ma'am, on a
21 Sunday morning.

22 However, later on when you also look at the
23 outdoor cameras, you see police come on up a little
24 bit later. It indicates like a little after 10:00.
25 But police indicate in the reports and say that it was

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1 actually -- when they arrived it was a little after
2 2:00. And, therefore, there is approximately a four-
3 hour time difference, is what they're saying.

4 And, additionally, there's also a time gap of
5 several minutes between one of the outdoor -- or a
6 couple of outdoor back cameras, as well as the rest of
7 the cameras.

8 THE COURT: So you have fully investigated that,
9 as well?

10 MR. STEVENS: Yes, ma'am.

11 THE COURT: And then what about the Walmart
12 videos surveillance?

13 MR. STEVENS: Yes, ma'am.

14 THE COURT: What would that prove to
15 corroborate?

16 MR. STEVENS: Well, if indeed he was actually at
17 Walmart during the time of the alleged incident, it
18 would have been good to actually have Walmart
19 surveillance. However, by the time I was informed
20 that he was at Walmart, it was well past the thirty-
21 day time period where Walmart keeps information from
22 video on file unless they're specifically made aware
23 of any pending litigation and therefore they can
24 actually preserve it.

25 THE COURT: So it was beyond the time frame that

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1 they would have kept these videos. So you did, in
2 fact, investigate that?

3 MR. STEVENS: Yes, ma'am, we did.

4 THE COURT: Sir, do you understand that your
5 lawyer feels that your work --

6 What do you think your work records would
7 prove?

8 MR. MAY: I felt as if my work records -- I had
9 two jobs at the time, Your Honor, and the second job
10 he really didn't look into. He said he --

11 THE COURT: What was the second job?

12 MR. MAY: I was doing security. I also had been
13 working --

14 THE COURT: Security where?

15 MR. MAY: TKL Security.

16 I have a witness that has been in the holding
17 cell with me that can testify that we worked together.

18 THE COURT: I can assure you that somebody
19 that's been locked up testifying for you --

20 MR. MAY: But we worked --

21 THE COURT: Yeah, but it ain't going to help you.

22 MR. MAY: I know. But I --

23 THE COURT: The jury isn't going to give that
24 much credibility. They're going to figure y'all were
25 all up there together and cooked it up.

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1 MR. MAY: But we did work together.

2 THE COURT: But, I mean, I guess I'm still
3 trying to figure out what is -- how does that help
4 you?

5 MR. MAY: I was just trying to prove that I
6 didn't have a motive to do any robberies. I --

7 THE COURT: People that make a whole lot of
8 money still rob folk.

9 I guess I'm just trying to figure out -- is your
10 theory that because you had two jobs, you didn't
11 commit a robbery?

12 MR. MAY: No.

13 Actually, the point that I was trying to prove
14 was I had no need to do anything like that and risk my
15 life and put my career on the line. I was a college
16 student with two jobs, supporting myself, with my
17 future ahead of me. I had ten credits left to take
18 till I graduated with my degree in physical economics.
19 Why would I risk all of that for --

20 THE COURT: Did you look into the TKL Security
21 that he's talking about?

22 MR. STEVENS: Ma'am, we did not have any
23 information to track down. His boss, who we were told
24 his name is Hawk, we didn't have that information to
25 go off of.

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1 However, what we do have is a potential witness
2 who is not only able to testify to his employment with
3 Dollar General at the time of the offense but also
4 able to testify that he indeed was also working a
5 second job at TKL Security, for club security, at the
6 same time. In other words --

7 THE COURT: So you do have the information?

8 MR. STEVENS: We do have the information. And
9 we can likely get it up through one of the State's
10 witnesses. That's the plan.

11 THE COURT: So you do plan to elicit that
12 information?

13 MR. STEVENS: Absolutely. And we can --

14 THE COURT: And you've explained that to him?

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: Sir, do you understand that your
17 lawyer has investigated that and he does plan to bring
18 that out?

19 MR. MAY: Yes.

20 THE COURT: So then that eliminates one of your
21 concerns.

22 MR. MAY: What about the receipts from Walmart
23 to prove the purchase of the --

24 THE COURT: He says it happened after.

25 MR. MAY: I understand that the State can prove

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1 that I actually was where I said I was.

2 THE COURT: He says it happened after the time
3 of the alleged incident. So it doesn't prove an
4 alibi.

5 MR. STEVENS: Not only that, Judge. If I may?
6 I've actually spoken with my client about this before.
7 I asked him how it was purchased, whether it was a
8 check, card, cash. He indicated to me it was cash.
9 He said if anybody would have the receipt, it would be
10 his girlfriend, Emonie Ford. Over time, obviously we
11 asked and she didn't have. So when it comes to a
12 receipt for the cash purchase of the phone card --

13 THE COURT: Walmart wouldn't --

14 MR. STEVENS: -- and, again, it only goes to a
15 time period --

16 THE COURT: -- have that. It was a cash
17 purchase.

18 MR. STEVENS: -- and a time period after the
19 alleged incident.

20 MR. MAY: I was under the understanding that
21 Walmart kept all receipts of purchases from --

22 THE COURT: You would have to know exactly -- it
23 wouldn't have your name on it.

24 MR. MAY: I would know exactly what time frame
25 it was when I bought it and what department.

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1 THE COURT: Yeah, but from a jury standpoint,
2 unless it was made with a credit card and a check and
3 it had your name it, as far as they're concerned you
4 could have fabricated it. Do you understand? So you
5 need something that corroborated that that was
6 actually your receipt.

7 MR. MAY: The purchase of the items on it
8 wouldn't do that, Your Honor?

9 THE COURT: It depends. Only if it was at 9:47
10 or 9:49 in the morning. When do you say it -- when do
11 you say you were in Walmart purchasing --

12 MR. MAY: I went to Walmart -- we went to
13 Walmart -- we left the house at around 1:40 p.m. and
14 we stayed there until about 3:40.

15 THE COURT: Yeah, but how is that going to help
16 you? You could have committed a robbery and went to
17 Walmart. People do it all the time.

18 MR. MAY: The actual time that they said that
19 the video is supposed to be -- supposed to be from
20 approximately 1:47 till two --

21 THE COURT: You said it was from 9:47 to 9:49
22 a.m. in the morning.

23 MR. MAY: And that's what we're arguing about
24 the video. It was inconsistent because of the fact
25 that the video says 9:00. He also told me that it

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1 would be -- the store owner who would verify that
2 actually says indeed the times are off and it
3 indeed --

4 THE COURT: Yeah, but even if it's off three
5 hours, that's still twelve o'clock. That's not 1:47.

6 MR. MAY: 1:47.

7 MR. STEVENS: I believe the State's theory of
8 the case is that there's a four-hour gap, Judge.

9 THE COURT: Four-hour gap.

10 MR. STEVENS: So therefore --

11 THE COURT: So they just have the wrong time on
12 these dates?

13 MR. STEVENS: They're saying it has the wrong
14 timestamp, yes, ma'am.

15 THE COURT: So it's 1:47 and 1:49?

16 MR. STEVENS: 1:47 through 1:49 is approximately
17 when they --

18 THE COURT: P.M.?

19 MR. STEVENS: P.M. Yes, ma'am.

20 -- they allege that the robbery occurred at the
21 time. That after the robbery they allege that the
22 individual that robbed the place got in his car -- or
23 took the car back over, they're alleging, back to [REDACTED]
24 Wilkinson Street, which is less than a mile away, and
25 that allegedly he and his girlfriend went to Walmart.

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1 THE COURT: You understand that he's talked to
2 your girlfriend and she doesn't have this receipt?

3 MR. MAY: Yes.

4 I was under -- like I said, I was under the
5 belief that you could get it from Walmart --

6 THE COURT: Did you-all make an attempt to get a
7 receipt from --

8 Well, actually, that's a subcontractor of
9 Walmart, so Walmart wouldn't have the receipt. So
10 Walmart wouldn't have the receipts, actually. It
11 would be a -- because don't they operate all those
12 phone companies as subcontractors? Or does Walmart
13 actually --

14 MR. STEVENS: All I know is Street Talk was
15 the --

16 THE COURT: I don't know how that works --

17 MR. STEVENS: -- it's a copyright of Track
18 Phone. Track Phone actually has its own operation.
19 Whether that's the phone --

20 THE COURT: So what is the likelihood of you
21 obtaining this receipt? Have you made any inquiry as
22 to whether Walmart keeps cash receipts?

23 MR. STEVENS: Not to Walmart itself, Judge. I
24 can make that inquiry today, if you would like.

25 THE COURT: Okay. I think you should, just to

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1 be on the safe side.

2 But I don't -- I've never known, because they're
3 so voluminous, how they would keep track of a cash
4 receipt. They would have their receipts at the end of
5 the day. They would have receipts, but that's like a
6 needle in a haystack on a cash transaction.

7 MR. MAY: And the point I was going to make was
8 between the hours of 1:40 to --

9 THE COURT: Do you know how much business
10 Walmart does?

11 MR. MAY: Yes, ma'am. I'm aware of that.

12 The purchase that was made was nothing but the
13 phone card.

14 THE COURT: It doesn't matter. They are the
15 largest retailer in South Carolina. They sell
16 millions of dollars worth of stuff in the frame of --
17 I forget. I had a civil case one time where they told
18 me how much money they generate in an hour -- it
19 boggled my mind -- in one department, from one
20 register. It boggled my mind how much money they
21 make.

22 I think it's like a needle in a haystack, but
23 I'm asking your lawyer to look for it. I don't know
24 if they'll have it. I don't know if they keep track
25 of cash transactions.

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1 But the bottom line is unless there's some video
2 correlating you with being there, it's unlikely a jury
3 is going to give much weight to a receipt. And that
4 means he's going to have to introduce it through
5 somebody, which means you'll lose last argument. And
6 I don't know if that's worth it to you.

7 MR. MAY: I just wanted to see if they would
8 have it, because I was thinking -- I could be wrong,
9 but I was thinking that because it was a Straight Talk
10 phone purchase of the card, the minute card, unlimited
11 minute card, and when I bought that card --

12 THE COURT: Yeah, but they would have to trace
13 it back to the number on the card. Do you still have
14 the card?

15 MR. MAY: I'm not sure. I've been in the county
16 for almost two years.

17 THE COURT: Yeah, but when they took you into
18 custody, wouldn't they have had all your belongings on
19 you? Wouldn't that --

20 MR. MAY: No, ma'am. The belongings --

21 THE COURT: What date did they take you into
22 custody?

23 MR. MAY: On the 14th of September.

24 THE COURT: You didn't have the phone with you?

25 MR. MAY: Yes, ma'am, but public safety took it.

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1 THE COURT: And they didn't have -- you didn't
2 have your card with you?

3 MR. MAY: No, ma'am. The card was in the house
4 on the -- but it was a week later until I don't know
5 if it was still in the house on the night stand where
6 they took the money from that they confiscated, the
7 money that I got from work. That was another point I
8 was making with my job, also, that I got paid every
9 Friday and this robbery happened on a Sunday. And I
10 don't know the likelihood of someone who would rob a
11 store after they --

12 THE COURT: You're trying to think logically.
13 Juries don't think like that. Neither does -- I
14 learned a long time ago people don't have to have
15 reasons to commit crimes. People do things that just
16 make no sense. People kill folk.

17 I had a fellow in this very county that killed
18 somebody over a car, and he had a brand new seven
19 series. Lived in a wonderful home, half-a-million-
20 dollar house, had a great job. And if I -- and his --
21 you know what his lawyers told me? He said, please,
22 for God's sake, don't ask him why he did it because he
23 don't know. He didn't have a clue. Young man.

24 So I learned a long time ago I don't ask -- and
25 most people don't. I mean, it's just -- crime, in and

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1 of itself, is just not logical. People, especially
2 young men, when they get in crowds together they do
3 stuff that nobody can explain and if you ask them
4 later, they wouldn't be able to explain.

5 So, I mean, although that's an argument I'm sure
6 your lawyer will employ, which is my client didn't
7 have any motive to steal, which I'm sure you're going
8 to do -- I don't -- you know, I don't -- I have no way
9 of knowing how persuasive that would be and I have no
10 way of gauging that.

11 But my other question becomes -- and now that
12 we're talking -- what did the video show?

13 MR. STEVENS: Well, Judge --

14 THE COURT: Or what does it purport to show?

15 MR. STEVENS: The video shows -- purports to
16 show an individual wearing blue jeans, tee-shirt, red
17 sunglasses, red bandana or shawl, gray knit hat,
18 carrying a SKS assault riffle with a banana clip and a
19 black strap.

20 THE COURT: And how is the State able to tie
21 your client to that video?

22 MR. STEVENS: Well --

23 THE COURT: An eyewitness or something?

24 MR. STEVENS: Well, they have the witness there,
25 plus different cameras because it indicated, from what

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1 the witness said, a light-skinned African-American
2 male. The witness claims that he thought he saw
3 either twists or dreadlocks coming out from underneath
4 the shawl -- hat and was, you know -- at first he said
5 between five eleven and six foot. Later on Corporal
6 Dukes went over, and a little bit taller. Also,
7 potentially a reddish hue to his skin. That I don't
8 know.

9 So they took photos from there. And they also
10 had the back photograph -- or the back view showed a
11 white Dodge Caliber with tinted windows --

12 THE COURT: That was my next question.

13 MR. STEVENS: Yes, ma'am.

14 THE COURT: What else did they have
15 inferentially to tie him to that video?

16 MR. STEVENS: And it's about the car. There is
17 the white Dodge Caliber with the dark tinted windows.
18 And it rolls on up and behind. And it eventually
19 backs up and parks in a place where you can't really
20 see from the camera angle somebody either getting in
21 or getting out.

22 That actually, on a time stamp, is about four to
23 five minutes. I'm saying it's about -- it's after the
24 time stamp from the other cameras. So the State's
25 argument obviously would be that all the time stamps

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1 are just off. They're alleging that a person arrived
2 in this car and then did the robbery and then left in
3 that car.

4 THE COURT: Is it his car? Whose car is it?

5 MR. STEVENS: No, ma'am.

6 Later there was -- about six days later, on the
7 14th of -- the incident occurred allegedly between
8 1:49 and 1:50 on September 8th, 2013. Approximately
9 six days later, on the 14th of September at 2:17 p.m.,
10 a traffic stop occurred where there was Lieutenant
11 Culler, from the Orangeburg County Sheriff's Office,
12 as well as public safety officer Piper. And they
13 stopped a white-in-color Dodge Caliber with tinted
14 windows and factory rims. And they had in their
15 possession two photographs: one of the robber looking
16 down him where you can see him exiting the Keg, and
17 the other was of this white Dodge Caliber from the
18 back parking lot allegedly leaving at the time.

19 They made the stop. They did not make an
20 arrest. They simply got the information. I believe
21 they alleged it was for window tint, however --
22 otherwise dislikelly, because they already had this
23 piece of paper up there issued saying be on the
24 lookout, essentially.

25 No arrest was made. However, the information

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1 was communicated of the driver, as well as the
2 registered-owner information of the vehicle.

3 THE COURT: Who's the registered owner?

4 MR. STEVENS: I believe -- the insurance I think
5 goes back to Beaufort. The owner of the vehicle
6 really is Ms. Emonie Ford.

7 THE COURT: Is that his girlfriend?

8 MR. STEVENS: Yes, ma'am. She lives at [REDACTED]
9 Wilkinson Street in Orangeburg, South Carolina.

10 So shortly after, I think on the same day, two
11 officers at the time, Sargent Caddell from public
12 safety, as well as Corporal Dukes, both had staked
13 out, one, the address of my client at Brandon Street,
14 which was on his license, and the other officer staked
15 out [REDACTED] Wilkinson Street. I'm sorry.

16 At the time, Sargent Caddell identified the car
17 and said he saw a tall, light-skinned African-American
18 male with dreadlocks getting into and out of it.
19 Confirmed that it was -- as well as the -- between the
20 house and the car.

21 They later got a search warrant on the 15th of
22 September. The search warrant was executed and, once
23 they were inside, they found other items as well.

24 THE COURT: From the theft or the alleged theft?

25 MR. STEVENS: Well, they didn't find -- the only

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1 items that were allegedly stolen was I believe \$281.65
2 cash.

3 THE COURT: What did they find pursuant to the
4 search warrant?

5 MR. STEVENS: Pursuant to the search warrant
6 they discovered red sunglasses -- they discovered --
7 which they claimed matched the description from the
8 video. They also claimed to have found in the search
9 black-and-white Nike tennis shoes, which they claim
10 also matched those worn by the robber. They also
11 discovered an SKS assault rifle with a banana clip and
12 a black strap in the closet with the defendant's
13 belongings.

14 THE COURT: Yes. That's your problem right
15 there.

16 MR. STEVENS: Those statements is the heart of
17 the State's case.

18 THE COURT: Now, let me ask a question. Have
19 you ever tried to get cash receipts from Walmart?

20 MR. STEVENS: I did not try to get cash receipts
21 from Walmart.

22 THE COURT: I mean, just in general. Not in
23 this case. But have you ever?

24 MR. STEVENS: No, not cash receipts.

25 THE COURT: I'm just not sure they keep any cash

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1 receipts.

2 MR. STEVENS: We'll make the inquiry, Judge.

3 THE COURT: Yeah, I think it's worth making the
4 inquiry. I don't see any foul in that. I mean, the
5 worse thing they can tell you is, no, we have no way.

6 MR. STEVENS: Right.

7 THE COURT: But you have a time frame and a
8 date.

9 MR. STEVENS: Right. The reason --

10 THE COURT: And I would assume there's only one
11 or two registers back in that area --

12 MR. MAY: Electronics department.

13 THE COURT: -- that would be doing those
14 transactions.

15 MR. STEVENS: Just a second.

16 THE COURT: Yes, sir?

17 MR. MAY: I'm sorry. I didn't mean to
18 interrupt.

19 THE COURT: No, that's okay.

20 MR. MAY: I was just saying the electronics
21 department.

22 THE COURT: Yeah. They usually only have two
23 registers back there.

24 MR. STEVENS: Yes, ma'am.

25 And the reason why we didn't try and track down

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1 the cash receipts before was obviously that it was our
2 understanding that they were allegedly purchased after
3 the time of the incident, in the first place, number
4 one; and, number two, that obviously the cash receipts
5 --

6 THE COURT: Yeah. I mean, they're really
7 tangential. If you don't have a video to link it, to
8 actually prove that you're the person making the
9 purchase, I mean, that's just a draw.

10 Sir, based on what Mr. Stevens has disclosed to
11 me, he's followed up on everything you asked him to
12 follow up on. He just hasn't had a response, that you
13 wanted to hear, from his objective analysis of the
14 situation. He's looked at your receipts -- I mean,
15 your jobs and he's going to elicit that testimony from
16 the State to prove that, in fact, you did have these
17 two jobs. He doesn't think actually entering your
18 work records would be helpful to you, at least not --
19 it wouldn't be worth enough to give up last argument.
20 He is able to impeach the public safety officer or
21 officers, if they testify inconsistently. He looked
22 into whether the Walmart video was available, but it's
23 not, because they only keep it for thirty days. I've
24 instructed him to see if the receipts are available,
25 although I'm not sure how helpful that actually would

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1 be to you. And I think that covers just about
2 everything.

3 But I'm going to be honest with you. And I'm
4 objective, because I'm not an advocate. I don't have
5 to win or lose, and so it really doesn't matter to me
6 one way or the other. I've come to a place in my life
7 where if you can accept your consequences, I can
8 accept them. I'm not going to lose any sleep over it
9 because I figure you're an adult, you're mature, and
10 you're the only person that can make an assessment
11 about your life. I can't make that assessment,
12 Mr. Stevens can't make that assessment. And I've come
13 to a place where as long as you're happy with your
14 assessment, I'm happy with your assessment. And I'm
15 not going to try to talk you out of anything. So if
16 this is what you want to do, the Court stands ready to
17 give you a fair and impartial trial.

18 And I don't want you to interpret in any way
19 that any of these inquiries indicate that I have a
20 posture one way or the other, because I don't. But I
21 will tell you, from an objective standpoint, that gun
22 is going to be very difficult to explain away. And
23 I'm certain Mr. Stevens has told you that. Since
24 we're having this in-camera discussion where nobody
25 can repeat anything and nobody can use anything

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1 against you -- that's why I cleared the courtroom, and
2 that's why I asked the questions that I asked.

3 Of course Mr. Stevens has lived with this case.
4 I'll be learning the case as we go along. And when I
5 mean learning it, I'll be hearing about the facts and
6 circumstances, as the State alleges, for the first
7 time. You've already heard them. You already know.
8 He's already explained to you the evidence that's
9 against you. But only you can make that assessment.
10 And I'm certain that you and Mr. Stevens have had some
11 very -- I don't want to say blunt, that's not the word
12 -- but very honest discussions about it. And I'm
13 certain that he has made his honest assessment. And
14 I'm certain he's going to do the best he can with what
15 he has. Which, you know, black and white, no lawyer
16 creates the facts. They have to do the best they can
17 with the facts as they're presented.

18 And based on what he's telling me, he's done a
19 thorough investigation of everything you asked him to
20 follow up on. It's just that some of these things, he
21 hasn't been able to give you the answer you want. And
22 most stores do -- probably Walmart, I'm thinking, has
23 a longer shelf life than most because I think most
24 stores do a loop, which means every so many hours they
25 re-record. So Walmart keeps theirs for thirty days,

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1 which is probably longer than most because most stores
2 within a twenty-four, forty-eight-hour time frame,
3 they're re-recording over that loop. Because most
4 things that happen aren't really particularly of any
5 importance unless, you know, they -- you know, capture
6 a crime or something. In other words, if there is
7 some reason for them to preserve it.

8 MR. MAY: I have another question.

9 THE COURT: Sure.

10 MR. MAY: What about the police personnel file?

11 THE COURT: Sir, what purpose would that --

12 MR. MAY: And the reason I asked --

13 THE COURT: -- what would that prove?

14 MR. MAY: The records of Officer Kevin Dukes,
15 who I believe to commit perjury at my preliminary
16 hearing. And I also have paperwork --

17 THE COURT: What would his records -- if he
18 committed perjury, the only way you -- what do you
19 think -- what did he say that is not accurate?

20 MR. MAY: That point -- the fact that he talked
21 about evidence that he never obtained and he --

22 THE COURT: Well, he would have to say that in
23 this courtroom, and then Mr. Stevens would what we
24 call impeach him. In other words, show that what he
25 said wasn't truthful. And that's for a jury then to

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1 determine whether he's telling the truth or not. That
2 doesn't mean he committed perjury. And even if he
3 did, that would be a matter for me to send to the
4 Attorney General's office. That wouldn't have any
5 affect on your trial.

6 MR. MAY: Another question. What about if
7 there's paper documentation of those -- of that
8 perjury?

9 THE COURT: What paper documentation would there
10 be?

11 MR. MAY: On the arrest warrant it stated that
12 the officer on the case announced that it was stated
13 that and --

14 THE COURT: All those things just lead to
15 probable cause. Even if you threw it out, I'm sure
16 there's enough. You're talking about what they took
17 from your house?

18 MR. MAY: Yes, ma'am.

19 Where he claimed they had -- whenever he claimed
20 they had -- like Mr. Stevens said, during the prelim
21 he did a thorough cross-examination of Mr. Dukes about
22 the jeans that he claimed that he had in the lockup.
23 And then he also claimed about the scarf that he had
24 and --

25 THE COURT: And does any of that really matter

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1 in your case? Are any of those things -- were you
2 alleged to have had any of that on at the time of this
3 incident?

4 MR. MAY: No, ma'am. Those are the things he
5 alleged that I took, to strengthen his case. And
6 this --

7 THE COURT: I can tell you that with the car,
8 with the tinting, with them stopping you, and getting
9 the search warrant, you potentially matching the
10 suspect's description, that was enough probable cause
11 for them to get a warrant and go in your house and
12 find a gun. Based on this limited amount of
13 discussion we're having, I don't -- I haven't heard
14 anything that's given me any pause.

15 A warrant has to be -- an affidavit for a
16 warrant has to be substantially correct, which means
17 that even if there's one fact in it that's accurate,
18 you can throw out the rest of it -- if there's even
19 one thing in there that establishes probable cause,
20 then the warrant on its face is sufficient.

21 MR. MAY: Does that also show the arrest
22 warrant?

23 THE COURT: Uh-huh.

24 Let's just say, for argument's sake, we threw
25 out your arrest warrant, they went back and did it

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1 right, they just normally arrest you. You sort of
2 come back to the same circle. It's not going to throw
3 your case out.

4 MR. STEVENS: Judge, the circuit that indicted
5 him.

6 THE COURT: Yeah.

7 So it's sort of a foregone conclusion at this
8 point.

9 Is there anything else you need me to address?

10 MR. MAY: I guess that would be the case for the
11 trial to have no evidence.

12 THE COURT: That's something your lawyer would
13 have to bring out.

14 But, I mean, what evidence do you claim they
15 have tampered with?

16 MR. MAY: The evidence that they had in Duke's
17 booking report, the evidence that they had in the book
18 -- in the lockup. And the days that they were -- and
19 also the days that it was said to have first been
20 booked. And also the search warrant was never seen.
21 Like I know the law states that you don't have to
22 present the search warrant when you enter the premises
23 if you think there's danger or some kind of threat.
24 But you also have to leave the search warrant for the
25 person who owns the house so that they will have a

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1 copy of it. And I'm under the understanding that it
2 was never left. Because I was -- at the time, I was
3 incarcerated so I don't know --

4 THE COURT: What were you incarcerated for at
5 the time?

6 MR. MAY: For that charge. They took me to
7 interrogation and --

8 THE COURT: You mean for this charge?

9 MR. MAY: Yes, ma'am.

10 THE COURT: And then they executed a search
11 warrant?

12 MR. MAY: Yes, ma'am.

13 THE COURT: Whose house is it that you were
14 living in?

15 MR. MAY: Actually, I wasn't living there quite
16 yet. But that was my -- Ms. Ford is my ex-
17 girlfriend's house.

18 MR. MAY: She says they didn't give her a copy
19 of the search warrant?

20 MR. MAY: I believe she did. But she --

21 THE COURT: Well, I deal -- I deal in absolutes
22 on certain things.

23 MR. MAY: So I guess that --

24 THE COURT: So whether she says -- I need -- you
25 know if somebody left a search warrant at your house.

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1 MR. MAY: She didn't tell me anything about it.
2 They didn't show it to us upon entry. And I --

3 THE COURT: Well, you weren't there so you don't
4 know what happened.

5 MR. MAY: No, I was there at the entry. But
6 after they entered the house, they took me and her to
7 interrogation and then --

8 THE COURT: Well, it was her house so they would
9 have served the warrant on her.

10 MR. MAY: We were right beside each other when
11 they came, when they kicked the door in and put the
12 guns to our head and all that.

13 THE COURT: And they didn't say they had --
14 Yes, sir?

15 MR. STEVENS: I believe the warrant indicates
16 that it was left at the --

17 THE COURT: Okay. With her.

18 MR. STEVENS: It doesn't say with her. It just
19 says it was left at the residence.

20 THE COURT: Whose residence was it? Was it in
21 her name?

22 MR. STEVENS: Monique Fords. Yes, ma'am.

23 THE COURT: And you said you hadn't moved in
24 yet; correct?

25 MR. MAY: No, ma'am. Some of my stuff was

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1 there.

2 THE COURT: Okay. But not -- you hadn't -- you
3 were just kind of staying there off and on?

4 MR. MAY: I was trying to protect her a little
5 bit because she had a couple of break-ins. That was
6 the whole reason I purchased the firearm in the first
7 place. Because by South Carolina law, you can
8 purchase a rifle, an AK-18, and keep it in your
9 dwelling as long you -- a private party, as long as
10 you keep it in your dwelling out of the way of the --
11 it's easier for me to purchase a rifle than a handgun.
12 So I purchased a rifle and kept it in the closet.
13 That was the reason I did it, purely for protection,
14 because somebody broke in her house and I didn't want
15 them hurting her.

16 THE COURT: Do you have any indication they
17 didn't leave a copy of the search warrant with her? I
18 would assume your communication with her has been
19 limited.

20 MR. STEVENS: Yes, ma'am, it has. We've had a
21 chance to speak with her early in the investigation.

22 THE COURT: Is there any indication the police
23 were going to charge her with anything?

24 MR. STEVENS: Not that I'm aware of.

25 Afterwards, she turned around and didn't want to

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1 have anything to do with us, didn't want to talk to
2 us, after we had already got at least a limited
3 statement from her. Said we wanted to talk to her.
4 Talked to her lawyer. And that --

5 THE COURT: So she basically indicated to you
6 she didn't have anything to say that would exculpate
7 him?

8 MR. STEVENS: Correct.

9 And then we finally had a chance to speak with
10 her Friday. And then after that conversation, we had
11 a chance to again speak with my client.

12 THE COURT: Is she going to be called as a
13 witness?

14 MR. STEVENS: I expect that she'll likely be
15 called as a witness for the State. If not, we also
16 have her under subpoena.

17 THE COURT: And what would they be calling her
18 for?

19 MR. STEVENS: They'll likely call her for her
20 statement she gave law enforcement when she was at
21 headquarters.

22 THE COURT: Which was?

23 MR. STEVENS: Well, Judge, she indicated --

24 THE COURT: Did she inculcate him?

25 MR. STEVENS: Yes, ma'am.

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1 THE COURT: Yeah. Uh-huh. And what did she say
2 she knew?

3 MR. STEVENS: They showed her the video of the
4 robbery itself.

5 THE COURT: She identified him?

6 MR. STEVENS: Yeah.

7 I believe that verbally -- there's a verbal
8 statement, which was recorded by Corporal Dukes, and
9 then there's her own handwritten statement which
10 doesn't contain all the same information but it
11 contains a lot of information, including identifying
12 the vehicle as hers.

13 THE COURT: And that she loaned it to him in
14 that time frame?

15 MR. STEVENS: Yes. And --

16 Well, she didn't know -- he used the car that
17 morning. She doesn't know what time, doesn't know
18 what he was wearing, doesn't know when he came back.

19 THE COURT: But he was the permissive user of
20 the vehicle?

21 MR. STEVENS: Yes, ma'am.

22 THE COURT: And she gave the keys to him --

23 MR. STEVENS: Yes, ma'am.

24 THE COURT: -- and allowed him to use her car?

25 MR. STEVENS: That was, yes, part and partial of

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1 her statement to law enforcement, as well as
2 identifying the sunglasses and vehicle and rifle.

3 It's not helpful, and that's why I do expect
4 that she'll likely be called as a witness to the -- or
5 by the State.

6 THE COURT: Yeah. It sounds like they -- yeah.

7 MR. STEVENS: Well, her circumstantial evidence
8 on --

9 THE COURT: Yeah.

10 MR. STEVENS: -- on the issue of identity --

11 THE COURT: -- she can be the -- yeah.

12 Now, did y'all have any pretrial motions that
13 y'all are going to need to be heard?

14 MR. STEVENS: We do, Judge. In fact, when the
15 Court is ready, when opposing counsel is ready, we've
16 got just a couple more.

17 THE COURT: Tell me all of your pretrial
18 motions. I apologize. I didn't --

19 MR. STEVENS: And I've already spoken with
20 opposing counsel about these matters, as well.

21 Obviously, we've gone over the defense motion to
22 relieve counsel. We've gone over our motion pursuant
23 to Missouri vs. Fridocks [phonetic], on-the-record
24 acknowledgment of the plea offer and either exception
25 or rejection.

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1 THE COURT: Uh-huh.

2 MR. STEVENS: All we have left is the motion to
3 suppress the evidence of the search on two bases, the
4 first being lack of probable cause and the affidavit,
5 and the other being search warrant return not returned
6 to the magistrate within ten days as required by the
7 statute.

8 THE COURT: Well, you know there's case law on
9 that; right?

10 MR. STEVENS: Yes, ma'am, I do.

11 THE COURT: Okay.

12 MR. STEVENS: But like I said, it's part and
13 partial of our duty to go ahead and try to make --

14 THE COURT: Absolutely. Yeah. I'm not
15 criticizing you for doing that.

16 MR. STEVENS: Yes, ma'am.

17 We I believe -- if the State wants to use his
18 statement against him, no matter what, we're going to
19 make a motion --

20 THE COURT: You need a Jackson vs. Denno.

21 MR. STEVENS: Yes, ma'am.

22 THE COURT: But have they indicated to you yet
23 whether they want to do that?

24 MR. STEVENS: He's indicated -- the prosecution
25 has indicated they don't intend to --

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1 THE COURT: Unless he testifies?

2 MR. STEVENS: Yes, ma'am.

3 However, I believe it's still my duty to at
4 least request it up front in a pretrial matter.

5 THE COURT: Yeah. I mean, if they actually use
6 it. Case law doesn't indicate when you have it. You
7 don't have to have it before trial, because it's a
8 waste of time if he's not going to testify. If he's
9 going to testify, we would just have it before his
10 testimony.

11 MR. STEVENS: I understand.

12 THE COURT: Yeah. So that you would be clear as
13 to, you know, when you're questioning your client.
14 Because you may want to bring out what's in the
15 statement, before they do, anything --

16 MR. STEVENS: Yes, ma'am.

17 THE COURT: -- that's adverse to him.

18 MR. STEVENS: And then the confirmation by the
19 State that it complied with both Brady and Rule 5 of
20 the South Carolina Rules of Criminal Procedure which
21 would, my understanding, also include anything that is
22 material -- any material evidence, whether it's in the
23 actual possession of the prosecutor or in possession
24 of a law enforcement state agency, which would
25 necessarily include anything that would be used for

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1 impeachment -- useable for impeachment value of
2 Corporal Dukes for any law enforcement officer from
3 their training records -- or from records at C.J.

4 THE COURT: Now, are you going to need a
5 Biggers?

6 MR. STEVENS: I don't believe there's a
7 requirement for a Biggers hearing.

8 The clerk, Ms. Quantavious Montgomery, was not
9 provided a six-pack, did not give a physical --

10 THE COURT: Okay. I got you.

11 MR. STEVENS: -- facial description for --

12 THE COURT: All right.

13 MR. STEVENS: And then, finally, the last motion
14 is just going to be to sequester witnesses.

15 THE COURT: I would assume y'all could agree to
16 that.

17 THE COURT: Yes, ma'am.

18 Sir, I've heard your motion to relieve your
19 attorney . And that, of course, is discretionary.
20 It's within the discretion of the Court. However, I
21 will tell you that I've not heard anything that has
22 not indicated to me that Mr. Stevens is thoroughly
23 prepared to go forward, that he's thoroughly
24 investigated this case based on the leads that you've
25 given to him. Everything that concerns you I've had

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1 him address. And I've directed him to see if this --
2 if Walmart keeps receipts and if he's able to obtain a
3 receipt for this Track Phone purchase that you've
4 indicated that you made.

5 So I have not heard anything that tells me he's
6 fallen below an objective standard of being ready and
7 that he's not prepared, that he has not listened to
8 you, that he has not explained to you the elements of
9 the offense or constitutional rights, range of
10 penalty, as well as gone over the discovery with you.

11 So I've not heard anything at this point that
12 would rise to the level of relieving him as counsel,
13 especially in light of the fact that this case is on
14 the trial roster and that he's ready to go forward.

15 And it sounds -- I've taken a lot of time,
16 probably more time than I normally would, but based on
17 what he's disclosed to me in-camera, he's thoroughly
18 prepared for the trial of this case. So the motion to
19 relieve him is denied.

20 Now, again, I'm not in the habit of telling
21 grown folk what to do, because I figure you're going
22 to do what you want to do anyway. And I don't want
23 you to feel pressured in any way about this, but I
24 would strongly suggest you take an objective view of
25 your situation, because your lawyer has disclosed

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1 several things to the Court that really are in some
2 ways very hard to explain away, that being the
3 discovery of the weapon that's alleged to have been a
4 part of this robbery.. But what is most insurmountable
5 is the testimony of your girlfriend. That's very
6 problematic. Even if you throw out everything else
7 you've still got the woman, who's supposed to be the
8 most loyal to you, saying that's my car and that looks
9 like him.

10 Yes, sir?

11 Sir, again, I don't take a position one way or
12 the other. It doesn't really matter to me which --
13 I'll be happy to try the case, and I'm going to be as
14 fair and impartial to you as I can be because this is
15 your one time in court and I'm going to let your
16 lawyers do their jobs.

17 MR. MAY: She also made another statement
18 that --

19 THE COURT: I'm sure your lawyer has looked at
20 it, and he can use it to impeach her if it's
21 inconsistent.

22 MR. MAY: No. Actually, it isn't inconsistent.
23 It's about an alibi.

24 But the point that I was making --

25 THE COURT: But unless she's willing to come in

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1 this courtroom, an alibi is not going to fly. It
2 doesn't matter that she said it before. Now, he can
3 use that to impeach her credibility. He can say,
4 didn't you say previously that you were at this place
5 and time with him and isn't that inconsistent with
6 what you're now stating. But unless she's willing to
7 come in here and say, he and I were in Walmart at the
8 time of this incident and he was not there, that
9 doesn't -- she would have to do that for it to rise to
10 the level of alibi.

11 MR. MAY: And one thing that I was getting at --
12 I'm sorry. I didn't mean --

13 THE COURT: No, that's okay. No, you don't have
14 to apologize.

15 MR. MAY: The point I was getting at was the
16 statement that they say places any guilt on me, it
17 was -- the verbal statement of the -- were lies told
18 by Kevin Dukes. If he went as far as to lie in my
19 prelim that --

20 THE COURT: Well, your lawyer will argue all of
21 that. That's about credibility and weight that the
22 fact finder give it. They may listen to Mr. Dukes and
23 feel that he's lying and totally disregard his
24 testimony. On the other hand, they may feel that he's
25 completely credible and believe everything he says.

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1 They may believe some of what he says and disregard
2 some of what he says, which is usually what juries do.
3 They sift through it and they figure out what they're
4 going to believe and what they're not going to
5 believe. Only you can make the assessment of risks in
6 your situation.

7 MR. MAY: Yes, ma'am.

8 THE COURT: This is one of the situations where
9 it can turn out extremely well where you'll be
10 acquitted, or turn out extremely bad where you're
11 convicted. There's just no middle ground in it.

12 MR. MAY: Yes, ma'am.

13 But the point I was getting at -- I'm sorry.

14 THE COURT: Yes, sir.

15 MR. MAY: -- was the fact that she never -- in
16 her written statement, she never said anything to say
17 that I had anything to do with any type of --

18 THE COURT: Who is she? Who are you referring
19 to?

20 MR. MAY: Ms. Ford. I'm sorry. My ex-
21 girlfriend.

22 THE COURT: She doesn't have to. She has
23 created for the State the circumstantial link that
24 they need to tie her car and you to this robbery.

25 MR. MAY: On the statement she never said that,

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1 that's my car. She said that was a car that looked
2 like --

3 THE COURT: Doesn't matter. She can come in
4 court today and say, that's my car, those are my --
5 I'm sure the video is clear enough to show whose tag
6 is on that car, because they're already run it and
7 they already figured out who it belonged to, to be
8 able to track it back to you.

9 MR. MAY: Well, actually, Your Honor, I asked
10 Mr. Stevens about that. But there was never any tag
11 taken from the video that stated that that car was the
12 same car that --

13 THE COURT: How did they figure it out? Oh. By
14 the stop --

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: -- with the tint?

17 MR. STEVENS: It was essentially from the stop
18 and from the --

19 THE COURT: And from a consistent description?

20 MR. STEVENS: Yes, ma'am.

21 THE COURT: She's willing to come to court and
22 say, that looks like my car on the video and I loaned
23 my car to him and we were in a romantic relationship
24 at the time, unless she changes her mind today. And I
25 don't know. Stranger things have happened. Stranger

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1 things have happened, so I'm not going to even try to
2 predict. Who knows? She may not show up at all. Who
3 knows? You know, I don't know. I don't know how
4 that's going to play out.

5 But I'm just saying to you, from an objective
6 standpoint, from somebody who has nothing to win or
7 lose, that that's some compelling circumstances that
8 you're going to -- your lawyer is going to have to
9 overcome. And I'm certain that he's excellent at what
10 he does and he's going to do the best he can to
11 overcome them. But, again, only you can make that
12 assessment --

13 MR. MAY: Yes, ma'am.

14 THE COURT: -- because you're the only one that
15 has the risk --

16 MR. MAY: Yes, ma'am.

17 THE COURT: -- and only you can determine
18 whether that risk is acceptable to you. None of us
19 can do that, because none of us have to live those
20 consequences.

21 So, you know, like I said, these -- there's no
22 middle ground. This is not like a civil case where
23 the jury -- where somebody is asking for a million
24 dollars and somebody's asking for a half a million
25 dollars and the jury can come out somewhere in the

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1 middle. This is either you win very big and you get
2 acquitted or you lose very big and you get convicted.

3 MR. MAY: Oh. And another question.

4 THE COURT: Yes, sir.

5 MR. MAY: About the time --

6 THE COURT: Uh-huh.

7 MR. MAY: And like I said, Mr. Stevens is a very
8 good lawyer. I was just upset when I -- the things
9 I asked him to do, I asked him to do that in a certain
10 -- I asked him to do that in March, like I said, and
11 here it is a week before my trial.

12 THE COURT: It wouldn't have mattered, because
13 the tapes were gone in thirty days. They were gone
14 within thirty days of September the 8th of 2013. So
15 by October the 8th, 2013, those tapes were gone.

16 MR. MAY: I didn't even have --

17 THE COURT: Yeah. So it wouldn't have mattered
18 when you asked him after that. After thirty days,
19 there's nothing -- he asked for them. There's nothing
20 more he could have done at that point. The tapes were
21 gone.

22 MR. MAY: And I have one last question.

23 THE COURT: Sure.

24 MR. MAY: Should I address Mr. Stevens about it?
25 Because I --

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1 THE COURT: I don't know. I don't know what the
2 question is.

3 MR. MAY: -- it was a forgery that was made.

4 THE COURT: Forgery how?

5 MR. MAY: By public safety. But maybe I should
6 address that.

7 THE COURT: You may. And it may be something
8 that he needs to investigate before we go forward. I
9 suggest you tell him about it so he can investigate
10 it.

11 [Whereupon, Mr. Stevens and Mr. May confer]

12 MR. MAY: Never mind. I was going to speak
13 about forging a signature on a waiver of rights, but
14 Mr. Stevens reassured me that he doesn't believe that
15 that would help me.

16 THE COURT: You're saying you didn't sign the
17 waiver of rights?

18 MR. MAY: No, not me, but Ms. Ford. I believe
19 that her --

20 THE COURT: You don't have the standing to
21 challenge that.

22 MR. MAY: That's why I asked.

23 THE COURT: As long as she says it's her
24 statement.

25 But it really doesn't matter. She could have

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1 made ten statements to the police and come in here and
2 say something totally different. That might be the
3 basis for him to impeach her credibility.

4 But oftentimes people make -- I've had cases
5 where a witness has made ten statements and every
6 statement, they've let out a little more facts than
7 they've let out before. It doesn't mean it was an
8 inconsistent statement. It just means that they --
9 sometimes they're scared and they just don't tell
10 everything and finally on the tenth visit to the
11 police they say, listen, I'm going to come clean about
12 everything and I'm going to tell you everything that
13 happened. So you have all these facts that they
14 never disclosed. It doesn't mean that it was an
15 inconsistent statement. And even with that, they
16 still could come in court and say, you know what, I
17 still didn't tell the police everything.

18 And since she's a witness, she didn't have to be
19 Mirandized. She didn't even have -- they didn't even
20 have to record it. It's helpful to your lawyer to use
21 to impeach her, in other words, to show that she's
22 made some inconsistent statements. But even with
23 that, I think that's going to be -- that's going to be
24 a rough hurdle. Okay?

25 MR. MAY: Yes, ma'am.

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1 THE COURT: All right. Y'all talk and let me
2 know what you want -- well, I'm assuming we're going
3 forward.

4 And I'm going to tell them to bring the jury in
5 in the morning.

6 MR. STEVENS: Thank you, Judge.

7 THE COURT: Okay. Thank you so much.

8 And if you could -- yeah. Get everybody for me
9 so I can --

10 [Whereupon, a recess is taken from 1:22 p.m. to
11 4:41 p.m.]

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MOTION TO SUPPRESS

1
2 THE COURT: We're back on the record in Tykeem
3 May, 2014-GS-38-189 and 190. And we are going forward
4 with the motion to suppress the search warrant; is
5 that correct?

6 MR. STEVENS: That's correct, Judge.

7 THE COURT: Okay. And we don't need to have a
8 Denno, is that correct, and we don't need to have a
9 Biggers?

10 MR. BELL: No, Your Honor.

11 THE COURT: And y'all have agreed to sequester
12 witnesses?

13 MR. BELL: I have no objection to that, Your
14 Honor, along as it's both sides.

15 MR. STEVENS: Yes, sir. We would certainly --

16 THE COURT: And, of course you know we can't
17 exclude the victim or the case agent. But everybody
18 else would have to be sequestered.

19 MR. STEVENS: Yes, ma'am.

20 And we would request that my private
21 investigator, Mr. Danny McDaniel, also be allowed to
22 stay as my investigator.

23 THE COURT: Any objection?

24 MR. BELL: No. No, Your Honor.

25 MR. STEVENS: Ma'am, in regard to the Denno

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1 hearing, obviously I'm obligated to at least make a
2 request. I think it's --

3 THE COURT: I think it would be relevant if your
4 client testifies. But at this point where the State
5 has indicated they don't intend to introduce it, I
6 think it would be sort of an exercise in futility in
7 terms of admissibility that's not going to be used.

8 MR. STEVENS: Yes, ma'am. And if he does --

9 THE COURT: Unless you plan to use it. Did you
10 plan to use it for anything?

11 MR. STEVENS: No, ma'am.

12 But if he does chose to testify, we'll do it at
13 the time?

14 THE COURT: Of course we'll have an in-camera
15 hearing on it.

16 MR. STEVENS: All right. Thank you, Judge.

17 THE COURT: All right. Is there anything else
18 we need to take up before we proceed with the motion
19 to suppress?

20 MR. BELL: I don't think so, Your Honor.

21 THE COURT: All right. Let's proceed.

22 MR. BELL: Your Honor, the State would call
23 Kevin Dukes to the stand.

24 THE COURT: Sir, if you would come to the stand.

25 [Whereupon, Mr. Dukes comes forward]

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1 THE COURT: Ma'am Clerk, if you would swear the
2 witness.

3 THE CLERK OF COURT: Please raise your right
4 hand.

5 [Whereupon, Mr. May is duly sworn by the clerk
6 of court as follows: do you hear by swear or affirm
7 that the testimony you're about to give is the truth,
8 the whole truth, and nothing but the truth, so help
9 you God]

10 THE WITNESS: I do.

11 THE COURT: Sir, if you would state your full
12 name for the record, spelling your last name for the
13 court reporter.

14 THE WITNESS: Kevin Christian Dukes. The last
15 name is D-U-K-E-S.

16 THE COURT: You may proceed.

17 MR. BELL: Thank you, Your Honor.

18 THE COURT: You're welcome.

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Motion to Suppress
Kevin Dukes
Cross-Examination by Mr. Stevens

1 KEVIN C. BELL,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Where are you employed, sir?

7 A. The Orangeburg Department of Public Safety.

8 MR. BELL: You're going to have to speak up.

9 THE COURT: I'm sorry. I need you to repeat
10 that for me.

11 A. The Orangeburg Department of Public Safety.

12 Q. [Mr. Bell] And how long have you been with the
13 Orangeburg Department of Public Safety?

14 A. About seven and a half years.

15 Q. And how long have you been in law enforcement?

16 A. About seven and a half years.

17 Q. Generally, what kind of training have you had
18 for your law enforcement career?

19 A. Initially, I went through a nine-week course to
20 the criminal justice academy. Successfully made it
21 through that. Throughout my law enforcement career, I've
22 been back to the academy for various things, numerous
23 trainings.

24 Q. And what is your current position with the
25 Orangeburg Department of Public Safety?

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1 A. I've got corporal stripes on, but I was newly
2 promoted to a sargent. I just haven't changed them over
3 on my uniform.

4 Q. And do you have a specific area that you work
5 in?

6 A. Correct. General investigations.

7 Q. And how long have you been doing general
8 investigations?

9 A. Close to three years.

10 Q. So back on September 8th of 2013, in that area,
11 you were an investigator with the Orangeburg Department of
12 Public Safety?

13 A. Correct.

14 Q. And were you aware of an incident that occurred
15 on that date, September 8th, 2013?

16 A. On that date, no.

17 But I happened to be off. That was on a
18 weekend. When I came in -- I was off Monday, also. When
19 I came in on Tuesday, which was the 10th, the case was
20 forwarded to me for me to handle the case.

21 Q. You got the case on September 10th; is that
22 correct?

23 A. Correct.

24 Q. But it did occur on September 8th --

25 A. Correct.

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1 Q. -- 2013?

2 What is it that you've read occurred on
3 September 8th, 2013?

4 A. Right around two o'clock in the afternoon on
5 that Sunday, which would have been September the 8th, a
6 caller called 911 and stated that there was an armed
7 robbery. Officers arrived. When officers arrived, the
8 initial officer made contact with the victim. The victim
9 told -- which was an employee of the Keg, which is located
10 within the city of Orangeburg. I can't remember the exact
11 numerics. I think it's [REDACTED] John C. Calhoun Drive. The
12 victim told the initial officer that arrived that a tall,
13 light-skinned black male --

14 MR. STEVENS: Objection.

15 THE COURT: Basis?

16 MR. STEVENS: Hearsay.

17 THE COURT: He can state hearsay as the basis of
18 the objection. It's not offered for its truth but as
19 how he came to investigate the matter. Overruled.

20 You may proceed.

21 THE WITNESS: Thank you, Your Honor.

22 A. The victim told the initial officer that a tall,
23 light-skinned black male with dreadlocks, but had his face
24 covered, had come in the store with an assault-type rifle
25 and then exited the store going toward the rear of the --

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1 or going toward the Hot Spot. I'm sorry.

2 When officers arrived, officers tried to locate
3 somebody matching that description. They were unable to.
4 And I think at the time, as they were looking for someone
5 matching that description, they went back to where the
6 dumpster area back behind the Keg and they actually
7 collected a pair of gloves and a money wrapper that went
8 around like 50-dollar bills or twenty-dollar bills,
9 because they didn't know at the time whether that would
10 have anything to do with the case or not.

11 Q. [Mr. Bell] And you got in the case on September
12 10th, two days afterwards?

13 A. Correct.

14 Q. What did you do in your -- you're the chief
15 investigating officer in this case?

16 A. Correct. Yes, sir.

17 Q. Were you aided in your investigation, during
18 this case, with anybody?

19 A. I was. That's correct.

20 Q. Who was that?

21 A. When I initially got the case, for the first
22 couple of days it was pretty cold. It was about two days
23 before I could get video surveillance from the Keg. They
24 did have interior and exterior video surveillance that was
25 maintained by Blackwater Security System, I think which

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1 works under Orkin. I was able to make contact with a
2 Donny Hall, which was the person that represented
3 Blackwater Security System, and he was able to give me
4 video footage of the actual incident.

5 Q. Okay. And you observed -- you watched that
6 video?

7 A. Correct.

8 Q. All the angles and all of that?

9 A. Numerous hours, numerous times.

10 Q. Did you have -- did you talk to the victim in
11 the -- the clerk or the victim in this case that was
12 actually robbed?

13 A. I did.

14 I talked with the victim. I didn't get a
15 written statement from him, but he did provide the
16 original responding officer with a short written
17 statement, and basically was what I just told to you guys
18 a few minutes ago.

19 But he -- when I talked to the victim, his
20 statement was consistent with the written statement that
21 he had provided the responding --

22 Q. Based on your investigations thus far with the
23 statement from the victim and the video, did you have a
24 description of the individual who robbed the store that
25 you were looking for now?

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1 A. Of the individual? Once I looked at the video,
2 we actually developed a suspect vehicle. It was a white
3 Dodge Caliber. And we could tell from looking at the
4 video. The only thing distinguishable about the Dodge
5 Caliber was a little sticker on the driver's side. I
6 guess it was some type of school sticker or -- you
7 couldn't see it that clearly -- or maybe like an
8 inspection type sticker like we used to use here in this
9 state. That was about the only thing distinguishable
10 about the vehicle, other than it had tinted windows on
11 each side.

12 That vehicle pulls up behind the -- behind
13 toward where the dumpsters are of the Keg, ends up backing
14 up toward the right side of the building, I guess for easy
15 access when they were going to leave.

16 As I watched the different camera angles, you
17 couldn't actually see a suspect get out of the vehicle but
18 shortly thereafter, on a different camera you could see a
19 suspect, it was a light-skinned black male, stoop down
20 beside the victim's car that was parked next to the Keg
21 and you could clearly see that it was a light-skinned
22 black male which had shades on and a covering over his
23 face.

24 That subject then went around toward the front
25 of the building where the victim was stooping down. I

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1 guess he was taking a smoke break. Nobody was in the
2 store, so he was smoking a cigarette. The suspect
3 actually walked past him, went into the store, and he was
4 kind of carrying the assault rifle, assault type rifle. I
5 call it a shotgun. And he was carrying it down by his leg
6 so it wouldn't be visible by persons passing on the road.

7 He actually goes into the store, takes a step or
8 two inside the store, comes back out. At that time, when
9 the victim saw that someone had went in the store with an
10 assault rifle, he got up and he proceeded to go toward
11 John C. on foot like he was going to go toward the Hot
12 Spot.

13 The suspect stepped back outside the store. It
14 doesn't have any audio but from what the victim says, you
15 can kind of get the gist of it from looking at the video.
16 The victim had went out toward the roadway to get away.
17 The subject called out to him, made some statements to
18 him, told him, you know, come back in, I know you work
19 here, I don't want to have to shoot you. The suspect --
20 excuse me -- the victim complied, came back toward the
21 store. He entered the store with the suspect.

22 You can see the suspect hand the money back to
23 the victim. The victim filled up the money bag. It was
24 like a blue-cloth bag, laundry type bag, blue or black,
25 and hands that to the suspect. The suspect leaves the

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1 store. And looking at the video, we can see that he got
2 back into the car.

3 He exited from the rear driveway onto Blakely.
4 He crosses across John C. and then makes a left on Whitman
5 Street, I believe it is.

6 Q. Now, from this you're looking for now -- based
7 on what you observed and talked with the victim, you're
8 looking for a white Dodge Caliber?

9 A. Correct.

10 Q. Kind of an SUV type vehicle?

11 A. I call it more of a crossover. I don't know
12 what it's classified as.

13 Q. And what description of the person that robbed
14 the store have you developed now?

15 A. It is a tall, light-skinned. And in talking
16 with the victim, the victim told me he's got more of a red
17 complexion, it's light complexion but he's got more of a
18 red complexion.

19 Q. Okay. Anything about hair style or anything?

20 A. In looking at the video and in talking with the
21 victim, it wasn't a bandana around the suspect's face, it
22 was something that appeared to be larger like a shawl or a
23 throw or something because you could see the tassels
24 hanging over it. But you could also see the bulge in the
25 top and you could see dreadlocks sticking -- what appeared

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1 to be dreadlocks jutting from under the back of that.

2 Q. Okay. So at that point, you had -- did you have
3 any leads?

4 A. At that point, no.

5 Q. And based on all this, what did you do or what
6 did the Department do in regards to the vehicle and the
7 subject that you're looking for?

8 A. I immediately talked to our immediate person at
9 our department. We released -- I think they released a
10 short video clip of the car and of the suspect, of the
11 incident itself. It wasn't the whole thing in its
12 entirety, but it was just clips of it that they released
13 in the newspaper.

14 I also made contact with the investigators and
15 some of the personnel at the sheriff's office and gave
16 them a picture. I actually sent pictures of the Dodge
17 Caliber and the suspect itself to some of the officers
18 there.

19 Q. So law enforcement in the Orangeburg area was
20 looking for a white Dodge Caliber --

21 A. Correct.

22 Q. -- is that correct?

23 A. Correct.

24 Q. Was one found?

25 A. Yes.

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1 Q. When was that?

2 A. That was on the 12th, I believe. I don't have
3 the paperwork in front of me, but I think it was on the
4 12th.

5 Q. Okay. Do you --

6 A. The 14th. I'm sorry.

7 Q. And how long since the robbery had that been?

8 A. The robbery occurred on the 8th, so, what? six
9 days.

10 Q. And on your knowledge, that occurred on the
11 14th; is that right?

12 A. I was notified, by an e-mail, that a sheriff's
13 deputy saw a car matching that description. He also
14 observed a subject, matching the overall description of
15 the suspect, enter a car. And I think it was on Ellis
16 Avenue.

17 The officer notified one of our officers. He
18 actually pulled the subject over and -- which now happened
19 to be Tykeem May was the operator of the vehicle. But he
20 noticed that Mr. May did meet the overall description and
21 that the vehicle met the overall description.

22 And I think through that, an officer backed him
23 -- one of our officers backed him up, Kenneth Piper.
24 Kenneth Piper did activate his video recorder in his car
25 and his body -- as well as his body mike.

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1 They spoke with Mr. May for a few minutes. And
2 I think they -- I think they ended up writing -- or
3 Lieutenant Culler ended up writing him a warning for a
4 window-tint violation, to the best of my recollection.

5 Q. And he wasn't under arrest or anything --

6 A. No. Not detained, not --

7 Q. -- wasn't detained, just let go on his way?

8 A. -- arrested or -- yes, sir.

9 Q. But based on that, what information did you
10 acquire based on that stop?

11 A. When I received that e-mail, what I did was I
12 went ahead and researched who the tag came back to, which
13 came back to an Emonie Ford, which happened to be, at the
14 time, Mr. May's girlfriend.

15 I found out that she was a student. Mr. May
16 actually told Lieutenant Culler that he was a student at
17 South Carolina State College. So what I did was I went to
18 State College and made contact with them out there. They
19 gave me some information and a photo of Mr. May and told
20 me that he was actually no longer a student at South
21 Carolina State University.

22 But I also found out that Emonie, which was his
23 girlfriend, was a student there. They gave me information
24 on her.

25 Through the tag, she was one of the owners on

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1 the tag and her address was [REDACTED] Wilkinson Street.

2 Q. Okay. And did he have an address? Or did you
3 get an address from this encounter with the police, as
4 well?

5 A. I think he gave them a Brandon Street address.

6 He had a Virginia's license but I think he told
7 the officers that he lived on Brandon Street. I can't
8 remember the exact numerics.

9 Q. And based on this information, what did you do
10 or you and others do?

11 A. I alerted Sargent Caddell. He was a Sargent at
12 the time. He's now a Lieutenant. I alerted Sargent
13 Caddell at the time, told him -- or asked him if we could
14 go ahead and set up surveillance.

15 So the next day I went and actually sat on the
16 Brandon Street address. Lieutenant Caddell went and sat
17 at the [REDACTED] Wilkinson Address. He can testify to what he
18 saw.

19 Q. Let me ask you this and go back. Did you have
20 an occasion to watch the video of that stop on Saturday --

21 A. I did.

22 Q. -- the 14th?

23 A. I did.

24 Q. And did it match what everybody told you?

25 A. Yes.

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1 Q. The vehicle and the individual?

2 A. The initial video from the actual incident, I
3 watched it countless hours, over and over and over, for
4 those first few days and when I saw the video of the
5 traffic stop, it was like just everything was clicking.

6 Q. And was then Sargent, now Lieutenant Caddell,
7 was he involved in your investigation, too, as well?

8 A. From that point on, yes, sir.

9 Q. Okay. Now, you were at the Brandon Street
10 address?

11 A. Yes, sir --

12 Q. How long --

13 A. -- originally.

14 Q. -- were you there?

15 A. I can't remember the exact time but I'm wanting
16 to say from like ten o'clock that afternoon until 4:00 or
17 5:00, maybe even 6:00, that evening.

18 Q. Did you see anything?

19 A. No movement.

20 Q. What did you do when you stopped your
21 surveillance?

22 A. Sargent Caddell was actually -- when I was
23 sitting on the Brandon Street address, Sargent Caddell was
24 sitting on the -- at the [REDACTED] Wilkinson Street. And I
25 alerted him that I had, you know, saw nobody coming and

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1 going. And he relayed to me that he had saw Mr. May get
2 out of the vehicle and go into the house over on Wilkinson
3 Street at one point.

4 He happened to know -- Sargent Caddell asked me,
5 well, which apartments is it over there, and I told him
6 which apartment. He happened to know the owner of the
7 apartments and I think he was able to make contact with
8 the owner and the owner was able to tell him that Mr. May
9 no longer stayed there.

10 Q. Okay. And so did you go -- you went back over
11 to the [REDACTED] Wilkinson?

12 A. At that point, I went to [REDACTED] Wilkinson.

13 Q. Okay. And once you got there --

14 THE COURT: Is that Wilkerson or Wilkinson?

15 THE WITNESS: Wilkinson.

16 MR. BELL: Wilkinson.

17 THE COURT: Thank you.

18 MR. BELL: W-I-L-K-I-N-S-O-N --

19 THE WITNESS: Like the --

20 MR. BELL: -- I believe.

21 THE WITNESS: -- school, yeah. Like Orangeburg
22 Wilkinson.

23 Q. [Mr. Bell] And after checking on the Brandon
24 address, what did you do at the Wilkinson Street address?

25 A. I relieved Sargent Caddell and I kept eyes on

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1 the [REDACTED] Wilkinson Street. At one point, I did see Mr. May
2 exit the house. He came on the porch. I think he was
3 smoking a cigarette. I can't recall. But I do
4 distinctively remember him coming out the front door.
5 Stayed out there on the porch a short time and he went
6 back in.

7 Probably an hour later, Emonie came out and was
8 walking a dog. They had a rather large dog, and she
9 walked the dog. And I actually had to reposition my
10 vehicle because she was going to walk right past me.

11 Q. And what happened then?

12 A. I collaborated with Sargent Caddell. It was
13 apparent that he now resided at the [REDACTED] Wilkinson Street,
14 as well as Ms. Ford.

15 Q. Okay. And what did y'all decide to do?

16 A. Sargent Caddell was able to get in touch with
17 Judge Claraday and was able to secure a search warrant.

18 Q. And who is Judge Claraday?

19 A. He's a newly-appointed judge here in Orangeburg
20 County.

21 Q. Is it municipal or county?

22 A. He's a county judge.

23 Q. Okay. The [REDACTED] Wilkinson Street address, is that
24 located in the city or the county of Orangeburg?

25 A. That's just outside the city. It's in the

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1 county.

2 Q. Okay. And that address -- I don't know if you
3 checked that night. But at some point, did you -- where
4 is it located in relation to the Keg on John C. Calhoun?

5 A. It's less than -- it's less than a half a mile.

6 I haven't timed it or I haven't driven it but in
7 my estimation, it would be less than a mile.

8 Q. How would you get there from the Keg on John C.
9 Calhoun?

10 A. The most direct way would be the route that's
11 seen on the video from where the Dodge Caliber enters,
12 which would -- it would end up coming on to Whitman
13 Street, crossing over 301 onto Blakely. They would get
14 onto Blakely and cross over 301.

15 Q. And Wilkinson is back in that area?

16 A. Correct.

17 Q. Okay. Now, while Sargent Caddell was getting
18 the search warrant, what are you doing?

19 A. I kept eyes on the house.

20 Q. Okay. And what happened then?

21 A. He was able to secure the search warrant. We
22 notified the County, SRT. We also notified our division
23 commander at that point, which was Lieutenant Schultz.
24 Lieutenant Schultz and Lieutenant Caddell collaborated
25 with County, you know, because of the assault rifle that

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1 was -- or SKS type of assault rifle that was used at the
2 Keg, we felt it was important to use the precautions
3 necessary to keep us, as well as the persons in the house,
4 safe.

5 Q. And so everybody came to that address?

6 A. Correct.

7 Q. Okay. Did you -- let me just kind of fast-
8 forward a little bit. Afterwards, did you have -- were
9 you involved in searching the house?

10 A. In searching the house, no, sir.

11 Q. What did you do?

12 A. Once the residence was secured, Mr. May was
13 detained. And Ms. Ford was also detained, because at that
14 point we didn't know if she would be involved with the
15 initial incident. We took them both back to headquarters.
16 We separated Mr. May and Ms. Ford. I Mirandized Ms. Ford.
17 I started talking with her first. Sargent Walker, Latisha
18 Walker, was actually present while I talked with Ms. Ford.

19 Q. All right. That's all I want to go on that
20 right now.

21 A. Okay.

22 MR. BELL: Thank you, Sargent Dukes.

23 THE WITNESS: Thank you.

24 MR. BELL: Please answer any questions the
25 defense has.

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1 THE COURT: Any questions for the witness?

2 MR. STEVENS: Thank you, Judge.

3 THE COURT: You may proceed.

4 MR. STEVENS: Good afternoon.

5 THE WITNESS: Good afternoon.

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. You said that you became involved in this investigation on the 10th?

A. On or around the 10th. Yes, sir.

Q. On or around the 10th. So you weren't personally there --

A. Not when the officers --

Q. -- on the scene of the incident?

A. -- arrived. No, sir.

Q. And you certainly weren't there when it occurred; correct?

A. No, sir.

Q. So when you went there on the 10th, you said you spoke with the clerk; right?

A. Quantavious.

Q. Quantavious Montgomery is his name; right?

A. Correct.

Q. And Quantavious Montgomery gave a written statement before, didn't he?

A. He had given a written statement to the initial responding officer. That officer is no longer with us. That was -- Alfred Doctor was the officer who actually made the report.

Q. But you're aware of the description; correct?

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1 A. Correct.

2 Q. And in that statement he does give a
3 description, does he not?

4 A. Correct.

5 Q. And in there he describes the robber as five
6 eleven to six foot; correct?

7 A. Correct.

8 Q. Okay. Now, he also gives other descriptions,
9 too?

10 A. He does.

11 Q. Like that he was wearing a gray hoodie?

12 A. He does.

13 Q. And that he's wearing gloves?

14 A. Correct.

15 Q. And then later on, you came back on the 12th
16 right?

17 A. Correct.

18 Q. Okay. I want to talk about when you came back
19 on the 12th. All right? You said you had a chance to get
20 a copy of the surveillance system?

21 A. Correct.

22 Q. And they didn't have the surveillance system
23 available immediately; right?

24 A. No.

25 Q. Okay. They couldn't even access it; right?

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1 A. The persons that were -- the manager that was
2 there on duty -- and it's not uncommon at a lot of
3 businesses. The staff that actually works at stores don't
4 know really know how to operate the equipment, if they do
5 have it. And at some businesses, they don't even have
6 access to it because you have to have a pass code.

7 In this instance, it was Blackwater Security who
8 maintained this security system.

9 Q. So when you say maintained, they actually
10 operate the security system?

11 A. If they need video or they need to review
12 anything, then they have to call the technician from
13 Blackwater.

14 Q. So you didn't get this from the clerk?

15 A. No.

16 Q. You didn't get it from the owner?

17 A. No.

18 Q. You got it from Blackwater?

19 A. Correct.

20 Q. And specifically an individual from Blackwater?

21 A. Correct.

22 Q. Okay. And that was on the 12th?

23 A. That was on the 12th. Yes, sir.

24 Q. So let's talk about those videos --

25 A. Uh-huh.

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1 Q. -- if we could, please.

2 Now, the videos have time stamps --

3 A. Correct.

4 Q. -- right?

5 And the time stamps didn't say --

6 A. The time --

7 Q. -- two o'clock?

8 A. -- stamps were off.

9 When Mr. Hall and I were getting the video, from
10 the best of my recollection -- I'm not looking at my notes
11 -- the time was off about four hours.

12 Q. Okay. And there were in-door cameras?

13 A. There were indoor cameras and --

14 Q. And there were outdoor --

15 A. -- cameras. Correct.

16 Q. -- cameras; right? Okay.

17 And the indoor cameras were pretty much
18 consistent with their time?

19 A. Yes.

20 Q. Within one another?

21 A. Correct.

22 Q. And most of the outdoor cameras were also
23 consistent in their time with the indoor cameras?

24 A. To the best of my recollection, yes, sir.

25 Q. All right. And those indoor cameras show -- I'm

Motion to Suppress
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1 sorry. Let's start with one of the outdoor cameras. You
2 said there was -- one of those outdoor cameras showed the
3 robber walking in between the car and the Keg?

4 A. You couldn't see the full figure but you could
5 see the upper torso bending down in between the cars.

6 Q. And when we say the car, we don't mean a white
7 Dodge Caliber?

8 A. That's not the car he was --

9 Q. Right.

10 A. -- kneeling down beside. Correct.

11 Q. But it was more of a red Honda; right?

12 A. Correct.

13 Q. Okay.

14 A. Correct.

15 Q. And that was about 9:47, according to your own
16 notes?

17 A. I'm not looking at it. But if that's what it
18 says, if that's the supplemental, then that should be
19 correct.

20 Q. Certainly. And then after that point it goes
21 on, also, to other cameras also showing 9:47?

22 A. Correct.

23 Q. And then 9:48 and 9:49 when it comes to the
24 actual robbery itself?

25 A. Correct.

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1 Q. Okay. And then at 9:48 on camera 7, the same
2 one that showed him going in, is also -- this is at 9:48.
3 It says, your notes, subject is seen going from front
4 corner of the Keg toward the rear part of the Keg, between
5 the building and the victim's car. So this is actually a
6 very short period of time the robbery occurred; correct?

7 A. Correct.

8 Q. Okay. And one thing we also know about the very
9 back cameras is they're also time-stamped?

10 A. Correct.

11 Q. And they also show nine o'clock, nine-something;
12 right?

13 A. Correct.

14 Q. But they don't show the white Dodge Caliber
15 arriving at 9:46 or 9:47, do they?

16 A. On the back cameras they show the victim -- they
17 show the vehicle actually come in off of Whitman Street.
18 The one on the side shows the Dodge Caliber coming off of
19 Whitman Street making a -- I believe it's a right-hand
20 turn onto Blakely. They cross over 301. When they pull
21 in -- because you see -- initially, you see the Dodge
22 Caliber once before it actually pulls into the business.
23 When it does pull into the business, it pulls in through
24 the back. I call it the rear driveway.

25 Q. It was at 9:50, correct, according to the

Motion to Suppress
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1 timestamp?

2 A. Yeah, I guess. It would -- it would be on the
3 video. Sure.

4 Q. Here you go, sir. What I'm referring to is here
5 where it says the white Dodge Caliber makes a right turn
6 off of Blakely Drive. This is at 9:49 on Channel 5;
7 correct?

8 A. Correct.

9 Q. And here at 9:50 on Channel 7 is the back
10 camera. It says the white Dodge Caliber pulls to the rear
11 corner of the Keg, backs up towards the dumpster --

12 A. Backs up toward the dumpster.

13 Q. All right. Correct?

14 A. Correct.

15 Q. So you would agree that according to the time
16 stamps, not for the hour but for the minute, this white
17 Dodge Caliber doesn't arrive until after the robber is
18 seen passing in between the victim's car and the Keg?

19 A. That's not accurate.

20 Q. What's not? The time stamps aren't accurate
21 or --

22 A. No. You see the suspect's vehicle show up
23 before you see the upper part of the torso.

24 Q. According to the time stamps of the recordings?
25 Your testimony is that according to the time stamps of the

Motion to Suppress
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1 videos themselves, that 9:27 occurs after 9:50?

2 A. No.

3 Q. Right. And according to your own notes --

4 A. I mean, that could be a typo.

5 We have copies of the video here, if Your Honor
6 would like to see it.

7 Q. Well, that's not been moved into evidence by
8 your attorney, so we'll let --

9 THE COURT: I don't want y'all having any
10 colloquy with each other. And I need you to stick to
11 what's germane in this hearing.

12 MR. STEVENS: Thank you, judge.

13 THE COURT: I'm not going to try the case. And
14 I'm not the fact finder. I'm only looking at --

15 Q. [Mr. Stevens] Regardless. Even according to
16 your own notes, you would agree that it was 9:47 that the
17 robber walked up in between the car and the Keg?

18 A. If -- that may be what I typed on it.

19 Q. And then 9:50, walks back -- I'm sorry -- 9:49,
20 walks back, according to your notes of watching the video?

21 A. It may be, yes. That may be --

22 Q. Would you like to see them again?

23 A. -- that may be what I have typed on the paper.

24 Q. Would you like to see them again?

25 A. No.

Motion to Suppress
Kevin Dukes
Cross-Examination by Mr. Stevens

1 Q. So you'll take that as true?

2 A. Okay.

3 Q. Well, I'm asking.

4 A. Yes, sir.

5 Q. Thank you.

6 Now, let's talk about your conversation with
7 Mr. Montgomery. Mr. Montgomery was inside when the robber
8 left; correct?

9 A. From the best of my recollection.

10 Q. And you testified that he said the robber left
11 toward the Hot Spot?

12 A. From the best of my recollection, he --

13 Q. Well, you just testified to that.

14 A. He didn't -- he didn't exactly know which
15 direction. He just assumed he went toward the Hot Spot.

16 MR. STEVENS: Beg the Court's indulgence.

17 THE COURT: Uh-huh.

18 Q. [Mr. Stevens] Now, Mr. Montgomery did not
19 follow the robber out the door, did he?

20 A. To my knowledge, no.

21 MR. STEVENS: Your Honor, may I approach?

22 THE COURT: Uh-huh.

23 MR. STEVENS: Thank you.

24 Q. [Mr. Stevens] Let's look at your supplemental
25 report here, as well.

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Cross-Examination by Mr. Stevens

1 A. Sure.

2 Q. It says here the descriptions; right?

3 A. Uh-huh.

4 Q. And it says right here that he waited about a
5 half a minute before he locked the front door; right?

6 A. Correct.

7 Q. And then he called the owner of the Keg, let him
8 know what happened; right?

9 A. Correct.

10 Q. And then he went to the stock room; right?

11 A. [No response]

12 Q. Went to the stockroom and called 911?

13 A. Correct.

14 Q. Right?

15 Okay. So from your own report, is it your
16 understanding that he did not leave the Keg and follow the
17 robber?

18 A. From the report. Correct.

19 Q. Right. And it's your report; right?

20 A. Correct.

21 Q. That would be your conversation with
22 Mr. Montgomery?

23 A. Correct.

24 Q. Now, when you looked at the -- you said you
25 observed the video; right?

Motion to Suppress
Kevin Dukes
Cross-Examination by Mr. Stevens

1 A. I did.

2 Q. And from the video it was clear that the robber
3 did not have on gloves?

4 A. He did not have on gloves.

5 Q. But Mr. Montgomery's statement is that he did
6 have gloves?

7 A. That he did have on gloves. Yes.

8 Q. And he did not have on a grey hoodie?

9 A. Correct.

10 Q. But Mr. Montgomery's statement said he had a
11 grey hoodie?

12 A. Correct.

13 Q. Okay. You said to the State on direct that you
14 circulated some photographs to law enforcement in the
15 Orangeburg area; right?

16 A. Correct.

17 MR. STEVENS: Your Honor, may I approach?

18 THE COURT: Uh-huh.

19 Q. [Mr. Stevens] I apologize if this is not in
20 color, Sargent Dukes. This is --

21 A. I do have one in color over here, if you would
22 like to see it.

23 Q. I would eventually. This is the one we received
24 in discovery.

25 A. Okay. Sure. Okay.

Motion to Suppress
Kevin Dukes
Cross-Examination by Mr. Stevens

1 Q. Now, is this a reasonable facsimile of what you
2 circulated?

3 A. It is, other than the one I circulated was in
4 color.

5 Q. Okay. I understand.

6 But right here it also says what at the bottom?

7 A. It says a white or silver Dodge Caliber,
8 probably white.

9 Q. Okay. Thank you.

10 So a white or silver Dodge Caliber, probably
11 white?

12 A. Uh-huh.

13 Q. So you weren't certain that it was a white Dodge
14 Caliber?

15 A. When we initially looked at the video on the one
16 side, the sun tends to bleach the color of the car. So
17 when the car is in the back driveway, it's kind of hard to
18 tell what color the car is because the sun is -- because
19 of the shading.

20 Q. When you say it bleached the car, do you mean it
21 actually bleached the car?

22 A. It made it -- it made it look a different color
23 than what it actually was.

24 Q. On the video?

25 A. Correct.

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1 Q. I understand. Thank you.

2 And as you previously testified, the video does
3 not show anybody getting out of the car?

4 A. Correct.

5 Q. It doesn't show anyone getting in the car?

6 A. Correct.

7 Q. In fact, you can't even really see the person
8 driving the car?

9 A. Correct.

10 Q. Okay. What I would like to do now is turn your
11 attention to the search warrant itself.

12 A. Okay.

13 Q. Actually, I should first ask: were you the
14 individual who drafted the language in the affidavit?

15 A. Sargent Caddell -- I conferred with him over the
16 telephone and we -- he discussed -- because he wasn't
17 there when I initially took the case. He came in after.

18 Q. Just so I'm straight. Even though he was the
19 affiant to the affidavit, you were the one who basically
20 provided the information for the affidavit?

21 A. Correct.

22 He was my supervisor, my direct supervisor, at
23 the time.

24 Q. I understand.

25 A. This is one of those cases that it wasn't a

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Cross-Examination by Mr. Stevens

1 routine shoplifting. You know, this was a case where
2 somebody could have gotten hurt.

3 Q. I understand.

4 Okay. Judge, if I may mark the search warrant
5 as an exhibit for --

6 THE COURT: You need to do that once you have
7 the person who prepared it testify, if the State plans
8 to call him --

9 MR. STEVENS: Yes, ma'am.

10 THE COURT: -- because he didn't prepare the
11 document. Irregardless of who provided the
12 information, it could have changed from talking to
13 being reduced to written form.

14 MR. STEVENS: I simply want to have it
15 identified for identification purposes at this time.

16 THE COURT: You can't question him about it. He
17 didn't prepare it. You have to talk to the person who
18 prepared it.

19 MR. STEVENS: Yes, ma'am.

20 Q. [Mr. Stevens] But you did provide the
21 information in the affidavit, did you not?

22 A. Correct.

23 Q. Thank you, sir.

24 Now, the information that you provided to then
25 Sargent, now Lieutenant, Caddell is that an armed subject

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Kevin Dukes
Cross-Examination by Mr. Stevens

1 carrying a long assault type rifle with a wooden stock
2 entered the Keg. And that was a light-skinned black
3 male --

4 A. Correct.

5 Q. -- that the clerk described as being red-
6 skinned?

7 MR. BELL: Your Honor, he's doing what he was
8 trying to do the other way. He's asking --

9 THE COURT: You need to ask him what information
10 did he provide --

11 MR. STEVENS: Yes, ma'am.

12 THE COURT: -- for purposes. And then he can
13 tell us what he provided.

14 But as to that actual document, he didn't
15 prepare it. He can't vouch as to what's in it. He
16 didn't do the -- somebody can relay information to me,
17 but what I actually write down is something totally
18 different. It could have changed in between. I have
19 no idea.

20 MR. STEVENS: Thank you, Judge.

21 Beg the Court's indulgence.

22 THE COURT: Uh-huh.

23 MR. STEVENS: No further questions at this time,
24 Judge.

25 THE COURT: Any redirect?

Motion to Suppress
Kevin Dukes
Cross-Examination by Mr. Stevens

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MR. BELL: Just briefly.

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THE COURT: You may proceed.

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Kevin Dukes
Redirect Examination by Mr. Bell
May 8, 2011

REDIRECT EXAMINATION

BY MR. BELL:

Q. Sargent Dukes, let me show you this and ask you if you can identify that.

A. Yes, sir.

Q. And what is that?

A. This is a depiction of the suspect from this incident in question.

Q. What is that picture taken from?

A. It's taken from camera eight.

Q. Okay. At the Keg?

A. At the Keg. Correct.

Q. Can you tell if he's leaving the Keg, or going into the Keg, from that?

A. I would assume, from looking at the picture, that he would be leaving the Keg.

MR. BELL: We would offer this as State's 1 for purposes of this hearing, Your Honor.

THE COURT: Did you show it to counsel?

MR. BELL: Yes, I did.

THE COURT: Any objection?

MR. STEVENS: Simply, Judge, that the officer was not there himself to actually authenticate it, under Rule 901.

THE COURT: Pictures are self-authenticating.

Kevin Dukes
Redirect Examination by Mr. Bell
May 8, 2011

1 Do you have any good-faith basis or argument
2 that that's not what actually came from the camera?
3 That somehow is hypothecated, changed, or edited in
4 some way?

5 MR. STEVENS: Simply, Judge, that the person who
6 would have to authenticate or document it is the
7 person who actually saw it, which in this case would
8 be the clerk.

9 THE COURT: Well, I think it would have to be
10 the person who's in charge of the records and would
11 have to -- they can't authenticate that picture. The
12 only thing they can authenticate is that they have a
13 video surveillance system that's regularly maintained,
14 that regularly records, and that's what it regularly
15 recorded.

16 But other than that, a picture or a video is
17 otherwise self-authenticating, unless you have some
18 good-faith basis to tell me that that's not what it
19 purports to be, that somehow the State has edited it
20 or someone else has edited it, they changed it, they
21 Photo-Shopped it or something of that nature, that
22 that's not what was actually taken, that being on
23 their video-recording equipment.

24 MR. STEVENS: We simply object on the basis of
25 901 and that he neither saw this incident, nor was he

Kevin Dukes
Redirect Examination by Mr. Bell
May 8, 2011

1 the person who maintains the equipment, therefore
2 cannot testify either to the voracity of this or
3 whether it indeed occurred on the date and time
4 indicated.

5 THE COURT: You need to ask him an appropriate
6 foundational question as to how it came into his
7 possession.

8 Q. [Mr. Bell] Let me show you what I've -- this
9 picture. You stated that you got the video surveillance
10 from the Keg and I think next to it is Green's Grocery,
11 right next --

12 A. Correct.

13 Q. -- that are the inside cameras to the Keg and
14 there's a video surveillance that's on the outside of both
15 buildings, is that correct --

16 A. Correct.

17 Q. -- since they're together?

18 Does this -- is this a screen shot from that
19 video that you observed of what you believe to be the
20 robbery on September 8th, 2013?

21 A. Yes, it is.

22 MR. BELL: We would offer it, Your Honor.

23 MR. STEVENS: Judge, he still can't corroborate
24 that this is the machine it actually came from. They
25 need the person from Blackwater Securities.

Kevin Dukes
Redirect Examination by Mr. Bell
May 8, 2011

1 THE COURT: This hearing is about probable
2 cause. It's about his reasonable belief. It's not
3 being offered for its truth, it's being offered as to
4 the foundation of his investigation and why he took
5 the action he took. Up to this point, he's
6 established that he received it from the personnel at
7 the store and that he reviewed it and that formed a
8 basis for him taking additional action. So the
9 objection is overruled. It's a Court's Exhibit.

10 I'll take up any other objections regarding its
11 admissibility for the jury. But for this hearing,
12 it's admissible. And it's marked as a Court's
13 Exhibit.

14 MR. STEVENS: Thank you, Judge.

15 THE COURT REPORTER: Court's 1?

16 THE COURT: Yes. Thank you, ma'am.

17 [Whereupon, Court's Exhibit Number 1 is marked
18 by the court reporter]

19 Q. [Mr. Bell] And there is no disagreement that
20 this robbery occurred approximately 2:00 p.m. on September
21 13th -- or September 3rd --

22 A. September the 8th. 8th.

23 Q. September 8th, I'm sorry, 2013.

24 A. Correct.

25 MR. BELL: Nothing further, Your Honor.

Kevin Dukes
Redirect Examination by Mr. Bell
May 8, 2011

1 THE COURT: Sir, you may step down.

2 You may call your next witness.

3 MR. BELL: The State would call now Lieutenant
4 Caddell.

5 THE COURT: Sir, if you would come forward to be
6 sworn by the clerk.

7 [Whereupon, Mr. Caddell comes forward]

8 [Whereupon, Mr. Caddell is duly sworn by the
9 clerk of court as follows: do you hear by swear or
10 affirm that the testimony you're about to give is the
11 truth, the whole truth, and nothing but the truth, so
12 help you God]

13 THE WITNESS: I do.

14 THE CLERK OF COURT: Thank you.

15 Please state your name. State your name and
16 spell your last name.

17 THE WITNESS: John Allen Caddell. Last name is
18 C-A-D-D-E-L-L.

19 THE COURT: Thank you, sir. You may be seated.

20 [Whereupon, Mr. Caddell takes the witness stand]

21 THE COURT: You may proceed.

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John Caddell
Direct Examination by Mr. Bell
May 8, 2011

JOHN CADDELL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Caddell, where are you employed?

A. With the Orangeburg Department of Public Safety.

Q. And how long have you been with the Orangeburg
Department of Public Safety?

A. Just shy of eleven years now.

Q. And is that how long you've been in law
enforcement?

A. I had an additional two years at the South
Carolina Department of Corrections.

Q. And, generally, what training have you had for
your law enforcement career?

A. Of course, I graduated from the South Carolina
Criminal Justice Academy in 2004. Numerous training
classes since. Also, I have taken classes at Claflin
University for criminal justice, sociology.

Q. And Lieutenant Caddell, what is your current --
what is your current duty with the Orangeburg Department
of Public Safety?

A. My current duty is lieutenant on the patrol
division.

John Caddell
Direct Examination by Mr. Bell
May 8, 2011

1 Q. And how long have you been doing that?

2 A. About two weeks.

3 Q. What were you doing before then?

4 A. Before that I was supervisor of the
5 investigations division.

6 Q. And how long were you a supervisor in
7 investigations?

8 A. About a year and a half as supervisor.

9 And I was in general investigations, overall,
10 about four years.

11 Q. And were you in such a position back on
12 September 8th of 2013?

13 A. Yes, sir. I was in investigations.

14 Q. And I'm calling you back to that date. Are you
15 aware of an armed robbery that occurred at the Keg in the
16 city of Orangeburg on that date?

17 A. Yes, sir.

18 Q. And did you become involved in the investigation
19 of that armed robbery?

20 A. Yes, sir.

21 Q. Do you recall about when you became involved in
22 the investigation?

23 A. When Detective Dukes got the original case, I
24 had followed along. And I was aware of it roughly about
25 September the 14th, I believe it was, when Officer Kenneth

John Caddell
Direct Examination by Mr. Bell
May 8, 2011

1 Pifer sent an e-mail out stating that him and Lieutenant
2 Culler with the sheriff's office had stopped a vehicle.
3 That e-mail was sent to myself and Detective Dukes. At
4 that point, we began corroborating and getting everything
5 together.

6 Q. Did you do anything else before that date in
7 regards to this case?

8 A. I was aware of it, but I wasn't involved at that
9 depth with it.

10 Q. Did you observe any video or anything in this
11 case?

12 A. Once I became involved with it I did. Detective
13 Dukes brought it to me. I've looked at the video with him
14 several times, numerous times. We've put together ideas.
15 And beyond that point, I did get the picture of the guy in
16 the video. I studied it intensively. And he -- Detective
17 Dukes brought some of his ideas to me and that's -- and he
18 was made aware of this gentleman.

19 At that point, he stated that we need to find
20 out where his -- where he resided. That's when we began
21 on that next day. I can't -- I think it was September the
22 15th, I believe it was, when the search warrant was
23 signed. That's when we started going and doing
24 surveillance at the possible residence of the subject.

25 Q. And let me back up a second back to the 14th.

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1 You were made aware of a video of a traffic stop; is that
2 correct?

3 A. That's correct.

4 Q. And did you have an occasion to watch that
5 video?

6 A. Yes, sir.

7 Q. And it was the stop of a white Dodge Caliber?

8 A. Yes, sir.

9 Lieutenant -- I'm sorry. Officer Pifer stopped
10 the -- got out on the traffic stop with Lieutenant Culler.
11 His car is equipped with a dash cam. As a supervisor of
12 investigations, I had access to our video cameras. Our
13 digital -- our recordings are digital and they are web
14 based. I have to go onto a server site, you know, and
15 pull the video. And that's when detective Dukes came into
16 my office and I pulled the video.

17 Q. And it had, I think, the license plate in the
18 video and all the information of the driver that --

19 A. That's correct.

20 Q. -- you needed; is that correct?

21 Q. Which came back to a Tykeem May? Or the driver
22 was Tykeem May; is that correct?

23 A. That's correct.

24 Q. And the vehicle came back registered to somebody
25 else; is that correct?

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1 A. Emonie Ford. Emonie Ford, I believe her name
2 was.

3 Q. And based on that stop, you got two addresses;
4 is that correct?

5 A. That's correct.

6 Q. For possible residents of --

7 A. That's correct.

8 Q. Okay. And I believe Sargent Dukes has testified
9 he went to the Brandon Street I guess apartment and you
10 went to the Wilkinson Street address?

11 A. That's correct.

12 Q. And that was on the next day, the --

13 A. That was the 15th.

14 Q. The 15th. Okay.

15 And how long did you stay initially at that --
16 at the Wilkinson Street address?

17 A. I don't remember the exact time. I know it was
18 in excess of an hour, two hours.

19 Q. And at some point, did Sargent Dukes come back
20 to you?

21 A. That's correct.

22 Q. And because he had no success where he was; is
23 that right?

24 A. That's right.

25 Q. And based on what he told you, did you do some

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1 inquiries for him about Mr. May's residence?

2 A. That's correct.

3 When he went to Brandon Street, he was telling
4 me that he didn't know if he lived over there. So at that
5 time I knew the -- it's an apartment complex over there.
6 I knew the owner of that apartment complex, which is a
7 Daniel Smith. I then contacted Daniel and asked him if he
8 was aware of Mr. May, if he was aware that he lived there,
9 and he told me at that time that he did not live there.

10 Q. Okay. So Sargent Dukes had come to your
11 location. And he basically relieved you, I guess, at that
12 point?

13 A. That's correct.

14 Q. And where did you go?

15 A. At that time, I went to -- I went to the office.
16 That's where I made some of my phone calls. And before
17 that point, I had seen Mr. May drive up in a vehicle, get
18 out, and go in the house. Which I did relay that
19 information over to Detective Dukes, also.

20 Q. So you saw Mr. May at the Wilkinson Street --

21 A. Wilkinson Street. That's correct.

22 Q. And so at some point, you and Sargent Dukes
23 decided to get a search warrant for that house?

24 A. That's correct.

25 MR. STEVENS: Objection, Judge.

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1 THE COURT: Basis?

2 MR. STEVENS: Leading throughout. I simply ask
3 that the witness testify.

4 THE COURT: For the interest of time, I'm going
5 to give him some latitude. Overruled.

6 You may proceed.

7 Q. [Mr. Bell] And who went to get that search
8 warrant?

9 A. I obtained the search warrant from Judge
10 Clariday.

11 Q. And you had firsthand knowledge of this
12 investigation?

13 A. That's correct.

14 Q. Okay. It wasn't that you were sent to a judge
15 and --

16 Q. Not only did I get the information from
17 Detective Dukes, but I also seen the video of the robbery,
18 I seen the video of Lieutenant Culler's stop, Officer
19 Pifer's. I also viewed pictures of Mr. May's driver's
20 license photo. I believe it was either his driver's
21 license photo or his South Carolina state ID photo. I
22 don't remember which photo it was. But I observed all
23 those photos. I also, you know -- basically everything
24 that Dukes told me, I confirmed and watched myself.

25 Q. And what did you do in preparing a search

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1. warrant?

2. A. At that point, I took all the information that
3. was given to me. Got a description of the house, and
4. basically typed up the -- you know, pulled up on our
5. server, typed up the search warrant, and took it over to
6. Judge Clariday.

7. Q. And you also -- you composed the probable cause
8. part of this with the facts in the case?

9. A. That's correct.

10. Q. And these are facts that you had learned both
11. firsthand and with additional input from Corporal -- or
12. Sargent Dukes?

13. A. That's correct.

14. Q. And let me show you this document and ask you if
15. you can identify that.

16. A. This is a copy of the search warrant that was
17. obtained from Judge Clariday.

18. Q. And what date was it obtained?

19. A. September the 15th, 2013.

20. Q. And Judge Clariday, where is he a judge?

21. A. He's an Orangeburg County magistrate.

22. Q. Okay. Is that because that address was in the
23. county?

24. A. That's correct.

25. Q. And you went to his house?

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1 A. That's correct.

2 Q. And showed him the search warrant?

3 A. And gave him my statement of probable cause.

4 And I was granted the search warrant.

5 Q. And you signed the search warrant. I will show
6 you on this page. Is that your signature on the affidavit
7 page?

8 A. As the affiant. Yes, sir.

9 Q. And did Judge Clariday swear you?

10 A. That's correct. Yes, sir.

11 Q. And he signed that he swore you? On the
12 affidavit part.

13 A. Yes, sir.

14 Q. And then back on page 2 he signed it and dated
15 it and put the location on the warrant?

16 A. Yes, sir.

17 MR. BELL: Your Honor, we would offer this as
18 Court's 2 for --

19 THE COURT: Did you show it to counsel?

20 MR. BELL: Yes. I'll show it to --

21 MR. STEVENS: Without objection, Judge.

22 THE COURT: Marked as Court's next in line.

23 [Whereupon, Court's Exhibit Number 2 is marked
24 by the court reporter]

25 THE COURT REPORTER: Court's 2, Judge.

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1 MR. BELL: Thank you.

2 Q. [Mr. Bell] Lieutenant Caddell, you brought the
3 search warrant back to the location [REDACTED] Wilkinson Street?

4 A. Not immediately.

5 First, we went to -- I contacted the Orangeburg
6 County Sheriff's Office, my immediate supervisor, which at
7 that time was Lieutenant Carl Shultz. He came out. We
8 collaborated with Lieutenant Danny Thomas with the
9 Orangeburg County Sheriff's Office. Because of the use of
10 an assault rifle during the robbery, we had SRT and the
11 sheriff's office come because, one, of the severity of the
12 crime, and, two, it was in the county.

13 Q. So the County was there, as well, when you-all
14 executed the search warrant?

15 A. That's correct.

16 Q. And were you involved in the execution of that
17 search warrant?

18 A. Yes, sir.

19 Q. And who was executing it with you? Who did the
20 search with you?

21 A. The actual execution was done by Thomas Gibson.

22 Q. And was somebody else with y'all when y'all were
23 searching?

24 A. Carl Schultz.

25 Q. And did you find items that were pertinent to

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1 your investigation here?

2 A. Yes, sir.

3 Q. And was there a return that was filed -- or that
4 was filled out at that point?

5 A. Yes, sir.

6 Q. And what was found that was pertinent to your
7 investigator, that you recall, to this investigation?

8 A. The items on the return is one pair of black-
9 and-white Nike shoes with the number 24 on the top, size
10 ten and a half, which fit Mr. May and also the shoes that
11 were seen in the video with the black-and-the white
12 stripe. That's the reason that they were taken. One pair
13 of red-framed sunglasses. That was the sunglasses that
14 was seen in the video. One rifle with a magazine and a
15 wooden stock. I have the serial number, if that's -- if
16 you need it. Plus bullets for that rifle. That rifle was
17 an SKS type of assault rifle.

18 Q. And did it have -- it had a magazine. But did
19 it have kind of a special type magazine or a distinctive
20 magazine?

21 A. Well, I don't remember exactly what type of
22 magazine. I do know it was -- like the -- if I'm
23 remembering correctly, it was like the banana type. But,
24 you know, the SKS rifle with that wooden stock is --

25 Q. And did it appear to be similar to the one you

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1 had seen in the videos?

2 A. It appeared to be exactly the same one in the
3 video.

4 Q. And so your affidavit on this, the factual
5 affidavit, was based on your knowledge, your firsthand
6 knowledge, as well as some information supplied by Sargent
7 Dukes; is that correct?

8 A. That's correct.

9 MR. BELL: Thank you, sir. Please answer any
10 questions the defense has.

11 Your Honor, I'll hand Court's 2 up to the Court.

12 THE COURT: He may want to use it.

13 MR. BELL: Okay.

14 THE COURT: You may proceed.

15 MR. STEVENS: Thank you, Judge.

16 THE COURT: You're welcome.

17 MR. STEVENS: Please the Court?

18 THE COURT: Uh-huh.

19 MR. STEVENS: Lieutenant Caddell, how are you
20 today?

21 THE WITNESS: I'm doing well.

22 MR. STEVENS: I'm Breen Stevens. I represent
23 the defendant, Mr. Tykeem May.

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. This hearing is really about the search warrant, so let's talk about the search warrant. Let's focus on that.

You indicated that you're the one who swore to it; right?

A. That's correct.

Q. As the affiant; right?

A. That's correct.

Q. And you said on direct that everything in there, you actually confirmed what Dukes told you?

A. Everything with the -- everything that can be seen in the video.

Q. So you did not confirm anything about Quantavious Montgomery's statement?

A. Yes. That's -- I wasn't there for the statement. I got that information from Dukes. The only thing that I witnessed firsthand was the videos and the pictures and --

Q. I understand.

A. -- seeing the white Dodge Caliber.

Q. Thank you.

MR. STEVENS: Judge, may I approach?

THE COURT: Uh-huh.

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1 Q. [Mr. Stevens] I'm handing you Court's Exhibit
2 Number 2, which is the warrant itself. I see here you
3 have a copy there. But as you know, there's -- just to
4 make sure there's no difference between what you have.

5 A. That's fine.

6 Q. All right. Thank you.

7 If you look in there, the warrant actually
8 describes in the affidavit where the clerk describes the
9 subject; correct?

10 A. That's correct.

11 Q. And it says the clerk described the subject as,
12 quote, a light-skinned black male?

13 A. Well, he -- subject -- he's describing him as
14 being what they call red-skinned.

15 Q. You'll have to help me out there. Red-skinned.
16 Well, first, it does say subject was a light-skinned black
17 male, doesn't it?

18 A. That's correct.

19 Q. And it says that the clerk described as being
20 red-skinned?

21 A. That's correct.

22 Q. Okay. And does that indicate, you know, Native-
23 American heritage or --

24 A. No. It normally means, from talking to other
25 people -- and what it is is basically it's a skin tone

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1 that they described -- that the clerk described to us. I
2 then spoke to other people and they stated that that
3 normally describes as a light-skinned almost with a
4 reddish tint. But it's normally referred to as light-
5 skinned.

6 Q. And then a little farther down it says, the
7 clerk described the subject to have thin, arching
8 eyebrows; correct?

9 A. That's correct.

10 Q. All right. And then it also says, he also
11 states the subject had long dreds approximately shoulder
12 length; right?

13 A. That's correct.

14 Q. And even though -- you never spoke with the
15 clerk before September 15th, 2013; right?

16 A. That's right.

17 Q. And you didn't read his written statement from
18 that time, either, did you -- or by that time, did you?

19 A. I had read the statement --

20 Q. So you did read the statement?

21 A. -- but the -- I mean, I read the statement but I
22 didn't talk to the -- I wasn't there when he wrote it and
23 I didn't speak to the victim personally.

24 Q. I understand.

25 So you are familiar with the statement, then?

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1 A. That's correct.

2 Q. Okay. So that means you're also familiar with
3 the fact that in his written statement nowhere does he
4 indicate thin, arching eyebrows?

5 A. Well, the information from that for the warrant
6 itself was gathered from what he stated to Detective
7 Dukes.

8 Q. Okay. So it's wholly independent of what he
9 wrote?

10 A. I guess.

11 MR. STEVENS: The Court's indulgence.

12 [Whereupon, Mr. Stevens reviews documents]

13 Q. [Mr. Stevens] Okay. Now, let's go back to the
14 warrant itself. You were looking for items from the
15 robbery; correct?

16 A. That's correct.

17 Q. Items like the assault rifle and banana clip;
18 right?

19 A. [No response]

20 Q. And we know this based on the description-of-
21 property-sought section in the affidavit; correct?

22 A. That's correct.

23 Q. Okay. And we're looking for, and I quote,
24 stone-washed-looking jeans with washed fabric in front --

25 A. That's correct.

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1 Q. -- third line.

2 Black-and-white stripped tennis shoes?

3 A. That's correct.

4 Q. Red shawl or bandana?

5 A. That's correct.

6 Q. Red sunglasses?

7 A. That's correct.

8 Q. And it says, and a skull cap with a circular
9 chain design wrapping around it?

10 A. That's correct.

11 Q. Now, let's actually focus on the search itself,
12 all right, of [REDACTED] Wilkinson Street, if we could.

13 A. All right.

14 Q. You were there; right?

15 A. That's correct.

16 Q. And when the search warrant was executed?

17 A. That's correct.

18 Q. All right. And, yet, you didn't find certain
19 things; right?

20 A. That's correct.

21 Q. You didn't find stone-washed-looking jeans with
22 faded fabric at the front?

23 A. Actually, we found numerous pairs.

24 Q. Pairs of jeans?

25 A. Uh-huh.

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1 Q. None were collected?

2 A. They weren't -- none of them were collected.

3 Q. Okay. So you have nothing in evidence for that?

4 A. No.

5 Q. You don't have a red shawl or bandana? That
6 wasn't collected?

7 A. No.

8 Q. You never found or collected a skullcap with a
9 circular chain design wrapping around it?

10 A. That's correct.

11 MR. STEVENS: Okay. Court's indulgence.

12 THE COURT: Uh-huh.

13 [Whereupon, Mr. Stevens reviews documents]

14 Q. [Mr. Stevens] One last thing, Lieutenant. You
15 said you reviewed the video footage of --

16 A. That's correct.

17 Q. -- of the robbery of the Keg; correct?

18 A. That's correct.

19 Q. And you also reviewed the footage of the car
20 from behind the Keg; correct?

21 A. That's correct.

22 Q. Now, on that video footage, again, no one exited
23 the vehicle; correct? No one could be seen exiting the
24 vehicle?

25 A. That's correct.

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1 Q. No one could be seen entering the vehicle?

2 A. That's correct.

3 Q. Let alone someone armed with a large rifle or
4 with a covered face; right?

5 A. No one could be seen getting in or out of the
6 vehicle.

7 Q. Right. Including no one with an assault rifle?

8 A. I believe that's covered in what I'm saying.

9 Q. Okay. So you mean --

10 A. When I say no one, that means no one.

11 Q. Okay. I understand.

12 MR. STEVENS: I have no further questions at
13 this time. Thank you.

14 THE COURT: Any redirect of the witness?

15 MR. BELL: No, Your Honor.

16 THE COURT: Sir, you may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 [Whereupon, Mr. Caddell is excused and exits the
20 witness stand]

21 THE COURT: Anything further from the State?

22 MR. BELL: Your Honor, I will --

23 THE COURT: Not argument. I mean witnesses.

24 MR. BELL: No other witnesses, no.

25 I want to make one stipulation that the State

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1 would say is -- that we -- as an officer of the Court
2 and all, that I do not believe, as best I can find,
3 that the return was brought back to the magistrate
4 pursuant to 17-13-140, even though that's a
5 ministerial duty that was not complied with. I just
6 haven't been able to find the return back, so --

7 THE COURT: Okay.

8 MR. BELL: Otherwise, we do have the search
9 warrant, a copy of the search warrant, that does have
10 the signatures on there of the judge and of the
11 officer.

12 And that would be the State's --

13 THE COURT: Is that a filing issue with the
14 magistrate or is that -- are you telling me they
15 just -- you have no indication they ever took it to
16 him?

17 MR. BELL: I don't know where -- I don't -- I do
18 not know where it is, whether it got back there within
19 the ten days. I cannot find it at the magistrate's
20 office and the magistrate cannot find it.

21 THE COURT: Okay. Any witnesses from the
22 defense?

23 MR. STEVENS: No, Your Honor.

24 THE COURT: All right. I'll be glad to hear
25 argument.

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1 MR. STEVENS: Thank you, Judge. May it please
2 the Court.

3 We respectfully move to quash the search warrant
4 of the defendant's residence and suppress all evidence
5 found as a result of the search on two grounds --

6 THE COURT: Was it his residence? Or was he a
7 visitor at that residence?

8 MR. STEVENS: Well, I believe he did live there,
9 Judge, which under state law does -- he is allowed to
10 go ahead and assert the fourth amendment privileges
11 as --

12 THE COURT: Well, that's not my question. He
13 doesn't have to live there to assert his rights.

14 MR. STEVENS: Yes, ma'am.

15 THE COURT: But there is limitations. If you're
16 just visiting, you only assert what belongs to you and
17 the privilege of what belongs to you. You don't
18 assert it over the whole house. So it does go to a
19 standing issue. And I need to know did he live there
20 or was he a transient visitor as a boyfriend coming
21 and going? Which is it?

22 MR. STEVENS: I believe we can only go from the
23 evidence which was provided at the hearing today, and
24 the evidence provided at the hearing today indicated
25 they believed he was a resident or living there with

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1 his girlfriend.

2 THE COURT: Well, they said they saw him go --
3 enter and exit the residence and drive the vehicle.

4 MR. STEVENS: Yes, ma'am.

5 But I do believe that there was testimony from
6 one of the officers that they did believe that he was
7 living there.

8 THE COURT: You may continue.

9 MR. STEVENS: Thank you, Judge.

10 My first ground would be lack of probable cause,
11 and, second, for failure to file a search warrant
12 return as required by statute.

13 As to our first ground, Judge, obviously a
14 search warrant can issue only on a finding of probable
15 cause. We also understand that the South Carolina
16 General Assembly has imposed stricter requirements in
17 the federal law for issuing a warrant. And also, the
18 fourth amendment to the Constitution of the United
19 States, as well as Article One, Section 10 of the
20 South Carolina --

21 THE COURT: I don't need a primer on the fourth
22 amendment. I just need you to get to the heart of it
23 as to why --

24 MR. STEVENS: Yes, ma'am.

25 THE COURT: -- how you feel it did not meet the

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1 requirements of probable cause.

2 MR. STEVENS: Yes, Judge.

3 First, Judge, the actual description of the
4 robber was limited to a light-skinned, red-skinned
5 black male with thin, arching eyebrows and long
6 dreadlocks approximately shoulder length. That's from
7 the language of the search warrant. Obviously, the
8 remaining description is necessarily limited to the
9 clothes, because the face was covered. This
10 description -- our position, at least for the first
11 half of this argument, is that the language is vague
12 and over-broad because it could actually cover many
13 African-American males in South Carolina, including
14 here in Orangeburg, South Carolina, and the whole
15 South Carolina state, as well as Claflin University.

16 Also noticeably absent from the description in
17 the affidavit was the height description provided by
18 the clerk himself, which is five foot eleven, six
19 foot. Mr. May is over six foot one inches tall.

20 Second, Judge, the white Dodge Caliber with
21 factory rims is likewise overboard and vague language.

22 Also, Judge, our position is that the affidavit
23 is misleading in where it says that video cameras in
24 the store were retrieved and it was discovered the
25 subject drove up to the business in a white Dodge

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1 Caliber. The timestamp, Judge, on the cameras
2 indicate the Dodge Caliber came to the store after the
3 robbery occurred. No video footage or eyewitness
4 observes anyone in the car, exiting the car, or
5 reentering the car, let alone someone armed with a
6 large rifle and masked face. Plainly speaking, Judge,
7 that's false. This error is also repeated throughout
8 the affidavit regarding the car stop on the 14th of
9 September, as well as the stakeout at [REDACTED] Wilkinson
10 Street.

11 Our position is that this information should be
12 excised from the affidavit pursuant to Delaware vs.
13 Franks and that without this information there's no
14 probable cause on the face of the affidavit forward.
15 Judge Clariday issued a warrant. Furthermore, even if
16 the Court determined the information was properly left
17 in, the actual descriptions of the robber in the car,
18 of course, are too vague and over-broad is our
19 position, Judge. Accordingly, at least for our first
20 round, Judge, we move that the warrant should be
21 quashed for lack of probable cause and -- search and
22 arrest.

23 THE COURT: I need you to make your full
24 argument so the State can respond in full.

25 MR. STEVENS: Yes, ma'am.

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1 Our second grounds, of course, that the police
2 also failed to file the search warrant as required by
3 statute number 17-13-140. The State has already
4 conceded that issue.

5 Judge, we do have a copy of the return. It's
6 never been returned to the issuing magistrate. There
7 are only five items listed by the executing officer.
8 Noticeably absent from the list were stone-washed
9 jeans, red bandana or shawl, skullcap with a circular
10 design wrapping around it.

11 We acknowledge, as we must, under our duty of
12 cannon toward the tribunal, that this rule regarding
13 the search warrant return has been interpreted as
14 ministerial. Inability to adhere to the requirement
15 may still result, though, in suppression if prejudice
16 is present.

17 Judge, our position is that if the State has
18 these items, then we are prejudiced because they were
19 never indicated on the search warrant return, nor were
20 they disclosed to us in the --

21 THE COURT: Do you have any indication that the
22 State has not fully complied with turning over
23 everything to you --

24 MR. STEVENS: Well, we have not yet --

25 THE COURT: -- including those items?

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1 MR. STEVENS: We have not yet received any in
2 discovery. And we have not yet actually had --

3 THE COURT: Have you had any indication they
4 plan to use any of that against your client?

5 MR. STEVENS: Well, Judge, our position is that
6 if they claim that it was at the house, and if they
7 intend to actually bring it in as information against
8 him, then --

9 THE COURT: Was it on the return?

10 MR. STEVENS: It was not -- it was listed as
11 what they were looking for, but not on the return,
12 Judge.

13 THE COURT: Yeah. But if they didn't seize it,
14 then how -- I guess we're back into a circular kind of
15 a logic, which --

16 MR. STEVENS: It kind of feeds into a Brady,
17 Rule 5 -- Judge, is what it --

18 THE COURT: How, if they don't have it and they
19 don't plan to use it against your client? Do you have
20 any indication it was exculpatory? It seems to me
21 it's inculpatory.

22 MR. STEVENS: Well, Judge --

23 THE COURT: It enures to your client's benefit
24 that they didn't find it or either they haven't found
25 it. And if they were going to use it against him,

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1 they would have already produced it by now.

2 MR. STEVENS: For example, if it did, in fact,
3 exist as far as what they're talking about, with the
4 color descriptions of what they're saying, we would
5 actually move to have our own experts look at it, test
6 it --

7 THE COURT: Yeah, but they haven't indicated to
8 you that they seized it at the address; correct?

9 MR. STEVENS: No, they have not, Judge.

10 THE COURT: Have they indicated to you they plan
11 to produce that? I mean, at this point, for them to
12 produce it at some eleventh hour -- you know, I doubt
13 it would come in at this -- well, I would give you
14 access to it. But, I mean, it's just unlikely that --

15 MR. STEVENS: Again, Judge, we --

16 THE COURT: -- it would somehow surface at this
17 point.

18 MR. STEVENS: Yes, ma'am, I agree. We don't
19 have a crystal ball to know what the State may have
20 laying in wait. We don't know.

21 Our position is that --

22 THE COURT: Well, that's circular logic.
23 Something can't be prejudicial to you that doesn't
24 exist. And if it did exist, it seems to me it would
25 inculcate your client, not exculpate him. So it

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1 really enures to his benefit that either they didn't
2 find it or it doesn't exist.

3 MR. STEVENS: We understand the Court's
4 position. However --

5 THE COURT: I don't have a position. I'm not an
6 advocate. I'm just making an observation. And your
7 argument needs to make sense to me, and I'm just sort
8 of pointing to the --

9 MR. STEVENS: Yes, ma'am. When it --

10 THE COURT: -- what we call the negative space
11 in the argument, which is I need to know what
12 prejudice you suffer by them not finding something
13 that inculcates your client.

14 MR. STEVENS: Yes, ma'am.

15 First and foremost, our position is that even if
16 such items did exist, they would actually be
17 exculpatory because we would necessarily demand not
18 only access to it but have it tested by some DNA
19 expert.

20 THE COURT: What would they be tested for?

21 MR. STEVENS: We would test it for DNA to prove
22 that he didn't wear it or have it.

23 THE COURT: Yeah, but it's still -- I mean,
24 that's still negative. That's sort of a negative
25 logical argument, therefore it doesn't exist,

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1 therefore if it did exist we could have it tested. By
2 the same token, if it did exist, they could have it
3 tested and corroborate that it was his. But having
4 had much experience in this area -- which is sort of
5 startling to me. Do you know if you try on something
6 in the store, you leave your DNA behind? That's why
7 they have mostly mixed samples on clothing. So it's
8 very hard to -- even if you had it to test it, it
9 would be unlikely that it would be dispositive because
10 everybody that's touched it, that's worn it, that
11 tried it on, no matter how many times it's been
12 washed, it leaves DNA behind.

13 MR. STEVENS: Yes, ma'am. Our position --

14 THE COURT: So you're going to come up with a
15 mixed sample, in all likelihood.

16 MR. STEVENS: And our position is that even if
17 indeed it did exist, we would have it tested. And
18 that would be a jury determination to --

19 THE COURT: Yeah, but that's -- I can't rely on
20 that. That's not something that I can -- that is
21 supported by something objective that I would be able
22 to make a -- I mean, to me it seems that the clothing
23 is consistent with a description of him and it
24 inculcates him more than exculpates him.

25 MR. STEVENS: Yes, ma'am.

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1 THE COURT: And for me -- that would take a huge
2 leap for me to assume that his DNA wouldn't be on it.
3 By the same token, it would be huge leap for me to say
4 that his DNA would be on it.

5 MR. STEVENS: Yes, ma'am. I understand.

6 Unless -- that's to the second argument, not the
7 first. And those are the -- presently, the arguments
8 for suppression of the items from the search, Judge.

9 THE COURT: Okay. Be glad to hear from the
10 State. Mr. Bell?

11 MR. BELL: Just -- I'm sorry, but I got kind of
12 caught up in some Brady accusation. I will say -- I
13 will state on the record --

14 THE COURT: Well, let's just ask and clear the
15 air. Did they find any of these items --

16 MR. BELL: They didn't take them. And I will
17 say that Mr. Stevens was given to full access to the
18 evidence, all the evidence --

19 THE COURT: So you don't plan to introduce any
20 of those items?

21 MR. BELL: No, I do not, Your Honor. No. No.

22 What was on the return was what was taken and
23 what we would introduce.

24 Your Honor, as to the first -- the first
25 argument as to the sufficiency of the search warrant,

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1 I think if the Court examines it, which is --

2 THE COURT: Let me interrupt you one second.

3 Hilda, can you hand that to me?

4 THE COURT REPORTER: Ma'am?

5 THE COURT: Can you hand me that search warrant?

6 Or did -- did somebody keep it, or is it up there?

7 Thank you.

8 You may continue.

9 MR. BELL: Thank you.

10 THE COURT: You're welcome.

11 MR. BELL: My understanding is that the search
12 warrant must show probable cause, have a factual basis
13 for probable cause, for a reasonably-detached
14 magistrate to make an independent search and that it
15 was there. I think that this particular affidavit, as
16 I read it, puts out facts. And, actually, there's no
17 conclusions, which a lot of search warrants tend to
18 have. I mean, they give the facts, as they knew it at
19 the time, that there was an individual, a light-
20 skinned black male, with dreds, who was wearing red
21 glasses, had a particular type of assault rifle and,
22 as they knew it at the time, was driving a white Dodge
23 Caliber. Also, to add to it further is they went
24 further and they found an individual, who turned out
25 to be Mr. May, driving a white Dodge Caliber about six

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1 days later through their diligence and putting the
2 pictures out. And as it turned out, they found that
3 Mr. May lived at this address. And we'll say he lived
4 there, for lack of a better term.

5 I think all these facts together showed that a
6 crime was committed, an armed robbery was committed,
7 and that it was probable that Mr. May, based on these
8 chain of facts, was the one who committed it, because
9 he was -- his description was similar, driving a
10 vehicle that was identical to the vehicle that they
11 believed to use -- that they -- was used in the
12 robbery.

13 Mr. Stevens wants you to go backwards and say
14 all of a sudden that's blatantly false, that those
15 particular facts are blatantly false. I can't ascribe
16 to that. I think they're all factual, I think they're
17 all true, based on their knowledge at the time of
18 getting the search warrant on September the 15th,
19 2013. And I think those facts are sufficient to show
20 that Mr. May was possibly, probably, involved in the
21 robbery, was the perpetrator of the robbery. And
22 that's the standard. Probably is not beyond all
23 reasonable doubt and it's not clear and convincing.
24 It's just probable cause that it's -- the facts show
25 that he was probably involved. And as it turned out,

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1 they found evidence of the robbery that links him
2 further to that particular robbery, Your Honor.

3 So I think the factual basis on the affidavit is
4 extremely sufficient, based on what Lieutenant Caddell
5 put in there.

6 As to the second prong, Your Honor, yes, statute
7 17-13-14 [phonetic] does require that a return be made
8 within ten days. However, I think our courts have
9 ruled more recently, I think in State v. Weaver, and
10 they quoted another -- an old one, State v. Wise, that
11 basically says a ministerial function, it's not fatal
12 to a search warrant under South Carolina law and under
13 the South Carolina Constitution, to -- that
14 invalidates a search warrant if there's no prejudice
15 shown to the defendant. And there's been no prejudice
16 shown to the defendant that, because this return was
17 not filed, that he's suffered any prejudice.

18 They've had -- they got a copy of a return that
19 was filled out and that states what were found with
20 specificity, specific items that were found, that will
21 eventually -- most of them -- I don't think -- all but
22 the money will be put into evidence by the State
23 during the course of this case.

24 I think that the State has had a search warrant
25 that was signed by a neutral and detached magistrate.

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1 The officer who filled out the warrant had firsthand
2 knowledge and additional knowledge. But I think
3 within the four corners of the search warrant, there
4 is sufficient facts to find probable cause that
5 this -- that led to the search of this residence.

6 THE COURT: What does the video actually show?

7 MR. BELL: What does the video actually show?

8 THE COURT: Uh-huh.

9 MR. BELL: It shows a -- it shows a Dodge
10 Caliber pulling in from -- behind of the -- there's
11 two businesses, that are attached, that are owned by
12 the same people. It goes in and it backs in and it
13 backs in the back to the victim's car. His car is
14 parked on the side. And it goes back so far you can't
15 see anybody getting out, based on the camera angle.
16 Then another angle shows a person going around the
17 corner by the victim's car. And then there's a front
18 angle where you see the person, the perpetrator,
19 walking in front of the business.

20 The victim, the clerk, is seated outside. He
21 was looking at his phone and smoking and the person
22 goes by, into it. He kind of sees that. I think he
23 sees the gun. He starts to run off to the left.
24 Which the previous part of the video shows, it shows
25 him heading off to the left as you're looking at the

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1 street. Then you see him coming back. The
2 perpetrator urging him to come back, and doing this
3 [indicates]. And so he comes back.

4 They both go in. And there's three different
5 camera angles inside the business that show him
6 pushing him and giving him a bag and taking money out
7 of the thing.

8 THE COURT: What happens after?

9 MR. BELL: And then the reverse is you see this
10 one picture of the -- is taken from him leaving along
11 the sidewalk that's along the front of the business.
12 He goes around the corner. And then the next thing
13 you see is you see this white Dodge Caliber leaving
14 out the driveway and then goes out and takes a left --

15 THE COURT: Are there any other cars that the
16 camera shows from that angle other than the victim's
17 and this Caliber --

18 MR. BELL: There's no other --

19 THE COURT: Caliber. It's C-A-L-I-B-E-R;
20 correct?

21 MR. BELL: I believe so.

22 There are no other vehicles in the parking lot,
23 other than the clerk's that's parked on the side and
24 this Caliber that comes in in the back. There's no
25 vehicles there.

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1 THE COURT: Anything further from the State?

2 MR. BELL: No, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. STEVENS: Just to simply talk a little bit
5 about the video, Judge.

6 Again, our position was, as our cross-
7 examination indicated, that there are -- even though
8 the times are --

9 THE COURT: They don't have to have -- if there
10 are two cars in that lot and one of them drives off, I
11 don't think you have to physically see the person get
12 in the car to infer. They had to leave somehow. And
13 there is no testimony they ran or they were running
14 down the street. Because if they were, they would
15 have been apprehended immediately.

16 MR. STEVENS: Actually, just -- I believe the
17 testimony is that he did run back in the direction of
18 the Hot Spot --

19 THE COURT: There's no testimony he fled on
20 foot. There's no testimony to really logically
21 support that, although you could argue that. You
22 could argue that it was some person, not your client,
23 that fled on foot and that's not who it was.

24 But what we're trying to determine right now is
25 if from an objective standpoint was there sufficient

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1 probable cause to believe --

2 MR. STEVENS: Yes, ma'am.

3 THE COURT: -- that these circumstances -- they
4 don't have to have -- you know, cases are made direct
5 and circumstantial evidence. And I don't think it's a
6 leap. If there are only two cars in the parking lot
7 and one of them belonged to Mr. Montgomery and one of
8 them drove up -- whether you can see him get in or out
9 of the car -- that he comes around simultaneous with
10 that car coming into the lot, and then certain
11 activity is alleged to have happened, and then he
12 exits, and then the car exits the parking lot, I don't
13 think that's a big leap to infer that he was the
14 person driving the vehicle. Of course, that's a
15 factual difference you could always argue to the jury.
16 You can always argue that it's some third person that
17 did it, that you have no clue who it is, and they fled
18 on foot and they were never apprehended.

19 MR. STEVENS: Thank you, Judge.

20 THE COURT: When considering the sufficiency of
21 a warrant -- I think I'm going to take them in
22 opposite order. I'll deal first with the failure to
23 return -- failure to file the return as required by
24 17-13-140. The State readily admits that they have,
25 as well as the magistrate, have not been able to

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1 locate the return. However, a return does exist and
2 that return was provided to the defendant. The
3 entirely of the purpose of a return is to show that,
4 one, a search warrant was executed and what was
5 actually taken or retrieved from the residence in that
6 search procedure.

7 There has been no indication for the record that
8 what has been represented to this Court as having been
9 taken from the defendant -- suspect's residence
10 pursuant to the search warrant, that there is any
11 variation in what was taken; that that copy of the
12 return was provided to defense counsel; and that those
13 items, in fact, exist and that the defendant has been
14 given access to those items for purpose of any
15 independent testing or otherwise.

16 And based on those items that have been
17 represented to the Court that were in the search
18 warrant -- and, again, I'm sort of going backwards, I
19 guess. Because something is listed in a search
20 warrant as something that the police is looking for,
21 it doesn't mean that they have to take everything that
22 was in the warrant. There's a reasonable scope of
23 what they think they will find. Sometimes they find
24 some, sometimes they find all, sometimes they find
25 nothing.

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1 In this instance they listed several things.
2 And the description of property was to include, but
3 not limited to, a wooden-stock assault-type rifle,
4 ammunition, banana-type clip for an assault-type
5 rifle, stone-washed-looking jeans with faded fabric in
6 the front, black-and-white tennis shoes, a red shawl
7 or bandana, red sunglasses, and a skullcap with a
8 circular chain design wrapping around it. And based
9 on the officer's testimony, some of these items were,
10 in fact, located. They were taken pursuant to the
11 search warrant. They were cataloged and provided for
12 in the return. And those items have been made
13 available to the defense.

14 State vs. Weaver is on point. That's 374 S.C.
15 313, 649 S.E.2nd 479, which is a Supreme Court opinion
16 which was amended -- which was affirmed as modified.
17 However, the dispositive portion of that holding of
18 the Supreme Court provides that the State's failure to
19 produce a return in this instance constituted more
20 than a ministerial error. However, the standard in
21 terms of a return -- and our courts have found that
22 the mere failure to file a return does not mandate the
23 suppression of evidence. 17-13-140 requires that
24 search warrants be executed and a return made within
25 ten days of that warrant. The failure to observe that

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1 ten-day requirement, however, is a ministerial
2 requirement and this does not necessarily void the
3 warrant. The warrant will only be invalidated if the
4 defendant can show he was prejudiced by the failure.
5 And a failure to comply with the inconsequential
6 ministerial requirement for the statute does not
7 require suppression in the absence of prejudice to the
8 defendant.

9 I cannot discern, nor have I heard anything,
10 that would rise to the level of prejudice as
11 contemplated by the case law or the statute. And
12 usually that is a lack of opportunity to refute some
13 evidence or have notice of some evidence. And all of
14 the evidence that was procured from the residence
15 pursuant to the search warrant has been accounted for
16 and it has been provided to the defense. There has
17 been some argument regarding what wasn't found, that
18 it may have been there, may not have been there, may
19 have been produced, not been produced. All of that
20 really is pure speculation, of which I cannot say what
21 could or could not have happened, may or may not have
22 happened. And so that would not provide basis for the
23 Court to find prejudice.

24 Therefore the motion to suppress, based on
25 failure to comply with 7-13-140 is denied.

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1 Now, as it regards probable cause or a lack of
2 probable cause regarding the warrant, case law is very
3 clear that when the Court is reviewing a magistrate's
4 determination of probable cause, this Court is
5 required to give substantial deference. And in
6 doubtful cases where reasonable minds could differ on
7 the existence of probable cause, the magistrate's
8 decision to issue a warrant should be upheld. And
9 that is supported both by South Carolina Supreme Court
10 precedent, as well as United States Supreme Court
11 precedent.

12 Probable cause is established by the totality of
13 the circumstances and the issuing magistrate is simply
14 to make a practical, commonsense decision whether,
15 given all the circumstances set forth in the affidavit
16 before him, including the voracity and basis of
17 knowledge of the persons applying hearsay information.

18 There is a fair probability that evidence of a
19 crime will be found in a particular place. I think
20 clearly, based on that totality of the circumstances
21 test, that there was evidence sufficient for the
22 magistrate to determine that there was a fair
23 probability that evidence was going to be found at
24 this particular residence regarding this alleged
25 robbery.

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1 The affidavit provided by the officer -- and
2 just in the interest of time, since it's 601, I'm not
3 going to read the entirety of it. But I think you-all
4 are probably more familiar with it than me. But while
5 there have been some things that are omitted, I have
6 to disagree with counsel in that there is no height
7 description as there is and it provides as follows:
8 the subject was a light-skinned black male that the
9 clerk described as being red-skinned; the subject was
10 dressed in black or dark-colored shoes with white
11 stripes near the bottom, jeans with a faded look at
12 the front, a black shirt, a red shawl or bandana
13 covering his face. And then skipping down: the clerk
14 described the subject to have thin, arching eyebrows.
15 He also states the subject had long dreds,
16 approximately shoulder length. And then it goes on to
17 talk about the video cameras. And then he says again
18 that -- I skipped over something. I apologize. I saw
19 something in here that said he was tall height.

20 [Whereupon, the Court reviews documents]

21 THE COURT: The subject was also wearing red
22 sunglasses and a black beanie or skull-type cap with a
23 circular chain design on it. Yeah. The subject is
24 tall and appears to have a larger than normal build.

25 Both officers testified that they very clearly

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1 and very deliberately reviewed this video and based on
2 what they saw in the video and also in collaboration,
3 however, with the traffic video from an in-car camera
4 on a stop, sort of, in effect, connected the dots to
5 develop the suspect and that once surveilling him it
6 appeared that he matched the general description given
7 by the store clerk. And in addition to that, the
8 general description of the vehicle used in this
9 incident.

10 It has been represented that somehow this
11 affidavit is misleading, in that it says: the video
12 also shows the subject enter the store, as the clerk
13 describes. And then it also goes on to say: subject
14 May was also driving a white Dodge Caliber matching
15 the vehicle that is seen in the video footage and who
16 it's registered to, et cetera.

17 I don't think the video from the store, as we
18 know, having watched -- at least, I've watched many
19 surveillance videos from stores -- it is rare -- they
20 all have different angles. They're all pointed in
21 different directions, some videos are better than
22 others. Some are grainy, some are -- I mean, you just
23 -- it runs the gamut. But I asked the questions very
24 specifically as I did because I don't think the video
25 has to show him getting in the car. I think that the

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1 officers can infer, based on their investigation, if
2 that there are only two cars in the parking lot and
3 one belongs to Mr. Montgomery, they can infer from the
4 totality of the circumstances that this is the way --
5 or at least this is their theory of how the defendant
6 or the accused fled the scene. And I think there's
7 sufficient evidence in the record to support that and
8 to support the affidavit provided to the magistrate.

9 And just so -- I don't know if I can take
10 judicial notice of this, but it is very typical in the
11 black community for somebody to be referred to as red-
12 skinned. It doesn't mean Indian. Matter of fact,
13 some women are referred to as red-boned, red-skinned,
14 light-boned. I mean, it's just a myriad of
15 descriptive terms that refer to the myriad of shades
16 that people occupy in the rainbow, I guess, for a lack
17 of a better way of putting it. But a lot of -- it is
18 a very typical term to call someone red-skinned or
19 red-bone, red -- there are a myriad of terms
20 associated with the word red, but it does not refer to
21 Indian ancestry, it refers to a light-skinned black
22 person. So it is not misleading in that regard. And
23 based on what I am able to observe of Mr. May in the
24 courtroom, it appears that the description is fairly
25 accurate regarding his physical attributes in the

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1 affidavit.

2 And so I would find for the record, based on a
3 totality of the circumstances, that the magistrate
4 issued a warrant based on practical common sense,
5 given all the circumstances set forth in the affidavit
6 before him, including the voracity and basis of
7 knowledge of the person who -- of the officer who
8 appeared before him. And clearly there was a fair
9 probability that evidence of a crime was going to be
10 found at that residence.

11 Therefore, the motion to suppress is denied.

12 Okay. Now, that means we're going to pick our
13 jury in the morning. Y'all have been troopers. I
14 appreciate you staying late. It saves us a lot of
15 time tomorrow. So we'll go forward in the morning.

16 [JURY TRIAL ADJOURNS AT 6:06 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG.

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the jury trial held before the Honorable Deadra L. Jefferson, on Monday, August 11, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of November, 2014.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
VS.)
)
TYKEEM MAY,)
)
DEFENDANT.)

JURY TRIAL

VOLUME 2 OF 5

held before the Honorable Deadra L. Jefferson
Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
in the Orangeburg County Courthouse
Orangeburg, South Carolina
on August 12, 2014, Commencing at 10:44 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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Jury Voir Dire
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PROCEEDINGS

[Whereupon, the jury panel is duly sworn by the clerk of court]

JURY VOIR DIRE

THE COURT: Please permit me to share with you some guidelines for your service this week.

By order of the Chief Justice, there can be no pagers, cellphones, tablets -- I'm trying to think. There are so many devices that can be -- you cannot have them.

[Off the record momentarily]

THE COURT: Some courthouses allow you to bring them in. We have to collect them. Other courthouses don't allow you to bring them in, which is I think the most prudent policy because then they don't have to go through taking your phones from you and giving them back to you. There is a reason that we do that, is because you're the fact-finders and on phones now you have access to the Internet and other sources of information and so we have to be able to maintain your impartiality during the process.

When you come to the courthouse, if you are selected for a jury please do not interact with anyone in or about the courthouse that you do not recognize to be a fellow juror. The reason for that is that

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1 there are many witnesses in cases. People look very
2 different outside the courtroom than in the courtroom.
3 We would not want you to have an innocent conversation
4 with someone and have that conversation
5 misinterpreted. In other words, we would not want
6 someone to think that you're improperly discussing the
7 facts or circumstances of a case. So to the best of
8 your ability, please do not interact with anyone,
9 again, that you do not recognize to be a fellow juror.

10 We would ask that you be prompt. It is not fair
11 when we must delay the proceedings because someone is
12 tardy. By the same token, if you run into some
13 difficulty getting to the courthouse in the morning,
14 please let us know, call us, because we can make
15 arrangements to assist you.

16 And in addition to that, I will tell you at the
17 beginning, so that you're aware of it, there will be
18 many times during this process when you are waiting on
19 us. Please know that we do not take your time for
20 granted, but there are many parts of the proceeding
21 that we have to insulate you from, again, because you
22 are the fact-finders. Sometimes we have to take up
23 matters of law that we cannot allow you to be privy to
24 because, again, we would not want to affect your
25 objectivity. So please know that if you're waiting on

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1 us, we're working. And in most instances, we have
2 started working long before you have arrived at the
3 courthouse. So, again, please know that we value your
4 time and we do not take it for granted.

5 If an emergency occurs at home, work, or
6 otherwise, I'm sure there's a number the clerk's
7 office will provide you with. Please make us aware of
8 it, even if it is during the course of jury duty. We
9 don't want you distracted trying to attend to
10 something when, again, in most instances we can assist
11 you with that responsibility.

12 Court generally begins at 9:30. We try to
13 conclude court as close to five o'clock as possible,
14 knowing that you have other obligations that you must
15 attend to during the day.

16 Again, as I've indicated, we only have one
17 criminal case to try this week, which we're going to
18 take probably another five-minute break and then we
19 will begin the jury-selection process. And, again,
20 that's the only jury that we will select. So anyone
21 who is not selected for that panel, even though we
22 will probably have you call back after a certain time
23 for certain jury instructions, it's probably unlikely
24 that we will try another case this week. So as a
25 practical matter, if you're not selected for this

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1 case, then your jury service for the week will be
2 concluded.

3 I am going to give you a five-minute recess to
4 stretch your legs. You don't have to leave the
5 courtroom. You can stay, if you like. But be back
6 promptly at ten of 11:00, at which time we will begin
7 jury selection. Thank you very much.

8 [Whereupon, a recess is taken from 10:48 a.m. to
9 10:54 a.m.]

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State v. Tykeem May
Arraignment
August 12, 2014

ARRAIGNMENT OF DEFENDANT

THE COURT: Sir, if you would stand.

[Whereupon, Mr. May complies]

THE CLERK OF COURT: The State alleges --

Indictment number 2014-GS-38-0189. How do you
wish to plead?

MR. MAY: Not guilty.

THE CLERK OF COURT: How do you wish to be
tried?

MR. MAY: By my state and my country.

THE CLERK OF COURT: We wish you --

MR. MAY: God and my country. I'm sorry.

THE CLERK OF COURT: We wish you Godspeed.

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JURY VOIR DIRE

THE COURT: Ladies and gentlemen, we are going to select a jury for the cases of the State of South Carolina vs. Tykeem Kalami May. They are indictments 2014-GS-38-189 and 190 for the offenses of armed robbery and possession of a weapon during the commission of a violent crime.

Those indictments allege as follows: that on or about September 8th, 2013, in Orangeburg County, the defendant, Tykeem Kalami May did, by use of force, threat or intimidation, while armed with a deadly weapon or by alleging either by words or action that he was armed while using the representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Quantavious Montgomery and/or the Keg, with the intent to permanently deprive the victim of possession of the goods or monies, such weapon or alleged weapon described as a rifle, alleging this offense to be in violation of Code Section 16-11-330. And that in Orangeburg County on or about September 8th, 2013, the defendant, Tykeem Kalami May, did visibly display or have in his possession a rifle

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1 during the commission of a violent crime, as defined
2 by section 16-1-60 of the South Carolina Code of Laws
3 as amended, to wit, armed robbery, alleging this
4 offense to be a violation of Section 16-23-490 of the
5 Code of Laws, and alleging both of these actions to be
6 against the peace and dignity of the State of South
7 Carolina.

8 We're going to go through a process that is
9 called voir dire in jury selection, which is simply a
10 legal term meaning that I'm going to ask you some
11 questions so that the attorneys can more effectively
12 exercise their peremptory challenges in jury
13 selection. If a question applies to you, please stand
14 and in a loud and clear voice give us your name, your
15 juror number, an answer to the question, if
16 applicable, and remain standing until the Court has
17 completed questioning you.

18 Before we go through that process, I'm going to
19 ask counsel for the State to introduce himself, anyone
20 who will be assisting him in the trial of this case,
21 and also give us the names of the lawyers in his
22 office and, as well, have counsel for the defense to
23 provide us with the same information and have his
24 client stand and face the panel.

25 You may proceed.

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1 MR. BELL: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. BELL: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BELL: My name is Harrison Bell. I'm a
6 senior assistant solicitor for the First Judicial
7 Circuit, which is Orangeburg, Dorchester and Calhoun
8 Counties. I work for your elected solicitor,
9 Mr. Davis Pascoe. In our office are Tommy Scott,
10 who's a deputy solicitor -- Ashley Cornwell will be
11 assisting me. Sarah Ford, Joshua Edwards, and Mandy
12 Kimmons are the other attorneys. I hope I got
13 everyone.

14 THE COURT: Is that everybody in both offices?

15 MR. BELL: That's in Orangeburg. I didn't go
16 through Dorchester County.

17 THE COURT: To the best of your ability, if you
18 could.

19 MR. BELL: Okay. Also we have in Dorchester
20 County Don Sorenson, who's a senior assistant
21 solicitor. We have Kyle Ward. We have Glen Justis,
22 we have Phil Giese. We also have Anna Welch, and we
23 have Vergil Deas, the juvenile prosecutor now. Oh,
24 I'm sorry. And Ted Lupton, who works in Calhoun
25 County.

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1 THE COURT: Thank you.

2 You may proceed, Mr. Stevens.

3 MR. STEVENS: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. STEVENS: Good morning. My name is Breen
6 Stevens. I'm in the Orangeburg County Public
7 Defender's Office. With me here today is Doug
8 Mellard. Together we represent Mr. Tykeem May, our
9 client.

10 In our office here in Orangeburg County I work
11 for the circuit public defender. His name is Mark
12 Leinedecker. His office is down in Summerville. In
13 our office here in Orangeburg County we have the chief
14 deputy public defender. Her name is Payton -- we also
15 have Cole Fitchett. We have Ms. Minh Lee. We also
16 have another attorney named Mark Wise in our office,
17 as well. We also have several legal assistants,
18 including Sarah Martin, Laura Kyser. We also have
19 several other attorneys in some of our other offices,
20 including obviously the circuit public defender Mark
21 Leinedecker. We also have Mary Lematte, Ashley
22 Chisholm, John Loy down in Summerville, and Martin
23 Orenbacks in Calhoun County.

24 THE COURT: Did you have your client stand and
25 face the panel?

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1 Sir, if you would stand and face the panel,
2 please.

3 [Whereupon, Mr. May complies]

4 THE COURT: Thank you.

5 Again, ladies and gentlemen, I'm going to ask
6 you a series of questions. If any of the questions
7 apply to you, please stand and in a loud and clear
8 voice give us your name, your juror number, and an
9 answer to the question, if applicable, and remain
10 standing until the Court has completed questioning
11 you.

12 Is there any member of the panel related by
13 blood or marriage to Tykeem May or Quantavious
14 Montgomery? If so, please stand at this time.

15 [Whereupon, there is no response]

16 THE COURT: Does any member of the panel have a
17 close personal or social relationship with Tykeem May
18 or Quantavious Montgomery or anyone who is employed
19 with or has any ownership interest in the Keg? If so,
20 please stand at this time.

21 Yes, sir. If you would give us your name and
22 your juror number.

23 MR. CALLOWAY: Kerchia Calloway. I don't
24 remember my jury number.

25 THE COURT: Your last name is Calloway?

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1 THE CLERK OF COURT: 24.

2 THE COURT: Number 24. Yes, sir?

3 MR. CALLOWAY: Quantavious Montgomery and I are
4 fraternity brothers and -- who actually owns the
5 Keg --

6 THE COURT: I'm sorry. Say that one more time.
7 Y'all are fraternity brothers and what else?

8 MR. CALLOWAY: Yes. And the owner of the Keg,
9 we have -- we own Campus Corners housing. We're
10 business partners --

11 THE COURT: You're business -- okay. Sir, I'm
12 going to excuse you from the trial of this case.

13 MR. CALLOWAY: So I can leave now?

14 THE COURT: No. I need you to stay with us.

15 I assume there is no exception from the State or
16 the defense?

17 MR. STEVENS: No, ma'am.

18 MR. BELL: No, Your Honor.

19 THE COURT: And is there any member of the panel
20 related by blood or marriage to anyone who has any
21 ownership interest in, is employed with, or works in
22 any supervisory capacity at the Keg? If so, please
23 stand at this time.

24 [Whereupon, there is no response]

25 THE COURT: The following are a list of

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1 potential witnesses in this case. I would ask that
2 you listen very carefully. Kevin Dukes, John Caddell,
3 Emonie Ford, Delissa Simpson, Danny McDaniel, Alfred
4 Doctor, R.C. Carter, Quantavious Montgomery, Kenny
5 Pifer, of the Orangeburg Department of Public Safety,
6 Lieutenant R. Culler, Orangeburg County Sheriff's
7 Office, Sargent John Caddell, Corporal Kevin Dukes,
8 both of the Orangeburg County -- Orangeburg Department
9 of Public Safety, Alfred Doctor, Henry Graham, Debbie
10 Byrd, the Orangeburg Department of Public Safety,
11 Captain Carl Schultz, Orangeburg Department of Public
12 Safety, Thomas Gibson, Lieutenant Anthony Robinson,
13 and Donny Hall.

14 Is there any member of the panel related by
15 blood or marriage to any of the people that I have
16 just listed, or does anyone have a close personal or
17 social relationship with any of these individuals? If
18 so, please stand at this time.

19 Yes, sir. Give us your name and your juror
20 number.

21 MR. DAVIS: Kerry Davis, number 41.

22 THE COURT: I'm sorry, sir. I can't hear you.

23 MR. DAVIS: Kerry -- Carroll Davis, number 41.

24 THE COURT: Yes, sir?

25 MR. DAVIS: And Sargent John Caddell married my

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1 first cousin.

2 THE COURT: And how would you characterize your
3 relationship with him? Are you close or do you just
4 pass at -- I mean, just sort of come in contact with
5 one another socially?

6 MR. DAVIS: I would say we're pretty close, like
7 hanging out and stuff.

8 THE COURT: Sir, as a result of this
9 relationship, do you feel that you can remain fair and
10 impartial?

11 MR. DAVIS: [No response]

12 THE COURT: There's no right or wrong answer. I
13 just need you to search your heart. And if you feel
14 that you can't be, there's nothing wrong with that
15 answer.

16 MR. DAVIS: No, ma'am.

17 THE COURT: Sir, you'll be excused from the
18 trial of this case only. Thank you. You may take
19 your seat. Remain with us.

20 Has any member of the panel ever been
21 represented by any of the attorneys involved in this
22 case or by any of the lawyers in their offices? If
23 so, please stand at this time.

24 [Whereupon, there is no response]

25 THE COURT: Is there any member of the panel

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1 related by blood or marriage to, or have a close
2 personal, social or business relationship, with any of
3 the attorneys involved in this case, any of the
4 lawyers in their offices, or anyone who is employed in
5 any capacity in their offices? If so, please stand at
6 this time.

7 [Whereupon, there is no response]

8 THE COURT: Has any member of the panel formed
9 or expressed any opinion about any issue or matter
10 involved in this case? If so, please stand at this
11 time.

12 [Whereupon, there is no response]

13 THE COURT: Is there any member of the panel
14 aware of any bias or prejudice toward either the State
15 or the defense in this case? If so, please stand at
16 this time.

17 [Whereupon, there is no response]

18 THE COURT: Is there any member of the panel who
19 was a member of the grand jury which issued the
20 indictments in this case? If so, please stand at this
21 time.

22 [Whereupon, there is no response]

23 THE COURT: Is there any member of the panel who
24 has watched, read, or listened to any media accounts
25 about this case? That includes any articles in the

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1 newspaper, any reports on television or radio, as well
2 as anything that could have been on the Internet. If
3 so, please stand at this time.

4 [Whereupon, there is no response]

5 THE COURT: Does any member of the panel have
6 any moral, philosophical, or religious opposition to
7 sitting in judgment of a fellow human being? If so,
8 please stand at this time.

9 [Whereupon, there is no response]

10 THE COURT: Is there any member of the panel
11 who's a member of or contributor to any group which
12 has as its primary concern the enforcement of law --
13 the promotion of law enforcement or victims' rights?
14 These groups would include, but are not limited to,
15 Mothers Against Drunk Driving, Students Against Drunk
16 Driving, Citizens Against Violent Crime, People
17 Against Rape, Citizens Advocating a Return to Decency
18 and Ethics, Parents Empowered to Save Teens, or any
19 other type community watch group. If so, please stand
20 at this time.

21 [Whereupon, there is no response]

22 THE COURT: Is there any member of the panel who
23 has ever been a victim of a violent crime? If so,
24 please stand at this time.

25 [Whereupon, there is no response]

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1 THE COURT: Is there any member of the panel who
2 is related to anyone who is currently employed in law
3 enforcement? If so, please stand at this time.

4 Yes, ma'am. Tell us your name and juror number.

5 MS. HAMPTON: Cheryl Hampton. I think it's 76.

6 THE CLERK OF COURT: 77.

7 THE COURT: Yes, ma'am?

8 MS. HAMPTON: My brother, Christopher Hampton,
9 is a Charleston County sheriff deputy.

10 THE COURT: As a result of this experience, do
11 you feel that you can remain fair and impartial and
12 render a fair and impartial decision in this case
13 based solely on the evidence as it will be presented
14 and on the law as the Court will instruct?

15 MS. HAMPTON: Yes, ma'am.

16 THE COURT: Thank you, ma'am. You may take your
17 seat.

18 Is there any member of the panel who was
19 previously employed in any form of law enforcement
20 agency? If so, please stand at this time. Not
21 current, but previous. If so, and you feel this
22 applies, please stand at this time.

23 [Whereupon, there is no response]

24 THE COURT: Is there any member of the panel who
25 has a moral, philosophical, or religious opposition to

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1 the ownership of firearms? If so, please stand at
2 this time.

3 [Whereupon, there is no response]

4 THE COURT: Is there any member of the panel who
5 is a member of the National Rifle Association? If so,
6 please stand at this time.

7 [Whereupon, there is no response]

8 THE COURT: Does any member of the panel know of
9 any reason whatsoever why he or she should not serve
10 as a juror in this case, with particular emphasis
11 being placed on your ability to be fair and impartial
12 to both the State and the defense? If so, please
13 stand at this time.

14 [Whereupon, there is no response]

15 THE COURT: Are there any additional questions
16 from the State?

17 MR. BELL: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: Not at this time, Judge.
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Striking of the Jury
August 12, 2014

1 STRIKING OF THE JURY

2 THE COURT: Strikes will be five and ten.

3 Come demonstrate for me how the jurors need to
4 come forward. Can somebody do that for me? Thank
5 you, ma'am. I appreciate your volunteering.

6 THE BAILIFF: As your name is called, come here
7 to the front. Bring all your personal belongings with
8 you. And the defense and State will ask the
9 questions.

10 THE COURT: Ladies and gentlemen, again, as the
11 bailiff has instructed, if your name is called, please
12 come forward, stand at the front of the podium, and we
13 will either seat or excuse you as a juror.

14 We appreciate your patience during this process.
15 If you would give the clerk your attention.

16 [Off the record momentarily]

17 THE COURT: Ladies and gentlemen, bear with us.
18 We've gone to an electronic system and it just takes
19 us a moment. We used to -- I remember the times when
20 every person's number was placed in a big old barrel
21 and we actually had a blind person, pursuant to the
22 statute, pull all the juror's name.

23 But what's so funny to me, and I'm sure there is
24 some statistical reason for this that's beyond my math
25 capability, it seems that even when we had the blind

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1 person doing it, when the computer does it it's almost
2 exactly duplicated. Funniest thing to me. I'm sure
3 that, again, there's some mathematical or statistical
4 explanation, but it's far beyond my mental acumen to
5 figure that one out. But it's really interesting to
6 have observed this.

7 In Charleston we had a huge barrel that was
8 probably almost as big as two of those podiums. And
9 we would turn it and hear all the capsules making
10 noise. And, literally, we had a person from the
11 Commission for the Blind who came and picked the
12 names. But it's just really interesting how it still
13 turns out the same way when we do it with a computer.

14 So if you would just give us a few moments to do
15 those strike sheets, we'll then begin the process.

16 [Off the record momentarily]

17 THE COURT: Okay. If you would -- once the
18 first one is done, if you will give her your attention
19 she will begin the selection process.

20 And then, again, if your name is called, please
21 come forward with all of your belongings and we'll
22 either seat or excuse you.

23 [Off the record momentarily]

24 THE CLERK OF COURT: Juror number 36, Ida
25 Crosby.

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1 [Whereupon, Ms. Crosby comes forward]

2 THE CLERK OF COURT: What says the State?

3 MR. BELL: Present the juror.

4 THE CLERK OF COURT: What says the defense?

5 MR. STEVENS: Please seat the juror.

6 [Whereupon, Ms. Crosby is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror Number 155, Makeisha
9 Sharrow.

10 [Whereupon, Ms. Sharrow comes forward]

11 THE CLERK OF COURT: What says the State?

12 MR. BELL: Present the juror.

13 THE CLERK OF COURT: What says the defense?

14 MR. STEVENS: Please seat the juror.

15 THE CLERK OF COURT: Have a seat in the jury
16 box. Thank you.

17 [Whereupon, Ms. Sharrow is seated in the jury
18 box as a juror]

19 THE CLERK OF COURT: Juror Number 15, Aaron
20 Briggman.

21 [Whereupon, Mr. Briggman comes forward]

22 THE CLERK OF COURT: What says the State?

23 MR. BELL: Excuse the juror from this trial.

24 THE CLERK OF COURT: You may return to your
25 seat, sir.

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1 THE BAILIFF: You may be seated back in the
2 panel. Thank you.

3 [Whereupon, Mr. Briggman returns to the
4 audience]

5 THE CLERK OF COURT: Juror Number 133, Tracy
6 Pelzer.

7 [Whereupon, Ms. Pelzer comes forward]

8 THE CLERK OF COURT: What says the State?

9 MR. BELL: Present the juror.

10 THE CLERK OF COURT: What says the defense?

11 MR. STEVENS: Please excuse the juror.

12 THE CLERK OF COURT: You may return to your
13 seat.

14 [Whereupon, Ms. Pelzer returns to the audience]

15 THE CLERK OF COURT: Juror Number 17, Ladeidra
16 Brown.

17 [Whereupon, Ms. Brown comes forward]

18 THE CLERK OF COURT: What says the State?

19 MR. BELL: Present the juror.

20 THE CLERK OF COURT: What says the defense?

21 MR. STEVENS: Please seat the juror.

22 THE CLERK OF COURT: You may have a seat in the
23 jury box. Thank you.

24 [Whereupon, Ms. Brown is seated in the jury box
25 as a juror]

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1 THE CLERK OF COURT: Juror Number 39, Laurie
2 Dantzler.

3 [Whereupon, Ms. Dantzler comes forward]

4 THE CLERK OF COURT: What says the State?

5 MR. BELL: Present the juror.

6 THE CLERK OF COURT: What says the defense?

7 MR. STEVENS: Please strike the juror.

8 THE CLERK OF COURT: You may return to your
9 seat, ma'am.

10 [Whereupon, Ms. Dantzler returns to the
11 audience]

12 THE CLERK OF COURT: Juror Number 174, Kathleen
13 Sweatman.

14 [Whereupon, Ms. Sweatman comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. BELL: Present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. STEVENS: Please seat the juror.

19 THE CLERK OF COURT: You may have a seat in the
20 jury box.

21 [Whereupon, Ms. Sweatman is seated in the jury
22 box as a juror]

23 THE CLERK OF COURT: Juror Number 164, Xavier
24 Stephens.

25 [Whereupon, Mr. Stephens comes forward]

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1 THE CLERK OF COURT: What says the State?

2 MR. BELL: Excuse the juror from this trial.

3 THE CLERK OF COURT: You may return to your
4 seat, sir.

5 [Whereupon, Mr. Stephens returns to the
6 audience]

7 THE CLERK OF COURT: Juror Number 2, Wilford
8 Arant.

9 [Whereupon, Mr. Arant comes forward]

10 THE CLERK OF COURT: What says the State?

11 MR. BELL: Present the juror.

12 THE CLERK OF COURT: What says the defense?

13 MR. STEVENS: Please strike the juror.

14 THE CLERK OF COURT: Please return to your seat.

15 [Whereupon, Mr. Arant returns to the audience]

16 THE CLERK OF COURT: Juror Number 50, Stephen
17 Eaddy.

18 [Whereupon, Mr. Eaddy comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. BELL: Please excuse the juror from this
21 trial.

22 THE CLERK OF COURT: You may return to your
23 seat.

24 [Whereupon, Mr. Eaddy returns to the audience]

25 THE CLERK OF COURT: Juror Number 200, Jaquetta

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1 Zimmerman.

2 [Whereupon, Ms. Zimmerman comes forward]

3 THE CLERK OF COURT: What says the State?

4 MR. BELL: Present the juror.

5 THE CLERK OF COURT: What says the defense?

6 MR. STEVENS: Present the juror.

7 THE CLERK OF COURT: You may have a seat in the
8 jury box, ma'am.

9 [Whereupon, Ms. Zimmerman is seated in the jury
10 box as a juror]

11 THE CLERK OF COURT: Juror Number 29, John Carr.

12 [Whereupon, Mr. Carr comes forward]

13 THE CLERK OF COURT: What says the State?

14 MR. BELL: Present the juror.

15 THE CLERK OF COURT: What says the defense?

16 MR. STEVENS: Please strike the juror.

17 THE CLERK OF COURT: You may return to your
18 seat.

19 [Whereupon, Mr. Carr returns to the audience]

20 THE CLERK OF COURT: Juror Number 22, Kayla
21 Butler.

22 [Whereupon, Ms. Butler comes forward]

23 THE CLERK OF COURT: What says the State?

24 MR. BELL: Present the juror.

25 THE CLERK OF COURT: What says the defense?

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1 MR. STEVENS: Please seat the juror.

2 THE CLERK OF COURT: You may have a seat in the
3 jury box.

4 [Whereupon, Ms. Butler is seated in the jury box
5 as a juror]

6 THE CLERK OF COURT: Juror Number 101, Katheryn
7 Kennerly.

8 [Whereupon, Ms. Kennerly comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. BELL: Present the juror.

11 THE CLERK OF COURT: What says the defense?

12 MR. STEVENS: Please seat the juror.

13 THE CLERK OF COURT: Have a seat in the jury
14 box. Thank you.

15 [Whereupon, Ms. Kennerly is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Juror Number 81, Dorothy
18 Hollis.

19 [Whereupon, Ms. Hollis comes forward]

20 THE CLERK OF COURT: What says the State?

21 MR. BELL: Present the juror.

22 THE CLERK OF COURT: What says the defense?

23 MR. STEVENS: Please seat the juror.

24 THE CLERK OF COURT: You may have a seat in the
25 jury box.

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1 [Whereupon, Ms. Hollis is seated in the jury box
2 as a juror]

3 THE CLERK OF COURT: Juror Number 14, Laurie
4 Brenn.

5 [Whereupon, Ms. Brenn comes forward]

6 THE CLERK OF COURT: What says the State?

7 MR. BELL: Present the juror.

8 THE CLERK OF COURT: What says the defense?

9 MR. STEVENS: Please seat the juror.

10 [Whereupon, Ms. Brenn is seated in the jury box
11 as a juror]

12 THE CLERK OF COURT: Juror Number 121, Larry
13 Moorer.

14 [Whereupon, Mr. Moorer comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. BELL: Present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. STEVENS: Please seat the juror.

19 THE CLERK OF COURT: Have a seat in the jury
20 box.

21 [Whereupon, Mr. Moorer is seated in the jury box
22 as a juror]

23 THE CLERK OF COURT: Juror Number 193, Roy
24 Williams.

25 [Whereupon, Mr. Williams comes forward]

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1 THE CLERK OF COURT: What says the State?

2 MR. BELL: Present the juror.

3 THE CLERK OF COURT: What says the defense?

4 MR. STEVENS: Please strike the juror.

5 THE CLERK OF COURT: You may return to your
6 seat.

7 [Whereupon, Mr. Williams returns to the
8 audience]

9 THE CLERK OF COURT: Juror Number 65, Frank
10 Gantt.

11 [Whereupon, Mr. Gantt comes forward]

12 THE CLERK OF COURT: What says the State?

13 MR. BELL: Present the juror.

14 THE CLERK OF COURT: What says the defense?

15 MR. STEVENS: Please seat the juror.

16 THE CLERK OF COURT: You may have a seat in the
17 jury box.

18 [Whereupon, Mr. Gantt is seated in the jury box
19 as a juror]

20 THE CLERK OF COURT: Juror Number 90, Elaine
21 Jeffcoat.

22 [Whereupon, Ms. Jeffcoat comes forward]

23 THE CLERK OF COURT: What says the State?

24 MR. BELL: Present the juror.

25 THE CLERK OF COURT: What says the defense?

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1 MR. STEVENS: Please seat the juror.

2 THE CLERK OF COURT: You may have a seat in the
3 jury box, ma'am.

4 [Whereupon, Ms. Jeffcoat is seated in the jury
5 box as a juror]

6 THE COURT: Two alternates. Strikes are one and
7 two.

8 THE CLERK OF COURT: Juror Number 7, Anthony
9 Blocker.

10 [Whereupon, Mr. Blocker comes forward]

11 THE CLERK OF COURT: What says the State?

12 MR. BELL: Present the juror.

13 THE CLERK OF COURT: What says the defense?

14 MR. STEVENS: Please seat the juror.

15 THE CLERK OF COURT: You may have a seat in the
16 jury box, sir.

17 [Whereupon, Mr. Blocker is seated in the jury
18 box as an alternate juror]

19 THE CLERK OF COURT: Juror Number 163, Tammie
20 Steele.

21 [Whereupon, Ms. Steele comes forward]

22 THE CLERK OF COURT: What says the State?

23 MR. BELL: Present the juror.

24 THE CLERK OF COURT: What says the defense?

25 MR. STEVENS: Please present the juror.

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1 THE CLERK OF COURT: You may have a seat in the
2 jury box, ma'am.

3 [Whereupon, Ms. Steele is seated in the jury box
4 as an alternate juror]

5 THE COURT: The jury has been selected. Are
6 there any motions from the State?

7 MR. BELL: Yes, Your Honor, the State does.

8 THE COURT: Please approach.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 THE COURT: Ladies and gentlemen, we thank you
12 for your patience. We have selected the panel for
13 this case. If you would call the jury information
14 line after six o'clock, there will be a message to let
15 you know if we have further need of your services.

16 Again, we appreciate your patience. I hope
17 everyone has a wonderful day. You're excused with the
18 Court's appreciation.

19 [Whereupon, the jury panel exits at 11:35 a.m.]

20 THE COURT: Ladies and gentlemen, please stand
21 and raise your right hand so that the clerk can
22 administer the oath to you.

23 [Whereupon, the jury is duly sworn by the clerk
24 of court as follows: do you solemnly swear or affirm
25 that you shall well and truly try and true deliverance

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1 make between the State of South Carolina and the
2 defendant at the bar, whom you shall have at charge,
3 and a true verdict give according to the evidence, so
4 help you God]

5 THE COURT: Please answer by saying, I do.

6 THE COURT: Thank you, ladies and gentlemen.
7 You may take your seats.

8 We're going to take a very brief break so that I
9 can talk about some scheduling matters with the
10 attorneys. I anticipate that we will have opening
11 argument and opening instructions and then break for
12 lunch.

13 During this break, please do not discuss the
14 case among yourselves. Please don't speculate about
15 what you think the case may or could be about.

16 Again, we appreciate your patience. I'm going
17 to turn you over to the able hands of your caretaker.
18 Go with her, please.

19 [Whereupon, the jury exits the courtroom at
20 11:36 a.m.]

21 THE COURT: Now, I was thinking what we could do
22 is do the Court's opening instructions, opening
23 arguments, and then break with this jury for lunch and
24 then handle the other things which we need to take
25 care of.

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1 [Off the record momentarily]

2 THE COURT: I'm thinking about starting back at
3 2:00 with this jury, after we do openings.

4 MR. BELL: That sounds fine.

5 THE COURT: Does that sound good for everybody?

6 Were there any exhibits that needed to be pre-
7 marked that y'all can agree on? If you have a
8 disagreement, I don't need to hear about it right now.
9 But if you've got something you've agreed on, I would
10 like for you to go ahead and have the court reporter
11 pre-mark it.

12 MR. BELL: Well, I've got pictures and --

13 [Off the record momentarily]

14 MR. BELL: We've got a series of photographs,
15 Number 1, Your Honor.

16 THE COURT: Well, they would be marked
17 individually.

18 Do y'all agree on all of them?

19 MR. STEVENS: Well, so long as they actually
20 have the proper witnesses to enter them into evidence,
21 Judge, yes, ma'am.

22 THE COURT: Well, I only want to know what you
23 agreed on to be pre-marked so I can go ahead and put
24 it on the record. If you disagree or there's some --
25 then you'll just have to do what you need to do and

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1 follow the procedure.

2 But I only need to know about what's being
3 marked and admitted without objection.

4 MR. STEVENS: Like I said, I don't think we can
5 just stipulate to everything right now. I think we'll
6 just --

7 THE COURT: Then we'll do what we need to do.

8 MR. STEVENS: Okay. Thank you, Judge.

9 THE COURT: But they need to be pre-marked so I
10 know what is being referring to.

11 MR. STEVENS: Okay.

12 THE COURT: So go ahead and pre-mark them.

13 MR. STEVENS: Thank you, Judge.

14 THE COURT: You're welcome.

15 THE CLERK OF COURT: Do you want them marked for
16 ID, Judge?

17 THE COURT: Yeah. Mark them individually so
18 we'll have --

19 [Whereupon, State's Exhibit Numbers 1 through 22
20 are marked by the court reporter]

21 THE COURT: Mr. Stevens, did you have an
22 opportunity to follow up on the matter that we
23 discussed on yesterday, which was the attempt to
24 retrieve the receipt from Walmart?

25 MR. STEVENS: I did, Your Honor.

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1 THE COURT: Did you meet with any success?

2 MR. STEVENS: Not as of yet.

3 We're still in the process. We've spoken with
4 managers at Walmart. We are in the process of trying
5 to obtain any copies of any receipts from the
6 electronics department from that date and a time range
7 of 2:00 to 4:00 p.m. If we can get them, we'll get
8 them.

9 THE COURT: Okay. Perfect. I just wanted to --
10 that was the only thing that we had not -- I wanted to
11 follow up on just for purposes, again, of post
12 conviction relief and what he indicated he was
13 dissatisfied with -- I use that term loosely -- or
14 that he felt you had not followed up on. So I wanted
15 to make sure just that we had a contemporaneous record
16 that you had, in fact -- had investigated it and what
17 the results were that you were in in the process of
18 investigating it. That's fine.

19 And, sir, is that your understanding?

20 MR. MAY: Yes, ma'am.

21 THE COURT: Okay. Perfect.

22 MR. STEVENS: If I may just point out an
23 additional thing?

24 THE COURT: Sure.

25 MR. STEVENS: There was the other matter where

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1 he alleged that --

2 THE COURT: You know what? About confidence.

3 MR. STEVENS: Yes, ma'am.

4 THE COURT: And I had made a mental note of that
5 when I was on my way home last night --

6 MR. STEVENS: Yes, ma'am.

7 THE COURT: -- and meant to ask you about that,
8 as well. I'm so glad you reminded me.

9 MR. STEVENS: Yes, ma'am.

10 THE COURT: Yes, sir?

11 MR. STEVENS: I didn't want to interrupt the
12 Judge yesterday.

13 THE COURT: No. We had a long day yesterday.

14 MR. STEVENS: We did.

15 THE COURT: We had a full Monday.

16 MR. STEVENS: Yeah.

17 THE COURT: Yeah.

18 MR. STEVENS: And there was a little -- actually
19 not a little, but a lot taken -- about it.

20 First I would like to say, first and foremost, I
21 don't talk to other clients about a client's case.
22 That's just a general flat-out we don't do that.

23 Second of all, I don't want to say I have a lot
24 of canned responses for clients, but I have a lot of
25 well-used explanations for law, procedure, for

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1 everything, particularly involved in, you know, our
2 opening meetings which for me takes typically anywhere
3 from a half an hour to forty-five minutes.

4 And then, you know, looking on, I -- no, I would
5 not have done that. So that's one.

6 I understand I spoke for Mr. May. He may want
7 to speak out again, he may not. I don't intend to
8 speak for him on his motion.

9 THE COURT: Have you determined the name of this
10 person that he's referring to?

11 MR. STEVENS: Yes, ma'am. Mr. Sikes.

12 THE COURT: And is he, in fact, a client of
13 yours?

14 MR. STEVENS: He is a client of mine, Judge.

15 THE COURT: And do you have any -- and I know
16 you can't read somebody's mind, and it's speculative
17 to a great degree, and we know the jailhouse grapevine
18 is ripe with information, most of which is unreliable.
19 Can you think of any reason why he would go to Mr. May
20 and basically contrive this?

21 MR. STEVENS: I have no idea, Judge.

22 But what I do know, and without disclosing
23 additional confidences --

24 THE COURT: Absolutely.

25 MR. STEVENS: -- of former clients, I have been

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1 made aware that there are people alleging my client is
2 speaking about his case in the facility. In fact,
3 I've actually had to back out of at least one case
4 already and make sure that person was appointed
5 outside counsel --

6 THE COURT: Because of a conflict?

7 MR. STEVENS: Because of that conflict. And I'm
8 not allowed to go ahead and disclose --

9 THE COURT: Well, I --

10 MR. STEVENS: -- any names or --

11 THE COURT: Yeah.

12 MR. STEVENS: -- anything about the clients or
13 any details --

14 THE COURT: Yeah.

15 MR. STEVENS: But --

16 THE COURT: Well, I can anticipate you would
17 have had a conflict, because then he could have
18 potentially have used what he heard against him, which
19 puts you in a real bad conflict --

20 MR. STEVENS: Yes, ma'am.

21 THE COURT: -- situation.

22 MR. STEVENS: So I noticed on the State's -- I
23 wanted to point out I noticed on the State's witness
24 list that the name is not on there whatsoever, so I do
25 not anticipate anything unless it's a surprise

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1 rebuttal witness by the State, at which obviously we
2 would make a motion before the Court.

3 THE COURT: Okay.

4 MR. MAY: May I address the Court, Your Honor?

5 THE COURT: Sure.

6 MR. MAY: I also wanted to say on the record I
7 didn't have any animosity towards Mr. Stevens. I was
8 just reciting what --

9 THE COURT: Oh. No, I -- and the Court did not
10 take it that way.

11 MR. MAY: And I also regard it as Mr. Sikes
12 probably heard Mr. Stevens, like you said, talking to
13 a secretary or someone about something that he needed
14 them to do with any contact with a witness. And
15 that's probably how he came back and relayed that
16 information to me. I was under the wrong intent --
17 under the wrong impression at the time. And I just
18 wanted to apologize.

19 THE COURT: So you don't have any concerns that
20 he was discussing your case with anybody, is what
21 you're telling me?

22 MR. MAY: No, ma'am.

23 Actually, I went back and I -- asked him about
24 that yesterday and it seemed like he kind of folded
25 under the confrontation. So I'm really trying to

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1 dismiss it due to the fact I believe Mr. Stevens has
2 more credibility than Mr. Sikes does. I also want to
3 apologize to Mr. Stevens on the record.

4 THE COURT: Okay. Well, then that -- perfect.
5 Wonderful. Okay.

6 And I don't think there's anything else
7 regarding PCR matters that we touched on yesterday
8 that we need to go over. I think we've covered
9 everything, haven't we?

10 MR. STEVENS: I believe so, ma'am, yes.

11 THE COURT: Perfect. All right.

12 We can let everybody back in the courtroom.

13 [Whereupon, the jury enters the courtroom at
14 12:10 p.m.]

15 THE COURT: Thank you, ladies and gentlemen, for
16 your patience.

17 As I instructed earlier, the case that we are
18 about to try is the case of the State of South
19 Carolina versus Tykeem Kalami May . What I am now
20 going to give you are what we -- are a brief
21 instruction, procedurally, so that -- and a brief
22 instruction of the case so you will know how we will
23 be proceeding during the course of this trial. I will
24 instruct you or charge you on the law applicable to
25 this case at the end of the trial, before you retire

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1 to consider your verdict. And when you hear me use
2 the word charge, charge is a legal term of art that
3 simply means instruction. So charge and instructions
4 are interchangeable words for purposes of these
5 proceedings.

6 And as I've already explained, this is merely an
7 explanation of the procedure that we will follow in
8 the trial of this case so that you will better
9 understand what is happening. You will be given the
10 opportunity to take notes. On the first page or the
11 front page of your notebook, please write your juror
12 number so that you will be able to identify which
13 notebook belongs to you. I will give you some further
14 instructions regarding note-taking near the conclusion
15 of this instruction.

16 The defendant is charged, by two indictments
17 filed in this court, with the crimes of armed robbery
18 and the possession of a weapon during the commission
19 of a violent crime, the elements of which I will
20 explain to you at the conclusion of the case before
21 you retire to deliberate.

22 The indictment, ladies and gentlemen, is simply
23 the charge by which the case is brought or processed
24 into court and is not in any sense evidence of any of
25 the allegations the indictments may contain.

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1 The defendant has pled not guilty to the
2 indictments. The State, therefore, has the burden of
3 proving each of the elements of the indictments beyond
4 a reasonable doubt and it will be your duty, ladies
5 and gentlemen, to decide whether the State has met
6 that burden or not.

7 Your purpose as jurors is to find and determine
8 the facts. You are the sole judges of the facts in
9 this case. If at any time I make any comment
10 regarding the facts, you must disregard it. The
11 constitution of our state does not allow a trial judge
12 to intimate or state or have any opinion about the
13 facts of a case tried by a jury. You are to determine
14 the facts from the testimony you hear and the other
15 evidence that will be introduced into the record. It
16 is up to you to determine the inferences which you
17 feel may be properly drawn from the evidence. It is
18 especially important that you determine your duty of
19 determining the facts diligently and conscientiously
20 because ordinarily there is no way to correct an
21 erroneous determination of facts made by a trial jury.

22 On the other hand, and with equal emphasis, the
23 same law that makes you the judges of the facts makes
24 me the judge of the law. The law as given by the
25 Court is the only law you may consider. You must

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1 accept and follow it, even though you may disagree
2 with the Court about it. I cannot tell you what the
3 facts are, and you cannot disagree with the Court
4 about what the law is or what the law should be.

5 Your responsibility, ladies and gentlemen, is to
6 take the law as I instruct it during the course of the
7 trial and at the conclusion of the trial and apply it
8 to the facts as you find them from the testimony of
9 the witnesses and the other evidence that will be
10 introduced. After doing that, you will render your
11 verdict, a true and just verdict, under the solemn
12 oath that you have taken as jurors in this case.

13 Until I advise you to begin your deliberations,
14 you must not discuss this case with anyone. That
15 includes among yourselves, your family members,
16 friends, or otherwise. And after the case is
17 submitted to you, you must discuss it only in the jury
18 room among your fellow jurors.

19 The attorneys and the parties have been
20 instructed that they're not to speak with you at all.
21 So if you should see them in the hallway, or even at a
22 local restaurant at lunch or perhaps going to your
23 cars in the evening, and they don't speak with you,
24 please don't think they're being unfriendly or
25 untoward. They're simply strictly following the

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1 Court's instruction.

2 Again, this instruction comes from hard-fraught
3 experience. We would not want an innocent
4 conversation to be misinterpreted. Most courthouses
5 have pretty much everything recorded. You see these
6 little bubbles in the courtroom? They record
7 everything that we're doing, as well as the ones you
8 see in the hallways and otherwise. And, also, in this
9 age of technology it is not uncommon for people to use
10 their tablets and telephones and otherwise to record
11 someone talking to someone. And having had this
12 experience before, I don't want to try to look for you
13 and try to determine what you were talking about. As
14 southerners, we're very social and we can have the
15 most animated conversations about the weather, about
16 the draft, about golf tournaments, and people during
17 litigation have a heightened suspicion and they will
18 assume that you're talking about the case instead of
19 having an innocent conversation. So please strictly
20 abide by that instruction.

21 You are not to read, watch or listen to any
22 media accounts about this case. That includes
23 anything that may be printed in the newspaper, on the
24 Internet, radio, or television. You must not consider
25 anything you may read or heard about this case outside

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1 the courtroom, whether before or during the course of
2 this trial. And you're strictly instructed not to do
3 any independent research of any type. That includes
4 any type of Google searches, satellite kind of
5 searches to look at locations or otherwise, or any
6 other matter or information that is involved in this
7 case, on the Internet. As the fact-finders, you are
8 bound by your oath to decide this case according to
9 the testimony that you will hear from the lips of the
10 sworn witnesses and the other evidence that will be
11 introduced.

12 It is essential that you maintain an open mind
13 and not decide any issue in this case until all of the
14 evidence has been presented, the parties have made
15 their closing arguments, and I've instructed you on
16 the law applicable to this case.

17 It is your solemn responsibility to determine
18 the guilt or innocence of the defendant and your
19 verdict must be based solely on the evidence as it is
20 presented to you in this trial and on the law that I
21 will instruct you during and at the close of this
22 trial.

23 In just a moment the solicitor will make what is
24 called an opening statement, in which he will outline
25 for you what he believes the evidence will show in

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1 this case. The defendant may also make an -- the
2 defendant's counsel may also make an opening
3 statement, although he is not required to do so.

4 I would ask that you give the attorneys your
5 undivided attention but keep in mind that what they
6 say is not evidence. It is only their contention as
7 to what they believe the facts will show in this case.
8 The evidence in this case will be presented to you,
9 again, by the testimony of sworn witnesses and from
10 exhibits that may be introduced.

11 From time to time, you may hear one of the
12 attorneys say something like, Your Honor, I object.
13 Just as in sports, business, or any other structured
14 activity, there are certain rules that the attorneys
15 must obey in the presentation of evidence. These
16 rules have a definite purpose. They ensure that you
17 receive the most trustworthy and reliable evidence
18 available. An objection is the procedure that an
19 attorney uses to call a possible violation of these
20 rules to my attention as the judge of this court and
21 for this reason, you should never hold an attorney's
22 objection against them. Nor should you conclude, from
23 the Court overruling or sustaining an objection, that
24 I favor one side or the other.

25 Also, from time to time you will hear the

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1 attorneys say, Your Honor, I have a matter -- we have
2 a matter of law to take up, or they may ask to
3 approach the bench or I may ask them to approach the
4 bench. And sometimes it may even be necessary for us
5 to excuse you from the courtroom for a short while
6 while we discuss matters of law. The reason we do
7 this, as I've explained, is that you are the finders
8 of the facts and sometimes when I'm discussing matters
9 of law with the attorneys, it might be necessary for
10 me to make some comment about the facts in connection
11 with ruling whether a statute applies, or a procedural
12 rule or an evidentiary rule, and for this reason, we
13 exclude you from the courtroom so that in no way will
14 you be influenced by anything that the Court may say
15 or do in connection with the facts of this case.

16 In determining what the true facts are in this
17 case, you must decide whether or not the testimony of
18 a witness or witnesses is believable. It is my
19 responsibility to rule as a matter of law as to
20 whether certain testimony is admissible at all or not.
21 But once it is admitted, ladies and gentlemen, whether
22 or not you believe it is solely a matter for you to
23 determine. In deciding whether to believe a witness,
24 you have a right to consider the interest of any
25 witness, the bias of any witness, the prejudice of any

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1 witness, the opportunity for the witness to have seen
2 the things and matters about which the witness may
3 testify, and the way the witness acts on the witness
4 stand, something we commonly refer to as demeanor.
5 You have a right to consider anything that is in the
6 record that will help you evaluate the testimony of
7 the witnesses. That means, ladies and gentlemen, that
8 it is your duty to pay close attention to the
9 witnesses, to observe them, to listen to them, and to
10 pay close attention to the attorneys and the Court.
11 Although I know that it is very difficult, especially
12 in a room without windows, please do not allow
13 yourself to wander but give strict attention to the
14 testimony so that at the end of the case, after you've
15 heard the arguments of the attorneys and the Court's
16 instructions on the law, you will then be in a
17 position to determine what the true facts are, apply
18 the law to those facts, and thus render a true and
19 just verdict in this case.

20 During the course of this trial, you will be
21 given the opportunity to take notes. Note-taking is a
22 privilege that you may choose to exercise or choose
23 not to exercise. You are not required to take notes.
24 Not everyone finds note-taking helpful to them. If
25 you should decide to take notes, please don't try to

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1 record everything that is said. I can tell you it's
2 physically impossible. And I count myself as a very
3 good note taker. But even with that, the mind is a
4 funny thing the way it processes information. And
5 even if you were to try to take down something
6 verbatim, you will find that you will commonly
7 substitute words that you use regularly for a word
8 that was actually used. Sometimes you will put the
9 end of a sentence at the beginning of a sentence. It
10 just depends on how your mind processes information.
11 So please don't try to record everything that is said.
12 Even a moderate speaker speaks about 200 words a
13 minute. I'm in the middle of my nineteenth year of
14 sitting on the bench and I find that during that
15 process I probably talked a lot slower at year one
16 than I now talk now. I have to really make myself
17 slow down. But even a moderately -- a person who
18 speaks slowly still speaks about 200 words a minute.
19 And that's a lot of words. The only reason the court
20 reporter can do it is because they are very trained in
21 a specialized form of taking down the record. It is
22 so very essential that you rely on your powers of
23 observation as you observe the witnesses. So please
24 do not allow note-taking to become a distraction to
25 you. You may want to keep an outline of the main

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1 points that are being made and the main arguments that
2 are being made so that when you deliberate regarding
3 this case, you can allow your notes to refresh your
4 memory.

5 Your notes, ladies and gentlemen, are not to be
6 shared with anyone else. They are for the sole
7 purpose of refreshing your own memory. And they will
8 be left in the courtroom during breaks and recesses.
9 We will secure them during any evening recesses. And
10 that's to make sure there's no premature deliberation
11 -- premature temptation to prematurely deliberate
12 regarding anything you may have heard before any
13 breaks or recesses.

14 Again, I would remind you that your notes are
15 for your specific and your individual purposes. They
16 are only to be used to refresh your own memory. And
17 likewise, please be reminded that your notes should
18 not be considered any more reliable than someone
19 else's memory. Someone else's memory should be
20 considered just as reliable as the notes that may have
21 been taken by a fellow juror.

22 Also, I would instruct you that during the
23 course of your jury service, please do not blog about
24 your jury service. Please do not make any mention of
25 your jury service on any social networking site.

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1 There are so many now, I really have lost track. When
2 they got to Vine and all that, I just admitted to
3 myself that I'm a dinosaur and that I have very little
4 interest in social media. But I recognize that a lot
5 of people do and that what you think may be an
6 innocent comment on a social networking site -- you
7 would be amazed the people, during the day, that troll
8 those sites and will call the jury coordinator and say
9 that you made a comment on your site. Somebody that
10 doesn't even know you will call us and say, so-and-so
11 made a comment on Instagram or did a video on Vine or
12 made a comment on facebook, and I understand they're
13 on jury duty. And that requires us to go through a
14 whole other process. So I have found that the best
15 course is just not to make any comment because words
16 are always subject to interpretation. And so it's
17 best just not to do that during your jury service.

18 It is your added duty, Madam Forelady, to write
19 out the jury's verdict and write out any questions
20 that the jury may have during its deliberations. But
21 I'll give you further instructions regarding that at
22 the conclusion of the case.

23 Ladies and gentlemen, the foreperson is simply
24 an administration function. That person fills out the
25 verdict form and writes out any questions that you may

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Striking of the Jury
August 12, 2014

1 have during jury deliberation. That person does not
2 have any greater vote or voice than any other juror.
3 And it's purely a random process that the Court
4 employs in foreperson selection so that a cross-
5 section of the community is represented. Again, I
6 emphasize they don't have any greater vote or voice
7 than you do.

8 In order to preserve everyone's rights, I'm
9 going to give the parties the opportunity to take
10 exception to anything that the Court has said by way
11 of opening instruction.

12 Any exceptions from the State?

13 MR. BELL: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: No, Your Honor.

16 THE COURT: Ladies and gentlemen, I would ask
17 that you give the attorneys your undivided attention
18 in opening argument.

19 The State may proceed.

20 MR. BELL: Thank you, Your Honor. May it please
21 the Court?

22 THE COURT: Yes, sir.

23 MR. BELL: Mr. Stevens.

24 - - -

25 - - -

State v. Tykeem May
Opening Statement by Mr. Bell
August 12, 2014

OPENING STATEMENT

1
2 MR. BELL: Madam Forelady, ladies and gentlemen
3 of the jury, the lure of easy money, assuming taking a
4 rifle and going to a convenience-store business and
5 robbing it is easy money, is why we're here this
6 afternoon now, since we started this morning. That's
7 what this case is about, ladies and gentlemen.

8 Back on September 8th of last year, 2013, at the
9 Keg, which is a business located at John C. Calhoun
10 and Bleakly Street in the city of Orangeburg, an
11 individual who had on a cap, had on something covering
12 his face, red sunglasses, went in with a rifle,
13 assault type rifle, and robbed the Keg on a Sunday --
14 early Sunday afternoon, back then. Robbed them of
15 about \$200 and then went away.

16 What the State's case will show you, ladies and
17 gentlemen, is that through the investigation of the
18 Orangeburg Department of Public Safety, they were able
19 to identify a suspect and then accumulate evidence
20 that pointed at this man, Tykeem May, seated at the
21 table, committed that armed robbery. And that is what
22 he's charged with, armed robbery and the possession of
23 a weapon during the commission of a violent crime.
24 And that's why we're here today, the trial of that
25 case.

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1 Ladies and gentlemen, as you heard earlier, my
2 name is Harrison Bell, and along with Ashley Cornwell
3 -- we work for the solicitor's office. We're the
4 prosecutors in South Carolina. It is our job and it
5 is our honor, our duty, to prosecute criminal cases
6 against people that have been charged with crimes. It
7 is also part of our job, and it is part of our burden
8 of proof, that we are required to prove a person
9 guilty of a crime that he is charged with because it
10 is a fundamental concept of law in South Carolina and
11 of the United States that Mr. May, as he is seated, is
12 innocent until the State proves him guilty beyond all
13 reasonable doubt. And that is our job and that's what
14 we will do. As you heard from the judge, she said
15 that you will hear evidence and witnesses to do that.
16 And that is what we're here to do. We will present
17 testimony from the stand, we will present exhibits,
18 photographs, and other items of evidence to prove our
19 case against Mr. May.

20 And, remember, we must prove our case beyond all
21 reasonable doubt. Which I think partly is defined in
22 our law as it leaves a jury seeking the truth, firmly
23 convinced of the defendant's guilt. Reasonable doubt
24 is not a doubt -- a hundred-percent doubt. It is not
25 doubt beyond a shadow of a doubt. The State is not

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1 required to go that far, because there's nothing
2 perfect in this life except death, and some people
3 would say taxes. But there's only one -- I call it
4 one certain in life, and that's death. Otherwise,
5 everything is open to interpretation and speculation.
6 And that's why our standard is beyond a reasonable
7 doubt.

8 Ladies and gentlemen, our case will show you
9 that after that day in September 8th, that detectives
10 with the Orangeburg Department of Public Safety were
11 able to identify a suspect, Mr. May, and they
12 furthered their investigation and they were able to
13 find evidence that shows that Mr. May was the person
14 that committed the armed robbery on that day.

15 Now, as I stated, and Judge Jefferson told you,
16 as well, she is the judge of the facts -- excuse me --
17 judge of the law in this case. What she says about
18 the law -- you have just taken an oath that says you
19 must follow the law as she gives it to you. What you
20 think about the law, whether you think the law is bad,
21 good, terrible, or whatever, cannot enter into it
22 because you have sworn that oath to follow the law.

23 But she's not the only judge in the courtroom.
24 I think as she stated, as well, you are judges, as
25 well, individually and together. You are the sole

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1 judges of the facts in this courtroom. Nobody can
2 tell you how to find those facts. Judge Jefferson
3 can't tell you how to find those facts, I can't tell
4 you how to find those facts, the defense can't tell
5 you how to find those facts. That is solely up to
6 you.

7 The question is how do you do that? What do you
8 do? What's your job? Well, your job, at the end of
9 this case we'll ask you to render a verdict in this
10 case based on all the testimony you hear from the
11 stand and any and all exhibits that may be presented
12 to you during the course of this trial.

13 Now, you're probably asking, well, testimony,
14 how do I tell if somebody is lying or not lying? I
15 wish I could tell you how to do that. I can't.
16 Nobody can. What we can suggest to you, ladies and
17 gentlemen, is that you do as you do in everyday life
18 when you're talking to friends, family, even
19 strangers, about how they're talking to you and how
20 they act and, as Judge Jefferson said, their demeanor.
21 You can usually tell if somebody is telling you a lie
22 or not.

23 And that's all we ask you to do here, ladies and
24 gentlemen. All we're asking you to do is find the
25 truth in this case from the facts that are presented

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1 to you -- it's not a hard job -- because at the end,
2 you'll take these facts that you'll find during the
3 course of this trial, you'll take the law that she
4 charges you at the end of the trial, and you'll meld
5 those together to reach a verdict, has the State given
6 you the facts that prove the charges and each and
7 every element.

8 Now, as I stated, armed robbery -- he's charged
9 with armed robbery. Mr. May is charged with armed
10 robbery, and possession of a weapon during the
11 commission of a violent crime. I'll tell you a little
12 bit what armed robbery is. Basically, what the
13 definition of armed robbery is in our law is stealing
14 or larceny. Larceny is the taking of goods or
15 property of another with the intention to deprive them
16 permanently thereof. That's the legal definition.
17 But it's stealing. Taking those by force and
18 intimidation, that makes it robbery. The stealing by
19 force and intimidation makes it robbery. And if a
20 person is doing that force and intimidation while
21 armed with a deadly weapon, that makes it armed
22 robbery. So we must prove that there was a taking, a
23 stealing, by force and intimidation and that the
24 person was armed with a deadly weapon at the time.
25 Those are what the State must prove to you, and that

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1 that individual is the person that did it.

2 As to the possession of a weapon, well, if you
3 find that the State has proven its case as to armed
4 robbery, then you consider possession of a weapon
5 during the commission of a violent crime. Which
6 basically says you either have in your possession a
7 weapon -- which a rifle would be a weapon during the
8 commission of a violent crime. Which in South
9 Carolina, armed robbery is defined as a violent crime
10 by statute. But if you were to find the State did not
11 prove its case, you wouldn't even have to worry about
12 the second charge. The armed robbery is the main
13 charge, and the other one goes with it.

14 Now, ladies and gentlemen, I don't anticipate
15 this case to be long, not long and drawn out, not like
16 you see on TV, been going on weeks and weeks.
17 Hopefully, it will be Thursday at the latest that
18 we'll finish this case. Doesn't mean it's not
19 important. It's important to the defendant because
20 his jeopardy is in your hands, but it's also important
21 to the State and to the proprietors of the Keg and to
22 our community at large that we enforce our laws when
23 somebody violates those laws. And that's what the
24 State is concerned about, as well.

25 Now, ladies and gentlemen, again, all I do --

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1 all I want to do is ask you to listen carefully. And
2 this is not going to be like TV, as Judge Jefferson
3 told you first thing this morning. I don't believe
4 anybody is going to jump up in the back of the
5 courtroom and say, I did it. We're not going to
6 finish this case in an hour plus commercials. This is
7 real life. And so I ask you to take it as real life
8 and not as TV.

9 Again, ladies and gentlemen, the State will show
10 you in the end sufficient evidence and facts to find
11 the defendant, Tykeem May, guilty of both charges,
12 armed robbery and possession of a weapon during the
13 commission of a violent crime. Thank you.

14 THE COURT: You may proceed.

15 MR. STEVENS: Thank you, Judge. May it please
16 the Court?

17 THE COURT: Yes, sir. You may proceed.

18 MR. STEVENS: Solicitor.
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OPENING STATEMENT

1
2 MR. STEVENS: Inconsistencies are reasonable
3 doubts, and there are inconsistencies in the evidence
4 in this case.

5 At the time of September 8th, 2013, Tykeem May,
6 my client, had not just one job but two. You're going
7 to hear that he had a job at Dollar General and you're
8 also going to hear that he had another job at TKL
9 Securities. Inconsistencies in this case.

10 You're also going to hear that on the date that
11 the Keg was robbed, Tykeem May was actually with his
12 girlfriend, Ms. Emonie Ford. They went to Walmart
13 together, went shopping. They went to Sonic together.
14 They ate. They came home together. We get
15 inconsistencies with the State's case.

16 Now, the State is going to produce witnesses and
17 other types of evidence, as well, but the evidence of
18 the identity of the robber is going to be based on
19 circumstantial evidence. And to the extent the State
20 relies upon circumstantial evidence, the circumstances
21 must be consistent with each other. And, yet, there
22 are inconsistencies in the State's evidence.

23 You're going to see -- you're going to see that
24 there's no true identification of Tykeem May by the
25 clerk, even when they actually allegedly developed a

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1 suspect. You're not going to see any CSI proof like
2 DNA or footwear impressions or tire impressions from
3 the State. It's all circumstantial. And there are
4 inconsistencies in the State's case, and
5 inconsistencies are reasonable doubts.

6 Now, me, along with my co-counsel, Doug Mellard,
7 we represent Tykeem May. And we're glad to. We truly
8 are. What we want you to do is also pay attention to
9 the witnesses, pay attention to the evidence, and pay
10 attention to the law, the law regarding circumstantial
11 evidence and the law regarding reasonable doubt.
12 Reasonable doubt. Sometimes that would be doubt that
13 a reasonable -- would cause a reasonable person to
14 hesitate to act. And inconsistencies are reasonable
15 doubts.

16 At the end of this case we're going to have a
17 chance to talk again and we're going to ask you to
18 apply the law, and the law of reasonable doubt and the
19 law of circumstantial evidence. Because when you do,
20 we are confident you will find what we do, that Tykeem
21 May is not guilty of armed robbery and he is not
22 guilty of a possession of a firearm during the
23 commission of a violent offense. Thank you.

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, we're going to take advantage of this break

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1 in testimony to take our lunch recess.

2 During the break, again, I emphasize that you
3 should not discuss this case among yourselves or with
4 anyone else. Please do not allow yourselves to be
5 exposed to any media coverage and please don't have
6 any contact with anyone in or about the courthouse
7 when you return. And your caretaker will show you how
8 to come directly back to your jury room.

9 We're going to resume at two o'clock. I have
10 some other cases that I need to dispose of, that are
11 unrelated to this case, before we can all go to lunch.
12 That will probably take us until about one o'clock.
13 So we'll resume at 2:00, because I have to give the
14 staff adequate time, of course, to refresh themselves
15 and have lunch as well.

16 I hope y'all have a good lunch. And we'll see
17 you at two o'clock. If you would leave your notepads
18 in your seats.

19 [Whereupon, the jury exits the courtroom at
20 12:39 p.m.]

21 THE COURT: Is there anything before we break
22 for lunch? From the State?

23 MR. BELL: No, Your Honor.

24 THE COURT: None from the defense, Judge.

25 THE COURT: Have a great lunch. I'll see y'all

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1 at 2:00.

2 MR. STEVENS: Thank you, ma'am.

3 THE COURT: You're welcome.

4 Mark that as a Court's Exhibit for me.

5 [Court's Exhibit Number 1 is marked by the court
6 reporter]

7 [Whereupon, Court's Exhibit Number 2 is marked
8 by the court reporter]

9 [Whereupon, a recess is taken from 12:40 p.m. to
10 2:04 p.m.]

11 THE COURT: Is the State ready to proceed?

12 MR. BELL: The State is ready.

13 THE COURT: Is the defense ready to proceed?

14 MR. STEVENS: We're still getting our client.

15 THE COURT: That's fine.

16 Now, while we're waiting on Mr. May, I need to
17 advise you both that I do not take speaking
18 objections, which means if you have an objection, I
19 will ask you the basis of that objection and you
20 should be able to succinctly state that for me,
21 whether it be leading, pitting, relevance. There are
22 a myriad of objections that could be raised. I do not
23 take argument unless I needed it in aid of making a
24 decision. So if I need argument, I will excuse the
25 jury for that purpose. Otherwise, I'll make a

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1 contemporaneous ruling.

2 Any questions from the State?

3 MR. BELL: None from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. STEVENS: No, ma'am.

6 THE COURT: All right. Are we ready to proceed?

7 MR. BELL: The State is ready, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. STEVENS: The defense is ready.

10 THE COURT: Who is the State's first witness?

11 MR. BELL: Quantavious Montgomery.

12 THE COURT: Where is he?

13 MR. BELL: He is out in the hall.

14 THE COURT: You need to get him. I don't want
15 to have to wait.

16 You can go ahead and get the jury now.

17 THE BAILIFF: Yes, Your Honor.

18 THE COURT: Thank you.

19 [Whereupon, the jury enters the courtroom at
20 2:05 p.m.]

21 THE COURT: Ladies and gentlemen, I hope that
22 you-all had a pleasant lunch recess. The sky
23 certainly opened up, didn't it, without any warning.
24 I heard that on the roof and I thought, is that rain,
25 it was just sun shining a minute ago. But I'm glad

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1 everybody has arrived safely.

2 We're now going to resume with testimony. And I
3 would ask that you give the attorneys your undivided
4 attention.

5 You may call your witness. The State may
6 proceed.

7 MR. BELL: Thank you, Your Honor.

8 If it please the Court, the State would call
9 Quantavious Montgomery to the stand.

10 THE COURT: Sir, if you would come to the stand
11 and be sworn.

12 [Whereupon, Mr. Montgomery comes forward]

13 THE CLERK OF COURT: Would you please place your
14 left hand on the Bible and raise your right hand,
15 please.

16 [Whereupon, Mr. Montgomery is duly sworn by the
17 clerk of court as follows: do you hereby swear or
18 affirm that the evidence you shall present to the
19 Court will be the truth, the whole truth, and nothing
20 but the truth, so help you God]

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you. You may have a seat.

23 [Whereupon, Mr. Montgomery takes the witness
24 stand]

25 THE CLERK OF COURT: Please state your name for

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1 the record and spell your last name.

2 THE WITNESS: Quantavious Montgomery.

3 THE CLERK OF COURT: Spell your last name.

4 THE WITNESS: Spell my last name? M-O-N-T-G-O-
5 M-E-R-Y.

6 THE COURT: You may proceed.
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Quantavious Montgomery
Direct Examination by Mr. Bell
August 12, 2014

1 QUANTAVIOUS MONTGOMERY,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Mr. Montgomery, are you employed?

7 A. Yes. I'm the manager.

8 Q. Manager of what?

9 A. The Keg.

10 Q. And where is the Keg located?

11 A. Down to [REDACTED] John C. Calhoun.

12 Q. In the city of Orangeburg?

13 A. Yes, sir.

14 Q. Do you do anything else besides work?

15 A. I go to school down here.

16 Q. Where do you go to school?

17 A. South Carolina State. I'm a graduate. I'm in
18 grad school right now.

19 Q. How long have you been working at the Keg?

20 A. It'll be a year this month.

21 Q. This is August.

22 A. Yes, sir.

23 Q. So you started in August of 2013?

24 A. Yes, sir.

25 Q. And I want to direct your attention to September

Quantavious Montgomery
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1 of 2013, September 8th. Do you recall something happened
2 to you that day?

3 A. That's when the store got robbed, on that
4 Sunday.

5 Q. Okay. And you were working at the Keg that
6 Sunday?

7 A. Yeah. Yes, sir.

8 Q. Was anybody else working with you?

9 A. On sundays there's only one person because you
10 can't sell beer on sundays. So there's just one person.

11 Q. And what do y'all sell on Sunday?

12 A. Lottery, cigarettes, tobacco products, snacks,
13 stuff like that.

14 Q. Okay. What time do you open on Sundays? What
15 time did you open in --

16 A. We open at noon, like right when people get out
17 of church. Yes, sir.

18 Q. So you open at noon. And how long are you open
19 on Sunday?

20 A. About like six hours, because I ain't going to
21 be there all day.

22 Q. So back on September 8th, which was a Sunday,
23 2013, you opened at noon?

24 A. Yeah.

25 Q. And you closed at -- well, you usually closed at

Quantavious Montgomery
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1 6:00 back then?

2 A. Yes, sir.

3 Q. Now, you stated that you -- the store got
4 robbed. Do you recall about what time that was?

5 A. I don't remember the time. I just remember I
6 was outside.

7 Q. Okay. But it was after noon?

8 A. Yeah. I know it was after I opened the door.
9 So, yeah, after noon.

10 Q. Can you tell the jury what happened?

11 A. I was standing outside, because on Sundays
12 business is slow. And I had just started working there.
13 A lot of customers, they didn't really understand that the
14 store was opened on Sunday so you have to be outside or
15 have the door open to let people know, you know, that
16 we're open.

17 So I'm outside. Parked my car on the side of
18 the store and I'm just outside, just sitting down outside
19 on the wall, like what the tape shows or whatever. And I
20 just noticed somebody walking to my left. I was leaning
21 down like this. And somebody was coming this way. And I
22 noticed like a gun. So I'm just like, oh, well, it's time
23 for me to run. And then by the time I kind of ran to the
24 corner I heard a noise like, hey, you know. I didn't want
25 to take any chances so I just turned around, went in the

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1 store, gave -- focused on the little registers, in the
2 bag, gave the money away. Because my boss taught me if we
3 get robbed, it's not worth your life so just -- you know,
4 just get the money out and just keep moving.

5 Q. And how many registers were there?

6 A. There's two registers in the Keg. But mainly
7 just one on Sundays because we don't make much money.

8 Q. Now, you said you saw a gun. What kind of gun
9 did you see?

10 A. It looked like a -- it was an AK-47.

11 Q. Can you describe it as best you can?

12 A. Assault rifle that you see in a lot of movies
13 and -- brown and -- I just saw it like from this angle
14 when he walked past me.

15 Q. Mr. Montgomery, I'm going to show you what's
16 been marked State's 17 for identification, that and this
17 clip. Does this look like the gun that you saw on
18 September 8th, 2013?

19 A. Yeah.

20 If you flip it this way, it definitely would
21 look like -- like flip it downward.

22 Q. Like this?

23 A. Yeah. Like this way --

24 Q. With that in there? That looks like the gun
25 that was displayed to you?

Quantavious Montgomery
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1 A. Yeah.

2 Q. And then once he took the money, what happened?

3 A. He left. And I locked the store and then called
4 the police.

5 Q. And did the police come?

6 A. Yeah.

7 They came like say about fifteen -- fifteen
8 minutes later. Actually, I first called my boss first and
9 then I called the police.

10 Q. Who did you call?

11 A. Brother Graham. Well, my boss, Henry Graham.

12 Q. And then you called the police?

13 A. Yes, sir.

14 Q. And they came?

15 A. Yeah.

16 Q. And did you give them a statement?

17 A. Yeah.

18 I wrote this right here. Flashback. Yeah, it's
19 right here.

20 Q. And talking -- as part of talking to the police,
21 did you give them a description of the person that robbed
22 you, as best you can remember?

23 A. Yeah.

24 At the time I remember like when I was coming
25 back in the store, all I remember is the person hollered

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1 to me. They had dreds. And I remember they had like a
2 mask on so you couldn't see their face. And I wasn't
3 really trying to look, anyway.

4 Q. Have any other coverings about the body?

5 A. Not really. I just know -- oh. He had gloves.
6 I do remember gloves. I don't know what color they were,
7 though.

8 Q. Did he say anything to you during all of this?

9 A. I mean, it's like, hurry up, get the money, get
10 the money in the bag, and all -- and just flipping --
11 flipping money to the bag.

12 Q. Now, let me ask you this. As working at the
13 Keg, does the store -- is it a store by itself? Let me
14 ask you that.

15 A. Sir?

16 Q. The Keg: is it a store by itself, or is there
17 anything near it or what?

18 A. Well, on Sundays it's definitely a store by
19 itself. But during the week it's next door to a liquor
20 store, Green's Package Store or whatever. But it's its
21 own single store, but it's connected right next to a
22 liquor store.

23 Q. And as working there as a manager, are you aware
24 of any security systems that the Keg has?

25 A. I just know like when I first worked there,

Quantavious Montgomery
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1 there's only one way in and one way out. The first thing
2 I asked them was, well, if something go down, what
3 happens. And they told me about the cameras that's all
4 around the store. And then the liquor store owns the -- I
5 guess some other cameras that -- the corner behind the
6 store and on the sides. I didn't even know my car was
7 blocked in during that day.

8 Q. And since that time, have you seen a video of
9 what happened that day --

10 A. Yeah.

11 Q. -- that were taken from those cameras?

12 A. Yeah. They showed it to me.

13 Q. And let me show you what's been marked as
14 State's 22 for identification and ask if I've shown you
15 this disk that has a little M on it.

16 A. It was a surveillance -- yeah.

17 Q. And the video that you saw, does that accurately
18 reflect what went on when you were present?

19 A. Yeah.

20 I was getting robbed at the store, putting money
21 in the bag, and then that was it. Those are the main
22 points --

23 Q. And that accurately reflects the person that
24 robbed you and everything that he had?

25 A. Yeah.

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1 MR. BELL: Your Honor, we would offer State's 22
2 into evidence.

3 THE COURT: Any objection?

4 MR. STEVENS: Simply that we raise our prior 901
5 argument.

6 THE COURT: Actually, the objection is
7 foundation. You need to lay the appropriate
8 foundation that it's kept in the ordinary course of
9 business.

10 Will be marked for ID only at this point.

11 MR. BELL: Okay.

12 THE COURT: He can authenticate it as to if it's
13 an accurate depiction, but you still have to establish
14 that it was kept in the ordinary course and how it was
15 kept.

16 MR. BELL: And I'll go -- I'll go --

17 THE COURT: And the objection on authentication
18 is overruled. Videos are self-authenticating unless
19 you have some good-faith evidence that it's been
20 hypothecated in same way. You may proceed.

21 Q. [Mr. Bell] But the video that you saw, the
22 video that's contained on this disk, accurately reflects
23 what went on that day; is that correct?

24 A. Yeah. Yes, sir.

25 Q. And are you aware that the cameras are on?

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1 A. Yeah. The cameras are on 24/7, so --

2 Q. And that's your security system. That's what
3 you do.

4 Do you have anything to do with the camera
5 system?

6 A. No.

7 Matter of fact, after that robbery, which was
8 the first robbery, that's when I got the code for the
9 camera or whatnot.

10 Q. But as far as you know, the cameras are kept on
11 in the normal course of business and they record
12 everything going on --

13 A. Uh-huh.

14 Q. -- 24/7?

15 A. Uh-huh.

16 MR. BELL: Your Honor, we would then now offer
17 it.

18 THE COURT: Overruled.

19 He has not established that he's the person in
20 charge of that or has that responsibility for the
21 business.

22 MR. BELL: Okay.

23 THE COURT: ID only, subject to foundation.

24 MR. BELL: Thank you, Your Honor.

25 Q. [Mr. Bell] And as I said, you gave a

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1 description to the police?

2 A. Sir?

3 Q. Did you give a description of the person to the
4 police?

5 A. Yes.

6 Q. What kind -- what was the description you gave
7 the police?

8 A. I told them I remember that he was tall, had
9 dreds, and a mask on.

10 Q. Okay. Was he --

11 A. And that he was -- that he was lighter-skinned
12 than me, from what I looked at.

13 Q. Was he a white male or a black male or a --

14 A. I would say a lighter-skinned than I am.

15 Q. Okay. But was he a white male or a black male
16 or --

17 A. Oh. Black.

18 Q. -- a Japanese male or --

19 A. Black.

20 Q. Okay. So he was a light-skinned --

21 A. He was just lighter than me.

22 Q. And you stated that you saw that he had dreds
23 on?

24 A. Yeah.

25 I saw -- I just saw dreds from the mask.

Quantavious Montgomery
Direct Examination by Mr. Bell
August 12, 2014

1 Everything was covered up so -- and I wasn't trying to
2 look at no face. So I was just -- I just saw like dreds
3 coming from the little street when I was coming in from
4 the video. So, yeah.

5 MR. BELL: Thank you, Mr. Montgomery. Please
6 answer any questions that Mr. Stevens may have for
7 you.

8 THE COURT: You may proceed.

9 MR. STEVENS: Thank you, Judge. May it please
10 the Court?

11 THE COURT: Yes, sir. You may proceed.

12 MR. STEVENS: Good afternoon, Mr. Montgomery.
13 My name is Breen Stevens. I represent the defendant,
14 Tykeem May.

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Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

CROSS-EXAMINATION

BY MR. BELL:

Q. What I would like to do first is ask you some questions about September 8, 2013. All right?

A. Oh. Okay.

Q. So you were working that day?

A. Yes, sir.

Q. And that was at the Keg?

A. Yes.

Q. And you actually saw the robber?

A. I was in the robbery.

Q. You were in the robbery. Okay.

A. So, yeah, I guess I did see him, too.

Q. You saw a gentleman walk on up?

A. Yeah. From a first-person perspective.

Q. Okay. And his face was covered?

A. Yeah. I didn't see -- I didn't see the face.

Q. And the eyes were covered, too?

A. Yeah. Everything was covered up.

Q. And his head was covered, too; right?

A. Yeah, besides like the little dreds I saw.

Q. Now, you said when you first walked on up you leaned back?

A. What do you mean when I first walked up?

Q. Well, no, no. Not when you --

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 A. I was already like leaning back right here and I
2 seen -- when I was looking at my phone -- all I had was a
3 flyswatter, my phone, and like keys. And I just noticed
4 somebody was coming this way out of my left-eye angle. I
5 just noticed the gun this way. That's when I leaned back
6 and I looked up.

7 Q. So you just leaned back?

8 A. Yeah.

9 Q. And then after that you ran?

10 A. Yeah.

11 I was like -- because he was going inside the
12 store. I guess he thought I was a regular person. So I
13 thought, well, here's my chance, time to go.

14 Q. And so when you ran, you ran in the direction
15 away from the store?

16 A. Yeah.

17 Q. And you passed --

18 A. Almost -- basically passes the -- I think from
19 the video it shows me almost going to the fence, like past
20 through the fence, but I all-the-way turned. I would have
21 been gone. So --

22 Q. So you passed up a little alleyway?

23 A. Yeah.

24 Q. And that's where your car was parked?

25 A. Well, my car was parked farther down the side of

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 the store.

2 Q. The side of the store?

3 A. Yeah.

4 Q. I see.

5 And you didn't see any of the cars over there,
6 either?

7 A. No, sir. But I didn't go that direction.

8 Q. Your car is the red car?

9 A. Yeah.

10 It was a Nissan Honda -- I mean, Nissan Maxima.

11 Q. And you didn't see any of the cars over in that
12 direction?

13 A. No, sir.

14 Q. Not a white Dodge?

15 A. Huh-uh.

16 I didn't look that way. I was walking -- or
17 running towards like the Hot Spot.

18 Q. So you did look that way?

19 A. No, I didn't look that way. Like when I was
20 running, I was running straight from the --

21 Q. I got you.

22 A. -- from where I'm at -- from here's the Keg,
23 here's my car over here. I can't see my car because it
24 was blocked from the store. And here's the fence.

25 Q. I got you.

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 A. I run to the fence that way to, you know --

2 Q. You turned around and you walked on back?

3 A. Huh-uh. Well, when I turned around, yeah. I
4 turned around this way.

5 Q. Okay. And passed that little space between the
6 Keg and the fence?

7 A. Yeah.

8 But I didn't see like my car or the white
9 car.

10 Q. Okay. So you didn't see --

11 A. I didn't look that way.

12 Q. I got you.

13 Now, you were the only person working that day?

14 A. Yes, sir.

15 Q. And at that time, there was no one else inside
16 the store?

17 A. At that time, no.

18 Q. Now, eventually the robber left?

19 A. Yes, sir.

20 Q. On foot?

21 A. Well, he walked out the store, yeah. Because I
22 didn't look after to see where he was going. I just
23 locked and then called the police.

24 Q. And it was in the direction of the Hot Spot?

25 A. Sir?

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 Q. The direction the robber left.

2 A. I have no idea the direction he left after he
3 left out of the store.

4 Q. You saw him leave on foot?

5 A. Yeah, he was on foot out of the store.

6 Q. And you waited?

7 A. No.

8 I waited -- I waited for like five minutes to
9 lock the store from the inside. I didn't go look at the
10 cameras. I didn't look at the door or anything like that.

11 Q. So you did lock the door?

12 A. Yeah.

13 Q. And that was the door to the store.

14 And you said you didn't follow him out?

15 A. No.

16 Q. And you made a phone call; right?

17 A. Yeah.

18 Q. You called the owner?

19 A. Yeah.

20 Q. And you made another call; right?

21 A. Yeah.

22 Q. You called 911?

23 A. Yeah.

24 Q. And then the police arrived?

25 A. Yeah.

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 Q. And you gave a statement; right? I'm sorry. I
2 need an answer.

3 A. Oh. Yes, sir. Yes, sir.

4 THE COURT: Sir, you need to say yes or no.

5 A. Yes.

6 Q. [Mr. Stevens] And you gave that statement to an
7 officer?

8 A. Yes.

9 Q. And you said the robber was taller than you?

10 A. Yes.

11 Q. And in your statement you told them he was from
12 five eleven to six foot?

13 A. Yeah. From my perspective.

14 Q. Now, you also said that he wore a gray hoodie?

15 A. I think I did, yes, sir.

16 Q. All right. And you also said that he wore
17 gloves?

18 A. Yeah, I do remember gloves.

19 Q. But you did not see the robber arrive in a white
20 Dodge Caliber?

21 A. No, sir.

22 Q. And you didn't see anybody get out of a white
23 Dodge Caliber?

24 A. No, sir.

25 Q. And you didn't see anybody get into a white

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1. Dodge Caliber?

2. A. No, sir.

3. Q. And you didn't see anybody leave in a white
4. Dodge Caliber?

5. A. No, sir.

6. MR. STEVENS: Court's indulgence?

7. THE COURT: Uh-huh.

8. MR. STEVENS: Thank you, sir. No further
9. questions.

10. THE COURT: Any redirect?

11. MR. BELL: Yes, Your Honor.

12. THE COURT: You may proceed.

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Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Montgomery, you stated that your -- where
was your car parked?

A. On the left side of the store.

Q. Let me show you what's been marked State's 1 for
identification and ask if you can identify that picture.

A. Yeah. The right side of the store.

Q. And this is a picture of what?

A. Oh. Well, who do I like -- who do I like turn
it in to?

Q. No. Just tell me what this is a picture of.

A. This is a picture of the Keg, and this is a
picture of my car.

Q. And that's where your car was on September 8th,
2013?

A. Yes, sir.

MR. BELL: Your Honor, we would offer this as
State's 1.

THE COURT: Any objection?

MR. STEVENS: No objection, Judge.

THE COURT: Marked and admitted, without
objection, as State's 1.

[Whereupon, State's Exhibit Number 1 is admitted
into evidence by the Court]

Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

1 Q. [Mr. Bell] Let me show you what's been marked
2 as State's 2 for identification and ask if you can
3 identify that picture.

4 A. That's the back of the Keg.

5 Q. Okay. And there's a vehicle there. Was that
6 vehicle --

7 A. The only vehicle is my vehicle.

8 Q. That's your vehicle.

9 A. Yes, sir.

10 Q. That's what I'm asking you.

11 A. Oh. Yeah, that's it.

12 Q. Okay. That's your vehicle?

13 A. Uh-huh.

14 Q. And that's where it was parked on September 8th,
15 2013?

16 A. Yes, sir.

17 Q. That's how it was on September 8th, 2013?

18 A. Yes, sir.

19 MR. BELL: Your Honor, we would offer this as
20 State's 2 into evidence.

21 THE COURT: any objection?

22 MR. STEVENS: No objection.

23 THE COURT: Number 2 marked and admitted without
24 objection.

25 [Whereupon, State's Exhibit Number 2 is admitted

Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

1 into evidence by the Court]

2 Q. [Mr. Bell] Let me show you what's been marked
3 as State's 3 and ask if you can identify that.

4 A. That's the back of the liquor store. Yeah.
5 They're the store that's got the cameras like this.

6 Q. Okay. And then where is the Keg? Can you show
7 the Keg in this relation?

8 A. In the left part. Got a drain and stuff right
9 there.

10 MR. BELL: We offer State's 3 for
11 identification.

12 THE COURT: Any objection?

13 MR. STEVENS: No objection, Judge.

14 THE COURT: Marked and admitted without
15 objection.

16 [Whereupon, State's Exhibit Number 3 is admitted
17 into evidence by the Court]

18 Q. [Mr. Bell] Now, Mr. Montgomery, when you were
19 out front looking at the -- did any vehicles pull up out
20 front?

21 A. No. I was out there for about a good ten
22 minutes.

23 Q. And is there any other parking around that
24 area?

25 A. I mean, yeah, like a little lot with a Kim's

Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

1 this and that. That's the only lot where other parking
2 could be.

3 Q. Is there anything in the rear of the buildings?

4 A. I don't believe so.

5 Q. Is there a parking area back there?

6 A. I don't think so.

7 Q. But if there was a vehicle back there, you
8 wouldn't have been able to see it, would you?

9 A. No.

10 Q. Or if there was a vehicle on the side of the
11 building behind your car, you wouldn't have been able to
12 see it, would you?

13 A. No. We don't have them cameras.

14 MR. BELL: Thank you, Mr. Montgomery.

15 THE COURT: Any objection to the witness being
16 excused? From the State?

17 MR. BELL: No, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: None, Your Honor.

20 THE COURT: Sir, you are excused.

21 [Whereupon, Mr. Montgomery is excused and exits
22 the witness stand]

23 THE COURT: You may proceed.

24 MR. BELL: The State would call Henry Graham.

25 THE COURT: Sir, if you would come in this

Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

1 direction to be sworn.

2 [Whereupon, Mr. Graham comes forward]

3 THE CLERK OF COURT: Would you please place your
4 left hand on the Bible and raise your right hand.

5 [Whereupon, Mr. Graham is duly sworn by the
6 clerk of court as follows: do you hereby swear or
7 affirm that the evidence you shall present to this
8 Court will be the truth, the whole truth, and nothing
9 but the truth, so help you God]

10 THE WITNESS: Yes.

11 THE COURT: Thank you. You may have a seat.

12 [Whereupon, Mr. Graham takes the witness stand]

13 THE CLERK OF COURT: Would you please state your
14 name for the record and spell your last name.

15 THE WITNESS: Henry Graham. G-R-A-H-A-M.

16 THE COURT: You may proceed.

17 MR. BELL: Thank you, Your Honor.

18 THE COURT: You're welcome.

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Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

HENRY GRAHAM,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Graham, how are you employed?

A. Self-employed.

Q. And what do you do as being self-employed?

A. Owner of the Keg.

Q. And how long have you owned the Keg?

A. About fifteen months now.

Q. And it's located where?

A. [REDACTED] John C. Calhoun.

Q. And are there any other businesses around
there?

A. Yes. There's an ABC store right next door.

Q. Do you own that?

A. No.

Q. Who owns that?

A. Marion Green.

Q. And do you have any business relationship with
Mr. Green?

A. Rent the building, that the Keg is located, from
Mr. Green.

Q. And do you recall last September 8th when your

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 business was robbed?

2 A. Yes.

3 Q. Mr. Montgomery, is he your employee?

4 A. Yes. He's the manager.

5 Q. And were you called to come down there?

6 A. Yes.

7 Q. And your business, do you have a security system
8 there?

9 A. Surveillance, yes.

10 Q. Video surveillance?

11 A. Yes.

12 Q. And what does that entail?

13 A. I think it's eight cameras located around the
14 building and inside the building.

15 Q. And do you maintain that or is that maintained
16 by somebody else?

17 A. We maintain it.

18 Q. Do you have access to the video that's fed
19 there?

20 A. I do.

21 Q. Now, on this particular occasion on September
22 8th, were you asked to access the video because of the
23 robbery?

24 A. Yes.

25 Q. Were you able to do it?

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 A. Yes.

2 Q. You were able to access the video?

3 A. With some help.

4 Q. With some help?

5 A. Right. I had to call the company that installed
6 it.

7 Q. Okay. And what company was that?

8 A. Blackwater Security.

9 Q. Okay. And do you deal with a particular person
10 there?

11 A. Yes. Don. And I can't remember Don's last
12 name.

13 Q. Donny Hall; would that be correct?

14 A. Donny. Donny Hall. You're right. Yeah.

15 Q. And he works on your video and maintains it, as
16 well?

17 A. Yes.

18 Q. And how do you -- do you keep the cameras on
19 twenty-four hours seven?

20 A. Yes.

21 Q. Do you have any -- you have access to it as the
22 owner; is that correct?

23 A. Yes.

24 Q. Does anybody else have access? Or did anybody
25 have access back in last September 8th? Any other

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 employee?
2 A. No.
3 Q. And did Mr. Hall have access to it?
4 A. Not unless he was let in the building. So I
5 would say no.
6 Q. But, I mean, when you called him he would go in
7 and --
8 A. Oh. Yes. Yes.
9 Q. -- maintain it or do whatever needed to be done?
10 A. Right. Yes.
11 Q. And did you -- it was on September 8th that the
12 video was taken, or was it another day, if you recall?
13 A. Taken by?
14 Q. The police. Or obtained by the police.
15 A. And I can't recall. It could have been that
16 day, yeah, but I can't recall.
17 Q. All right. Have you observed the video that day
18 of the robbery?
19 A. Yes.
20 Q. And the time stamps and all that and --
21 A. Yes.
22 Q. -- Mr. Montgomery being there?
23 A. Yes.
24 Q. Do you own the security of all the cameras
25 around, or just for the Keg inside and outside?

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 A. Just for the Keg.

2 Q. But you're aware there's other security --

3 A. Yes.

4 Q. -- around the perimeter, as well?

5 A. Yes.

6 Q. Now, on September 8, 2013, were you asked by the
7 police to determine if money was taken and if so, how
8 much?

9 A. Yes.

10 Q. And did you do that?

11 A. Yes.

12 Q. And how did you do that?

13 A. We pulled the register tape. We always keep a
14 certain amount in the cash register and then we pulled the
15 register tape to check the sales for that day.

16 Q. And did you give them some type of written
17 report reflecting what your loss was?

18 A. Yes.

19 Q. Let me show you -- well, I haven't marked this
20 one. Sorry.

21 THE COURT REPORTER: 25 for ID.

22 [Whereupon, State's Exhibit Number 25 is marked
23 by the court reporter]

24 Q. [Mr. Bell] Let me show you what's been marked
25 as State's 25 for identification and ask if that's the

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 report that you gave to police to figure out how much, if
2 any, money had been taken.

3 A. Yes.

4 Q. And what was the amount?

5 A. 281.65.

6 MR. BELL: Your Honor, we would offer this as
7 State's 25.

8 MR. STEVENS: Without objection, Judge.

9 THE COURT: Marked and admitted without
10 objection.

11 [Whereupon, State's Exhibit Number 25 is
12 admitted into evidence by the Court]

13 Q. [Mr. Bell] And that was a Sunday, wasn't it, on
14 September 8th?

15 A. Yes.

16 Q. What time do y'all open -- or did y'all open
17 back then on Sunday?

18 A. We opened at 12:00, closed at 6:00.

19 Q. 12:00 noon?

20 A. Uh-huh.

21 Q. I guess that's because you don't sell -- can't
22 sell alcohol on Sunday?

23 A. Right. Exactly.

24 MR. BELL: All right. Thank you, Mr. Graham.

25 Please answer any questions that Mr. Stevens may have

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 for you.

2 THE COURT: You may proceed.

3 MR. STEVENS: Thank you, Judge.

4 THE COURT: You're welcome.

5 MR. STEVENS: May it please the Court.

6 THE COURT: Yes.

7 MR. STEVENS: Good afternoon, Mr. Graham.

8 THE WITNESS: Hello.

9 MR. STEVENS: My name is Breen Stevens. I
10 represent the defendant, Tykeem May.

11 THE WITNESS: Right.

12 MR. STEVENS: Pleased to meet you.

13 THE WITNESS: Good to meet you, as well.

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Henry Graham
Cross-Examination by Mr. Stevens
August 12, 2014

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Now, you established pretty clearly you are the owner of the Keg; right?

A. Yes.

Q. Yes, sir.

And you owned it on September 8, 2013; right?

A. Yes.

Q. And you recall that day; right?

A. Right. Yes.

Q. You were first called by Montaveous -- I'm sorry -- Quantavious Montgomery?

A. Yes.

Q. And then you came to the store?

A. Correct.

Q. And that was in the afternoon?

A. Yes.

Q. You were the one that was robbed; right?

A. Yes.

Q. And you attempted to access the videos?

A. Right.

Q. But your password didn't work; right?

A. Did not work.

Q. So at that moment, at the time you were not able to access it?

Henry Graham
Cross-Examination by Mr. Stevens
August 12, 2014

1 A. Well, didn't know the password.

2 Q. I see.

3 So because of that, you weren't able to access
4 it; right?

5 A. Right.

6 Q. I got you.

7 I won't keep you here very long, sir. I just
8 want to make clear. You were not present there during the
9 robbery, were you?

10 A. No.

11 Q. Okay. So you did not personally witness the
12 robber?

13 A. No.

14 Q. That means you did not personally witness
15 whether the robber was on foot?

16 A. No.

17 Q. And you didn't notice whether the robber was
18 driving?

19 A. No.

20 MR. STEVENS: Thank you, sir.

21 No further questions, Your Honor.

22 THE COURT: Any redirect of the witness?

23 MR. BELL: No, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused?

Henry Graham
Cross-Examination by Mr. Stevens
August 12, 2014

1 MR. BELL: No, Your Honor.

2 THE COURT: From the State?

3 MR. BELL: Not at all.

4 THE COURT: From the defense?

5 MR. STEVENS: None, Your Honor.

6 THE COURT: Sir, you are excused.

7 THE WITNESS: Thank you.

8 MR. BELL: Thank you, Mr. Graham.

9 [Whereupon, Mr. Graham is excused and exits the
10 witness stand]

11 THE COURT: You may proceed.

12 MR. BELL: The State would call Donny Hall.

13 [Whereupon, Mr. Hall comes forward]

14 THE CLERK OF COURT: Please place your left hand
15 on the Bible and raise your right hand.

16 [Whereupon, Mr. Graham is duly sworn by the
17 clerk of court as follows: do you hereby swear or
18 affirm that the evidence you shall present to this
19 Court will be the truth, the whole truth, and nothing
20 but the truth, so help you God]

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you. You may have a seat.

23 [Whereupon, Mr. Hall takes the witness stand]

24 THE CLERK OF COURT: Please state your name
25 again for the record and spell your last name.

Henry Graham
Cross-Examination by Mr. Stevens
August 12, 2014

1 THE WITNESS: My name is Donny Hall, Jr. Last
2 name H-A-L-L.

3 THE COURT: You may proceed.

4 MR. BELL: Thank you, Your Honor.

5 THE COURT: You're welcome.
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Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

DONNIE HALL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Hall, how are you employed?

A. Right now I'm self-employed.

Q. And self-employed doing what?

A. Install closed-circuit television, which is
security cameras, for houses and businesses.

Q. Okay. And how long have you been self-employed
doing that?

A. Well, all together, eight years. I worked for
Blackwater for one year.

Q. And when did you work for Blackwater?

A. That was this past year. Stopped right around
in December.

Q. So it was basically December 2012 to 2013?

A. Yes, sir.

Q. And you've been doing security systems for how
long?

A. It's been right around eight, nine years. Yes,
sir.

Q. And what do you do with security -- I mean,
what --

Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

1 A. Everything. Basically, on my own, for my own
2 business, I basically install everything from the wiring
3 to the networking, installing the type of cameras they
4 want depending on, you know, how many TVLs they want. It
5 just really depends on what the customer is asking for at
6 the time.

7 Q. And what's a TVL?

8 A. Lines and resolution, basically. Television
9 lines.

10 Q. And that's like the 710 and 1080 --

11 A. Right.

12 Q. -- that we have on --

13 A. Yes, sir.

14 Q. -- the big-screen TVs and all that?

15 A. Yes, sir.

16 Q. Did you either -- as you're working for yourself
17 or with Blackwater, did y'all work with the Keg or have an
18 account with the Keg?

19 A. Yes, sir.

20 Q. And what about Green's Liquor Store?

21 A. I did that one, as well, yes, sir.

22 Q. You did both?

23 A. Uh-huh.

24 Q. And what did you do for that -- those two
25 businesses?

Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

1 A. Both of them I, you know, did all the wiring,
2 installed everything, installed the cameras, set
3 everything up for them.

4 Q. And do you do anything else besides -- do you
5 have any kind of continuing relationship with them?

6 A. Yes, sir.

7 I keep contact with them. But also, if they
8 need anything, they have my number to call me. Once I
9 install a system, they own the system. It's not like ADT
10 or anything like that where you actually pay a monthly
11 fee. If they need anything maintained or anything, they
12 call me and I come take care of it at the time. Or if
13 they have an event that happens, they call me and I
14 actually come and back up the system for them.

15 Q. And what do you mean by backing up the system?

16 A. I take the information off the hard drive inside
17 the DVR. It has a hard drive like a computer. And I take
18 the information off that, put it onto a jump drive and
19 then at that time it's up to whether -- you know, if they
20 want to take the jump drive or I can actually put it on a
21 disk for them.

22 Q. Now, specifically with the Keg and Green's
23 Liquor Store, is it one security system for the whole --

24 A. No, sir.

25 Q. -- both businesses?

Donnie Hall
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1 A. There's two separate -- there's one in the store
2 side and there's another one in the liquor store side.

3 Q. And what did -- what do these security systems
4 -- what do they entail?

5 A. On the store side -- they both have QC systems.
6 But on the store side, he actually has an eight-channel
7 system. And on the liquor store side, he actually has a
8 larger system but only eight cameras, which is a sixteen-
9 channel system.

10 Q. And what -- you said a Q --

11 A. It's a QC-QS. It's the type of DVR system that
12 they have.

13 Q. And how did they -- I mean, how did you install
14 what cameras go to the Keg and what cameras go to the --

15 A. Because of the way the store is divided in half
16 -- you know, the left side, if you're facing the back --
17 or if you're facing the front, say the left side is the
18 liquor store and the right side is what they classify as
19 the Keg. All the cameras on the right side are hooked to
20 the store portion; all the cameras on the left side are
21 hooked to the liquor store. Even when it comes to the
22 outside and the inside, they're separated. They're just
23 divided down the middle.

24 Q. Okay. Now, were you asked back last September,
25 back September 8th, to access the Keg's DVR system because

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1 of an incident?

2 A. Yes, sir.

3 Q. Do you recall when you were asked to do that?

4 A. I do not recall the exact date. I do recall
5 that I had to actually go there twice. Yes, sir.

6 Q. Okay. And who did you go there for?

7 A. Well, I was called and I came there for the
8 police department.

9 Q. Did you meet a police officer there?

10 A. Yes, sir.

11 Q. Do you recall who that was?

12 A. Mr. Dukes.

13 Q. And you said you went two times. Why did you go
14 two times?

15 A. Because we had to make sure on the footage,
16 because remember the times on those DVRs are off.

17 Q. And you've seen the video footage --

18 A. Yes, sir.

19 Q. -- is that correct?

20 A. Uh-huh.

21 Q. And you said that the times were off; is that
22 correct?

23 A. Yes, sir.

24 Q. How far were they off?

25 A. They both varied. They were off by a few hours.

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1 And I can't remember exact -- because it's been awhile. I
2 don't know exactly.

3 Q. And how did these systems keep time or date or
4 whatever?

5 A. What they do is when you initially set it up,
6 you can go in and manually set the time and the date. But
7 what happens is because it's not like a regular-based
8 thing where we come every month or something like that --

9 MR. STEVENS: Objection. 702.

10 THE COURT: It doesn't require specialized
11 knowledge. It's within the ambient of his what he
12 does for a living. He's established that he has a
13 foundational knowledge of how these systems operate
14 and that these are the systems he actually installed.
15 Overruled.

16 You may proceed.

17 Q. [Mr. Bell] Go ahead.

18 A. What happens is these systems, just like a hard
19 drive, you know, they need to shut down to reset
20 themselves. The reason for that is, you know, if you run
21 something too long and you never reset it, it eventually
22 starts to act up, especially hard drives. So we set them
23 to where every thirty days they actually reset themselves.
24 But in doing that, they actually -- there's nobody there
25 to actually go in and manually change the dates and times

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1 back. So that's why we have to -- when somebody calls us
2 for an event, that's why we have to look at what time it's
3 showing at that. And if they tell us like, well, it
4 happened last Tuesday at this time, we do the math from
5 where -- you know what I'm saying -- from where they were
6 off to make it -- find out where the footage is.

7 Q. And it took you going in there to realize that
8 the times were off; is that correct?

9 A. Yes, sir.

10 And the reason we have to do it twice is because
11 there is two systems in there. And so what we had on this
12 one -- and they were installed on different days. So
13 that's why where the time was off on this one, it was
14 different on the other one.

15 Q. So the times would be consistent on one system
16 but they may be different between the two systems?

17 A. Yes, sir.

18 Q. By minutes or hours or whatever --

19 A. It could be hours. It could even be days.

20 Q. Okay. Now, have you seen -- have you been shown
21 what's been marked State's 23?

22 A. Yes, sir.

23 Q. And that contains -- is what's on State's 23
24 video that you downloaded from the system at the Keg and
25 Green's Grocery?

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1 A. Yes, sir.

2 Q. And who did you turn those over to?

3 A. I turned those over to Mr. Dukes.

4 Q. And you gave kind of all the videos for a
5 specific or a certain time range; is that correct?

6 A. Yes, sir.

7 Usually they'll give me -- what we'll do is
8 we'll go two hours before and two hours after, just to
9 make sure that -- you know, in case somebody was coming
10 around before or after.

11 Q. And this video I'll show you just has very small
12 excerpts of different cameras; is that correct?

13 A. Yes, sir.

14 Q. It doesn't have the whole two hours --

15 A. It doesn't have the whole --

16 Q. -- or whatever?

17 A. Yes, sir.

18 Q. It's about six minutes.

19 And does that accurately reflect what you
20 downloaded and what is from those camera systems --

21 A. Yes, sir.

22 Q. -- that you downloaded back in September of last
23 year?

24 A. Yes, sir, it is.

25 MR. BELL: Your Honor, we would offer State's 23

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1 into evidence.

2 THE COURT: Any objection?

3 MR. STEVENS: No, Your Honor.

4 THE COURT: Marked and admitted without
5 objection.

6 State's 23? Is that correct?

7 MR. BELL: Yes, Your Honor, State's 23.

8 [Whereupon, State's Exhibit Number 23 is marked
9 by the court reporter]

10 [Whereupon, State's Exhibit Number 23 is
11 admitted into evidence by the Court]

12 MR. BELL: And because of this way, we're going
13 to withdraw what's been marked as State's 22 for
14 identification, because it's contained within State's
15 23.

16 THE COURT: Well, it's already marked as ID so
17 it will remain marked for ID.

18 MR. BELL: Okay. But I just wanted to kind of
19 put that for the record as why it wasn't entered.

20 MR. BELL: Your Honor, at this time may we
21 publish State's 23 to the jury via the TV, computer
22 TV?

23 I hate to ask you, but I might have to ask you
24 to come down. I know you've got a bad back.

25 [Whereupon, Mr. Hall complies]

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1 [Whereupon, Video, State's Exhibit Number 23, is
2 played for the jury, with questions from Mr. Bell]

3 [Whereupon, State's Exhibit Number 23 is not
4 transcribed by the court reporter]

5 Q. [Mr. Bell] Does this show one of the camera
6 angles there?

7 A. Yes, sir. That's from the register side.

8 Q. And the time says 9:49. Is that accurate, as
9 far as you know?

10 A. As far as what's on the DVR. But that's not the
11 correct time.

12 Q. Could somebody go in and change the time on the
13 DVR?

14 A. No, sir.

15 If you change it, what happens is it'll go to a
16 format and it will actually erase all of the footage
17 that's on there.

18 Q. So you've kind of got to take it for what it is;
19 is that correct?

20 A. You've got to take it for what it is.

21 Q. And a lot of these store security systems, based
22 on your experience some are accurate, some aren't, is that
23 correct, based on --

24 A. Right.

25 Based on -- when it comes to the reset, now, if

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1 the customer wants to go in there on that day and reset it
2 every time. But it'll still be off by so many minutes,
3 especially if you're using more than one system in a
4 store.

5 Q. I'm going to play it and -- that's a different
6 camera? That's --

7 A. Yes.

8 Q. -- channel 7? Of which store?

9 A. That's the liquor store side. You can tell
10 because it's pointing towards the Keg side where the trash
11 can is.

12 Q. And the time should be consistent with all the
13 liquor store cameras; is that correct?

14 A. Yes, sir.

15 Q. All right. We'll stop that. That's camera 7,
16 which is -- which side is that?

17 A. That there's on the store side.

18 Q. Okay. Now, this view kind of looks bleached out
19 or something; is that --

20 A. Yes, sir. It's a different camera than the rest
21 of them. This is actually one that mister -- for the
22 store side, Mr. Graham only ordered so many, but it would
23 actually hold an extra camera so he brought this one from
24 his house. This one here is what we call -- remember we
25 were talking about the lines of resolution? This is 420.

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1 The rest of the cameras are 600.. That's why it looks --

2 Q. What difference does that make?

3 A. It's a lower-grade camera.

4 Q. So that's kind of why it's --

5 A. That's why it looks that way.

6 Q. This is on the Keg side?

7 A. Yes, sir.

8 Q. And that has a different time.

9 MR. STEVENS: Judge, hearsay. I'm sorry, Your
10 Honor. Leading.

11 THE COURT: Sustained, leading. Rephrase.

12 Q. [Mr. Bell] Camera seven, which side is it on?

13 A. That's on the Keg side.

14 Q. And there's a different time than what we just
15 saw?

16 A. Yes, sir.

17 Q. And is that because it's a different system?

18 A. It is. Because it's on a different DVR.

19 Q. On what -- and this is camera eight. On which
20 side?

21 A. The store side. Because you can see that's
22 where he's getting ready to go in.

23 Q. And that color is a little cooler or whatever?

24 A. It's because that's a 600.

25 Q. And that's camera four.

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1 A. And that's in the store -- that's on the store
2 side.

3 And you'll notice that, yes, they have a little
4 bit different -- they have -- the lighting is different
5 from the inside and outside. So the IRs play a difference
6 in it.

7 Q. That's camera two?

8 A. Yes. Still on the store side. Yes, sir.

9 Q. And this is camera three?

10 A. Yes, sir. Still on that same store side.

11 Q. Now we're back to camera eight. Is that still
12 the store?

13 A. Yes, sir. That's the store side.

14 And that's that same one that's got that the
15 lower monitor resolution.

16 Q. Camera 7?

17 A. And now we're back to -- with the store side.

18 And that one is on the liquor store side, as
19 well.

20 [Whereupon, State's Exhibit Number 23 concludes]

21 MR. BELL: Okay. You can have a seat.

22 [Whereupon, the witness retakes the witness
23 stand]

24 Q. [Mr. Bell] Mr. Hall, let me show you two
25 stills. Let me show you what's been marked as State's 4

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1 for identification and ask if that appears to be a screen
2 shot from the video.

3 A. It is. Yes, sir.

4 Q. Taken directly from the video?

5 A. Yes, sir. On the store side.

6 MR. BELL: Your Honor, we would offer State's 4
7 into evidence.

8 THE COURT: Any objection?

9 MR. STEVENS: Without objection, Judge.

10 THE COURT: Marked and admitted without
11 objection.

12 [Whereupon, State's Exhibit Number 4 is admitted
13 into evidence by the Court]

14 Q. [Mr. Bell] and let me show you what's been
15 marked as State's 5 for identification and ask if that's
16 also a screen shot from a different camera.

17 A. It is, yes, sir, from -- and this is from the
18 liquor store side.

19 MR. BELL: Your Honor, we would offer this as
20 State's 5 into evidence.

21 THE COURT: Any objection?

22 MR. STEVENS: No.

23 THE COURT: Marked and admitted without
24 objection.

25 [Whereupon, State's Exhibit Number 5 is admitted

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1 into evidence by the Court]

2 MR. BELL: Thank you, Mr. Hall. Please answer
3 any questions Mr. Stevens has.

4 THE WITNESS: Yes, sir.

5 THE COURT: You may proceed.

6 MR. STEVENS: Judge, may it please the Court?

7 THE COURT: Yes, sir.

8 MR. STEVENS: Good afternoon, Mr. Hall.

9 THE WITNESS: Good afternoon, sir.

10 MR. STEVENS: My name is Breen Stevens. I
11 represent Tykeem May.

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Now, you said you were self-employed with Blackwater Security; right?

A. Yes, sir. Well, I was employed for Blackwater Security. I was self-employed before that.

Q. So that's not your company?

A. Right.

Q. But you've been installing these security systems for approximately eight or nine years now?

A. Yes, sir.

Q. That takes some special knowledge or skill to do, or can any average Joe off the street just walk in --

A. No. You have to learn -- yes, sir, you have to learn some things.

Q. So some serious training involved, as well; right?

A. Yes, sir. And you have to continue to learn, as well.

Q. Along the way?

A. Yes, sir.

Q. I got you.

So it's a pretty specialized trade?

A. Yes, sir.

Q. Now, let's talk about the DVRs and the separate

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1 security systems. I want to focus your attention on that.

2 A. Okay.

3 Q. You said that there are two systems inside that
4 building; correct?

5 A. Yes, sir. Well, inside the building, yes, sir,
6 in different locations.

7 Q. Locations, as well? Right.

8 Now, you said that the times can be off;
9 correct?

10 A. Yes, sir.

11 Q. But you yourself can't specifically say exactly
12 how off they are from each other; right?

13 A. Right.

14 In other words, you can go in there -- like say
15 if you call me today and I went in there and you said,
16 okay, it happened Thursday between 1:00 and 2:00. Now
17 what you could do is see -- at that time you can see how
18 far it is off because then you can actually look and say,
19 okay, well, it's showing this date and time. So you can
20 do the math to find out exactly when that was.

21 Q. Right.

22 But you can't specifically say, well, this one
23 and that one are totally off by this specific amount?

24 A. When you look at each one you can.

25 Q. When you compare them?

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1 A. Right.

2 Q. But when you do compare them, if one does show
3 something happening on one system, it's not necessarily
4 overlapping with the other?

5 A. They are running -- they're basically running at
6 the same time. They just show different days and times
7 because they're two different units. That's all.

8 Q. But if one actually says, for example, five
9 o'clock --

10 A. Right.

11 Q. -- and the other one actually shows, I don't
12 know, 5:05 --

13 A. Uh-huh.

14 Q. -- one might actually be telling five o'clock
15 and the other one actually telling 5:05, were actually
16 running at the same time; right?

17 A. Right. Yes, sir. You would have to do the math
18 to know.

19 Q. Right.

20 But it's also possible they're running the same
21 time?

22 A. What do you mean by running at the same time?

23 Q. It's possible that they're both accurate?

24 A. Oh. That would be -- not on the same location,
25 no, because you'd think they're two separate units.

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1 If they're running at the exact same time --
2 there's no way they can both have -- it's about like --
3 when it comes to those type of systems, this -- of course,
4 you have more advanced systems that you can buy. But a
5 lot of people can't afford those, which is what's called
6 IP systems, which I'm sure you've seen, and those are dead
7 on the money. But when you come to those --

8 Q. But what we're talking about is possibilities.

9 A. Right.

10 If you set them up, they might show a minute
11 difference. But I doubt they're going to run on the same
12 exact time, because they're two separate units. You would
13 actually have to have them side by side and flip them on
14 at the exact same time.

15 MR. STEVENS: And, again, Judge, we would just
16 simply --

17 THE COURT: You elicited the question. You
18 can't object.

19 MR. STEVENS: Well, I understand, Judge.

20 THE COURT: When you elicit a question, you
21 elicit the response.

22 MR. STEVENS: I understand, Judge.

23 THE COURT: Under Rule 702, what he's testifying
24 to doesn't require the specialized training and
25 experience required of an expert. He's testifying

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1 based on his rational perception and his employment.
2 It's something he does every day.

3 MR. STEVENS: Yes, ma'am.

4 And our entire -- just for the record, we're
5 indicating that our entire line of questioning was
6 premised on --

7 THE COURT: I've already noted your objection.
8 I've overruled it.

9 If you elicit the question, it elicits the
10 information. I don't think you have standing to
11 object to it.

12 MR. STEVENS: Thank you, Judge.

13 THE COURT: So be careful in the way you posture
14 your question.

15 MR. STEVENS: Thank you, Your Honor.

16 THE COURT: You may proceed.

17 Q. [Mr. Stevens] Like we were saying, though: but
18 when it does come actually to it, the times are what the
19 times are?

20 A. Right.

21 MR. STEVENS: Thank you, sir.

22 THE WITNESS: Yes, sir.

23 MR. STEVENS: No further questions.

24 THE COURT: Any redirect of the witness?

25 - - -

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REDIRECT EXAMINATION

BY MR. BELL:

Q. Let me go back. You stated that you went, on this particular occasion, on two different times; is that correct?

A. Yes, sir.

Q. For the police?

A. Yes, sir.

Q. And through working with the system, did you determine that the time was off?

A. Yes, sir. We noticed that right away. Yes, sir.

Q. And do you recall how far -- it looked like it was about four hours. Is that about right, what you remember?

A. It looked. But I can't remember exactly.

MR. BELL: Thank you, Mr. Hall. Nothing further.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: None from the State, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, Your Honor.

THE COURT: Sir, you're excused.

[Whereupon, Mr. Hall is excused and exits the

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1 witness stand]

2 THE COURT: You may call your next witness.

3 MR. BELL: The State would call Lieutenant
4 Anthony Robinson.

5 [Whereupon, Mr. Robinson comes forward]

6 THE CLERK OF COURT: Please place your left hand
7 on the Bible and raise your right hand.

8 [Whereupon, Mr. Robinson is duly sworn by the
9 clerk of court as follows: do you hereby swear or
10 affirm that the evidence that you shall present in
11 this case today will be the truth, the whole truth,
12 and nothing but the truth, so help you God]

13 THE WITNESS: Yes.

14 THE COURT: Thank you. Please have a seat.

15 [Whereupon, Mr. Robinson takes the witness
16 stand]

17 THE CLERK OF COURT: State your name again for
18 the record and spell your last name.

19 THE WITNESS: It's Lieutenant Anthony Robinson.
20 Robinson: R-O-B-I-N-S-O-N.

21 THE CLERK OF COURT: Thank you.

22 THE COURT: You may proceed.

23 MR. BELL: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 - - -

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ANTHONY ROBINSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Robinson, where are you employed?

A. Orangeburg Department of Public Safety.

Q. And how are you employed there?

A. Shift supervisor.

Q. And you're a Lieutenant; is that correct?

A. Yes.

Q. What are your duties as a lieutenant as shift supervisor?

A. Well, I'm in control of several people on the shift. Well, actually, I'm in control of the whole shift. Just monitor -- to monitor all -- my duties, whatever duties I have that day and -- basically.

Q. Do you respond to calls at times?

A. Yes, sir.

Q. And was that your position back in September of last year?

A. Yes, a shift supervisor on that day.

Q. And I want to direct your specific attention to September 8th, 2013.

A. Okay.

MIA PERRON, CVR-CM-M

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1 Q. Were you working on that day?

2 A. Yes, sir.

3 Q. Were you working a particular shift?

4 A. Yes, sir. Alpha shift.

5 Q. Excuse me?

6 A. Alpha.

7 Q. And what is Alpha shift in your organization?

8 A. It's -- the A shift is just the first shift that
9 -- it's basically just one shift. We've got four shifts,
10 Alpha, Bravo, Charlie, and Delta.

11 Q. And what time is Alpha shift from -- to and
12 from?

13 A. I think that morning we were working -- we came
14 on at 7:45 to 8:00 p.m. 7:45 a.m. to 8:00 p.m.

15 Q. And during the course of your shift that shift,
16 did you have an occasion to be called to a place called
17 the Keg in the city of Orangeburg?

18 A. Yes.

19 Q. And why were you called there?

20 A. We had received a dispatch I think around about
21 almost two o'clock, two o'clock that afternoon, saying
22 there was a robbery that just occurred. And I was -- at
23 that time, I think I was stationary right there on 301 at
24 -- 301 and Magnolia, right across from McDonald's, just
25 sitting around just monitoring traffic. And when the call

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1 came in, I just turned around and started to go ahead in
2 that direction. But I think my dispatcher had stated that
3 there was -- the subject who had robbed them was actually
4 walking down the street -- was told by the cashier, was
5 walking down 301, maybe walking down 301. So I started
6 looking in that area to see if I could find him. And
7 Officer Doctor went to the actual scene.

8 Q. And you're going from basically the middle of
9 town where -- the intersection of 601 and 301; is that
10 correct?

11 A. Yes.

12 Q. And you're heading back out like you're going
13 towards Interstate 26 --

14 A. Yes.

15 Q. -- and Chestnut?

16 A. Yes, sir.

17 Q. And when you were going that way once you got
18 the call, you said you were looking to see if you saw
19 anybody?

20 A. Right. I started searching the area to see if I
21 could see.

22 Because I think at that time they said it was --
23 the guy giving us a brief description, that he may be
24 carrying an assault rifle. I said, if somebody's carrying
25 an assault rifle on 301, I'm going to see them. So I was

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1 riding around looking.

2 And then I started cutting around the other --
3 around the -- down other streets like Whitman and -- I
4 think it was Whitman, Clarendon and other stuff -- other
5 areas in that vicinity.

6 Q. So you went down 301 towards the Keg; is that
7 correct?

8 A. Right.

9 Q. And did you see anybody --

10 A. No.

11 Q. -- fitting the description --

12 A. No, sir.

13 Q. -- walking along --

14 A. No, sir.

15 Q. What other businesses? Is there another
16 convenience store down before that?

17 A. Hot Spot. The Hot Spot is there. Then like I
18 said, right there.

19 Q. And then did you stop at the Keg or did you go
20 farther or did you --

21 A. I actually stopped at the Keg, checked on
22 Officer Doctor to see what kind of information we were
23 going to -- what he was receiving. And when I got there I
24 started listening to what the cashier was saying, I saw
25 him making -- started called my dispatcher, started making

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1 some phone calls to call out the investigator on call, the
2 CSI personnel on call, as well as a K-9 unit.

3 Q. Now, you said before that you rode around trying
4 to see if you saw anybody on foot?

5 A. Yes, sir.

6 Q. Did you see anybody matching the description?

7 A. No. No, sir.

8 Q. And what investigator responded at that time?

9 A. Who was the investigator?

10 Q. Yes, sir.

11 A. It was Sargent Hague.

12 Q. Okay. And the CSI, who was --

13 A. That would be Sargent Gibson.

14 Q. And you said something about the dogs were
15 called out?

16 A. Yeah.

17 I called the county's K-9 unit. I was unable to
18 get in touch with our K-9 unit, so we called the county
19 K-9. They were closer, so they came out. And I think it
20 was Corporal Harter at that time.

21 Q. And did you talk with the clerk there that was
22 robbed?

23 A. Briefly, yes.

24 Q. And you got a description of the individual?

25 A. Yes, sir.

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1 Q. And Officer Doctor was there, as well?

2 A. Right.

3 Q. And he did most of the talking to the clerk; is
4 that correct?

5 A. Right.

6 Q. Is he with your --

7 A. No.

8 He's no longer with our -- he left, he resigned.
9 I think he was going to another department, I believe.

10 Q. And how long did you stay around the Keg in that
11 capacity?

12 A. I sat around a little bit and listened to what
13 he was saying, trying to get some information. And then
14 when he explained to me he was outside -- the cashier,
15 when he was outside that the subject came around the
16 building. And if I'm facing the building from 301, it
17 would be on the right side. Came around the building and
18 that's when he noticed him. And I assumed -- I said,
19 well, let me backtrack where he was at. So I said, I'm
20 going to go back that direction and see if I can see
21 anything.

22 Q. Did you see anything?

23 A. Well, I noticed some gloves that were by a trash
24 can and I said, well, why -- you know, there's some drugs
25 just sitting -- I mean, gloves were just sitting there.

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1 So I went back and I asked the clerk was he wearing any
2 gloves, and he told Officer Doctor that he may have been
3 wearing some gloves. And so he walked back and said
4 that's possible, the gloves. So then I cornered off that
5 area and I went back.

6 And like I said, I wanted to wait until the CSI
7 got there. Not -- well, the CSI and the K-9 unit to get
8 there, too, on the scene.

9 Q. Do you know if the K-9 unit found anybody?

10 A. Not really.

11 I don't think -- I think they tracked to Metz
12 Trailer Park or Mell's Court or something, basically. But
13 I don't think -- they talked to somebody there but it
14 wasn't the right person, didn't look like the right
15 person.

16 MR. MELLARD: Objection, Your Honor. Hearsay.

17 THE COURT: It's within the scope of the
18 information.

19 Overruled. Not offered for its truth.

20 Q. [Mr. Bell] And is that basically all you had
21 done with this -- at this particular time?

22 A. Yes, sir.

23 And I waited on -- like I said, I waited on
24 scene with the CSI and the investigator. I think the
25 owner arrived a short period of time later, was trying to

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 get the camera systems up, was unable and said he would
2 have to call somebody to try to get the camera system up.

3 MR. BELL: Thank you, Lieutenant Robinson.

4 Please answer any questions the defense has.

5 THE COURT: You may proceed.

6 MR. MELLARD: Just a few questions.

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Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

CROSS-EXAMINATION

BY MR. MELLARD:

Q. So you responded and you called out the K-9 unit; is that correct?

A. Yes.

Q. And you found some gloves?

A. Yes, sir.

I saw some gloves right by the trash can, the big green container.

Q. And you said the dogs tracked. I assume they tracked based on the gloves?

A. No. From the -- from the area, I would assume.

But the gloves were there, so I'm not sure if that -- those were his gloves or were somebody else's gloves. I just found gloves there.

Q. And you said the dogs tracked. What does that -- tell us what that means.

A. Well, they picked up a scent and they was following a scent in that area.

Q. Now, did you follow the K-9 unit?

A. No. Officer Metz, another officer on my shift, did.

Q. So all you know is you called out the K-9 unit and the K-9 unit picked up a scent and they tracked it?

A. They picked up a scent, yes.

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 MR. MELLARD: That's all I have.

2 THE COURT: Any redirect?

3 MR. BELL: Nothing further, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused? From the State?

6 MR. BELL: [No response]

7 THE COURT: Any exception to the witness being
8 excused?

9 MR. BELL: No, Your Honor.

10 THE COURT: From the defense?

11 MR. STEVENS: No, Your Honor.

12 THE COURT: Officer, you're excused.

13 [Whereupon, Mr. Robinson is excused and exits
14 the witness stand]

15 THE COURT: Madam Forelady, ladies and
16 gentlemen, you-all have been sitting a little over an
17 hour. I'm going to give you a quick restroom break.

18 During the break please do not discuss the case.
19 And please leave your notepads in your seats. If you
20 would go with your caretaker, please.

21 [Whereupon, the jury exits the courtroom at
22 3:07 p.m.]

23 THE COURT: We'll be at ease until 3:20.

24 [Whereupon, a recess is held from 3:08 p.m. to
25 3:23 p.m.]

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 THE COURT: Is the State ready to proceed?

2 MR. BELL: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. STEVENS: The defense is ready, Judge.

5 THE COURT: All right. Please bring in the
6 jury.

7 THE BAILIFF: Yes, Your Honor.

8 [Whereupon, the jury enters the courtroom at
9 3:23 p.m.]

10 THE COURT: Ladies and gentlemen, I hope you
11 enjoyed your break. We'll now resume testimony.

12 You may call your next witness.

13 MR. BELL: The State would call Officer Kenny
14 Pifer, please.

15 THE COURT: Sir, if you would come forward to be
16 sworn.

17 [Whereupon, Mr. Pifer comes forward]

18 THE CLERK OF COURT: Please place your left hand
19 on the Bible and raise your right hand.

20 [Whereupon, Mr. Pifer is duly sworn by the clerk
21 of court as follows: do you hereby swear or affirm
22 that the evidence that you shall present to the Court
23 today will be the truth, the whole truth, and nothing
24 but the truth, so help you God]

25 THE WITNESS: I do.

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 THE COURT: Thank you. Please have a seat.
2 [Whereupon, Mr. Pifer takes the witness stand]
3 THE CLERK OF COURT: Please state your name
4 again for the record and spell your last name.
5 THE WITNESS: Kenneth Pifer. P-I-F-E-R.
6 THE COURT: You may proceed.
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Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

KENNETH PIFER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Where are you employed?

A. Orangeburg Department of Public Safety.

Q. And in what capacity are you employed there?

A. Patrol officer.

Q. And how long have you been employed with the
Orangeburg Department of Public Safety?

A. Just over ten years now.

Q. And what are your duties as a patrol officer?

A. Just answer calls for service, as well as
respond to calls for service and any call that may come in
through our dispatch center for a call for service
involving police or fire department.

Q. And I want to direct your attention back to
September of 2013. Were you working with the Department
of Public Safety then?

A. Yes.

Q. And specifically I think on September 14th --

A. Yes.

Q. -- 2013, were you on duty that day?

A. I was.

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 Q. And what were you doing? What kind of duty were
2 you doing that day?

3 A. Just on a regular routine patrol that day.

4 Q. And did you have an occasion to assist with a
5 traffic stop of a county officer, county deputy?

6 A. I did.

7 Q. And who did you assist with?

8 A. Lieutenant Randy Culler.

9 Q. And he's with the Orangeburg County Sheriff's
10 Office?

11 A. Yes, sir, Orangeburg County.

12 Q. And where did that occur?

13 A. Boulevard Street, just across from State Credit
14 Union, a bank there.

15 Q. Okay. Was that location in the city of
16 Orangeburg or --

17 A. It's in the city of Orangeburg.

18 Q. How did you come to assist him?

19 A. He called me.

20 Q. And where were you at the time?

21 A. I was -- I believe I was traveling on the Ellis
22 Avenue, just around the corner.

23 Q. And what did you do when you came up to where he
24 was?

25 A. I just pulled up to the traffic stop and just

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 positioned my vehicle to get a view of the car and got out
2 of my vehicle and just took a look at the -- in the
3 passenger side, just to make sure nothing suspicious or
4 illegal was inside the vehicle, and just stood by and
5 watched as Lieutenant Culler conducted his traffic stop.

6 Q. And did you observe what kind of vehicle he had
7 pulled over?

8 A. It was a white Dodge Caliber.

9 Q. Was there any significance to that vehicle or --

10 A. We just received a tip that it was possibly
11 involved in an armed robbery at the Keg.

12 Q. I mean, how did you -- what kind of tip? Or
13 what are we talking about?

14 A. We were given photographs from surveillance from
15 the business itself.

16 Q. Okay. And was that through your department?

17 A. That was through our department, yes.

18 Q. And other departments had that, as well?

19 A. Yes.

20 Q. The sheriff's department --

21 A. The sheriff's department, yes.

22 Q. Now, going back to you, what kind of vehicle
23 were you in?

24 A. My fully-marked Crown Victoria, public safety
25 written on the side of it. Fully marked.

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 Q. And it's got, what, red and blue lights, I
2 think; is that correct?

3 A. That's correct.

4 Q. Your emergency lights?

5 A. Correct.

6 Q. And what other kind of equipment do you have
7 inside?

8 A. Video camera, radar, computer.

9 Q. And did you have your video that day on
10 September 14th?

11 A. Yes, I did.

12 Q. And when you went to that traffic stop with
13 Lieutenant Culler, did you activate that system?

14 A. I did.

15 Q. And what were you trying to do by activating
16 that system?

17 A. Just, you know, look at the driver that was
18 driving. He had matched the description of the possible
19 suspect we were looking for. So we were just trying to
20 get a look at him and identify him, let the investigators
21 go from there with it.

22 Q. And afterward, I mean, did you do that? I mean,
23 you gave -- the video showed the vehicle itself?

24 A. I did.

25 I believe I zoomed in on the tag where you could

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 clearly see the tag number. And then got out and
2 positioned it where you could see the occupant while
3 Lieutenant Culler was out talking with him and get a good
4 physical description and get a good look at him.

5 Q. Okay. And does your video have audio, as well?

6 A. It does.

7 Q. And what kind -- I mean, how is the audio set up
8 with your --

9 A. It's a -- we wear a body mike. It's a piece on
10 our body.

11 And it records, Your Honor.

12 Q. Who was doing most of the conversing with that
13 person?

14 A. Lieutenant Culler was. Yes.

15 Q. And you were kind of close with your microphone?

16 A. I was.

17 Q. Let me show you what's been marked as State's 26
18 for identification. And it's a video disk. Have you seen
19 that video?

20 A. I have.

21 Q. Okay. And does it accurately reflect what went
22 on that day?

23 A. Yes, it does.

24 Q. And you use the video in the course of your work
25 as a police officer, is that correct --

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 A. Correct.

2 Q. -- when you make stops and all --

3 A. Correct.

4 Q. -- to record stops? I mean, any traffic stops,
5 DUIs or anything else that may --

6 A. Correct.

7 Q. -- you're investigating?

8 And you activated it that day --

9 A. Yes, I did.

10 Q. -- on that stop?

11 MR. BELL: Your Honor, we would offer State's 26
12 into evidence.

13 THE COURT: Any objection?

14 MR. MELLARD: Two, Your Honor. Foundation and
15 hearsay.

16 THE COURT: Please approach.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: Madam Forelady, ladies and
20 gentlemen, I have a very brief matter of law to take
21 up.

22 During this break, please do not discuss the
23 case. And please leave your notepads in your seats.
24 We appreciate your patience.

25 [Whereupon, the jury exits the courtroom at

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 3:30 p.m.]

2 [Whereupon, video played out of the presence of
3 the jury]

4 [Whereupon, video is not transcribed by the
5 court reporter]

6 THE COURT: For what purpose is the video being
7 offered?

8 MR. BELL: To show that -- I'm kind of -- I'm
9 having to go ahead of myself, but I'm going to come
10 back with Investigator Dukes that they were on the
11 lookout for a white Dodge Caliber because of that.
12 And this is the stop, six days after the robbery,
13 where they identify the -- they found a white Dodge
14 Caliber. They found an individual driving it who was
15 -- looked similar to the descriptions given. And they
16 got the information, they got the tag number, to who
17 it was registered to, they got his information, to
18 further the investigation.

19 THE COURT: Now, why do I have to -- we have to
20 see this whole video? That's shown in the first
21 twenty seconds, basically. He can testify as to what
22 they did. Because all I really can hear in the
23 background in Eric Clapton and Lela.

24 MR. BELL: That's right.

25 THE COURT: I don't hear much else. I hear a

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 bunch of mumbling, but I don't hear anything audibly
2 or clearly, other than the radio. And what he says
3 really I can't ascertain any relevance to it other
4 than him dropping his friends off at his baby mama's
5 house and it's his girlfriend's car and they paid \$25
6 for somebody to tint the windows and does he need to
7 take it for somebody to check it. I mean, I --

8 MR. BELL: Well, I mean, the main video is
9 identifying the driver, identifying the vehicle and
10 that thing.

11 THE COURT: I think you can show that in the
12 first twenty seconds, with him being stopped, with
13 Mr. May getting out of the vehicle, them interacting.
14 I don't know that any of the audio is necessary.

15 And this witness is here. He was there. He
16 rationally perceived it. He can testify that, I
17 stopped him based on this description, this is what I
18 did as a result, I ran the tags, this is who it came
19 back to.

20 Because you really cannot hear it audibly. I
21 mean, you can hear bits and pieces of it. And I've
22 got pretty good hearing. But I suspect the jury would
23 be back there wanting to replay it and have us turn --
24 and need audio to augment it.

25 And I just don't know that it really adds very

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 much, other than -- I mean, for the purpose that
2 you're offering it, I think you can accomplish that
3 without playing the whole thing and without the audio.

4 MR. BELL: Well, I have no problem. The first
5 shows the license plate and the individual getting out
6 for just a few seconds with the vision of who -- who
7 we've got -- and I can have them -- both officers
8 testify about the information.

9 THE COURT: I would think that's acceptable to
10 the defense.

11 MR. MELLARD: Yes, Your Honor. Yes, ma'am.

12 THE COURT: Okay. Can we proceed?

13 [Off the record momentarily]

14 MR. BELL: As modified, it's State's -- I can't
15 remember what the number is because I've got it in the
16 computer set up to go. Is that in evidence now?

17 THE COURT: Well, I would think what you need to
18 do is remark that one as a Court's Exhibit because it
19 depicts the entire stop.

20 But if you could burn one that just depicts that
21 short portion, because the jury shouldn't have to come
22 back in here and watch a video, if they want to see
23 it, once it's entered into evidence. Can you do that?

24 MR. BELL: I don't know that I can, because it's
25 embedded in another program. The other video I have

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 no problem because I've got the raw video. But this
2 one is embedded in a program from the police
3 department.

4 THE COURT: Well, why don't we investigate
5 whether we can do it or not.

6 Right now we'll just mark it as a Court's
7 Exhibit until we can get an answer about whether you
8 can burn another one.

9 MR. BELL: Well, I can get an answer hopefully
10 right here.

11 UNIDENTIFIED: I should be able to have one
12 burned for you with no problem.

13 THE COURT: Yeah. And if you --

14 MR. BELL: Just about the first, I don't know --

15 THE COURT: Tell him exactly the starting point
16 and the stopping point so that he can go ahead and
17 burn that. And then that is what will come into
18 evidence. And then the State's 26 will be
19 alternatively now marked as a Court's Exhibit because
20 it's the entirety of the video with the audio.

21 THE COURT REPORTER: State's 26 for ID is now
22 Court's Exhibit --

23 THE COURT: Whatever the number is.

24 [Off the record momentarily]

25 THE COURT: And then that will become State's

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 26. Is there any exception to the admission of that
2 document as redacted per the Court's instruction?

3 MR. MELLARD: No, ma'am.

4 THE COURT: And I'm giving the State leave to do
5 that over the evening recess and provide that for the
6 record.

7 MR. BELL: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 All right. Are we ready?

10 MR. BELL: Yes, ma'am.

11 THE COURT: Is the defense ready?

12 MR. MELLARD: Yes.

13 THE COURT: Please bring in the jury.

14 MR. BELL: What number was that, because I think
15 I still have --

16 THE COURT REPORTER: 26. And then I'm going to
17 move it --

18 THE COURT: It's not 26.

19 THE COURT REPORTER: It's going to be 26 --

20 THE COURT: The original is now Court's 3.

21 THE COURT REPORTER: If you'll give it to me
22 when you get through, I'll remark it.

23 MR. BELL: Okay.

24 THE COURT REPORTER: Thank you.

25 [Whereupon, the jury enters the courtroom at

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 3:53 p.m.]

2 THE COURT: Ladies and gentlemen, we'll now
3 resume testimony.

4 Mr. Bell, you may proceed.

5 MR. BELL: Thank you, Your Honor. I think we --
6 I think I was at the point of offering it into
7 evidence, State's 26.

8 THE COURT: 26 has been marked and admitted
9 without objection.

10 [Whereupon, State's Exhibit Number 26 is
11 admitted into evidence by the Court]

12 MR. BELL: Yes, Your Honor. May I publish it to
13 the jury?

14 THE COURT: Yes, sir. You may proceed.

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Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

CONTINUED DIRECT EXAMINATION

BY MR. BELL:

Q. Before I start playing it, Officer Pifer, that is the video from your vehicle that you engaged?

A. Correct. That is the vehicle.

Q. And what street is that on?

A. That's Boulevard Street.

[Whereupon, State's Exhibit Number 26 is played for the jury, with questions from Mr. Bell]

[Whereupon, State's Exhibit Number 26 is not transcribed by the court reporter]

Q. [Mr. Bell] And who is that in front of you?

A. That's Lieutenant Culler in front of me. We're turning onto Fairfield Street. It's across from State Credit Union on Boulevard Street.

Q. And that's the vehicle that he's pulling over?

A. That's the vehicle, the white vehicle. It'll turn in and get a better view of it here.

Q. That was a view of the license plate?

A. Correct. Yeah.

Q. And that's Deputy Culler --

A. That is.

Q. And that's the driver?

A. That is.

Q. And that's who?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. That would be me.

2 Q. And that's the driver?

3 A. That's the driver.

4 [Whereupon, State's Exhibit Number 26, video,
5 concludes]

6 Q. [Mr. Bell] Now, Officer Culler, you were there
7 -- I mean, Officer Pifer, excuse me. Lieutenant Culler
8 made contact with the driver; is that correct?

9 A. Correct.

10 Q. And were you listening? Did he get information,
11 identifying information --

12 A. He did.

13 Q. -- from the driver?

14 And also information about the vehicle?

15 A. Yes, sir.

16 Q. Stuff like his driver's license and the license
17 plate and all that information?

18 A. Yes, sir.

19 Q. And you were privy to all that information as
20 well?

21 A. Yes, sir.

22 Q. Did you hear all that information being given?

23 A. I did.

24 Q. And what did you do with that information that
25 you -- that was ascertained from that stop?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. I just -- I copied it down and e-mailed it to
2 Detective Caddell.

3 Q. When did you -- did you e-mail it right then or
4 did you -- was it some time later?

5 A. I'm not a hundred percent sure if it was that
6 day or not.

7 Q. Okay. Let me show you this, if I can refresh
8 your recollection. Is that a copy of the e-mail that you
9 sent?

10 A. It's a forwarded copy. But, correct, it is a
11 copy on the bottom from where I sent it to -- at 3:24 that
12 day, on September 14th. I e-mailed Detective Caddell and
13 he forwarded it to Detective Dukes. Yes.

14 Q. But all the identifying information --

15 A. Correct.

16 Q. -- was what you put in there?

17 A. This is -- yeah, this is --

18 Q. What information did you put in? The name of
19 the driver?

20 A. Yeah.

21 Q. And what was his name?

22 A. Driver, Tykeem May; date of birth, [REDACTED]; GL
23 number that he gave us to identify himself with; the tag
24 number; and owner of the vehicle.

25 Q. And what -- did he give you an address?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. He did. He gave us an address of [REDACTED] Brandon
2 Street, is where he stated that he lived.

3 Q. And who was the owner of the vehicle?

4 A. It had dual owners on there. Charles Brown and
5 Tanya Brown.

6 Q. And why did you send that information to
7 Detective Caddell?

8 A. It was just suspicion, but, you know, the
9 information that had been given out from an armed robbery
10 that had previously occurred.

11 Q. And y'all were looking for a vehicle like that;
12 is that correct?

13 A. That is correct.

14 Q. And at that time, the description that you had
15 of the individual involved, did that driver match the
16 description, as you saw?

17 A. He did.

18 Q. And is that kind of what heightened your
19 interest?

20 A. It was.

21 MR. BELL: Thank you, Officer Pifer.

22 Please answer any questions the defense

23 Mr. Mellard has.

24 THE COURT: You may proceed.

25 MR. MELLARD: Just a couple of questions.

Kenneth Pifer
Cross-Examination by Mr. Mellard
August 12, 2014

CROSS-EXAMINATION

BY MR. MELLARD:

Q. The September 14th stop, you said you were working that day?

A. Yes, sir, I was.

Q. And I believe you had -- you were looking for a white or silver Dodge Caliber; is that correct?

A. Would be. Yes, sir, that's correct.

Q. You weren't sure if it was white, weren't sure it was silver. Okay.

A. Yes, sir.

Q. And a white Caliber was stopped that day?

A. Yes, sir.

Q. But you didn't do the stop?

A. No, sir.

Q. You just called for -- you called for backup, I guess?

A. Lieutenant Culler did on the stop.

Q. Called you for backup?

A. Yes, sir, because -- yes, sir.

Q. And my understanding, the stop was for window tint; is that correct?

A. Yes, sir.

Q. So window tint, we're talking the window was too dark or something?

Kenneth Pifer
Cross-Examination by Mr. Mellard
August 12, 2014

1 A. Correct.

2 Q. All right. And I believe a warning ticket was
3 issued for the --

4 A. Yes, sir.

5 Q. Did you issue that ticket?

6 A. I did not.

7 Q. You did not. Okay.

8 Just so we're clear. You didn't respond to the
9 robbery at the Keg?

10 A. No, sir, I did not.

11 Q. You weren't there?

12 A. I was not there.

13 Q. Weren't there when it happened?

14 A. No, sir.

15 Q. Didn't witness anything?

16 A. No, sir.

17 MR. MELLARD: All right. One second.

18 THE COURT: Uh-huh.

19 MR. MELLARD: That's all the questions I have.

20 THE COURT: Any redirect?

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Kenneth Pifer
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Officer Culler [sic], but you -- for lack of a better term, I think this is an old thing, but y'all were on the be on the lookout for a vehicle and an individual?

A. That's correct.

Q. Did y'all have anything to help you identify vehicles or individuals?

A. We had the surveillance video from the business itself that was robbed.

Q. Did you have anything in your vehicle that --

A. I had a photocopy. I did, yes, sir.

Q. Okay. Of the vehicle?

A. Of the vehicle and the suspect.

MR. BELL: Okay. Thank you.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. MELLARD: No, ma'am.

THE COURT: Sir, you're excused.

[Whereupon, Mr. Pifer is excused and exits the witness stand]

THE COURT: You may call your next witness.

MR. BELL: The State would call Lieutenant

Kenneth Pifer
Redirect Examination by Mr. Bell
August 12, 2014

1 Randall Culler.

2 [Whereupon, Mr. Culler comes forward]

3 THE CLERK OF COURT: Please place -- raise your
4 right hand.

5 [Whereupon, Mr. Culler is duly sworn by the
6 clerk of court as follows: do you hereby swear or
7 affirm that the evidence that you shall present to the
8 Court in this case will be the truth, the whole truth,
9 and nothing but the truth, so help you God]

10 THE WITNESS: I do.

11 THE COURT: Thank you. You may have a seat.

12 [Whereupon, Mr. Culler takes the witness stand]

13 THE CLERK OF COURT: Please state your name
14 again for the record and spell your last name.

15 THE WITNESS: My name is Randy Culler.

16 C-U-L-L-E-R.

17 THE COURT: You may proceed.

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Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

RANDALL CULLER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. And you're Lieutenant Culler; is that correct?

A. Yes, sir.

Q. And where are you employed?

A. Orangeburg County Sheriff's Office.

Q. And how are you employed there?

A. I'm a lieutenant in the patrol division.

Q. And how long have you been in law enforcement?

A. I started with the sheriff's office in '96.

Q. And you've been with the sheriff's office ever
since?

A. Yes, sir.

Q. So that's eighteen years almost?

A. Going on eighteen.

Q. Yeah.

And what do you do as a lieutenant over the
patrol division?

A. I oversee a shift.

I've got several guys underneath me that
basically when the shifts are running, any of the calls
for service or any of the activities that we're doing, I

MIA PERRON, CVR-CM-M

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Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 oversee everything.

2 Q. And were you working back on September the 14th
3 of last year, 2013?

4 A. Yes, sir.

5 Q. What times were you working on that day?

6 A. I believe it would have been day shift, so it
7 should have been from 7:00 in the morning until 7:00 in
8 the evening.

9 Q. And during your shift, did you have an occasion
10 to make a traffic stop on a vehicle on Boulevard?

11 A. Yes, sir, I did.

12 Q. What kind of vehicle was it?

13 A. It was a white Dodge Caliber with tinted
14 windows.

15 Q. And why did you make that stop?

16 A. I believe like the day before, or one day that
17 week, I had received I believe either a text or -- I
18 believe I got some pictures from a public safety officer,
19 I believe it was Officer Pifer with public safety. He had
20 told me they had an armed robbery that occurred at the Keg
21 and they basically gave me pictures of the vehicle that
22 was involved and somewhat of a picture of the suspect that
23 was involved with it.

24 Q. And so on that day, when did you first see the
25 white Dodge Caliber?

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1 A. I was leaving the law complex. I was at the
2 traffic light that's located there at Ellis Avenue and
3 Chestnut Street, and I was actually stopped at the red
4 light, and I observed a white Dodge Caliber coming down
5 Chestnut and he made a left turn onto Ellis in front of
6 me. And when he -- when I observed the car, I knew it
7 looked very familiar as the one that was in that picture
8 of the video.

9 Q. And so what did you do then?

10 A. Well, at first, I -- you know, he turned in
11 front of me so I had to wait on my light to change. So as
12 I was catching up to him, he actually turned into a yard.
13 So I said, well, I'm going to go down the road and sit
14 down the road and see who gets out of it to see who's
15 driving the vehicle.

16 So I went and parked a short distance away and
17 just sat on the side of the road. And I observed a
18 gentleman get out of the vehicle. And he stayed at a
19 residence there on Ellis for a little bit. And then when
20 he got back in the vehicle and drove off, that's when I
21 initiated a traffic stop on him.

22 Q. And when did you get -- how did you get in
23 behind him or what -- how did that transpire?

24 A. I'm not sure of the name of the street that I
25 was at. I think I was at Colleton Street, or something

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1 like that, and Ellis Avenue. And basically when he passed
2 by me, he passed right in front of me. I was kind of
3 parked at an intersection. And I was at the stop sign and
4 he passed right in front of me. So as soon as he passed
5 me, I turned out behind him.

6 Q. And where did he go from there?

7 A. He traveled down Ellis to the interjection of
8 Boulevard, Boulevard and Ellis, and he made a right turn
9 on Boulevard.

10 And at that point I activated my blue lights and
11 he pulled into the parking lot of the old Lewis Dukes
12 station there on Boulevard.

13 Q. Were there any other law enforcement officers
14 involved at this time?

15 A. Officer Pifer.

16 Q. And how did he become involved?

17 A. I called him.

18 Actually, when I saw the vehicle turn in front
19 of me and I said it looked very similar to the one in the
20 picture, or actually looked identical to it, I called in
21 and I said, I see a vehicle that's fitting the exact
22 description of the vehicle that you gave me a picture of.
23 And I said, it went to a house on Ellis, you know, I'm
24 sitting on it. And the guy got out and went to a house.

25 So he went ahead and headed in my direction so

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1 we could stop the vehicle to identify the guy.

2 Q. Okay. And you stopped at that station; is that
3 correct?

4 A. That's correct.

5 Q. And what did you do?

6 A. Basically went up, told him who I was, asked him
7 for his driver's license and his registration, and told
8 him why I stopped him. Went back to my vehicle. Spoke to
9 Officer Pifer, gave him the information. Wrote the
10 warning. I wrote him -- I actually wrote him a warning
11 for a window-tint violation. And basically we cut him
12 loose.

13 Q. Okay. What did you tell him that you stopped
14 him for?

15 A. I told him -- initially, I told him that it was
16 a window-tint violation. And also I told him that we had
17 been given a description of a vehicle. At that time I
18 told him it was for shoplifting, that we had a store that
19 gave us a description as a vehicle for shoplifting and,
20 you know, that I was stopping him to identify him to see
21 if he was the suspect in that shoplifting. Naturally, I
22 didn't want to say, I stopped you for armed robbery and he
23 had an out-of-state driver's license and then he flee the
24 area and we not be able to locate him.

25 Q. But you -- in fact, you were stopping him

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1 because the vehicle looked like the vehicle that everybody
2 was looking for?

3 A. That's correct.

4 Q. And who did you identify the driver as?

5 A. Mr. Tykeem May, I think is his name.

6 That's that gentleman that's sitting right
7 there.

8 Q. You're identifying the defendant as the driver
9 of that vehicle that you pulled that day?

10 A. Yes, sir.

11 MR. BELL: Your Honor, I would ask that the
12 record reflect that the witness has identified the
13 defendant.

14 THE COURT: You may proceed.

15 Q. [Mr. Bell] And did you determine who owned the
16 vehicle?

17 A. I did.

18 I don't recall the exact name of who owned it,
19 but I believe Mr. May told me the vehicle belonged to his
20 girlfriend.

21 Q. And what did you do with this -- did he give you
22 an address where he was living?

23 A. He -- I got a -- when I asked for his driver's
24 license, he gave me a Virginia license. So naturally he
25 had a Virginia license, I believe it was. So with him

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1 having a Virginia license, driving a car from South
2 Carolina, one of my initial questions was, you know, what
3 are you doing here, who's car is it, and, you know, why
4 are you driving it. And he explained to me that it was
5 his girlfriend's, you know, vehicle.

6 And I don't recall the exact address that the
7 vehicle came back to but I believe I asked him did he live
8 at that address or did he live at another address, since
9 his driver's license was out of Virginia, Virginia
10 license. And he gave me an address, I believe it was
11 [REDACTED] Brandon Street in Orangeburg.

12 Q. At that time, you just -- you gave him a warning
13 ticket and let him go; is that correct?

14 A. That's correct.

15 Q. And the information you got at the stop was
16 passed on; is that right?

17 A. That's correct. I passed that information on to
18 Officer Pifer.

19 Q. Okay. And he passed it on to --

20 A. To the investigators.

21 MR. BELL: Thank you, Lieutenant Culler. Please
22 answer any questions the defense has for you.

23 THE COURT: You may proceed.

24 - - -

25 - - -

Randall Culler
Cross-Examination by Mr. Stevens
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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Let me get this straight. You stopped the guy, you told him that it was a window-tint violation --

A. Right.

Q. -- and that he was a shoplifting suspect --

A. That's correct.

Q. -- but that was a lie? That wasn't true?

A. The window tint wasn't a lie.

And the shoplifting side of things, naturally, like I explained in the beginning, being a felony charge of a violent nature like that, you know, not just for officer safety but to not -- if he is a suspect, I wouldn't want to say, hey, you did an armed robbery yesterday or this week, I'm trying to identify you, go ahead and flee back to Virginia. So, yeah, that's what I told him.

Q. So you lied to him?

A. So I told him a shoplifting, yeah. I didn't tell him the correct charge of what he was possibly involved in. But it did involve a store, yes.

Q. And the description -- you said that you were texted a description, I believe?

A. Yes, sir.

I don't recall -- I know I had a picture of it.

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1 I believe it was a texted picture on my phone, I believe.

2 Q. A white or a silver Dodge Caliber? Is that what
3 you --

4 A. It was a white Dodge Caliber with tinted
5 windows.

6 Q. And did you know anything about that Dodge
7 Caliber?

8 A. Just a white Dodge Caliber.

9 Q. It could have been from Columbia, could have
10 been from Charleston?

11 A. Could have been from anywhere.

12 Q. Could have been from New Jersey?

13 A. Could have been.

14 Q. You didn't know anything about it?

15 A. No, sir.

16 Q. Now, you issued a warning ticket; is that
17 correct?

18 A. Yes, sir.

19 Q. And that was for the window tint?

20 A. Yes, sir.

21 Q. Now, just so I'm -- I want to make sure I've got
22 everything.

23 You didn't respond to any robbery on the Keg or
24 anything like that?

25 A. No, sir.

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1 Q. Didn't witness anything?

2 A. No, sir.

3 MR. STEVENS: No more questions.

4 THE COURT: Any redirect?

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Randall Culler
Redirect Examination by Mr. Bell
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REDIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Culler, besides the car, did you have any other photographs you testified to?

A. Yes, sir.

They gave me a picture of the vehicle and a picture of the suspect involved --

MR. STEVENS: Objection, Your Honor.

THE COURT: Basis?

MR. STEVENS: It is beyond the scope of cross-examination.

THE COURT: Approach.

[Whereupon, an off-the-record bench conference is held]

THE COURT: You may proceed.

MR. BELL: Nothing further, Your Honor.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, ma'am.

THE COURT: Sir, you're excused.

THE WITNESS: Thank you.

THE COURT: You're welcome.

[Whereupon, Mr. Culler is excused and exits the

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1 witness stand]

2 THE COURT: You may call your next witness.

3 MR. BELL: The State would call Kelvin Dukes to
4 the stand.

5 [Whereupon, Mr. Dukes comes forward]

6 [Whereupon, Mr. Dukes is duly sworn by the clerk
7 of court as follows: do you hereby swear or affirm
8 that the evidence that you shall present to the Court
9 in this case will be the truth, the whole truth, and
10 nothing but the truth, so help you God]

11 THE WITNESS: I do.

12 THE COURT: Thank you. You may have a seat.

13 [Whereupon, Mr. Dukes takes the witness stand]

14 THE CLERK OF COURT: Please state your name
15 again and spell your last name.

16 THE WITNESS: My name is Kevin Christian Dukes.
17 The last name is spelled D-U-K-E-S.

18 THE COURT: You may proceed.
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Kevin Dukes
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1 KEVIN DUKES,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Where are you employed, sir?

7 A. With the Orangeburg Department of Public Safety.

8 Q. And how are you employed there?

9 A. Currently I'm an investigator, a general
10 investigator. I investigate crimes anywhere from
11 shoplifting to homicide.

12 Q. What's your rank?

13 A. I am -- I know I'm wearing corporal stripes, but
14 actually I'm a newly-promoted sargent.

15 Q. Sargent Dukes; is that correct?

16 A. Yes.

17 Q. And how long have you been with the Orangeburg
18 Department of Public Safety?

19 A. About seven and a half years.

20 Q. And is that how long you've been in law
21 enforcement?

22 A. Yes.

23 Q. And how long have you been doing investigation?

24 A. Close to three years now.

25 Q. And you do -- do you do any special type of

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1 investigations or --

2 A. Like I say, it can range anywhere from
3 shoplifting, cases such as this, armed robbery, cases of a
4 violent nature, misdemeanor cases, felony cases.

5 Q. And you were working as a detective with the
6 Department of Orangeburg -- the Orangeburg Department of
7 Public Safety back in September of last year?

8 A. Correct.

9 Q. And did you get assigned a case, the robbery of
10 the Keg --

11 A. Yes.

12 Q. -- that occurred in that month?

13 A. Yes.

14 Q. And when did you get assigned that?

15 A. I was actually off when the robbery occurred. I
16 was off that Monday. I think the robbery actually
17 occurred on the 8th and I actually picked up the case on
18 the 10th.

19 Q. Okay. And when you picked up the case, what did
20 you do?

21 A. Really, to start out with I didn't have a whole
22 lot at first. I was able to go back and make contact with
23 the victim that was there during the armed robbery.
24 Talked with him. I didn't get a written statement from
25 him. He had already provided the officers, who responded

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1 originally, with a written statement. He verbally gave me
2 a statement that was consistent with the written statement
3 that he had already given.

4 I also made contact with a Donnie Hall, which
5 was able to access the video system there, and I was able
6 to retrieve video footage that was captured on camera
7 during that incident.

8 Q. And when did you obtain that video footage?

9 A. That was on the 12th, I believe.

10 Q. And he accessed all the cameras at that
11 particular location?

12 A. He accessed the cameras first in the Keg side,
13 and then we went to the liquor store side -- I think they
14 call it Green's Package Shop -- because they have two
15 separate DVR systems.

16 Q. And the Keg, do you know what the address of the
17 Keg is?

18 A. I believe it is [REDACTED] -- [REDACTED] John C. Calhoun
19 Drive.

20 Q. And that's in the --

21 A. It's within the city limits of Orangeburg.

22 Q. And what county is it in?

23 A. It's in Orangeburg County.

24 Q. And what did you do? Once you got the video,
25 what did you do?

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1 A. I went back and started reviewing it, and
2 through the sequential events was able to ascertain that
3 during the armed robbery that a white Dodge Caliber pulled
4 behind Green Street -- through the rear driveway, the
5 Green Street -- or the Green's Package Shop, continued on
6 around to where the Keg was. There's a dumpster there.
7 Pulls forward to where the dumpster is. And then he --
8 the Dodge Caliber backs, kind of concealing itself, on the
9 right side of the Keg. From that --

10 Q. And then the video showed the actual robbery?

11 A. It showed the robbery. Correct.

12 Q. And the person that committed the robbery?

13 A. Correct. Yes, sir.

14 MR. STEVENS: Objection. Leading.

15 THE COURT: Basis? Sustained, leading.

16 Rephrase.

17 Q. [Mr. Bell] What did you do next with the video?

18 A. Got in touch with our liaison, which handles our
19 media --

20 Q. Well, let me go back and -- you were looking at
21 the video. You say that you watched the vehicle come in
22 the back?

23 A. Correct.

24 Q. What else did you watch of the video?

25 A. From that point on, it's -- you can't actually

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1 see anybody get out of the car. But from the next camera,
2 you see the upper torso of a black male, appeared to be
3 light-skinned. His head was covered. He was wearing
4 glasses. He was stooped down actually in between the Keg,
5 the right side of the Keg if you were facing it from 301.
6 And I believe it was the victim's car that was parked on
7 that side.

8 From there it switches to a front camera and you
9 actually see him -- I call it shotgunning. If you've ever
10 watched football, they hold the football down by the leg
11 to kind of conceal it. You could see the same male
12 subject is standing -- he actually passes by the victim,
13 who is smoking a cigarette and texting. And he was
14 kneeling down by the wall near the front door of the Keg.
15 The subject with the rifle is actually holding it down his
16 right side. The victim looks up and sees it and you can
17 see the shock in his eyes. The subject with the rifle
18 continues on into the store. He goes in one or two steps.

19 You can see the victim take out. He's trying
20 to get out of there. So originally he's trying to run
21 toward the general direction of the Hot Spot, which is
22 right down the road. You can see the subject come back to
23 the door --

24 MR. STEVENS: Objection.

25 THE COURT: Basis?

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1 MR. STEVENS: 403.

2 THE COURT: Please approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Sustained. Proceed.

6 Q. [Mr. Bell] Sargent Dukes, let me ask you this
7 question. How many times or how long did you study all
8 these videos that were involved in the robbery?

9 A. I didn't count it, but numerous, numerous,
10 numerous hours.

11 Q. And as a police officer investigating, the
12 information that you got from the victim and the videos,
13 were you able to kind of get a description of the person
14 that committed the robbery?

15 A. Correct. Yes, sir.

16 Q. And what description did you come up with, based
17 on your observations?

18 A. It would have been a light-complected, almost
19 reddish complected, black male, at least shoulder-length
20 dreds. Viewing it on my computer, I could see that the
21 black male had the portion up here that you could see --
22 because most of his face was covered -- you could see
23 thin, arched eyebrows in there. I didn't see any
24 distinguishable tattoos on the bare arms or anything. And
25 he was, in my estimation from looking at the video, six

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1 foot, six foot two, with a relatively muscular type build.
2 Not big, but just a muscular type build.

3 Q. And you had the information of a description of
4 the perpetrator and the vehicle. What did you do with
5 that information?

6 A. We actually put it out.

7 Our media-relations person with our department,
8 we put a clip of it in the Times and Democrat on their
9 mobile website where you can log in on the website.

10 And I think they also put an article in the
11 paper, and I think in that article it showed a picture of
12 the white Dodge Caliber and of the suspect.

13 I also printed up some papers with a picture of
14 the suspect from like the waist down, and also the Dodge
15 Caliber. I circulated that out to our patrol officers as
16 well as some of the officers with the county. It was more
17 or less the investigators at the county that I circulated
18 them.

19 Q. And after that, after you did all that, did you
20 have anything to do with this case?

21 A. I did.

22 Q. What? What was the next thing that happened --

23 A. The next thing that happened? Through the
24 information that was obtained through the traffic stop,
25 the vehicle came back registered to Emonie Ford. We were

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1 able to get an address where she resided, which was [REDACTED]
2 Wilkinson Street.

3 I also -- with cases like this, I consult with
4 at the time was my immediate supervisor. He was a sargent
5 at that time. He's a lieutenant now, John Caddell. So we
6 collaborated together to, you know, continued this
7 investigator.

8 Q. Let me stop you and ask you --

9 A. Sure.

10 Q. -- the information you got about the vehicle,
11 that was from Lieutenant -- that was from Officer Pifer
12 and Lieutenant Culler with the sheriff's department?

13 A. Right. Through a text -- I originally got it
14 through a text message. Correct.

15 I did have a chance to speak with Lieutenant
16 Culler after that and he reaffirmed the text message.
17 Same thing with Officer Pifer. We talked about it.

18 Q. Let me -- did you watch the video of the traffic
19 stop?

20 A. I did, yes.

21 Q. And based on watching the video, did that
22 dissuade you or encourage you about that --

23 A. I thought we were moving in the right direction.
24 It wasn't enough at that time that I would have actually
25 arrested somebody, but it was enough that encouraged me to

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1 go further because I felt we were moving in the right
2 direction. The description of the male subject, the
3 overall description, matched and the description of the
4 car did match.

5 Q. And so you got an address that the vehicle went
6 back to; is that correct?

7 A. Correct.

8 Q. And what did y'all do next after you discussed
9 this with Lieutenant Caddell?

10 A. There were two locations that we had to actually
11 look out for because on information that I got from
12 Lieutenant Culler and Officer Pifer that backed him up on
13 the stop, Mr. May I think gave them an address of -- it
14 was a Brandon Street address. I can't remember the exact
15 numerics, but it was a Brandon Street address. Brandon
16 runs off of Marshall Street right across from Marshall
17 school, if you're familiar with the area.

18 So the next morning I came out early, probably
19 around 8:00 or ten o'clock. I put eyes -- I started
20 surveilling from a distance. I was actually in the school
21 parking lot, had binoculars, and I surveilled the address
22 that was provided to me where Mr. May was supposedly
23 living at the time.

24 Sargent Caddell came out a little bit later than
25 I did because he had some family obligations that he had

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1 to fulfill. But when he came out, I let it be known that
2 I was watching Brandon Street. He went and he started
3 surveillance at the [REDACTED] Wilkinson Street.

4 While we were both conducting surveillance, I
5 was able to communicate with him, after me watching for
6 several hours, that I had seen no movement at that
7 address. He relayed to me that he --

8 MR. STEVENS: Objection. Hearsay.

9 MR. BELL: I will --

10 THE COURT: Within a certain realm, pursuant to
11 State vs. Weaver, he can say what led up to the
12 foundation of his investigator.

13 But be very careful about him repeating what
14 someone said if it's offered for its truth.

15 Q. [Mr. Bell] After conversing with Lieutenant
16 Caddell, what did you do?

17 A. After conversing with Lieutenant Caddell, and I
18 didn't see any movement where I was at, I moved from my
19 location.

20 And, actually, Lieutenant Caddell knew the
21 persons who owned the apartment complex that the Brandon
22 Street address came back to. We were able to confirm
23 through that source that Mr. May did not live at that
24 address. He may have --

25 MR. STEVENS: Objection. Hearsay again, as to

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1 the last --

2 THE COURT: Basis of his objection -- I mean,
3 the basis of his investigation and how he developed a
4 suspect. It's not being offered for its truth, it's
5 being offered to show the steps they followed as they
6 developed -- in this case was.

7 Overruled pursuant to State vs. Weaver.

8 You may proceed.

9 MR. BELL: Thank you.

10 THE COURT: You're welcome.

11 Q. [Mr. Bell] Where did you go once you determined
12 that nobody was there?

13 A. Once I determined nobody was there, I actually
14 relocated and took Sargent Caddell's position at ■ Street
15 -- Wilkinson Street, just a short distance down the road,
16 where I could actually keep eyes on the house.

17 We were just trying to establish if Mr. May did
18 indeed live at that address instead of the Brandon Street
19 address.

20 While I was sitting there, I did observe Mr. May
21 at one point to come out on the porch. I can't remember
22 whether he smoked a cigarette or was texting on the phone,
23 but he was on the porch for just a short time. He turned
24 around and he went back into the house.

25 Q. Let me stop and ask you a question. When you

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1 went back there, did you observe any vehicles around that
2 address?

3 A. I did. The white Dodge Caliber was at that
4 address.

5 From that point on -- I had already obtained
6 photographs from South Carolina State College. Mr. May
7 had told Lieutenant Culler that he was a student at South
8 Carolina State College, so I was able to make contact with
9 South Carolina State P.D. They did provide me a photo of
10 him, as well as his girlfriend, Emonie Ford. She was a
11 current student there. I was able to find out through
12 them that he was actually -- he was a student but he was
13 not currently enrolled at the time. But they were able to
14 provide me photographs of both.

15 I was able to -- while I was still watching the
16 house, I was able to see Ms. Ford actually come out of the
17 house. They had a rather large dog, and she came out and
18 she walked the dog. And I actually had to relocate my
19 vehicle, I was in an unmarked vehicle, because I did not
20 want her to see me sitting and watching.

21 Q. Let me ask -- let me stop and ask you a
22 question.

23 A. Sure.

24 Q. Where was Lieutenant Caddell at this point?

25 A. Lieutenant Caddell, we stayed on the phone

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1 together and I was relaying anything that I saw. What we
2 were doing was looking at the totality --

3 Q. Well, my question is was he still there --

4 A. No.

5 Q. -- at [REDACTED] Wilkinson?

6 A. No, sir.

7 Q. When did he leave?

8 A. He left when I took his position, and the best
9 of my recollection, it was just the time that it was
10 starting to get dark. So I'm guessing right around 6:30,
11 seven o'clock, somewhere right around in there.

12 Q. All right. And you observed Mr. May there --

13 A. Yes.

14 Q. -- is that correct?

15 A. Correct.

16 Q. And you observed who you believed to be
17 Ms. Ford?

18 A. Correct.

19 Q. And you observed a white Dodge Caliber there?

20 A. Correct.

21 Q. Okay. What did y'all do next or decide to do
22 next?

23 A. I talked with Lieutenant Caddell. We felt that
24 we had enough probable cause to be able to obtain a search
25 warrant. We had a suspect that -- or we had an individual

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1 that matched the overall description of the suspect from
2 the armed robbery. We had a vehicle that matched the
3 vehicle from the armed robbery. So Lieutenant Caddell was
4 able to approach one of the magistrates and did obtain a
5 search warrant.

6 Q. And you stayed at the house; is that correct?

7 A. I stayed at the house the whole time. Yes, sir.

8 MR. STEVENS: Judge, at this time we renew our
9 pretrial motion.

10 THE COURT: It will noted --

11 MR. STEVENS: Thank you, Judge.

12 THE COURT: You're welcome.

13 MR. STEVENS: And just so we're clear. I don't
14 want to have another mistake before --

15 MR. BELL: Objection --

16 THE COURT: I don't think you have to make a
17 continuing objection. I think the Supreme Court has
18 spoken very clearly about --

19 MR. STEVENS: As with the 702 objection. Yes,
20 ma'am. Thank you.

21 THE COURT: Well, I don't know what you're
22 referring to now --

23 MR. STEVENS: -- is what I'm saying. Yes,
24 ma'am.

25 THE COURT: We have error preservation. You

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1 need to make a contemporaneous objection and I'll
2 rule.

3 MR. STEVENS: Thank you, Judge.

4 THE COURT: Thank you.

5 Q. [Mr. Bell] Corporal Dukes, let me show you a
6 couple of photographs. First of all, I want to show you
7 what's been marked State's 6 for identification and ask if
8 you can identify that photograph.

9 A. That's the residence I was watching. That's
10 Wilkinson Street.

11 Q. And that's how it was --

12 A. That's the front.

13 Q. And that was how it was that night?

14 A. Yes. Correct.

15 MR. BELL: Your Honor, we would offer State's 6
16 into evidence.

17 THE COURT: Any objection?

18 MR. STEVENS: No, ma'am.

19 THE COURT: Marked and admitted without
20 objection.

21 [Whereupon, State's Exhibit Number 6 is admitted
22 into evidence by the Court]

23 Q. [Mr. Bell] I'm going to show you what's been
24 marked as State's 7 for identification and ask if you can
25 identify it.

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1 A. Yes.

2 That's the front right corner of the residence,
3 with the white Dodge Caliber parked beside the house in
4 the driveway.

5 Q. And that's how it was that night?

6 A. Correct.

7 MR. BELL: Your Honor, we would offer State's 7
8 into evidence.

9 THE COURT: Any objection?

10 MR. STEVENS: Just obviously with the prior
11 search warrant objection we had before.

12 THE COURT: That's not tied into that objection.
13 You need to look at the picture and tell me if you
14 have a contemporaneous objection --

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: -- to State's 7.

17 [Whereupon, Mr. Bell and Mr. Stevens confer]

18 THE COURT: Is there any objection to State's 7?

19 MR. STEVENS: Simply that it was part of the
20 execution of the search warrant, when it was taken --

21 THE COURT: No speaking objections. Is there a
22 basis for the objection?

23 MR. STEVENS: Just our prior objection to the
24 Court to the search warrant.

25 THE COURT: That wasn't a part of the in-camera

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1 hearing. You need to approach. I need to know the
2 basis of the objection.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: The objection is noted and
6 overruled.

7 THE COURT: Number 7 --

8 MR. BELL: Yes, Your Honor.

9 THE COURT: -- is marked and admitted.

10 [Whereupon, State's Exhibit Number 7 is admitted
11 into evidence by the Court]

12 Q. [Mr. Bell] Let me show you what's been marked
13 as State's Exhibit 9 for identification and ask you if you
14 can --

15 A. Correct. That's the rear of a Dodge Caliber
16 that belonged to a Ms. Ford.

17 Q. And it shows what on the rear?

18 A. It shows the license tag and a Butler -- I
19 believe Butler Automobile Dealership sticker down at the
20 bottom. It also says Dodge Caliber.

21 Q. And that's from the night of --

22 A. Correct.

23 Q. -- that you were there?

24 A. Yes.

25 MR. BELL: Your Honor, we would offer State's 9

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1 into evidence.

2 THE COURT: Any objection?

3 MR. STEVENS: The same as before, Judge.

4 THE COURT: Noted and overruled.

5 You may proceed. Number 9, State's, marked and
6 admitted.

7 [Whereupon, State's Exhibit Number 9 is admitted
8 into evidence by the Court]

9 Q. [Mr. Bell] And finally, let me show you what's
10 been marked as State's 11 for identification and ask if
11 you can identify that.

12 A. That's the front of the same vehicle.

13 Q. And that's how it was that night --

14 A. Correct. Yes, sir.

15 Q. -- with the sticker that's on the --

16 A. The sticker that's on the driver's side.

17 Q. -- windshield?

18 A. Correct. Yes, sir.

19 MR. BELL: And we would offer this as State's
20 11, Your Honor.

21 MR. STEVENS: Same as before, Judge.

22 THE COURT: Noted and overruled. Marked as
23 State's 11.

24 [Whereupon, State's Exhibit Number 11 is
25 admitted into evidence by the Court]

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1 [Off the record momentarily]

2 THE COURT: You may proceed.

3 Q. [Mr. Bell] Lieutenant Culler [sic], at some
4 point you said that Sargent Caddell went and got a search
5 warrant. Did other officers come to your location?

6 A. Yes.

7 Q. And when these other officers came to your
8 location, what did you do?

9 A. I stayed where I was at until -- they had
10 organized the County SRT team. Because of the nature of
11 the crime, we felt that there was a good chance that there
12 was an assault rifle inside the residence. And any time
13 that happens, we want to be prepared for worse situations.
14 So we got the county SWAT team, worked in conjunction with
15 my superiors, my immediate supervisor, which was John
16 Caddell, also my division commander at the time,
17 Lieutenant Carl Shultz, he came out, as well as our CSI
18 person, Thomas Gibson.

19 Q. And when this was going on, did you participate
20 in that or did you go and do something else?

21 A. Once they arrived on scene and they were going
22 to execute, I did move just on the outside perimeter just
23 as precaution. Because if anything did break loose, you
24 want all personnel to be able to stay close. But I didn't
25 take part as far as in searching the house or executing

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1 the search warrant.

2 Q. What did you do from then on?

3 A. From that point, Mr. May was secured. He came
4 out but he was separated from Ms. Ford. We detained Ms.
5 Ford because at that point we didn't know maybe if she may
6 be involved. And we took them back to headquarters in
7 separate vehicles. Once we got back to headquarters --

8 Q. Okay. Let me ask you this. And at that point,
9 you separated those individuals?

10 A. Yes, sir.

11 Q. And you talked to Ms. Ford; is that correct?

12 A. Yes, sir.

13 Q. And did you get a statement from Ms. Ford?

14 A. I did. Yes, sir.

15 Q. Okay. And after that, did you go back to the
16 house?

17 A. No, I do not believe I did go back to the house
18 at all that night because it was some time dealing with
19 Ms. Ford, and then when we immediately finished our talk
20 with Mr. May.

21 Q. And by then, stuff was coming back and coming
22 in, is that correct, that --

23 A. Correct.

24 When she sat down and was giving her statements,
25 I --

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1 Q. I just want -- you talked to Ms. Ford and she
2 gave you a statement; is that correct?

3 A. Yes, sir.

4 MR. BELL: One moment, Your Honor.

5 THE COURT: Uh-huh.

6 Q. [Mr. Bell] Let me backtrack a little bit. From
7 your viewing of the video that occurred at the scene --

8 A. Correct.

9 Q. -- and from reviewing your case file, being that
10 -- you're the case detective; is that correct?

11 A. Yes, sir.

12 Q. I believe we had testimony earlier that
13 Lieutenant Robinson located some gloves; is that correct?

14 A. Yes, sir.

15 Q. And based on what you observed from the video
16 and all, did that glove have anything to do in -- those
17 gloves have anything to do in your investigation?

18 A. No, sir.

19 Q. Did anybody -- the video showing anybody going
20 over there --

21 A. No, sir.

22 Q. -- from the time of the robbery?

23 A. No, sir.

24 MR. BELL: Thank you, Sargent Dukes. Please
25 answer any questions that the defense may have for

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1 you.

2 THE COURT: You may proceed.

3 MR. STEVENS: Thank you, Judge. May it please
4 the Court.

5 THE COURT: Yes, sir.

6 MR. STEVENS: Agent, how are you?

7 THE WITNESS: Doing good. How about yourself?

8 THE WITNESS: Doing well.

9 MR. STEVENS: Sargent Dukes now?

10 THE WITNESS: Yes, sir.

11 MR. STEVENS: My name is Breen Stevens. I
12 represent the defendant, Mr. May. Good seeing you
13 today.

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Sargent Dukes, I would first like to ask you some questions about your investigation, sir.

A. All right.

Q. It was on September 10th, 2013, that you went to the Keg; right?

A. That I actively started investigating it. Yes, sir.

Q. And that's when you went to the Keg?

A. No. Originally, let's see -- give me just one second.

THE WITNESS: Bear with me, Your Honor.

[Whereupon, the witness reviews documents]

A. Yeah. On the 10th I made contact with -- it was actually the victim, Mr. Montgomery, at the Keg. Yes, sir.

Q. [Mr. Stevens] You were not there on the 8th; right?

A. No, I was not.

Q. Or the 9th?

A. No.

Q. It was the 10th?

A. Yes.

Q. And you were there about the robbery?

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1 A. Yes.

2 Q. And the robbery occurred on the 8th?

3 A. Yes, sir.

4 Q. All right. So that means you weren't there when
5 it happened?

6 A. No, sir.

7 Q. You didn't personally see it happen?

8 A. No, sir.

9 Q. But you did write a report about your
10 investigation?

11 A. Correct. Yes, sir.

12 Q. I would like just for me to just ask a few
13 questions about report-writing in your job.

14 A. Sure.

15 Q. You've received a lot of training on how to
16 write reports; right?

17 A. Not actually.

18 Q. No?

19 A. Not actually, no.

20 Q. Have you received any training on how to write
21 reports?

22 A. We do. But we've gone away from --
23 traditionally, we used a lot of police verbiage and such.
24 Now we try to use more plain talk.

25 We do have training at our -- the only training

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1 I've had is actually at my department. It's not been
2 training that I've gone to the criminal justice academy
3 for.

4 Q. But you have gone to the criminal justice
5 academy; correct?

6 A. I have. Yes, sir.

7 Q. And you've received extensive training at that
8 criminal justice academy; correct?

9 A. Not for report-writing. But for other things,
10 yes, sir.

11 Q. Okay. But you have written a lot of reports?

12 A. Yes, sir.

13 Q. And you do have a dangerous job; right?

14 A. Yes.

15 Q. Okay. I mean, you carry a gun to protect
16 yourself?

17 A. Yeah. We're also --

18 Q. That's right.

19 You do that to protect other officers, as well;
20 right?

21 A. Correct.

22 Q. And also to protect citizens; right?

23 A. Correct.

24 Q. And, obviously, thankfully you're here today;
25 right?

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- 1 A. Yes, sir.
- 2 Q. But you could get injured?
- 3 A. Correct.
- 4 Q. Or you could have an accident; right?
- 5 A. Correct. Yes, sir.
- 6 Q. And if you were injured or unavailable, then
- 7 other officers would have to rely on reporting your
- 8 investigation?
- 9 A. Correct.
- 10 Q. And so after drafting a report, it's filed for
- 11 later use?
- 12 A. Correct.
- 13 Q. And your supervisor sees it?
- 14 A. Generally they do.
- 15 Q. Attorneys see it?
- 16 A. On our original reports -- when an original
- 17 report is written, generally your supervisors have to
- 18 check off on them. When you make it back to
- 19 investigations where I am, that's no so much the case.
- 20 Sometimes they do, sometimes they don't, go back to review
- 21 them.
- 22 Q. Okay. But it does happen?
- 23 A. It does happen. Yes, sir.
- 24 Q. Clearly, the prosecutors see it?
- 25 A. Yes, sir.

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1 Q. Defense attorneys have to see it?

2 A. Yes, sir.

3 Q. Judges might see it?

4 A. Yes, sir.

5 Q. So a lot of folks essentially will review your
6 report; right?

7 A. Correct.

8 Q. And so you want them to be as accurate and
9 truthful as possible; right?

10 A. Correct.

11 Q. Let's get back to the report of this incident.
12 Okay? You met with Mr. Quantavious Montgomery; correct?

13 A. Correct.

14 Q. And that was on the 10th?

15 A. I believe that was on the 10th, yes, sir.

16 Q. And he was the store clerk at the Keg; right?

17 A. Yeah.

18 Well, he was actually, I think, the manager.

19 Q. The manager.

20 And he was there during the robbery?

21 A. Sir?

22 Q. He was there during the robbery?

23 A. Yes.

24 Q. No one else, as far as no other employees?

25 A. Just him.

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1 Q. And you learned that after the Keg was robbed,
2 he locked the door?

3 A. Correct.

4 Q. Now, when you were there on the 10th, he didn't
5 give you a copy of the videos, did he?

6 A. No.

7 Q. But you are aware that at least until the 8th,
8 when other officers are there, you're aware that they did
9 try to conduct --

10 A. Correct.

11 Q. -- an investigation? I mean, that's --

12 A. Yeah.

13 Q. -- part of your duties as basically the
14 investigating attorney --

15 A. Yes, sir.

16 Q. -- the investigating officer; right?

17 A. Yes, sir.

18 Q. So you're aware that there was a dog track
19 involved, as well; correct?

20 A. Yes.

21 Q. And that dog track actually led to a residence;
22 right?

23 A. Yes.

24 Q. In fact, it tracked down Bleakly Street?

25 A. Yes, based off the scent of the gloves.

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1 Q. But it tracked down Bleakly Street?

2 A. Tracked down -- I have the report right here, if
3 you would like to see it. I wasn't there for that,
4 either. That's kind of secondhand information. But I do
5 have a copy of that report.

6 Q. But as the overall investigating officer, you're
7 aware that there was a dog track; right?

8 A. Yes.

9 Q. And it tracked to a trailer park?

10 A. Tracked to a trailer park.

11 Q. And that was in --

12 A. It was actually down by Metz Laundromat.

13 Q. Down by Metz. Is it Mell's Court?

14 A. I believe it's Mell's Court address, is what it
15 gives us.

16 Q. Mell's Court address. Okay.

17 And, in fact, someone answered that door?

18 A. Yes.

19 Q. And it was a man?

20 A. Yes.

21 Q. And his name was Ed Glover?

22 A. Yes.

23 Q. And an officer spoke with him. It was Officer
24 Hardin; right?

25 A. Yes.

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1 Q. But Officer Hardin did not go inside the trailer
2 at that time?

3 A. I do not think he went inside the trailer, no,
4 sir.

5 Q. Well, so it's your understanding from the
6 investigation you don't believe he went inside at the
7 time?

8 A. I do not believe, from what I have, no, sir.

9 Q. All right. And in an attempt, you also visited
10 Mr. Glover's trailer?

11 A. I did. Correct.

12 Q. And that's at [REDACTED] Mell's Court?

13 A. Yes.

14 It's the second trailer on the lefthand
15 side.

16 Q. And Mr. Glover was there?

17 A. Yes.

18 Q. As was Ms. Retisha DeWalt?

19 A. Correct.

20 Q. Let's talk about when you came back from the Keg
21 on September 12th, 2013. All right? Okay. So you came
22 back there to the keg of September 12th, 2013, and you got
23 a copy of the surveillance video; right?

24 A. Correct.

25 Q. So let's focus a bit on those videos. First of

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1 all, we know it's -- according to your notes, it's
2 maintained by Blackwater Security Systems; correct?

3 A. Correct.

4 Q. And those videos have time stamps?

5 A. Yes.

6 Q. Okay. And --

7 MR. STEVENS: Court's indulgence.

8 THE COURT: Uh-huh.

9 [Whereupon, Defendant's Exhibit Numbers 1
10 through 13 are marked by the court reporter]

11 Q. [Mr. Stevens] Officer Dukes, I'm going to show
12 you what's been pre-marked as Defendant Exhibits 2 through
13 13.

14 A. Sure.

15 Q. All right?

16 MR. STEVENS: May I approach, Your Honor?

17 THE COURT: Uh-huh.

18 MR. STEVENS: Thank you, ma'am.

19 Q. [Mr. Stevens] I just want you to look through
20 those, if you can, please.

21 A. Sure.

22 [Whereupon, the witness reviews documents]

23 Q. [Mr. Stevens] And while you're looking through
24 those, do those accurately reflect screen shots from the
25 video cameras, the surveillance cameras?

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1 A. Yes, they do.

2 MR. STEVENS: Judge, we would like to admit
3 these as Defendant's --

4 THE COURT: Did you show them to opposing
5 counsel?

6 MR. BELL: I've seen them, Judge. No objection.

7 THE COURT: They'll be marked and admitted as --
8 they need to be marked separately.

9 MR. STEVENS: Yes, ma'am.

10 THE COURT REPORTER: They are Defendant's 2
11 through 13.

12 THE COURT: 2 through 13 without objection.

13 MR. STEVENS: Thank you.

14 THE COURT: You're welcome. You may proceed.

15 MR. STEVENS: We've got a little bit of
16 paperwork here to take care of. Beg the Court's
17 indulgence.

18 THE COURT: Uh-huh.

19 [Whereupon, State's Exhibit Numbers 2 through 13
20 are admitted into evidence by the Court]

21 THE COURT REPORTER: 2 through 13 are entered.

22 MR. STEVENS: Thank you.

23 Q. [Mr. Stevens] I would first like to show you
24 Defendant's Number 7, if I may.

25 MR. STEVENS: Judge, may I approach?

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1 THE COURT: You may.

2 MR. STEVENS: Thank you, Your Honor.

3 Q. [Mr. Stevens] Here you go. And that is of
4 camera seven from the store, outside; correct?

5 A. That's outside camera seven.

6 Q. Right. And it has a time stamp on there; right?

7 A. Yes.

8 Q. And the time stamp says what?

9 A. 9:47:17.

10 Q. Thank you.

11 I would like to show you now Defendant's Exhibit

12 8. And that's also the red car on the side; correct?

13 A. The same camera. Yes, sir.

14 Q. And in that same camera, you can see --

15 A. 9:47:22.

16 Q. And in both of those, you actually see someone
17 dressed or garbed as the robber --

18 A. Correct. Yes, sir.

19 Q. -- in the reflection in the window; right?

20 A. Correct. Yes, sir.

21 Q. Okay. Next, I would like to show you
22 Defendant's Exhibit 2.

23 A. Okay.

24 Q. This is camera four, indoors; correct?

25 A. Correct.

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1 Q. And it also has a time stamp; correct?

2 A. Yes, sir.

3 Q. And what does the time stamp say?

4 A. 9:47:43.

5 Q. Now I would like to show you Exhibit Number 3.

6 And --

7 A. The time stamp is 9:48:48.

8 Q. And what is -- that shows the robber leaving;
9 correct?

10 A. Without looking at it moving, I would assume so.

11 Q. And now I would like to show you Defendant's
12 Exhibit Number 4. It's again the outside camera?

13 A. Yes.

14 Q. And that's also the robber leaving?

15 A. Yes.

16 Q. And what's the time stamp on that?

17 A. 9:48:51.

18 Q. Now, Defendant's Exhibit 5. That's the side
19 camera again?

20 A. Correct.

21 Q. And you can see the red car in there; correct?

22 A. Correct.

23 Q. And you can also see the reflection of the
24 robber walking past; correct?

25 A. I can't see the reflection. You can point it

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1 out to me, but I can't.

2 Q. Would it help with Defendant's Exhibit 6?

3 A. Yes. In that one, I can clearly see it. Yes,
4 sir.

5 Q. And, again, comparing 5 and 6?

6 A. Yes.

7 Q. And the time stamps?

8 A. 9:48:54.

9 Q. Now, clearly it was about a four-hour time
10 difference; correct?

11 A. Yes, sir. I can't remember exactly what it -- I
12 know it was around a four-hour time difference.

13 Q. I would like to show you Court's Exhibit Number
14 9. I'm sorry. Defense Exhibit Number 9. Sorry.

15 A. Yes.

16 Q. And that shows the car arriving?

17 A. Correct.

18 Q. And the time stamp is?

19 A. 9:49:44.

20 Q. And Defense Exhibit Number 10? That's also the
21 car arriving?

22 A. Correct.

23 Q. And the time stamp?

24 A. It's 9:48. Excuse me. 9:49:51.

25 Q. All right. And here?

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1 A. Is 9:50.

2 Q. And that's the car leaving?

3 A. Correct. 9:54:50.

4 Q. 9:54:50. And this one?

5 A. Is 9:54:55.

6 Q. 9:54:55. Thank you, Mr. Dukes.

7 A. You're welcome.

8 Q. Now, you said you studied these videos?

9 A. I did.

10 Q. And you actually even tracked the times yourself
11 in your notes?

12 A. I did as good as I could. Yes, sir.

13 Q. So I think you did quite an admirable job. You
14 tracked exactly what we just covered.

15 Now, all of the images we have of -- that we
16 covered from essentially the robber coming in from the
17 outside, walking around the front, going inside, and then
18 walking back outside and back out, all occurred between
19 9:47 and late into 9:48, according to the time stamps?

20 A. According to the time stamps. Correct.

21 Q. That's correct.

22 So, essentially, just like a little over --
23 almost three minutes is what we're looking at?

24 A. Roughly.

25 Q. Okay. And the videos of the cars occurred over

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1 a period of approximately four minutes, almost five;
2 right?

3 A. I didn't add it up.

4 Q. And according to the time stamps, they actually
5 occurred afterward?

6 A. I misunderstand your question.

7 Q. According to the time stamps, the car arrived
8 after the robbery time stamps in the photographs?

9 A. The cameras that are controlled by -- on the --

10 Q. The robbery time stamps occurred before the car
11 time stamps?

12 A. According to the camera system that the robbery
13 was captured on.

14 Q. We can look at it again. You would agree that
15 9:47 and 9:48 occur before 9:50 through 54?

16 A. Yeah.

17 Q. Okay. I think that should suffice.

18 Now, again, you've seen the videos?

19 A. Yes.

20 Q. And the videos do not show a person driving?

21 A. You can't clearly see a person driving.

22 Q. And they don't show a person dressed like the
23 robber getting out?

24 A. No.

25 Q. And they don't show a person dressed like the

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1 robber getting in?

2 A. No.

3 MR. STEVENS: Court's indulgence.

4 THE COURT: Uh-huh.

5 Q. [Mr. Stevens] Now, you said that after
6 examining the videos --

7 A. Yes.

8 Q. -- you also put together a couple of clips --

9 A. Correct.

10 Q. -- and you circulated those to some officers?

11 A. Correct.

12 THE WITNESS: That's actually a --

13 MR. STEVENS: Thank you, sir.

14 Q. [Mr. Stevens] So this is what you actually
15 circulated?

16 A. Correct.

17 Q. And in here, you didn't just say a white Dodge
18 Caliber; correct?

19 A. I did not.

20 Q. In fact, you said a white or silver Dodge
21 Caliber, probably white?

22 A. Correct.

23 Q. And that is what was circulated to all the other
24 officers?

25 A. Correct.

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1 MR. STEVENS: Court's indulgence.
2 MR. STEVENS: Uh-huh.
3 MR. STEVENS: Nothing further at this time.
4 THE COURT: Any redirect?
5 MR. STEVENS: Thank you, sir.
6 MR. BELL: Yes.
7 THE COURT: You may proceed.
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REDIRECT EXAMINATION

BY MR. BELL:

Q. Sargent Dukes, let me show you what's been entered as State's 5 and ask if you recognize that from the video.

A. I do.

Q. And that is a picture of what?

A. A white Dodge Caliber.

Q. So it is a white Dodge Caliber that's in that picture?

A. Correct.

From some of the video that I viewed, depending on where the car was in the shadowing --

I'm getting up in age. I'm not old, but I'm forty-three. My eyesight is not the best in the world.

When I initially viewed the video, I couldn't distinguish whether it was a -- like a light silver or a white, from looking at the pictures that were displayed on the monitor. I was going more toward the white color, just based on what I saw. But I couldn't clearly -- in some pictures like this one, it looked like pictures like this. I can't really distinguish between the silver and --

Q. Okay. Thank you.

MR. BELL: One moment.

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1 Q. [Mr. Bell] Sargent Dukes, when you got the
2 videos and started looking at them, you're aware of the
3 time lag on the videos; is that correct?

4 A. Correct.

5 Q. And did you talk to anybody about that?

6 A. When I contacted Donnie Hall, he actually came
7 to burn them -- I actually tried to obtain the video the
8 day before, which would have been on the 11th. We tried
9 to figure out the time difference. And the first time I
10 tried to get the video, we failed. He burned a copy of
11 some footage but I found out immediately, when I took it
12 back to headquarters, that it was not the right footage we
13 were looking for. When I went back on the 12th, he
14 actually -- the day prior he was in a hurry so he was
15 rushing, so he didn't actually view the video, he just
16 tried to burn the time frame that we thought we were
17 looking for. When we went back on the 12th, he was not as
18 pressed for time so we actually looked at some of the
19 video as it played to make sure we captured it from the
20 cameras.

21 MR. BELL: One moment.

22 THE COURT: Uh-huh.

23 MR. BELL: Nothing further, Sargent Dukes.

24 THE COURT: Any objection to the witness being
25 excused? From the State?

Kevin Dukes
Redirect Examination by Mr. Bell
August 12, 2014

1 MR. BELL: Your Honor, he's my case officer so
2 he'll stay.

3 THE COURT: Subject to re-call. From the
4 defense?

5 MR. STEVENS: No, ma'am.

6 THE COURT: Sir, you're excused, subject to
7 being re-called.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 [Whereupon, Mr. Dukes is excused and exits the
11 witness stand]

12 THE COURT: Ladies and gentlemen, we're going to
13 take advantage of this break in testimony to take our
14 evening recess.

15 During the break, please do not discuss the case
16 in any manner whatsoever. Please leave your notepads
17 in your seats. We'll secure them during the evening
18 recess. And please follow all of the additional
19 instructions that I gave you regarding posting to any
20 social networking sites, as well as watching, reading
21 or listening to any media accounts about this case.
22 And I suspect there will be an article in the paper at
23 some point, because I think I saw one of the reporters
24 for the Time and Democrat here. So especially guard
25 yourselves and just -- I probably, I guess, would have

Kevin Dukes
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1 somebody skim the newspaper for me in the morning, if
2 you're one of those people that read it first thing,
3 to make sure that you don't read anything that could
4 possibly be in the media.

5 Now, I need to ask a quick question. Bear with
6 me one moment.

7 Mr. Moorner, what time is your appointment in the
8 morning? Do you remember?

9 MR. MOORER: I'm thinking, ma'am, it's probably
10 3:30.

11 THE COURT: I think what we'll do is why don't
12 you go ahead and come in in the morning and then we'll
13 accommodate your appointment so that I can make sure
14 you get there on time. Okay?

15 MR. MOORER: All right.

16 THE COURT: Thank you-all so much. Y'all have a
17 good evening. See you tomorrow at 9:30. Come
18 directly to your jury room.

19 [Off the record momentarily]

20 [Whereupon, the jury exits the courtroom at
21 9:48 p.m.]

22 THE COURT: Is there anything -- we have --
23 Mr. Moorner has a doctor's appointment tomorrow and he
24 was protected for tomorrow, but we may have to -- I
25 wouldn't close and charge after three o'clock anyway.

Kevin Dukes
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1 So we'll probably have to make some adjustment.

2 And then we have a young man, who I protected
3 for Thursday, who has his orientation at Tech. So I
4 will find out what time that is on tomorrow to see if
5 we need to work around his schedule, as well. But
6 we'll just kind of play it by ear and we'll take it
7 from there.

8 MR. BELL: As a matter of housekeeping: on
9 State's -- well, I think it's now Court's 3 --

10 THE COURT REPORTER: State's 26.

11 MR. BELL: -- State's 26 --

12 THE COURT: Yes, sir.

13 MR. BELL: -- we have inquired -- Sargent Dukes
14 inquired and they cannot cut it, they cannot --

15 UNIDENTIFIED: They can't get just a clip or an
16 excerpt from that video, for legal purposes, Your
17 Honor. They would have to rely -- you would just get
18 another copy.

19 But on this video you can manually stop it where
20 you want to stop it, and he can disable the sound.

21 MR. BELL: I mean, if they want to watch it --

22 THE COURT: Yeah. Yeah. We'll just have to
23 bring them back in here.

24 And we'll mark that as State's 26 and take off
25 the Court's -- because I can't restrict --

Kevin Dukes
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1 THE COURT REPORTER: I never marked it. I was
2 just waiting.

3 THE COURT: Yeah. I can't restrict -- if we
4 have the whole thing, and they're in the jury room,
5 they may watch the whole thing and I didn't admit the
6 whole thing. So we'll just have to -- if they want to
7 watch it again, I'll just have to make them aware that
8 they'll have to come in here to watch it.

9 THE COURT REPORTER: Do you want it now entered?
10 26?

11 THE COURT: 26, as redacted. But it's really
12 not redacted. It's sort of fiction until it's
13 redacted. But we'll work with it.

14 [Whereupon, State's Exhibit Number 26 is marked
15 by the court reporter]

16 [Off the record momentarily]

17 THE COURT: Is there anything else before we
18 adjourn for the evening? From the State?

19 MR. BELL: Nothing from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. STEVENS: Nothing from the defense.

22 THE COURT: Have a good evening. See y'all at
23 9:30. Make sure the court reporter has all the
24 exhibits.

25 [JURY TRIAL ADJOURNS AT 5:01 PM]

Kevin Dukes
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August 12, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the jury trial held before the Honorable Deadra L. Jefferson, on August 12, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of November, 2014.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-383-

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 3 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 13, 2014, Commencing at 9:24 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

THE COURT: Who is the State's next witness?

MR. BELL: The State is Lieutenant Caddell.

THE COURT: Is he present?

MR. BELL: Yes, Your Honor. He's seated in the courtroom.

THE COURT: Okay. Please bring in the jury.

THE BAILIFF: 'Yes, Your Honor.

[Whereupon, the jury enters the courtroom at 9:49 a.m.]

THE COURT: Good morning, ladies and gentlemen. I hope everyone had a pleasant and restful evening.

We are now going to resume testimony. I would ask that you give the attorneys your attention.

The State may proceed.

MR. BELL: Thank you, Your Honor. If it please the Court.

The State would call Captain -- Lieutenant. I'm sorry. Lieutenant Caddell.

[Off the record momentarily]

[Whereupon, Mr. Caddell comes forward]

THE CLERK OF COURT: Put your left hand on the Bible and raise your right hand, please.

[Whereupon, Mr. Caddell is duly sworn by the clerk of court as follows: do you hereby swear or

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1 affirm that the evidence that you present today in
2 this case will be the truth, the whole truth, and
3 nothing but the truth, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Thank you. You may have a
6 seat.

7 [Whereupon, Mr. Caddell takes the witness stand]

8 THE CLERK OF COURT: Please state your name
9 again for the record and spell your last name.

10 THE WITNESS: John Caddell.

11 THE CLERK OF COURT: Thank you.

12 THE WITNESS: C-A-D-D-E-L-L.

13 THE COURT: You may proceed, Mr. Bell.

14 MR. BELL: Thank you, Your Honor.

15 THE COURT: You're welcome.

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John Caddell
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JOHN CADDELL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Caddell, where are you employed?

A. With the Orangeburg Department of Public Safety.

Q. And in what capacity are you employed there?

A. Currently, I supervise the patrol division.

Q. And how long have you been doing that?

A. That's a recently-appointed position. For a few weeks now.

Q. How long have you been in law enforcement?

A. Approximately thirteen years.

Q. And how long have you been with Orangeburg Department of Public Safety?

A. Approximately eleven.

Q. And before you were the lieutenant over the patrol division, what were your duties?

A. Before, I was first sargent over the investigations division.

Q. And how long did you do that?

A. I was supervisor for about a year. Total investigations, about four years.

Q. And I'm going to direct you back to September of

John Caddell
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1 last year, 2013. What was your -- what were your duties
2 then?

3 A. Then, I was supervisor of investigations
4 division.

5 Q. And did you have an occasion to assist now
6 Sargent Dukes with an armed robbery investigation?

7 A. Yes, sir.

8 Q. And what was the investigation about?

9 A. The investigation was concerning an armed
10 robbery of the Keg located on John C. Calhoun Drive in the
11 city of Orangeburg.

12 Q. And how did you get involved in that
13 investigation?

14 A. Sargent Dukes had requested some assistance. He
15 was -- he had given me information and asked for help with
16 the case, and also with some surveillance and other
17 things, search warrants.

18 Q. And once you became involved, what did you do to
19 familiarize yourself with the case?

20 A. Once I became involved, of course I pulled the
21 case file, which the case file includes everything about
22 the case. I read the report, the initial report, from the
23 responding officers, seen what evidence there was. There
24 was a video. I watched the video of the actual armed
25 robbery that took place. There was other pictures that

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1 was gathered by Detective Dukes, of the defendant that he
2 identified. Took a look at those pictures, did
3 comparisons. Basically did an investigation to
4 familiarize myself with the case.

5 Q. And I guess kind of during the couple of days
6 afterwards, you kind -- y'all were kind of at a dead-end
7 with trying to find a suspect; is that correct?

8 A. Yes, sir.

9 Q. And later on, a couple of days after that, did
10 something happen that kind of started the investigation or
11 got it going --

12 A. Yes, sir.

13 I believe it was September the 14th I received
14 an e-mail from Officer Kenneth Pifer stating that himself
15 and Lieutenant Randy Culler, with the sheriff's office,
16 had stopped a person of interest that matched the
17 description and the vehicle description of a picture that
18 was put out by Detective Dukes.

19 Q. And what did you do with that information?

20 A. At that time, I relayed the information over to
21 Detective Dukes. He came into my office. I pulled the
22 in-car video camera from Officer Kenneth Pifer's in-car
23 dash cam.

24 Q. And based on that, did that help or deter your
25 investigation?

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1 A. It tremendously helped. It identified a suspect
2 that Officer Pifer identified as Tykeem May. We took that
3 information and Detective Dukes then followed up and got
4 other pictures of him and we started to determine who he
5 was and get some background information.

6 Q. And as a result of gathering this information,
7 what did you and Detective Dukes do?

8 A. We prepared photographs and height, weight,
9 build, skin tone and everything, from the description that
10 we got from the person at the armed robbery. Also, we
11 determined the vehicle that was used, who it belonged to,
12 where she resided. We found out where the defendant
13 resided by doing surveillance. And at that time, it was
14 put together and we got enough probable cause to retrieve
15 a search warrant.

16 Q. Now, you said y'all did surveillance. What did
17 you do in regards to surveillance?

18 A. The defendant was -- it was -- we were trying to
19 determine exactly where the defendant's residence was, or
20 what we refer to as where he's laying his head. We had
21 two addresses that we had to determine. One was I believe
22 █████ Brandon Street, which is located over by Clark Middle
23 School kind of over in the north side of town. The other
24 location was -- I believe it was █████ Wilkinson Street. At
25 that time, Detective Dukes went and sat surveillance up on

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1 one residence, I set surveillance up on the other
2 residence.

3 Q. You were at the [REDACTED] Wilkinson?

4 A. Initially, I was at [REDACTED] Wilkinson.

5 Q. How long did you stay there, approximately, as
6 best you can remember?

7 A. Several hours.

8 Q. Okay. What did you observe there?

9 A. I did observe the defendant driving up in the
10 vehicle, the white Dodge Caliber that was seen on Officer
11 Pifer's video as well as the video that was from the Keg.

12 He got out of the vehicle, went into the house.
13 At that point, Detective Dukes had called me and said that
14 he hadn't seen any movement or anything over on Brandon
15 Street.

16 Q. And did you do something in regards to that
17 Brandon Street address?

18 A. Yes, sir.

19 What I did is I -- from working in Orangeburg
20 for so long, you get to know people. And I know the guy
21 that owned the apartments over there. So to determine if
22 he was staying there, I called the owner of those
23 apartments.

24 Q. And based on that phone call, what as your
25 determination?

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1 A. It was my determination that he didn't live on
2 Brandon Street.

3 Q. Now, the person you saw drive up in -- what kind
4 of vehicle was it?

5 A. A white Dodge Caliber, I believe it was.

6 Q. Okay. Do you see him in the courtroom today?

7 A. Yes, sir.

8 Q. Could you point him out, please, for the jury?

9 A. It's Mr. May, sitting at the far end of
10 defendant's table.

11 Q. With dreds; is that correct?

12 A. That's correct.

13 Q. After that, what happened after you determined
14 that he wasn't living at the Brandon Street address, or it
15 was determined that it wasn't there?

16 A. Once we determined that he wasn't living there,
17 we focused our efforts on the Wilkinson Street address to
18 determine whether he was actually staying there.

19 At that point, Detective Dukes swapped out with
20 me. He ran surveillance on it. And he -- and after him
21 sitting and running surveillance, he advised me that he
22 had seen the defendant step out of the house, you know,
23 just kind of hang around on the porch smoking a cigarette
24 or, you know, basically information that would lead me to
25 believe that he was staying there.

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1 Q. Okay. And where did you go?

2 A. I went to headquarters -- or I went to my office
3 at my headquarters, over there by the post office on
4 Middleton Street, to start to prepare a search warrant.

5 Q. Let me show you what's been entered as State's 6
6 in evidence and ask if you recognize that photograph.

7 A. That is the residence located on Wilkinson
8 Street.

9 Q. And that's the one that you had surveillance on?

10 A. Initially. Yes, sir.

11 Q. And let me show you what's been marked as
12 State's 7, that's in evidence, and ask if you can identify
13 that photograph.

14 A. That is also the same photograph or the same
15 residence on Wilkinson Street, taken at a different angle
16 to include the driveway, which is where the white Dodge
17 Caliber was parked where I initially saw Mr. May pull up
18 in.

19 Q. So that's the vehicle you saw pull up?

20 A. That's correct.

21 Q. With Mr. May driving?

22 A. That's correct.

23 Q. The defendant driving?

24 A. That's correct.

25 Q. Now, you said that you had gone back to the

John Caddell
Direct Examination by Mr. Bell
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1 office and it was decided to prepare a search warrant?

2 A. That's correct.

3 Q. What were you going to search?

4 A. The residence located at [REDACTED] Wilkinson.

5 Q. And what do you do when you prepare a search
6 warrant?

7 A. Basically, you have to identify three things on
8 a search warrant. You have to identify the residence that
9 you want to search, the property that you're looking for,
10 and your statement of probable cause as to why you believe
11 that the items you want is in that location that you're
12 looking in.

13 Q. And I guess -- and the connection of the person
14 to the place --

15 A. That's correct. That's in my statement of
16 probable cause as to why I'm looking for those items in
17 that residence.

18 Q. So you typed -- is that a form or something you
19 type up?

20 A. Yes, sir.

21 It's a standardized form that we use that we
22 fill in the information.

23 Q. And once you filled out that form, what did you
24 do?

25 A. Once I filled out that form, I contacted Judge

John Caddell
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1 Clariday, who is a magistrate with Orangeburg County.

2 Took it to him. Presented my probable cause and all the
3 information and to let him determine if I had enough to
4 actually gain a search warrant.

5 Q. Lieutenant Caddell, let me show you what's been
6 marked as State's 21 and ask if you can identify that.

7 A. That is a copy of the search warrant that I
8 prepared.

9 Q. And it has your signature in there?

10 A. That's correct.

11 Q. And it has the signature of Judge Clariday?

12 A. That's correct.

13 Q. And when you go there, are you put under oath as
14 to your -- the facts of the statement in an affidavit?

15 A. Yes, sir.

16 Q. And was that done, as well?

17 A. Yes, sir.

18 Q. And did you sign that he swore you?

19 A. Yes, sir.

20 MR. BELL: Your Honor, we would offer this as
21 State's 21.

22 THE COURT: Marked for ID only at this time.

23 Q. [Mr. Bell] Now, once you had that search
24 warrant, State's 21 for identification, signed, what did
25 you do with it?

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1 A. I then contacted the division commander. Me and
2 him met. We also contacted the SRT, or SWAT team
3 commander for the Orangeburg County Sheriff's Office,
4 because the residence was located in the county and not
5 the city. So we contacted the county to assist with the
6 execution of the warrant.

7 Q. And who's your division commander?

8 A. Captain Carl Shultz.

9 Q. And where did you go once you had the warrant
10 signed?

11 A. Once the warrant was signed we went to the main
12 complex off Ellis Avenue, which is the sheriff's office
13 complex, where we briefed the sheriff's office on the
14 incident and basically all the tactical information, to
15 serve the warrant.

16 Q. And then where did you go?

17 A. At that point, we left and went straight to [REDACTED]
18 Wilkinson Street and executed the warrant.

19 Q. Okay. And who actually executed the warrant?
20 What individuals?

21 A. That conducted the search?

22 Q. Yes.

23 A. The search was conducted by my self, Captain
24 Shultz, and Sargent -- or crime scene investigator Thomas
25 Gibson.

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1 Q. Now, when you went to that residence to execute
2 the search, were there -- was anybody there at that time?

3 A. When we made entry into the house to secure the
4 residence, there was the defendant, Mr. May, his
5 acquaintance, girlfriend, whatever their relationship is,
6 Ms. Emonie -- I believe I'm pronouncing that right --
7 Ford.

8 Q. And what was done with them?

9 A. They were detained, for officer safety, and
10 removed from the residence. At that point they were read
11 the search warrant and given a copy of it as to the
12 exactly what was going on.

13 Q. And what were y'all looking for?

14 A. During the video of the search warrant, we could
15 see -- I mean, I'm sorry. During the video of the armed
16 robbery we could see the clothing of what the defendant
17 was wearing, or the clothing the perpetrator was wearing
18 when he went into the Keg, the rifle that he was carrying.
19 It was a wooden stock SKS type assault rifle, had the long
20 banana clip that was hanging from it.

21 MR. STEVENS: Objection, Judge.

22 THE COURT: Basis?

23 MR. STEVENS: 702, knowledge for the basis --

24 THE COURT: He's a police officer. I would
25 think he has sufficient knowledge to be able to

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1 identify what was from the video.

2 It's overruled.

3 Q. [Mr. Bell] And when you went in and y'all
4 searched, did you find items that, to your knowledge,
5 apparently were evidence that fit the robbery?

6 A. Yes, sir.

7 Q. Do you recall what was found?

8 A. I can go through them one by one and tell you
9 exactly what was found. One thing that we were looking
10 for, during the video of the robbery you can see a pair of
11 white-and-black stripped tennis shoes. They -- I don't
12 want to say it's unique, but it's not a common pattern.
13 It's a -- it was a pair of black-and-white Nike shoes that
14 matched that description of the ones on the video. They
15 were size ten and a half. We also found a pair of red-
16 framed sunglasses. We also found the wooden stock SKS
17 type assault rifle with the banana clip magazine. We also
18 found several bullets that went into the gun. And we also
19 found \$50 in U.S. currency, which was one 20-dollar bill
20 and three 10-dollar bills.

21 Q. First, let me show you what's been entered as
22 State's 4. It's been testified to as a screen shot from
23 the video of the robbery. Have you seen that video?

24 A. Yes, sir, I have.

25 Q. And does that represent a picture of the

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1. individual that would rob the Keg on September the 8th?

2. A. That's correct.

3. Q. And could you step down and show the jurors the
4. items that you were specifically talking about, some items
5. of clothing and the weapon?

6. A. Okay. The only thing that this picture does not
7. show -- well, it barely shows it. The shoes --

8. MR. BELL: Let me hold you up.

9. THE WITNESS: I'm sorry.

10. MR. BELL: Let them all see it.

11. A. The --

12. THE WITNESS: Can everybody see that?

13. MR. STEVENS: Judge, we object.

14. THE COURT: Please don't interact with the jury.

15. And I need you to stand back just --

16. We don't have any equipment -- you don't have an
17. Elmo or anything to --

18. MR. BELL: No, Your Honor, we don't have an
19. Elmo.

20. THE COURT: You may need to pass it around once
21. he's done that. But, yeah.

22. MR. STEVENS: Objection. We would also, for the
23. record, say he can testify to what he recovered there
24. but when it comes to the photograph, it pretty much
25. explains itself.

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1 THE COURT: Let me see the photograph.

2 Approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: The objection is sustained.

6 Q. [Mr. Bell] Lieutenant Caddell, based on
7 State's 4, what items were you looking for? Just what
8 were you looking for? Don't go into the description.
9 Just what were you looking for? Show the jury.

10 A. What we were looking for, or what we found?

11 Q. What you were looking for when you got the
12 search warrant.

13 A. What we were looking for was the skull cap, the
14 sunglasses, the shawl or bandana, the tee-shirt, this
15 rifle here, the wooden-stock SKS type assault rifle with
16 the banana clip, and the black-and-white stripped shoes,
17 along with the faded -- with the jeans with the faded
18 front.

19 Q. Okay. Thank you.

20 [Whereupon, the witness retakes the witness
21 stand]

22 Q. [Mr. Bell] Lieutenant Caddell, let me show you
23 what's been marked as State's 16 for identification and
24 ask if you can identify that photograph.

25 A. That is a photograph of one of the bedrooms

John Caddell
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1 located inside the residence of [REDACTED] Wilkinson.

2 Q. And what --

3 MR. STEVENS: At this time, we simply renew our
4 pretrial argument regarding the search warrant and
5 anything --

6 THE COURT: Noted and overruled.

7 MR. STEVENS: Thank you, Judge.

8 THE COURT: You're welcome.

9 Based on the Court's previous ruling.

10 MR. BELL: Okay.

11 THE COURT: You may proceed.

12 MR. BELL: Thank you, Your Honor.

13 Q. [Mr. Bell] And what is the significance of that
14 particular bedroom?

15 A. This is the bedroom where most of the items were
16 found

17 MR. BELL: Your Honor, we would offer this as
18 State's 16.

19 THE COURT: Marked and admitted, subject to the
20 earlier objection.

21 [Whereupon, State's Exhibit Number 16 is
22 admitted into evidence by the Court]

23 MR. BELL: Again, if you could come down and
24 just step away from the jury. You may have to come
25 here and do it twice.

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1 Q. [Mr. Bell] Kind of show -- you said you found
2 shoes. Can you show them approximately where you found
3 the shoes?

4 A. The shoes were located in this closet here in
5 the far corner. This is the closet that was in the corner
6 of the bedroom, which goes back behind this door here.
7 The shoes were located -- where you can see all these
8 boxes of shoes, they were located back here in the back
9 corner.

10 MR. BELL: And you might want to just kind of
11 show them over here so they can --

12 MR. STEVENS: Judge, if he could just pass them
13 to the jury instead of having him to be in the jury.

14 THE COURT: Well, if he wants to point out where
15 he located certain items in the photograph, he's
16 allowed to do that.

17 MR. STEVENS: Yes, ma'am.

18 THE COURT: Unfortunately, we don't have the
19 technology necessary to be able to do it all at one
20 time so after he does that, you can pass the
21 photograph around.

22 MR. BELL: Okay.

23 A. This is the closet here that was located in the
24 bedroom. On this kind of -- where the doors open, there's
25 space on either side. The shoes were located in this back

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1 corner here.

2 MR. BELL: All right. I'm going to refer to it
3 a couple more times, so I'll kind of pass it to the
4 jury after I kind of finish with it.

5 THE COURT: That's fine.

6 [Whereupon, the witness retakes the jury stand]

7 Q. [Mr. Bell] Let me show you what's been marked
8 State's 13 for identification and ask if you can identify
9 that photograph.

10 A. This is a close-up photograph of the same closet
11 in that back corner that I was explaining.

12 Q. And what does it show in that back corner?

13 A. It shows exact -- that shows a close-up video
14 exactly where the shoes were located.

15 MR. STEVENS: Could we have a continuing
16 objection to any evidence from the search, based upon
17 our prior pretrial motion?

18 THE COURT: Well, no speaking objections. Is it
19 based --

20 MR. STEVENS: Based upon our pretrial motion.

21 THE COURT: Noted and overruled.

22 MR. STEVENS: Thank you.

23 THE COURT: You're welcome. Based on the
24 Court's previous ruling.

25 Q. [Mr. Bell] You can continue.

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1 A. I'm sorry.

2 This is a photograph that shows -- it's
3 basically a close-up of that photograph. It takes a
4 picture of the back end of the closet in exactly the
5 location where the shoes were found.

6 MR. BELL: Your Honor, we would offer this as
7 State's 13.

8 THE COURT: Marked and admitted, subject to the
9 earlier objection and overruled.

10 [Whereupon, State's Exhibit Number 13 is
11 admitted into evidence by the Court]

12 Q. [Mr. Bell] Let me show you what's been marked
13 as State's 20 for identification and ask if you can
14 identify what's in that bag.

15 A. Can I take them out?

16 These are the -- these are the actual shoes that
17 were located and seized subject to the search warrant.

18 MR. STEVENS: Judge, same objection.

19 THE COURT: Noted and overruled.

20 MR. STEVENS: Thank you.

21 THE COURT: You're welcome.

22 MR. BELL: Your Honor, we would offer these,
23 State's 20, into evidence.

24 THE COURT: Admitted subject to the objection
25 and overruled.

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1 [Whereupon, State's Exhibit Number 20 is
2 admitted into evidence by the Court]

3 Q. [Mr. Bell] While you're looking at that,
4 Lieutenant Caddell, can you tell the size of those shoes?

5 A. The size of the shoes are located in the tongue.
6 It's U.S. size ten and a half.

7 MR. BELL: Okay. You can just put them back in
8 here.

9 [Whereupon, the witness complies]

10 Q. [Mr. Bell] Now, after you found the shoes, were
11 other items found in that bedroom?

12 A. That's correct.

13 Q. What else was found?

14 A. The sunglasses and the rifle was found.

15 Q. Where were the sunglasses found?

16 A. The sunglasses were found -- the closet is here,
17 there is a table that sits here, and they were found on
18 that table.

19 Q. Okay. Let me show you State's 16 and ask if you
20 could point out the glasses. You can probably just stand
21 up and point at it. Because I'll pass that photo around.

22 A. This is the same photograph of the -- where the
23 closet --

24 MR. STEVENS: Objection --

25 THE COURT: Noted and overruled.

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1 MR. STEVENS: Thank you, Judge.

2 A. This is the same closet, same bedroom, where the
3 shoes were. The shoes were here. The sunglasses were
4 located right here on the top of the table.

5 Q. [Mr. Bell] Okay. Thank you.

6 Let me show you what's been marked as State's 8
7 for identification and ask if you can identify that.

8 A. This is a closeup of that same bedroom, the --
9 basically, that same picture but a closeup of where the
10 glasses were actually found.

11 MR. BELL: Your Honor, we would offer State's 8
12 into evidence.

13 THE COURT: Marked and admitted subject to the
14 objection.

15 [Whereupon, State's Exhibit Number 8 is admitted
16 into evidence by the Court]

17 Q. [Mr. Bell] Lieutenant Caddell, let me show you
18 what's been marked as State's 19 for identification and
19 ask if you can identify that.

20 A. These are the actual sunglasses that are in the
21 picture that was taken and entered into evidence.

22 MR. STEVENS: Again, Judge, same objection.

23 THE COURT: Overruled.

24 MR. BELL: And we would offer State's 19 into
25 evidence, Your Honor.

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1 THE COURT: Admitted, subject to the objection
2 and overruled.

3 [Whereupon, State's Exhibit Number 19 is
4 admitted into evidence by the Court]

5 Q. [Mr. Bell] Okay. Now, you said what else was
6 found in that bedroom?

7 A. The wooden stock SKS type assault rifle.

8 Q. Let me show you what's been marked as State's 10
9 for identification and ask if you can identify that.

10 A. Oh. This is a closeup, an extremely closeup
11 view, of the other side of the closet, the location where
12 --

13 MR. STEVENS: Objection.

14 THE COURT: Basis?

15 MR. STEVENS: Same objection.

16 THE COURT: Overruled.

17 MR. STEVENS: Thank you.

18 THE COURT: You're welcome.

19 A. This is a closeup of that same closet, but the
20 left side of it where the assault rifle was found.

21 Q. [Mr. Bell] And where is the assault rifle in
22 that picture?

23 A. It's hard to see, but it's tucked back in this
24 corner right here.

25 MR. BELL: We would offer State's 10 into

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1 evidence, Your Honor.

2 THE COURT: Marked and admitted, subject to the
3 objection.

4 [Whereupon, State's Exhibit Number 10 is
5 admitted into evidence by the Court]

6 MR. BELL: Catch up with the court reporter.
7 Sorry.

8 Q. [Mr. Bell] Lieutenant Caddell, let me show you
9 what's been marked as State's 17 and State's 18 for
10 identification and ask if you can identify these.

11 A. This is the actual -- and there's a gun lock on
12 it, so it's safe. This is the actual wooden-stock SKS
13 type assault rifle and --

14 MR. STEVENS: Objection. Same objection.

15 THE COURT: Noted and overruled.

16 A. And this is the magazine, or what's commonly
17 referred to as a clip, banana clip, that fits this rifle.

18 Q. [Mr. Bell] And when you found it, were they
19 separate?

20 A. It was together.

21 Q. Okay. And did you check, or did somebody check,
22 or were you there present when somebody checked, to see if
23 it was loaded at the scene?

24 A. I was there. I didn't check it, and I don't
25 know if it was loaded or not. I do know that there was

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1 rounds found with it. But they were in the magazine but I
2 do not know if there was one in the chamber.

3 Q. But you were aware that there were bullets in
4 the magazine?

5 A. That's correct.

6 Q. And showing you 18, what's been marked as
7 State's 18 for identification.

8 A. Those are the bullets that were found.

9 MR. BELL: Your Honor, we would offer State's 17
10 and 18 into evidence.

11 THE COURT: Objection?

12 MR. STEVENS: Objection to both, Judge.

13 THE COURT: Noted and overruled. Be admitted,
14 State's 17 and 18.

15 [Whereupon, State's Exhibit Number 17 is
16 admitted into evidence by the Court]

17 [Whereupon, State's Exhibit Number 18 is
18 admitted into evidence by the Court]

19 Q. [Mr. Bell] Let me show you State's 14 for
20 identification and ask if you could identify that.

21 A. Those are the 762 -- or the rifle rounds that
22 were found in the magazine of the gun.

23 Q. And that's how they were found on the night
24 of --

25 A. That's correct.

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1 Q. What was the date of the search warrant?

2 A. September the 15th.

3 Q. And that's how they were that night?

4 A. That's correct.

5 MR. BELL: Your Honor, we would offer State's 14
6 into evidence.

7 THE COURT: Marked and admitted, subject to the
8 objection.

9 Q. [Mr. Bell] Let me show you what's been marked
10 State's 15 for identification and ask if you can identify
11 that.

12 A. This was a picture -- this was a picture of the
13 SKS once it was taken outside of the closet. Because the
14 way the closet was constructed, it was tucked back in a
15 corner and it was hard to get an overall picture of it
16 where it sat so we took a picture of it where it sat,
17 pulled it out, and then took another picture. And it just
18 so happens the sunglass and the shoes are also -- that we
19 found are in that picture.

20 Q. And that's how you found that rifle on that
21 night; is that correct?

22 A. That's the condition the rifle was found in.
23 That's correct.

24 MR. BELL: Your Honor, we would offer State's 15
25 into evidence.

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1 THE COURT: It's admitted, subject to the
2 objection.

3 Q. [Mr. Bell] Now, Lieutenant Caddell, you said
4 you were looking on some other items, based on the video
5 of the person that robbed the store?

6 A. That's correct.

7 Q. Did you find anything that -- a covering for the
8 mouth?

9 A. The red bandana or the shawl, we did not locate
10 it.

11 Q. You said you were looking for a hat or
12 something?

13 A. It was a -- well, it was commonly called a
14 beanie or a skull type cap with a chain design on it.

15 Q. Okay. Did you that?

16 A. No, we did not.

17 Q. And you said you were looking for jeans that
18 were distinctive?

19 A. The jeans was a dark in color -- it was dark-
20 colored jeans with a faded front. We actually found
21 numerous pairs of jeans. That's actually kind of a common
22 looking jean.

23 Q. In fact, if you -- I'm going to show you State's
24 10 and ask if you see anything in there.

25 A. That's some of the jeans that we found.

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1. Q. And did you take any into evidence?

2. A. We did not take any of the jeans into evidence.

3. Q. Why not?

4. A. There were so many pairs of them, it was hard to
5. determine which one was actually used.

6. Q. And these items that were taken into evidence
7. that night, who actually took them into evidence?

8. A. I believe it was Sargent Thomas Gibson, with the
9. crime scene unit.

10. Q. And who else was there, as well, with you?

11. A. It was Captain Carl Shultz.

12. He is also a member of the crime scene unit, so
13. I'm unsure which one of those actually took the items and
14. put them into evidence.

15. Q. And let me show you, as part of State's 21 for
16. identification. At the end there's a sheet. What is that?

17. A. That's the return sheet. That's basically a
18. list of the items that was found. And it was made -- and
19. it also tells that the inventory was made of what we took
20. and who it was made in the presence of.

21. Q. And whose writing is that?

22. A. I believe it's Sargent Thomas Gibson's.

23. Q. And that inventory was made in the presence of
24. who?

25. A. It was made in the presence -- it says

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1 Lieutenant Shultz, not Captain Shultz, and myself.

2 MR. BELL: Your Honor, I would offer the search
3 warrant into evidence.

4 THE COURT: I had it marked for ID. I have it
5 under advisement.

6 MR. BELL: Okay.

7 THE COURT: Proceed.

8 MR. BELL: One moment.

9 Q. [Mr. Bell] When y'all were looking for the
10 stuff, were y'all just kind of blindly looking or did you
11 have any directions as to where it was located?

12 A. We were getting directions from -- initially,
13 when we served the search warrant, all the residents were
14 detained. We then took them to our office, our
15 headquarters, to speak with them.

16 Detective Dukes at the time was talking to
17 Ms. Ford, who stated that she was --

18 MR. STEVENS: Objection. Hearsay. Competition
19 clause.

20 THE COURT: Please approach.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 THE COURT: The objection is sustained.

24 You may proceed.

25 Q. [Mr. Bell] Were you -- let me go back a little

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1 bit. In searching for the items, were you in contact with
2 anybody?

3 A. Sargent Dukes.

4 Q. Sargent Dukes. And he was relaying information
5 to you?

6 A. That's correct.

7 Q. That A&G [phonetic] was bonding these items?

8 A. That's correct.

9 Q. What other things, Lieutenant Caddell --
10 Lieutenant Caddell, let me show you what's been marked as
11 State's 24 and ask if you can identify this.

12 A. That's a map, city of Orangeburg.

13 Q. Okay. And you're familiar with the city of
14 Orangeburg --

15 A. That's correct.

16 Q. -- and the streets in the city of Orangeburg and
17 near the city of Orangeburg?

18 A. Yes, sir.

19 Q. And does it -- is this a specific kind of area
20 of Orangeburg?

21 A. This is the area of 301 North, just before you
22 get to the bypass.

23 Q. Does it show the place that was robbed, the Keg,
24 on that? You can look at it.

25 A. Yes, sir, it does.

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1 MR. BELL: Your Honor, we would offer this as
2 State's 24.

3 THE COURT: Any objection?

4 MR. STEVENS: No, Your Honor.

5 THE COURT: Marked and admitted without
6 objection.

7 [Whereupon, State's Exhibit Number 24 is marked
8 by the court reporter]

9 [Whereupon, State's Exhibit Number 24 is
10 admitted into evidence by the Court]

11 Q. [Mr. Bell] I'm going to ask you to come down
12 and we're going to kind of do this in sections. If you
13 could show the jury number one, point out -- I'll hold it
14 for you and you can point out -- where is the Keg located?

15 A. The Keg is located here.

16 Q. Okay. And what is --

17 A. This is [REDACTED], John C. Calhoun Drive.

18 Q. And what's this cross street? What's it
19 intersecting with?

20 A. This is Bleakly Street.

21 Q. And you stated that you went to -- eventually
22 went to Wilkinson Street; is that correct?

23 A. Yes, sir.

24 Q. Can you show the general area where Wilkinson --
25 it's not -- is it on this map?

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1 A. Wilkinson is not on this map.

2 This is Dorchester, Liberty, Monroe. Right
3 where Liberty Street and Monroe Street meet, Wilkinson
4 starts here and goes up. And then Russell Street is here.

5 Q. And the house was on Wilkinson?

6 A. The house was on Wilkinson, just down from
7 Russell. So if this map would continue, it would be
8 somewhere in this area here.

9 MR. BELL: Thank you, Lieutenant Caddell.

10 Please answer any questions the defense may have for
11 you.

12 THE COURT: You may proceed.

13 MR. STEVENS: Thank you, Judge. May it please
14 the Court.

15 THE COURT: Yes, sir.

16 MR. STEVENS: Thank you.

17 Good morning, Lieutenant Caddell. How are you
18 doing today?

19 THE WITNESS: Good morning. I'm doing well.

20 MR. STEVENS: My name is Breen Stevens. I
21 represent the defendant, Tykeem May. Just going to
22 ask you a couple of questions, if that's all right.

23 THE WITNESS: That's fine.

24 - - -

25 - - -

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CROSS-EXAMINATION

1
2 BY MR. STEVENS:

3 Q. I'm going to ask you some questions about
4 September 14th, 2013; all right?

5 A. Okay.

6 Q. Now, you indicated you were working that day;
7 right?

8 A. September the 14th?

9 Q. September the 14th.

10 A. That was the day before the search warrant. I
11 don't remember if I was working that day or not. I do
12 know I was -- I came in.

13 Q. So you came in that day?

14 A. Once I eventually got the information from
15 Officer Pifer.

16 Q. So you got information from Officer Pifer that
17 day?

18 A. That's correct.

19 Q. And once you got the information, then you came
20 into work?

21 A. I don't remember. I don't know if I was already
22 here or if I came in.

23 Q. But you did come into work?

24 A. That's correct.

25 Q. And you had pictures in your possession of a

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1 possible robber in a car; right?

2 A. Yes, sir.

3 Q. And specifically you were looking for a white or
4 silver Dodge Caliber; right?

5 A. Yes, sir.

6 Q. And on the 14th, you saw a Dodge Caliber at [REDACTED]
7 Wilkinson Street?

8 A. Not on the 14th. I believe the -- I went over
9 to the area of Wilkinson Street on the 15th.

10 Q. And did you write a report about this?

11 A. The 15th was when the search warrant was signed.
12 That was the day that we run surveillance.

13 Q. Did you write an incident report about this?

14 A. No, sir.

15 Q. Well, let's talk about the 15th. All right?
16 You contacted Corporal Dukes that day?

17 A. He was already -- we were already working in
18 conjunction on everything.

19 Q. But you were in contact with each other around
20 3:00 p.m.?

21 A. We were in contact with each other. I can't
22 tell you what times we were in contact with each other.

23 Q. But you were in contact with each other that
24 day; correct?

25 A. Yes, sir.

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1 Q. And at around 3:00 p.m., you guys were in
2 contact; correct?

3 A. I'm assuming.

4 Q. You saw Tykeem May that day?

5 A. On the 14th?

6 Q. On the 15th.

7 A. On the 15th? Yes, sir.

8 Q. And you were specifically looking for Tykeem
9 May; correct?

10 A. That's correct.

11 Q. And that was based off information from the
12 traffic stop the day before; correct?

13 A. That's correct.

14 Q. So you weren't looking for any other light-
15 skinned or red-skinned African-American male with
16 dreadlocks?

17 A. No, sir.

18 Q. And you were specifically looking for him at
19 that address; correct?

20 A. That's correct.

21 Q. Because at that address is where a white Dodge
22 Caliber was located; correct?

23 A. That's correct.

24 Q. And that's where Emonie Ford lived; right?

25 A. Yes. Yes, sir.

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1 Q. And it's her car; right?

2 A. Yes, sir.

3 Q. And then you went back to the Orangeburg
4 Department of Public Safety headquarters?

5 A. That's correct.

6 Q. And you also met with Corporal Dukes?

7 A. Not at headquarters. He was actually running
8 surveillance on Wilkinson Street when I went back to
9 headquarters.

10 Q. So later that evening, you went back to
11 headquarters to get a search warrant; right?

12 A. That's correct.

13 Q. Let's talk about that search warrant. You swore
14 to it?

15 A. That's correct.

16 Q. And you were the affiant; right?

17 A. That's correct.

18 Q. Now, when you swear to it, you present that
19 information to the judge; right?

20 A. Took.

21 Q. And the judge considers what you have in the
22 affidavit; right?

23 A. That's correct.

24 Q. And he didn't ask you to add more?

25 A. No, sir.

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1 Q. And let's talk about that. So you swore in your
2 affidavit that the subject was a light-skinned black male?

3 A. That's correct.

4 Q. And that the clerk described him as being red-
5 skinned?

6 A. That's correct.

7 Q. And that the clerk described the subject as
8 having thin, arching eyebrows?

9 A. That information was given to me by Detective
10 Dukes. I didn't actually speak partially one-on-one with
11 him.

12 Q. But the affidavit says -- that you swore to says
13 that the clerk described the subject to have thin, arching
14 eyebrows?

15 A. That's correct.

16 Q. And long dreds approximately shoulder length?

17 A. That's correct.

18 Q. And you never personally spoke with the clerk
19 before September 15th?

20 A. The only information that I gained from the
21 clerk was retrieved directly from Detective Dukes.

22 Q. But you did read the clerk's written statement
23 before September 15th; right?

24 A. That's correct.

25 Q. And in that written statement it says nothing

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1 about thin, arching eyebrows?

2 A. I don't exactly remember what was in the
3 statement.

4 Q. Okay. And it also says, in the affidavit that
5 you swore to, that on video it was discovered that the
6 subject drove up to the business; right?

7 A. That's correct.

8 Q. In a white Dodge Caliber?

9 A. That's correct.

10 Q. Right?

11 And in the video itself, what you've seen;
12 right?

13 A. Yes, sir.

14 Q. You can't see who is driving the car?

15 A. That's correct.

16 Q. You can't see anyone getting in the car?

17 A. No, sir.

18 Q. You can't see anyone getting out of the car?

19 A. No, sir.

20 Q. And the time stamps don't match; right?

21 A. I'm assuming so. I didn't pay attention to the
22 time stamps.

23 Q. Well, let's get back to the warrant itself.

24 Now, you were looking for items from the robbery; right?

25 A. That's correct.

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1 Q. Items like an assault rifle with a banana clip?

2 A. That's correct.

3 Q. Stonewashed-looking jeans with faded fabric in
4 the front?

5 A. That's correct.

6 Q. Black-and-white stripped tennis shoes?

7 A. That's correct.

8 Q. A red shawl or bandana?

9 A. That's correct.

10 Q. Red sunglasses?

11 A. That's correct.

12 Q. And a black beanie or skullcap with a circular
13 chain design wrapping around it?

14 A. That's correct.

15 Q. Now let's focus on the search itself; right?
16 You were present when the search warrant was executed?

17 A. That's correct.

18 Q. And that was executed on [REDACTED] Wilkinson Street?

19 A. That's correct.

20 Q. And yet you did not find certain things;
21 correct?

22 A. That's correct.

23 Q. You did not recover any jeans at all, did you?

24 A. We did not enter any into evidence.

25 Q. Even though that's specifically something you

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1 were looking for in the warrant; correct?

2 A. That's correct.

3 Q. You didn't find or recover any red shawl or
4 bandana?

5 A. No, sir.

6 Q. Even with direction from Corporal Dukes?

7 A. That's correct.

8 Well, I was given information that it was there,
9 by Detective Dukes, and --

10 Q. But with their direction, you didn't find
11 anything there, did you?

12 A. That's correct.

13 Q. And you're also looking for a black beanie or
14 skullcap with a circular chain design wrapping around it;
15 right?

16 A. That's correct.

17 Q. You didn't find that, either, did you?

18 A. No, sir.

19 MR. STEVENS: Court's indulgence.

20 THE COURT: Uh-huh.

21 MR. STEVENS: No further questions at this time,
22 Judge.

23 THE COURT: Any redirect of the witness?

24 MR. BELL: Yes, Your Honor.

25 THE COURT: You may proceed.

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REDIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Caddell, again, you were asked about the jeans; is that correct?

A. That's correct.

Q. You didn't take any jeans. Were there jeans present, the faded style or whatever --

A. Numerous pairs.

Q. And why didn't you take them into custody?

A. Because we couldn't determine which ones were used. There was approximately ten pairs.

Q. They looked similar?

A. Yes, sir.

Q. And you didn't know which one was which?

A. That's correct.

Q. You didn't even know if all of them were his or not?

A. That's correct.

Q. There were two people that lived --

MR. STEVENS: Leading, Judge.

THE COURT: Sustained. Leading.

Q. [Mr. Bell] Whose jeans were they?

A. Based upon the size and the style, they were of men's style, we could only assume --

MR. STEVENS: Speculation, Judge.

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1 THE COURT: Based on his rational perception as
2 investigating the incident and to -- well, sustain
3 more than that -- he's entitled to rehabilitate his
4 witness, based on your cross-examination. Overruled.

5 You may proceed.

6 MR. BELL: Okay.

7 THE COURT: But he needs to have a foundation of
8 what he's testifying about.

9 MR. BELL: Thank you, Lieutenant Caddell.
10 That's all.

11 THE COURT: Any objection to the witness being
12 excused subject to re-call? From the State?

13 MR. BELL: No, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: Not from the defense, Judge.

16 THE COURT: Sir, you're excused, subject to
17 re-call.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 MR. BELL: Your Honor, may I publish these
23 pictures to the jury?

24 THE COURT: You may.

25 [Whereupon, Mr. Bell proffers documents to the

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1 jury]

2 MR. BELL: Your Honor, may we approach?

3 THE COURT: Yes.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: Madam Forelady, ladies and
7 gentlemen, I have a very brief matter of law to take
8 up.

9 During this break, please do not discuss the
10 case and please leave your notepads in your seats. We
11 appreciate your patience.

12 [Whereupon, the jury exits the courtroom at
13 10:38 a.m.]

14 THE COURT: Okay. What's the issue?

15 MR. BELL: Your Honor, as I stated, our next
16 witness is Emonie Ford. She's a State's witness but
17 she's also been noticed as an alibi witness for the
18 defense. And I'm necessarily asking for her direct
19 testimony, but mainly redirect, probably, that we be
20 allowed under 611(c) to have a little flexibility in
21 our questions, because she may start becoming a
22 witness for the defense during cross-examination, and
23 to allow us to lead some because she is becoming a
24 witness with -- identified with an adverse party under
25 611(c).

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1 THE COURT: We don't have those rules anymore as
2 it regards hostile witnesses.

3 MR. BELL: Well, I mean --

4 THE COURT: But I'll have to -- I don't think
5 anybody knows what she's going to say.

6 MR. BELL: That's true, Your Honor --

7 THE COURT: We'll have to cross that bridge when
8 we come to it.

9 MR. BELL: But I was just kind of -- because I
10 got her up there, to alert the Court.

11 THE COURT: Yeah. I'm going to have to take
12 that one as it comes. I'm going to have to see what
13 she says.

14 MR. BELL: But like I said, not necessarily
15 during my direct but maybe during my redirect.

16 THE COURT: Yeah. I'll have to cross that
17 bridge when we come to it and see what she actually
18 says.

19 MR. BELL: Okay.

20 THE COURT: Yeah. Because I'm not sure --

21 MR. BELL: Well, that's true, Your Honor.

22 THE COURT: -- with sufficient particularity
23 what she's going to say.

24 MR. BELL: All I have is an idea and -- don't
25 think any of us have.

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1 THE COURT: Even just like the weather, folks
2 change. Who knows.

3 MR. BELL: That's --

4 THE COURT: Yeah. I wish I were clairvoyant. I
5 could be off in Vegas -- I'm being sarcastic. Not
6 sarcastic, but you know what I mean. A little levity.

7 But I don't think anybody knows what she's going
8 to say and I think we have to take it as it comes and
9 see what she says and then I'll cross that bridge when
10 we come to it.

11 MR. BELL: Well, I just kind of wanted to alert
12 the Court as kind of where I was heading.

13 THE COURT: Well, I sort of anticipated that,
14 because I saw her on both lists. So I assumed -- and
15 I had not had the opportunity yet to ask if, in
16 accordance with the rules, the defense had given you
17 notice of alibi.

18 MR. BELL: Yes, Your Honor.

19 THE COURT: I noticed in their request they have
20 asked for an alibi instruction. But I don't know that
21 -- when I looked at the file in the clerk's office, if
22 there was any indication of a notice of alibi. So I
23 had intended to ask that question and just had not
24 gotten around to it. But my assumption was that
25 apparently the defense thought there was something

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1 favorable she was going to say for them, because they
2 had her on their list and that you-all had, based on
3 our pretrial discussions, some favorable information
4 from her, as well. So I think we're going to have to
5 kind of see where all that leads.

6 MR. BELL: And, Your Honor, I will say for the
7 record that they did properly notice an alibi witness.
8 I think she was the only alibi witness. And,
9 likewise, we filed a return for the Rule.

10 MR. STEVENS: That's correct, Judge. That's my
11 understanding, also, from my records.

12 THE COURT: And I appreciate that clarity for
13 the record.

14 Let's see how it goes and we'll go from there.

15 MR. BELL: Okay.

16 MR. STEVENS: Judge?

17 THE COURT: Yes, sir?

18 MR. STEVENS: If we may allow my client to take
19 a restroom break?

20 THE COURT: Sure. Why don't we all take a
21 restroom break.

22 MR. STEVENS: Thank you, ma'am. I appreciate
23 it.

24 THE COURT: You're welcome.

25 [Whereupon, a recess is held from 10:41 to

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1 10:48 a.m.]

2 THE COURT: Is the State ready to proceed?

3 MR. BELL: The State is ready, Your Honor.

4 THE COURT: The defense ready to proceed?

5 MR. STEVENS: The defense is ready, Judge.

6 THE COURT: Please bring in the jury.

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: Thank you, ma'am.

9 [Whereupon, the jury enters the courtroom at
10 10:50 a.m.]

11 THE COURT: Ladies and gentlemen, I hope you
12 enjoyed your break. We'll now resume testimony.

13 The State may proceed.

14 MR. BELL: The State would call Emonie Ford.

15 THE COURT: Ma'am, if you would come forward to
16 be sworn.

17 [Whereupon, Ms. Ford comes forward]

18 THE CLERK OF COURT: Please place your left hand
19 on the Bible and raise your right hand.

20 [Whereupon, Ms. Ford is duly sworn by the clerk
21 of court as follows: do you hereby swear or affirm
22 that the evidence that you give today will be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God]

25 THE WITNESS: Yes, ma'am.

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1 THE CLERK OF COURT: Thank you. You may have a
2 seat.

3 [Whereupon, Ms. Ford takes the witness stand]

4 THE CLERK OF COURT: Please state your name
5 again for the record and spell --

6 THE WITNESS: Emonie Ford.

7 THE CLERK OF COURT: -- and spell your last
8 name.

9 THE WITNESS: F-O-R-D.

10 THE CLERK OF COURT: Thank you.

11 THE COURT: Ma'am, if you could spell your first
12 name, as well, for the benefit of the court reporter.

13 The witness: E-M-O-N-I-E.

14 THE COURT: Thank you so much.

15 You may proceed.

16 MR. BELL: Thank you.

17 THE COURT: You're welcome.

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- - -

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EMONIE FORD,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Emonie: is that the correct pronunciation?

A. Yes.

Q. Emonie, are you employed?

A. No.

Q. Are you a student?

A. Yes.

Q. Where are you a student?

A. South Carolina State University.

Q. Now, how long -- what year are you -- I guess
you're going into a new year now?

A. Senior year.

Q. You're a senior?

A. Yes.

Q. What are you majoring in?

A. Fashion merchandising.

Q. And were you a student last year in 2013?

A. Yes, I was.

Q. And where do you live?

A. [REDACTED] Wilkinson Street.

Q. And were you living there in September of last

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- 1 year?
- 2 A. Yes, I was.
- 3 Q. How long have you lived at that address?
- 4 A. For about four years.
- 5 Q. And where is that Wilkinson Street located?
- 6 A. Off of Russell, right across from the school.
- 7 Q. From South Carolina State?
- 8 A. Yes.
- 9 Q. Is that where you're going to school?
- 10 A. Yes, South Carolina State.
- 11 Q. Back in September, 2013, was anybody living with
- 12 you?
- 13 A. Yes. Tykeem May and Alexis.
- 14 Q. And who is Tykeem May?
- 15 A. My boyfriend.
- 16 Q. Do you see him in the courtroom this morning?
- 17 A. Yes.
- 18 Q. Could you point him out, please?
- 19 A. He's right here [indicates].
- 20 Q. With the dreds over there on --
- 21 A. Yes, with the dreds.
- 22 Q. And back in September of 2013, how long had
- 23 Tykeem lived with you?
- 24 A. He had just moved in from staying with somebody
- 25 else, so it probably was like three months. It was like

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1 during the summer time he moved back in.

2 Q. So two, three, four months, something --

3 A. Yes.

4 Q. -- like that?

5 A. Uh-huh.

6 Q. And I want to go back to September, in September
7 of last year, 2013. Did you have an occasion to have some
8 contact with police officers?

9 A. No. Well, I had before then, because somebody
10 broke in my house. But not really.

11 Q. There were no police officers that came to your
12 house back then?

13 A. Oh. Yes. They came in with a -- I guess a
14 search warrant, looking for Tykeem.

15 Q. And when they came to your house with a search
16 warrant, did you have any idea what they -- what it was
17 about?

18 A. No, I didn't.

19 Q. And when they came to the search warrant, they
20 came to search the search warrant, what did they do?

21 A. Basically, I was sleeping and then they bust in
22 the door. Somebody put a gun to the back of my head, put
23 their knee in my back, had me down on the floor. Put me
24 in handcuffs, took me outside, sat me down. And then
25 that's when I went off with another female police officer.

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1 Q. Okay. And where did you go to?

2 A. I came to the jail -- or, I don't know, like a
3 building by the jail.

4 Q. And did you talk with anybody there?

5 A. Yes.

6 Q. Who did you talk with?

7 A. I talked with a black female police officer with
8 sort hair and a male Caucasian police officer.

9 Q. You talked with --

10 A. Yes.

11 Q. -- this officer?

12 A. Yes.

13 Q. Sargent Dukes?

14 A. Yes.

15 Q. And when you were there, did he show you
16 anything?

17 A. Yes. He showed me a video surveillance.

18 Q. And what did it show that you remember?

19 A. They see a car that looked like mine driving
20 from -- I don't know the name of the street, but driving
21 from the street to the back of the Keg. And then from the
22 back of the Keg, he showed me somebody like walking to and
23 from the Keg with a gun and leaving the Keg.

24 Q. Now, when you saw this video, when you saw that
25 video, you stated that you recognized the car, that it

Emonie Ford
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1 looked like yours; is that correct?

2 A. Yes.

3 Q. What kind of car did you have back then?

4 A. An '09 Dodge Caliber.

5 Q. Did you recognize anything else in the video?

6 A. My glasses and scarf. Well, something similar
7 to when it was pointed out.

8 Q. What kind of glasses? Do you recall?

9 A. Some red frames.

10 Q. And what kind of scarf?

11 A. It was like a checkerboard kind of looking
12 scarf.

13 Q. And where was that scarf -- where did you see
14 that in the video?

15 A. Over -- supposedly over the face or the mouth of
16 the person.

17 Q. Did you see anything else in the video that you
18 recognized?

19 A. The gun. That's it. Yeah, the gun.

20 Q. Where had you seen the gun before?

21 A. In the house.

22 Q. Okay. And whose gun was that?

23 A. It was Tykeem's gun.

24 Q. And you pointed those out to Sargent Dukes?

25 A. Yeah. When he asked about them, yes.

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1 Q. Did he ask where they were in your house?

2 A. Yes, he did.

3 Q. And you told him where they were?

4 A. Yeah, the glasses and the scarf. Yeah.

5 Q. Where did you tell them the scarf was?

6 A. Over the window shield of -- a window in a room,
7 in a guest bedroom.

8 Q. And where did you tell them that the glasses
9 were?

10 A. On a table, a glass table, that my TV was
11 sitting on.

12 Q. Did they ask you anything about shoes?

13 A. Yes.

14 Q. What did they --

15 A. They asked about my shoes that were in the back
16 seat.

17 Q. They were in the back seat on that night when
18 the police came?

19 A. Yeah.

20 Q. What did they ask you about those?

21 A. They asked me -- they asked me if they were his,
22 because I guess he had similar shoes on at the time. But
23 they asked me if they were his. But they were mine. We
24 had the same shoes.

25 Q. Okay. How did you come to have the same shoes

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1 as he did?

2 A. He got them first, and then I liked them so I
3 went and got some.

4 Q. So he had them sometime -- when did you buy
5 those shoes, do you recall, about?

6 A. I don't.

7 Q. Sometime before the police came to your house?

8 A. Yeah. It had to have been before.

9 Q. What size shoe do you wear?

10 A. Seven and a half in boys.

11 Q. Now, did they ask you about -- did they tell you
12 when this robbery happened?

13 A. At the time?

14 Q. Yes.

15 A. No, they didn't tell me at the time. But like
16 once they sat me down and explained what was going on,
17 then that's when I figured everything out.

18 Q. And did they ask you about what was going on
19 about where you were and where Tykeem was at the time they
20 told you or when the robbery happened?

21 A. Yes.

22 Q. And what did you tell the police about that?

23 A. At the time, I estimated a time based on happy
24 hour at Sonics, because we went -- I remember that day we
25 went to Walmart and then after Walmart we went to Sonics.

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1 Q. And when is happy hour at Sonic?

2 A. 2:00 to 5:00.

3 Q. So in the afternoon sometime, you and Tykeem
4 went to Walmart and hit the happy hour; is that correct?

5 A. Yes.

6 Q. Did he have your vehicle at some point during
7 that day?

8 A. I'm not sure, but he probably did because he
9 usually uses my vehicle. We both use it. It was nothing
10 out of the ordinary for him to, you know, get my keys and
11 take my car.

12 Q. Let me show you -- let me show you this and ask,
13 first, if you can say what that is.

14 A. Okay. Do you want me to just read it?

15 Q. No. First of all, what is it?

16 A. It's a voluntary statement.

17 Q. Okay. Is it your statement?

18 A. Yes.

19 Q. Could that refresh your recollection about what
20 you told the police about September 8th?

21 A. Yes.

22 Q. Do you want to take a moment to look for it --
23 or to read it over?

24 A. Yes.

25 Q. Did you say what -- if Tykeem had your vehicle

Emonie Ford
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1 or not that morning?

2 A. Yes, he did.

3 Q. Did you -- were you with it when he had it?

4 A. No.

5 Q. And what did you say about it?

6 A. I didn't know where he went or where he left to
7 go.

8 Q. So at some point on September 8th, before y'all
9 went to Walmart and Sonic, he went off by himself with
10 your vehicle?

11 A. Yes.

12 Q. The white Dodge Caliber?

13 A. Yes.

14 Q. I want to show you some pictures, Ms. Ford.

15 First of all, let me show you what's been introduced into
16 evidence as State's 6 and ask if you recognize that.

17 A. Yes.

18 Q. What is that?

19 A. My house.

20 Q. And let me show you what's been marked as
21 State's 7 and ask if you recognize that picture.

22 A. Yes.

23 Q. And what is that?

24 A. My car and my house.

25 Q. And that's your car at the house?

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1 A. Uh-huh.

2 Q. Let me show you what's been marked as -- or
3 what's been entered as State's 9, into evidence, and ask
4 if you recognize that.

5 A. Uh-huh.

6 Q. And what is that?

7 A. My car, the back of my car, and the license
8 plate.

9 Q. That's the license plate on your car?

10 A. Yes.

11 Q. And it's got -- Beaufort, South Carolina. Is
12 that where you live --

13 A. Uh-huh.

14 Q. -- or where your family is from?

15 A. Yes.

16 Q. And let me show you what's been marked as
17 State's 11, that's into evidence, and ask if you recognize
18 that.

19 A. Yes. The front of the car.

20 Q. And up on the windshield, what's on the
21 windshield there?

22 A. My sticker, so I can get on base.

23 Q. Okay. What base is that?

24 A. Any military base.

25 Q. So there's a white sticker with writing on it?

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1 A. MC Beaufort. MCS Beaufort.

2 Q. Let me show you what's been marked as State's 20
3 into evidence and ask if you recognize these.

4 A. Yes.

5 Q. And what are these?

6 A. King Grippies sneakers.

7 Q. And whose are they?

8 A. Tykeem's.

9 Q. They were in your house?

10 A. Uh-huh.

11 Q. And they were in your house back on September
12 15th --

13 MR. STEVENS: Objection. Leading.

14 THE COURT: Watch the leading.

15 Q. [Mr. Bell] Do you know where they were in your
16 house?

17 A. Not exactly. Maybe in the closet on the floor.

18 Q. Let me show you what's been marked State's 13
19 and ask if that -- is that your --

20 A. Yes.

21 Q. -- in your house --

22 A. Uh-huh.

23 Q. -- and where the shoes were?

24 A. In the closet.

25 Q. Let me show you what's been marked as State's 19

Emonie Ford
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- 1 -- and I'll pull them out -- and ask if you recognize
2 those.
- 3 A. Yes.
- 4 Q. What are those?
- 5 A. My glasses.
- 6 Q. Red glasses?
- 7 A. Red frames.
- 8 Q. How long have you had those?
- 9 A. For a while.
- 10 Q. What's a while? Before September of last year?
- 11 A. No. Well, I got them at a photo shoot from my
12 photographer around that time. I can't remember exactly
13 the date.
- 14 Q. Let me show you what's been marked as State's
15 17, into evidence, and ask if you recognize this.
- 16 A. Yes.
- 17 Q. What is that?
- 18 A. A gun.
- 19 Q. Have you seen this gun before?
- 20 A. Yes, I have.
- 21 Q. Where have you seen it?
- 22 A. It was at my house.
- 23 Q. Whose gun is it?
- 24 A. Tykeem's.
- 25 Q. And he had it at your house?

Emonie Ford
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1 A. Yeah. In the process of selling it, supposedly.

2 Q. Let me add: did you realize it was still at
3 your house?

4 A. No.

5 Q. What did you think had happened to it?

6 A. I thought he sold it.

7 Q. Let me show you what's been marked as State's --
8 or has been entered into evidence. Do you recognize that
9 picture?

10 A. Yeah.

11 Q. What is that?

12 A. The inside of the closet. It must be, because
13 those jeans -- yeah. The inside of the closet.

14 Q. And there are some jeans in there?

15 A. Yes.

16 Q. Whose jeans are those?

17 A. Mine.

18 Q. Yours.

19 Were there other jeans in your house?

20 A. Yes.

21 Q. Were there some that were yours?

22 A. Yes.

23 Q. Were some Tykeem's?

24 A. Yes.

25 Q. Similar type jeans?

Emonie Ford
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1 A. Yes.

2 Q. After you went to the police station and talked
3 to them and gave a statement, what happened?

4 A. We sat outside for a little while, then one of
5 the officers took me home.

6 Q. They didn't arrest you for this, did they?

7 A. No, they did not.

8 Q. Did you know anything about a robbery at the
9 Keg --

10 A. No, I did not.

11 Q. -- the week before?

12 A. No.

13 MR. BELL: One moment, Your Honor.

14 Q. [Mr. Bell] Let me show you what's entered, as
15 State's evidence, State's Number 5. And this is a screen
16 shot. Does that show the vehicle that you saw on the
17 video?

18 A. Yes.

19 Q. And it looks like your vehicle?

20 A. Yes.

21 Q. You told the police it looked like your vehicle?

22 A. Yes.

23 Q. And let me show you what's been entered as
24 State's 4. And this is a screen shot from the video. Did
25 you see that from the video?

Emonie Ford
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1 A. Yes.

2 Q. And that shows the individual that was robbing
3 the Keg?

4 A. Yes.

5 Q. And you saw familiar things. You said you saw
6 glasses that looked like yours?

7 A. Yes.

8 MR. STEVENS: Judge, he's leading again.

9 THE COURT: Sustained. Leading. Rephrase.

10 MR. BELL: I'm kind of recapitulating.

11 THE COURT: No leading.

12 Q. [Mr. Bell] What did you see that was familiar
13 to you?

14 A. The glasses and the scarf was familiar.

15 Q. Anything else?

16 A. The gun looked familiar.

17 MR. BELL: Thank you, Ms. Ford. Please answer
18 any questions the defense has for you.

19 THE COURT: You may proceed.

20 MR. STEVENS: Thank you, Judge. May it please
21 the Court.

22 THE COURT: Yes, sir.

23 MR. STEVENS: Good morning, Ms. Ford. How are
24 you today? My name is Breen Stevens. I represent the
25 defendant, Mr. Tykeem May.

Emonie Ford
Cross-Examination by Mr. Stevens
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CROSS-EXAMINATION

BY MR. STEVENS:

Q. All right, Emonie. I'm going to ask you some questions, first, about -- just kind of go over a little bit about what they --

A. Okay.

Q. First of all, you indicated you're a student; right?

A. Yes.

Q. At South Carolina State University?

A. Yes.

Q. And that you're not presently employed?

A. Right.

Q. Well, then, now let's ask some questions about Tykeem.

A. Okay.

Q. Okay? Now, you knew Tykeem then; right?

A. Yes.

Q. And you've known him since about 2010?

A. Yes.

Q. And he has had a job; right?

A. Yes.

Q. And, in fact, as of September 8th, 2013, he was employed; right?

A. Yes, he was, at Dollar General.

Emonie Ford
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1 Q. So he had a daytime job at Dollar General?

2 A. Yes. He also was starting a job with security,
3 with this guy named Hogue [phonetic].

4 Q. So he had a job at Dollar General and he had
5 another job, as well; right?

6 A. Yes.

7 Q. And this job was with TKL Security; right?

8 A. Yes.

9 Q. Working security for clubs?

10 A. Uh-huh.

11 Q. And that was primarily at night?

12 A. Yes.

13 Q. So he worked in the daytime?

14 A. At Dollar General.

15 Q. And he worked in the nighttime at TKL?

16 A. Uh-huh.

17 Q. So he's a hardworking young man?

18 A. Yes.

19 Q. And you don't know him to be a hat person, do
20 you?

21 A. No.

22 Q. All right, Emonie. Let's talk about some items
23 in your house. All right?

24 A. Okay.

25 Q. Now, you have sunglasses; right?

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1 A. Uh-huh.

2 Q. And, in fact, you like sunglasses?

3 A. Yeah. I have a collection.

4 Q. You like them to the point where you collect
5 them?

6 A. Yes.

7 Q. And you actually have a pair of red sunglasses?

8 A. Yes.

9 Q. And these red sunglasses were common?

10 A. Yes.

11 Q. And, in fact, you can't remember specifically
12 when you got your red sunglasses?

13 A. No.

14 Q. But you do remember you got them at a photo
15 shoot?

16 A. Yes.

17 Q. And at the photo shoot, they were actually
18 handed out to people at the photo shoot?

19 A. Well, me and my photographer are close like
20 that, so if I wanted to take something from -- he would
21 let me.

22 Q. I got you.

23 And you don't remember if this photo shoot was
24 before or after September 9th?

25 A. No, I don't.

Emonie Ford
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1 Q. Now, you said you also had a scarf?

2 A. Yes.

3 Q. And the scarf you keep on a door?

4 A. Uh-huh.

5 Q. Right? And it's actually covering a window on
6 the door?

7 A. Yes.

8 Q. And it's in your home; right?

9 A. Yes.

10 Q. Acting kind of like a shade?

11 A. Yes.

12 Q. And I want you to focus on September 8th, 2013.

13 A. Okay.

14 Q. You did not notice your red scarf missing on
15 September 8th, 2013?

16 A. No. It's still there. And it's pink.

17 Q. It's pink?

18 A. Yeah. My scarf is pink.

19 Q. So you have a pink scarf, not a red scarf?

20 A. Right.

21 Q. And this scarf you did not notice missing on
22 September 8th?

23 A. No. It's still there.

24 Q. And you were at your home on September 8th?

25 A. Yes.

Emonie Ford
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August 13, 2014

1 Q. You were there in the morning?

2 A. Uh-huh.

3 Q. And you were there a little bit into the
4 afternoon; right?

5 A. Yeah, after we came back from Walmart or Sonic
6 or whatever.

7 Q. Well, let's talk about that. Let's focus on
8 September 8th itself, as well. Now, you stated that
9 Tykeem used your car in the morning; right?

10 A. Uh-huh.

11 Q. Okay. And that wasn't unusual?

12 A. No.

13 Q. And you also noted at the time he was still in
14 the process of talking with his boss at TKL Security?

15 A. Yes.

16 Q. All right. And he came back?

17 A. Yes.

18 Q. And y'all left together?

19 A. Yes.

20 Q. About 1:40 p.m.?

21 A. Yes.

22 Q. And you remember because you wanted to make it
23 to Sonic's happy hour?

24 A. Yes.

25 Q. After you were finished shopping --

Emonie Ford
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- 1 A. Yes.
- 2 Q. -- at Walmart?
- 3 A. Uh-huh.
- 4 Q. So you didn't want to go directly to Sonic?
- 5 A. No.
- 6 Q. So you went to Walmart with Tykeem?
- 7 A. Yes.
- 8 Q. You shopped there?
- 9 A. Yes.
- 10 Q. With Tykeem?
- 11 A. [No response]
- 12 Q. And when you got there, it was actually around
- 13 2:00 p.m.?
- 14 A. Yes.
- 15 Q. And then you left Walmart?
- 16 A. Yeah. And went to Sonics.
- 17 Q. And when you left Walmart, you were with Tykeem?
- 18 A. Yes.
- 19 Q. And you left at about 3:00 p.m.?
- 20 A. Yeah. Estimated, yeah.
- 21 Q. And then finally you got to stop at Sonics?
- 22 A. Right.
- 23 Q. Because you love Sonics --
- 24 A. Yes, I do.
- 25 Q. And then you both came home?

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- 1 A. Uh-huh.
- 2 Q. Still together?
- 3 A. Yes.
- 4 Q. And you actually arrived home at about
- 5 3:40 p.m.?
- 6 A. Approximately, yes.
- 7 Q. All right, Emonie. I'm just going to ask you a
- 8 couple of brief questions about September 15th.
- 9 A. Okay.
- 10 Q. All right?
- 11 Tykeem was with you on that evening; right?
- 12 A. Yes.
- 13 Q. And the police actually raided your home?
- 14 A. Yes.
- 15 Q. Put a gun to your head?
- 16 A. Yes.
- 17 Q. Handcuffed you?
- 18 A. Yes.
- 19 Q. Drug you outside?
- 20 A. Yeah.
- 21 Q. You were placed into a police car?
- 22 A. Yes.
- 23 Q. And you were taken to the station?
- 24 A. Yes.
- 25 Q. And that's where you were questioned?

Emonie Ford
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1 A. Yes.

2 Q. You were scared?

3 A. I was.

4 Q. But one thing you're sure about is you
5 definitely went with Tykeem May to go shopping --

6 A. Yes.

7 Q. -- on the 8th?

8 A. Yes.

9 Q. At about 1:40 p.m.

10 MR. STEVENS: Court's indulgence.

11 THE COURT: Uh-huh.

12 MR. STEVENS: No further questions at this time,
13 Judge.

14 Thank you, Ms. Ford.

15 THE COURT: Any redirect fo the witness?

16 MR. BELL: Yes, Your Honor.

17 THE COURT: You may proceed.

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Emonie Ford
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REDIRECT EXAMINATION

BY MR. BELL:

Q. You stated on cross-examination that you had known Tykeem since 2010; is that correct?

A. Yes.

Q. Where did you meet him?

A. I met him at a party.

Q. What kind of party?

A. Like a college party.

Q. Did he go to college?

A. Yes, he did.

Q. Where did he go?

A. He went to South Carolina State.

Q. In September, was he still going to college?

A. No, he wasn't.

Q. Why not?

MR. STEVENS: Judge, beyond the scope.

THE COURT: Approach for me, please.

[Whereupon, an off-the-record bench conference is held]

THE COURT: The objection is overruled. Within the scope of cross. As to motivation and finances.

Q. [Mr. Bell] Again, you said he was not in school in September of 2013?

A. Right.

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1 Q. Did you know why?

2 A. Because they were still considering him an out-
3 of-state student, so his tuition was more.

4 Q. And what does that -- what does that mean?

5 A. He couldn't pay his tuition. That's why he got
6 another job.

7 Q. Now, on cross-examination you were talking about
8 the scarf.

9 A. Uh-huh.

10 Q. And you told Mr. Stevens it was a pink scarf.

11 A. It is.

12 Q. When I asked you about it, you said it was a red
13 checkerboard.

14 A. No, I didn't tell you that.

15 Q. You said it on direct, a red checkerboard scarf.

16 A. I said it was checkerboard. I never said it was
17 red.

18 Q. You said it was a red scarf on the video.

19 MR. STEVENS: Judge --

20 A. No, I did not.

21 MR. STEVENS: -- badgering the witness.

22 THE COURT: I'm going to give him a little
23 latitude. It goes to her credibility and a consistent
24 statement. I'm going to give him a little latitude.

25 But watch --

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1 MR. BELL: Yes, ma'am.

2 THE COURT: -- don't badger. You may proceed.

3 Q. [Mr. Bell] So it's a pink scarf? Pink
4 checkerboard is what --

5 A. Yes, it is.

6 Q. -- you're saying now?

7 A. It's a pink scarf.

8 Q. Is it a pink checkerboard or a pink scarf?

9 A. Pink checkerboard. Pink with black lines --
10 black checkerboard.

11 Q. Now, you were asked on cross-examination about
12 you and Tykeem going to Sonic and Walmart; is that
13 correct?

14 A. Yes.

15 Q. And the reason you wanted to go to Sonic was?

16 A. For happy hour.

17 Q. And when is -- or when was happy hour back last
18 year, September, 2013?

19 A. It was probably 2:00 to 4:00, but it's 2:00 to
20 5:00 now.

21 Q. So there is a two-hour window when you could --
22 when you can get to Sonic; is that correct?

23 A. Right.

24 Q. And you told Mr. Stevens that y'all went at
25 1:40 p.m.; is that right?

Emonie Ford
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1 A. Yes. I estimated it.

2 Q. Is that exact time?

3 A. It's an estimated time.

4 Q. It's an estimated time. So it could have been
5 later, a little later?

6 A. Well, it was towards the beginning of happy
7 hour.

8 Q. So it could have been 2:00, it could have been
9 2:15 --

10 A. Right.

11 Q. -- that y'all left?

12 And then you went to Walmart. And how long were
13 y'all at Walmart?

14 A. We never stay in Walmart long. Probably like
15 thirty, forth minutes.

16 Q. So if you left at 2:15 and stayed in Walmart
17 thirty minutes, that would have put you at Sonic about
18 three o'clock; is that correct? That would have been the
19 middle of the afternoon.

20 A. Exactly.

21 Q. And could that have been the time that you were
22 there?

23 A. It could have.

24 Q. You don't know the exact times that you-all left
25 and went; is that correct?

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1 A. No, not the exact time.

2 Q. Now, when you left to go to Walmart with Tykeem,
3 when did he get back home prior to that? Back to your
4 house.

5 A. After Walmart?

6 Q. No. Before.

7 A. Before Walmart?

8 Q. Before. You said he had gone off with your car
9 by himself.

10 A. Yeah.

11 Q. And he came back at some point; correct?

12 A. Yes.

13 Q. And how long after he came back did y'all leave?

14 A. Probably like twenty minutes. I got dressed and
15 we left.

16 Q. But the 1:40 time that you said y'all left, you
17 didn't look at a clock, did you?

18 A. No.

19 MR. BELL: Thank you, Ms. Ford. Nothing
20 further.

21 THE COURT: Any objection to the witness being
22 excused? From the State?

23 MR. BELL: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. STEVENS: None from the defense, Judge.

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1 THE COURT: Ma'am, you're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 [Whereupon, Ms. Ford is excused and exits the
5 witness stand]

6 THE COURT: The State may proceed.

7 MR. BELL: We call Captain Carl Shultz.

8 [Whereupon, Mr. Shultz comes forward]

9 [Whereupon, Mr. Shultz is duly sworn by the
10 clerk of court as follows: do you hereby swear or
11 affirm that the evidence you shall give today will be
12 the truth, the whole truth, and nothing but the truth,
13 so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Thank you. You may have a
16 seat.

17 [Whereupon, Mr. Shultz takes the witness stand]

18 THE CLERK OF COURT: Please state your name
19 again for the record and spell your last name.

20 THE WITNESS: Carl Wayne Shultz. S-H-U-L-T-Z.

21 THE COURT: You may proceed.

22 MR. BELL: Thank you.

23 THE COURT: You're welcome.

24 - - -

25 - - -

Carl Shultz
Direct Examination by Mr. Bell
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CARL SHULTZ,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Shultz, where are you employed?

A. With the Orangeburg Department of Public Safety.

Q. And how are you employed?

A. I'm a captain in charge of investigators and
forensic services.

Q. And how long have you been with the Orangeburg
Department of Public Safety?

A. With Public Safety, seven years. Law
enforcement, twenty-one.

Q. And how long have you been over investigations
and evidence; is that correct?

A. Evidence and forensics, the last seven.
Investigations, two and a half.

Q. And you're now a captain; is that correct?

A. Correct.

Q. How long have you been a captain?

A. About a month. I had been captain [phonetic]
for two years.

Q. Do you recall in September, 2013, you being
involved in the execution of a search warrant?

MIA PERRON, CVR-CM-M

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Carl Shultz
Direct Examination by Mr. Bell
August 13, 2014

1 A. I do.

2 Q. Do you recall where that occurred?

3 A. On -- if I can review my notes, get the exact
4 address.

5 It was [REDACTED] Wilkinson Street.

6 Q. And who was along with you?

7 A. Sargent Caddell, John Caddell, Thomas Gibson,
8 and Sargent Dukes.

9 Q. And who was Thomas Gibson?

10 A. He was a crime scene investigator that worked
11 with me. He's now employed with the Lexington Police
12 Department.

13 Q. And during the execution of the search warrant
14 -- I think it was testified to -- but y'all took some
15 county officers, as well; is that correct?

16 A. Correct.. We did.

17 Q. And that was the special operations team, the
18 SWAT?

19 A. Correct. The SWAT team.

20 Q. And do you recall why that was?

21 A. Based on the nature of the crime being an armed
22 robbery and there was weapons involved, and the house was
23 located in the jurisdiction of the sheriff's office, so we
24 brought them in.

25 Q. And y'all made -- they made entry before y'all

Carl Shultz
Direct Examination by Mr. Bell
August 13, 2014

1 did?

2 A. Correct.

3 Q. And they were doing that because they didn't
4 know what you were going to find?

5 A. They didn't know what we were going to find.

6 Q. And once all that was settled, did you
7 participate in the search of the residence?

8 A. I did.

9 Q. And there were several items that were taken
10 into evidence; is that correct?

11 A. Correct. Correct.

12 Q. They were found, cataloged, and taken into
13 evidence?

14 MR. STEVENS: Judge, leading.

15 THE COURT: Sustained. Leading. Rephrase.

16 MR. BELL: Your Honor --

17 THE COURT: I'll give you some latitude, but --
18 I understand why you're doing it, but technically he's
19 correct.

20 You may proceed.

21 MR. BELL: I understand, Your Honor.

22 Q. [Mr. Bell] Who did you -- you participated in
23 the search warrant; is that correct? The execution?

24 A. Yes.

25 Q. And who officially, for the department, took

Carl Shultz
Direct Examination by Mr. Bell
August 13, 2014

1 items into custody?

2 A. I did.

3 Q. And let me show you a couple of items that we
4 have. We have State's 20. And I'll show you what's been
5 entered as State's 20 and ask if you recognize it.

6 A. I do.

7 Q. And these are what shoes?

8 A. Nike shoes with number twenty-four written on
9 the side of them.

10 Q. And you took them into custody. And what date
11 did you take them into custody?

12 A. On that same day, on the 13th.

13 Q. And let me show you what's been marked as
14 State's 20 -- actually, 20 and, I'm sorry, this is 17,
15 State's 17, and ask if you recognize that.

16 A. I do. That is a rifle that was found in the
17 closet of the bedroom of the home at [REDACTED] Wilkinson.

18 Q. And, also, 18 goes along with that.

19 A. Correct. That is the bullets that were in the
20 magazine.

21 Q. And you took that into possession?

22 A. I did. That's my handwriting and initials on
23 that bag.

24 Q. And these were during the execution of the
25 search warrant?

Carl Shultz
Direct Examination by Mr. Bell
August 13, 2014

1 A. Correct.

2 Q. And, finally, State's 19.

3 A. It's a pair of red sunglasses that was also
4 found in the bedroom at [REDACTED] Wilkinson.

5 Q. And you took possession of them?

6 A. I did take possession of those.

7 Q. And those items that you just testified you took
8 possession of, what did you do with them?

9 A. I packaged them -- prepackaged them at the
10 scene, took them back to our evidence lab, and did some
11 further packaging and processing, and then placed them
12 into our evidence room via the lockers.

13 Q. Okay. And when did you place them into
14 evidence?

15 A. On the 17th, at 2:14.

16 MR. BELL: Thank you, Captain Shultz. Please
17 answer any questions they have.

18 THE COURT: Any questions for the witness?

19 MR. STEVENS: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. STEVENS: It's still morning, so good
22 morning, Captain Shultz. How are you today?

23 THE WITNESS: Good morning. I'm good. How are
24 you?

25 MR. STEVENS: I'm very well.

Carl Shultz
Cross-Examination by Mr. Stevens
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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Just so we're clear. You were present when the search warrant was executed on [REDACTED] Wilkinson Street?

A. Yes, sir. Correct.

Q. And that was September 15th, 2013?

A. Correct.

Q. And just to be clear, you did not recover any red scarf; correct?

A. No, sir.

Q. And you did not recover a black beanie with a chain design around it; correct?

A. No.

Q. Which would be on the hat; right?

A. Correct.

Q. You did not recover that?

A. Did not.

Q. And you did not recover any jeans with faded fronts, did you?

A. No.

MR. STEVENS: Thank you, sir. No further questions.

THE COURT: Any redirect?

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Carl Shultz
Redirect Examination by Mr. Bell
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REDIRECT EXAMINATION

BY MR. BELL:

Q. Did you see any items like that?

A. We saw similar items, yes.

Q. Such as?

A. There was a lot of clothing. There was jeans in the house. There were scarfs. We just didn't see any that looked exactly like that, so we didn't take them.

MR. BELL: Thank you.

THE COURT: Any objection to the witness being excused?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, ma'am.

THE COURT: Sir, you're excused.

THE WITNESS: Thank you.

THE COURT: You're welcome.

[Whereupon, Mr. Shultz is excused and exits the witness stand]

THE COURT: The State may proceed.

MR. BELL: Your Honor, let me check with the court reporter just one moment.

THE COURT: Uh-huh.

[Off the record momentarily]

MR. BELL: Your Honor, with the pending ruling

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1 on item 21 --

2 THE COURT: Are you ready to rest?

3 MR. BELL: Well --

4 THE COURT: I know what I've taken under
5 advisement.

6 MR. BELL: But I just wanted to make sure that
7 my evidence is -- I'm sorry.

8 The State rests, Your Honor.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, the State has rested their case. We have a
11 few matters of law we need to take up, after which we
12 will resume the trial.

13 During this break, please have no discussion
14 among yourselves. And please leave your notepads in
15 your seats. We appreciate your patience.

16 [Whereupon, the jury exits the courtroom at
17 11:28 a.m.]

18 THE COURT: I took State's 21 under advisement
19 because I assumed that there was going to be an
20 objection and I didn't want to take up the time to
21 send the jury in and out.

22 Is there any exception to the request to
23 introduce State's 21, which is the search warrant?

24 MR. STEVENS: Judge, we do object to it.

25 THE COURT: Basis of the objection?

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1 MR. STEVENS: Well, first and foremost, it's a
2 document by law enforcement and therefore is not
3 really included under the business record exceptions
4 for hearsay. It is a document that does contain
5 affidavits. And, frankly, it is a hearsay document in
6 all that it actually contains, number one.

7 Number two, we believe that it's prejudicial --

8 THE COURT: How is it hearsay when it's the word
9 of the proponent, the person who actually testified?
10 It's his words.

11 MR. STEVENS: Yes, ma'am. But --

12 THE COURT: You had the opportunity to cross-
13 examine him regarding those words.

14 MR. STEVENS: We did, Your Honor.

15 But it's similar to -- our position is that it
16 would be similar to an incident report where it's
17 literally going to have the State's version of events
18 --

19 THE COURT: An incident report has other
20 people's statements in it.

21 MR. STEVENS: Yes, ma'am. As does this
22 document. This document literally tracks the
23 investigation of the report. In fact, they say they
24 gain this information from the clerk, they gain this
25 information, and on and on and on. So, therefore,

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1 when we actually look at the document itself, it
2 contains hearsay. Within hearsay, multiple levels.

3 THE COURT: But you've had an opportunity to
4 cross-examination every single person that provided
5 that information. And the information in there is
6 consistent with what they've testified to. Correct?

7 MR. STEVENS: Yes. We have had the opportunity
8 to go ahead and cross-examine them, Judge.

9 However, the document itself is also hearsay.
10 They can't get it in as a business record because,
11 much like an incident report, it's not under that
12 exception.

13 THE COURT: You're talking -- what incident
14 report? You lost me.

15 MR. STEVENS: I'm sorry.

16 It would still be hearsay. There are multiple
17 levels of hearsay, is our position. In order for it
18 to actually come into evidence the State must, as the
19 proponent, provide the hearsay exception to every
20 single hearsay within hearsay occurrence. Our
21 position is they've not yet done so. They're simply
22 saying this document is what it is, it speaks for
23 itself. And it does actually contain multiple
24 incidences of hearsay within hearsay.

25 And our position is also if the State attempted

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1 to say the document itself wasn't hearsay, was
2 attempted to be entered into evidence under the
3 business record exception, it would still be much like
4 an incident report for police officers, which is
5 specifically not allowed to come in under that
6 exception.

7 THE COURT: Anything further?

8 MR. STEVENS: No, ma'am. Thank you.

9 THE COURT: You may respond, Mr. Bell.

10 MR. BELL: Your Honor, I think that my position
11 is that the State is required to prove a case against
12 a defendant. We have to prove every element.

13 THE COURT: You don't have to prove probable
14 cause. That's a matter of law for the Court. You
15 have to establish that by a preponderance of the
16 evidence, and I've already ruled that you've done
17 that.

18 I guess I was a little -- the reason I took it
19 under advisement, I was trying to figure out for what
20 purpose it was being offered. I can't think of any
21 instance where I've had the State seek to introduce
22 the search warrant --

23 MR. BELL: I was just doing it --

24 THE COURT: -- in their case in chief.

25 MR. BELL: I was doing it to show evidence of

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1 how the police gained entry, how they were able to
2 develop the case, and they were -- under the law, were
3 able to gain entry to search for these items.

4 THE COURT: But your officer testified to that,
5 didn't he?

6 MR. BELL: I mean, it's just an instrument that
7 I was using as part of it. I mean, everything's been
8 testified into that. It's required by state law. And
9 I think it's just part of the State's case, part of
10 our case, of how we did what we did and why we did
11 what we did.

12 MR. STEVENS: Judge, may I say one other thing?

13 THE COURT: Uh-huh.

14 MR. STEVENS: Thank you, ma'am.

15 It also does contain the signature of a judge
16 indicating his probable cause.

17 An additional ground for why it should remain
18 out is that whenever there's an incidence where
19 another body, particularly a judicial body, gave it's
20 blessing over something, it might serve to actually
21 indicate to the jury or the juror's minds to lower the
22 burden of proof, in other words, saying, look, a judge
23 has already signed off on this, we should do --

24 THE COURT: Again, I've already determined as a
25 matter of law that there's probable cause. The jury

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1 doesn't have to determine probable cause.

2 MR. STEVENS: Yes, ma'am.

3 THE COURT: Yeah. They're to determine the
4 elements of an offense, which is whether your client
5 did -- whether your client meets the elements --

6 MR. STEVENS: Yes, ma'am.

7 THE COURT: -- of armed robbery pursuant to the
8 statute. The execution of a search warrant has
9 nothing to do with that.

10 MR. STEVENS: Yes, ma'am.

11 THE COURT: What they found may well corroborate
12 the State's theory. But --

13 MR. STEVENS: Therefore, Judge, in addition to
14 the other grounds already stated, we also raise Rule
15 401 for relevance, and also Rule 403.

16 THE COURT: I'll think about it.

17 MR. STEVENS: Thank you.

18 THE COURT: Anything further, Mr. Bell?

19 MR. BELL: No, Your Honor.

20 THE COURT: Okay. I'm going to think about it a
21 little more.

22 All right. Now that the State has rested --
23 well, let me make another question. Does he have any
24 record that the State would be seeking to use --

25 MR. BELL: No, Your Honor.

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1 THE COURT: -- will be seeking to use to impeach
2 his credibility?

3 MR. BELL: No, Your Honor. He, in fact, has no
4 prior record that we're aware of.

5 THE COURT: I think you told me that earlier,
6 and I apologize for not remembering.

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State v. Tykeem May
Motion for a Directed Verdict by Mr. Stevens
August 13, 2014

MOTION FOR A DIRECTED VERDICT

THE COURT: Now that the State has rested, are there any motions?

MR. STEVENS: Yes, ma'am.

At this time, we respectfully move for a directed verdict of acquittal on armed robbery and for possession of a firearm during the commission of a violent offense.

Our position is that there is no direct or substantial circumstantial evidence on the element on identity. The State has produced circumstantial evidence; however, based upon what has been presented, Judge, it merely rises to the level of suspicion of guilt rather than substantial circumstantial evidence. Accordingly, we respectfully request the Court to enter a directed verdict of acquittal for armed robbery. And because the offense of possession of a firearm during the commission of a violent offense is dependent upon conviction of a violent offense, in this instance armed robbery, it should likewise be directed as an acquittal.

Thank you, Judge.

THE COURT: You're welcome.

Would the State like to respond?

MR. BELL: Yes, Your Honor.

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1 First of all, I would take exception that it's
2 totally circumstantial. I would argue that there is
3 direct evidence. We have a video that shows an
4 individual that has black-and-white sneakers, he's got
5 a covering over his -- over his mouth, he's got red
6 sunglasses, he's using an assault type rifle with a
7 banana clip with a wooden stock, that those items, a
8 rifle with a wooden stock, a banana clip, a red
9 sunglasses, and tennis shoes or athletic shoes that
10 match the what is in the video were found at his house
11 along with a -- we say that a white -- and the video
12 shows that there was a white Dodge Caliber vehicle
13 used, which the defendant had access. I tend to think
14 that's more direct evidence than circumstantial
15 evidence, but we could argue about that.

16 But, anyway, I think we're concerned with the
17 existence of evidence, not the weight. And I think
18 that the evidence the State has presented, plus the
19 description of the individual, a light-skinned black
20 male with dreds, it turns out the defendant is a
21 light-skinned black male with dreds. I think that all
22 of this evidence that the State has presented has
23 singularly focused and shown one conclusion, that the
24 defendant is the person who committed the armed
25 robbery. An armed robbery was committed. And, also,

State v. Tykeem May
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1 that a weapon was used during the commission of an
2 armed robbery for the second indictment. And that
3 this is certainly a jury question. There's more than
4 enough evidence to send it to the jury for them to
5 decide the matter.

6 THE COURT: Considering the evidence in the
7 light most favorable to the State, the Court is
8 concerned with the existence or nonexistence of
9 evidence and not its weight. It's not for the Court
10 to act as the fact-finder. It must only determine if
11 there is direct or substantial circumstantial evidence
12 reasonably tending to prove the elements of 16-11-330,
13 which is armed robbery, and 16-23-490, which is
14 possession of a weapon during the commission of or
15 attempt to commit a violent crime, rising to the level
16 of that being the direct and/or substantial
17 circumstantial evidence reasonably tending to prove
18 the defendant's guilt. That proof does not have to
19 rise above or prove guilt to the exclusion of any
20 other reasonable hypothesis. And the Court, again, is
21 not -- or does not have the prerogative to weigh
22 evidence. I am not the fact-finder.

23 A directed verdict is only appropriate when
24 there is an absence of evidence or where the evidence
25 merely raises a suspicion of guilt. And suspicion

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1 implies a belief or opinion as to guilt based upon
2 facts and circumstances not amounting to proof. But,
3 again, the trial court is not required to find the
4 evidence for his guilt to the exclusion of any other
5 reasonable hypothesis.

6 In order to establish armed robbery, the State
7 must prove several elements beyond a reasonable doubt,
8 that being that the defendant took property from the
9 presence or person of another person, that the
10 defendant carried away the property intending to
11 permanently deprive the owner of the property and keep
12 the property for his own use, that the taking or
13 carrying away of the property was done with violence
14 or by putting the owner of the property in fear of
15 violence. And then the State must prove that the
16 defendant was armed with a deadly weapon or that the
17 defendant either by action or words while using a
18 representation of a deadly weapon [phonetic].

19 And in order to establish possession of a weapon
20 during the commission of a violent crime, the State
21 must establish that the defendant was armed with a
22 firearm and was in the -- and he must have been found
23 guilty of a violent crime, as defined by 16-1-160, of
24 which armed robbery is clearly within that category of
25 violent crime.

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1 I find for the record that there is both direct
2 and substantial circumstantial evidence reasonably
3 tending to prove the defendant's guilt, without going
4 through each of the elements. We have the direct
5 testimony of the victim in this case, a Mr.
6 Quantavious Montgomery, regarding a description of the
7 person who committed this armed robbery with an
8 assault rifle, and that a certain sum of money was --
9 which has been documented, was taken from the Keg,
10 which is the store where he was a manager.

11 There is also, in combination with that, direct
12 evidence in the form of a video from this convenience
13 store that purports to show an individual strikingly
14 similar to the defendant.

15 In combination with that, we then have the use
16 of a vehicle which, in the direct testimony of
17 Ms. Emonie Ford, she identified as her vehicle not
18 only at her residence at the execution of the search
19 warrant but also at the convenience store where she
20 said once the police began to question her, all of the
21 events came together for her and then everything made
22 sense and she then understood what they were talking
23 about and it became clear to her what had happened on
24 that day.

25 And she did, in fact, identify her vehicle, as

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1 well as corroborating that the defendant in this case
2 had the use of her vehicle and she was not present
3 with him and that he was absent from the residence
4 during a window of time which gave him the opportunity
5 to have committed this offense, which, again, is
6 corroborated by a picture of her vehicle at this
7 convenience store.

8 Then have connected with that, the
9 circumstantial evidence, which I guess you could
10 interpret it as direct or circumstantial evidence,
11 that being those items that were found pursuant to the
12 valid search warrant at the residence that the
13 defendant shared with Ms. Ford, that being the
14 sunglasses and the sneakers that were consistent with
15 the description given by the victim, as well as that
16 which is corroborated by the video from the
17 convenience store.

18 So based on what has been presented to the Court
19 at this point, in the light most favorable to the
20 State, there is both direct and substantial
21 circumstantial evidence reasonably tending to prove
22 the defendant's guilt, which certainly rises above
23 suspicion.

24 And this record does not have an absence of
25 evidence. What has been raised by the defendant

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1 are -- certainly goes to the -- certainly goes to the
2 weight of the fact of the -- goes to the weight to be
3 accorded the facts that have been presented.

4 Certainly, they can argue that the State has failed to
5 prove the identity of their client, and certainly they
6 can argue regarding the credibility of the witnesses
7 who've testified. Again, that's not for the Court to
8 parcel out or to weigh or to sift to, as the Court
9 does not sit as the fact-finder.

10 And so therefore the motion for directed verdict
11 is denied.

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DEFENDANT'S RIGHTS

1
2 THE COURT: Now, sir, if you would stand for me,
3 please, and raise your right hand to be sworn.

4 [Whereupon, Mr. May is duly sworn by the Court
5 as follows: do you swear or affirm the testimony you
6 give will be the truth]

7 MR. MAY: I do.

8 THE COURT: You can put your right hand down.

9 I need you to speak up a little bit more for me.
10 You're a little soft-spoken.

11 If you would state your full name for the
12 record.

13 MR. MAY: Tykeem Kalami May.

14 THE COURT: Sir, at this time I'm going to
15 explain certain of your rights to you. If you do not
16 understand anything that I say, please let me know.
17 If you want me to explain anything in more detail,
18 please let me know.

19 Do you understand?

20 MR. MAY: Yes, I do.

21 THE COURT: Sir, we have now reached the stage
22 of the trial where you may present your defense. You
23 have the rights of protection as given to you by the
24 fifth amendment of the United States Constitution
25 which reads, in part, that no person shall be

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1 compelled in any criminal case to be a witness against
2 himself. This means that you cannot be required to
3 testify in this case. If you desire to testify, that
4 decision must be made freely and voluntarily and
5 intelligently, of course with legal advice and with
6 full knowledge of the consequences of your decision to
7 testify, as well as your protection under and pursuant
8 to the United States and the South Carolina
9 Constitution.

10 You have a right to testify, as I've already
11 explained. However, no one can make you testify.
12 This is a personal right and no one can waive that
13 right except you. If you decide to testify, you will
14 be subject to the same rules that govern other
15 witnesses. You will be examined and cross-examined
16 just as you've seen the other witnesses in this case.
17 And you may be examined and cross-examined on any
18 relevant issue in this case.

19 In addition, if you have any convictions
20 involving dishonesty or for false statement or
21 punishable by imprisonment for more than one year and
22 this Court determines that the probative value of
23 admitting this evidence outweighs its prejudicial
24 effect to you, the solicitor will be able to introduce
25 your record to attack your credibility. But I will

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1 inform you that you have no record, so the State has
2 indicated that they are not seeking to introduce any
3 evidence of that type to impeach your credibility.

4 If you decide to testify, this decision on your
5 part must be made freely, voluntarily and
6 intelligently, with knowledge of the protections given
7 to you by the fifth amendment and the consequences of
8 your decision to testify.

9 If you decide not to testify, I will instruct
10 the jury that they cannot give the fact that you did
11 not testify any consideration whatsoever. In fact, I
12 will instruct them that you have no burden of proof in
13 this case, that the burden of proof remains on the
14 State to prove each and every element of the offense
15 charged beyond a reasonable doubt, that there is to be
16 no inference of guilt drawn from your lack of
17 testifying and, in fact, that there is to be no
18 prejudice to you by not testifying and the fact that
19 you did not testify should not be discussed in their
20 deliberations in any manner whatsoever.

21 It is left entirely up to you whether or not you
22 testify. You may speak with your attorney, your
23 family members, friends or others, but the final
24 decision is left entirely up to you.

25 Sir, do you understand your rights as I've just

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1 explained them to you?

2 MR. MAY: Yes, Your Honor.

3 THE COURT: Do you need to ask me any questions
4 about what I've just explained to you?

5 MR. MAY: No, Your Honor. But I would like
6 to --

7 THE COURT: Give me one second. You're getting
8 a little ahead of me.

9 Have you discussed with your attorneys whether
10 you should or should not testify?

11 MR. MAY: That's what I would like to do.

12 THE COURT: Well, it's a yes or no answer.

13 MR. MAY: No.

14 THE COURT: You have not discussed with him
15 whether you should or should not testify?

16 MR. STEVENS: We have had previous conversation,
17 Judge.

18 THE COURT: That's why I need him to answer.

19 I need you to listen to what I'm asking. Have
20 you discussed with your attorneys whether you should
21 or should not testify?

22 MR. MAY: Yes, Your Honor.

23 THE COURT: Do you need to speak with them any
24 further at this time?

25 MR. MAY: Yes, Your Honor.

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1 THE COURT: Okay. We'll take a short recess and
2 you-all talk with him. Let me know when you have
3 concluded speaking with him.

4 MR. STEVENS: Yes, ma'am.

5 THE COURT: Thank you.

6 [Whereupon, a recess is taken from 11:47 a.m. to
7 12:06 p.m.]

8 THE COURT: Sir, if you would stand for me,
9 please. I will remind you that you're still under
10 oath.

11 Have you fully discussed with your lawyers
12 whether you should or should not testify?

13 MR. MAY: Yes, Your Honor.

14 THE COURT: Do you need to speak with them any
15 further at this time?

16 MR. MAY: No, Your Honor.

17 THE COURT: And, sir, do you wish to testify?

18 MR. MAY: Yes, Your Honor.

19 THE COURT: And you can take your seat, sir.

20 Now, are there any other witnesses? And bear
21 with me one second.

22 [Whereupon, the Court reviews documents]

23 THE COURT: You have listed a Miss Delicia
24 [phonetic] Simpson?

25 MR. STEVENS: Yes, Your Honor.

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1 THE COURT: Are you calling her?

2 MR. STEVENS: No, ma'am.

3 THE COURT: A Dammie McDaniel [phonetic]?

4 MR. STEVENS: I don't believe it's necessary
5 calling her, Judge.

6 THE COURT: And we also have Mr. May. So other
7 than your client, you have no other witnesses;
8 correct?

9 MR. STEVENS: Correct, Judge.

10 THE COURT: And, also, I need to clear the
11 courtroom for just a quick moment. There are some
12 other matters I need to follow up with counsel on.

13 MR. BELL: Your Honor --

14 THE COURT: It should only take a moment.
15 Yes?

16 MR. BELL: For the Court's consideration, I
17 think we talked about this earlier in passing not
18 knowing what was going to happen. Since the defendant
19 has indicated he's going to take the stand, he did
20 give a statement to the police. Now, whether --

21 THE COURT: Do you plan to use it?

22 MR. BELL: I may use it in cross-examination.

23 THE COURT: If you do -- well, you would be only
24 able to use it, if it's inconsistent, to impeach him.

25 MR. BELL: I may -- I mean, I may do that. It

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1 just depends on how the testimony comes out.

2 THE COURT: Well, that's the only way you would
3 be able to use it. Or to refresh his memory.

4 MR. BELL: Probably be towards refreshing --

5 THE COURT: Only two ways.

6 MR. BELL: Probably refreshing memory is how I
7 would use it.

8 THE COURT: Okay. Are we going to need a
9 Jackson v. Denno?

10 MR. STEVENS: Well, that's just it, Judge. I
11 understand the State's position that the only time
12 they would use it would be on cross-examination.
13 However, our position is that --

14 THE COURT: That's a direct question. Yes or
15 no?

16 MR. STEVENS: Yes, ma'am, we want a Jackson v.
17 Denno hearing.

18 THE COURT: All right. I'm going to deal with
19 this, then we'll deal with that.

20 MR. BELL: Okay.

21 THE COURT: And I need a copy of the statement.

22 MR. BELL: Your Honor, I'll hand you a copy of
23 his.

24 THE COURT: That's not your only copy, is it?

25 MR. BELL: It's my copy. But I have the

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1 original from the police officer that I would actually
2 enter into evidence.

3 THE COURT: I can make a copy.

4 [Off the record momentarily]

5 THE COURT: You told me earlier that one of the
6 strategies that you were concerned about was
7 preserving last argument.

8 MR. STEVENS: Yes, ma'am.

9 THE COURT: But at this point, you've already
10 introduced evidence and your client is going to
11 testify. So I assume you've already gone over with
12 him, strategically, that change in strategy? I --

13 MR. STEVENS: Yes, ma'am.

14 THE COURT: -- know that's redundant.

15 MR. STEVENS: Yes, ma'am. At the time we
16 entered in --

17 THE COURT: You don't have to explain to me. I
18 just need to preserve for the record that y'all
19 discussed that.

20 MR. STEVENS: Yes, we have.

21 THE COURT: And, sir, that's correct? Your
22 lawyer has discussed with you that change in strategy?

23 MR. MAY: Yes, ma'am.

24 THE COURT: Now, you can take your seat.

25 [Whereupon, Mr. May complies]

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1 THE COURT: What about the --

2 MR. STEVENS: Walmart receipts.

3 THE COURT: Yeah. That will be my last
4 question.

5 MR. STEVENS: We've been following up on that
6 all day long. I spoke with my legal assistant about
7 it. She said she still has calls into that facility,
8 again, that Walmart here. They have not been able to
9 -- she has not been able to contact them today. We
10 were able to contact them yesterday and try and track
11 down where things may be, but this morning they've
12 been totally unresponsive. So I'll --

13 THE COURT: There's not another manager in the
14 store you can talk to?

15 MR. STEVENS: Well, I've been in court all
16 morning long. I'm going to try to get downstairs and
17 talk with them myself.

18 THE COURT: You'll probably have some time to
19 deal with it anyway, because we have a juror that has
20 a doctor's appointment at 3:30 and I promised him he
21 was going to be able to go to that.

22 MR. STEVENS: Yes, ma'am.

23 THE COURT: So I doubt we're going to close and
24 charge today, because I would think I would need to
25 give him at least a thirty-minute lead time. I don't

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1 even know where his doctor's appointment is. I
2 assumed it was in Orangeburg.

3 Could you find out for me where -- because it
4 may be in Columbia or Charleston.

5 [Off the record momentarily]

6 THE COURT: So I think thirty minutes will be
7 sufficient.

8 Okay. I just wanted to follow up on the receipt
9 for the Walmart. All right. You can let everybody
10 else in --

11 MR. STEVENS: I will say that if we're going to
12 try and be able to make use of the receipt, it would
13 have to be during his testimony.

14 THE COURT: Yeah. But I'll give you leave to
15 reopen the record if you have to. I'm not going to
16 stop in the middle of his testimony and wait and see
17 if we can find a receipt.

18 MR. STEVENS: Thank you, Judge.

19 [Off the record momentarily]

20 THE COURT: 21, which was the search warrant and
21 the company return, the objection is sustained
22 pursuant to State vs. Arther, which is A-R-T-H-E-R,
23 State vs. Latham, and State vs. Smith, all of which
24 holds that a search warrant and an accompanying
25 affidavit are not admissible.

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JACKSON V. DENNO HEARING

1
2 THE COURT: Now we need to deal with whether his
3 statement -- and I've read his statement, it's fairly
4 brief, and the necessity of a Jackson v. Denno
5 hearing.

6 What is the State's position?

7 MR. BELL: Your Honor, I mean, our position is
8 that we don't feel we need one. However, we will hold
9 one if the Court deems it necessary.

10 THE COURT: What is your rationale for not
11 needing one?

12 MR. BELL: Your Honor, [a], it's not an
13 incriminating statement.

14 THE COURT: Well, you could incriminate him with
15 it, based on these time lines in here, if he says
16 something inconsistent.

17 MR. BELL: That's correct, Your Honor.

18 But I think if we were using it -- if we were to
19 use it, it would be used to either impeach him or
20 refresh his memory. We're not using it as a
21 substantive piece of evidence.

22 And I believe that when he puts himself on the
23 stand he, as any other witness, he opens him up --

24 THE COURT: Well, he's not like any other
25 witness. He has due-process rights.

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1 MR. BELL: I agree.

2 But I believe that once he gets on the stand, he
3 is like all other witnesses and prior statements,
4 inconsistent or consistent, are fair game.

5 THE COURT: Not if they're made to the police.
6 It's a whole different ball of wax. Him getting on
7 the stand does not negate the need for a Jackson v.
8 Denno hearing.

9 I've read the statement. I'm trying to figure
10 out what in it inculcates him.

11 MR. STEVENS: Yes. A couple of points. First
12 of all, obviously it was made in custody. Second of
13 all, we specifically request a Jackson v. Denno
14 hearing because if it was given under duress --

15 THE COURT: Yeah. But do you have any real
16 good-faith basis that it was under duress or was
17 coerced in any way and that he did not sign the waiver
18 of rights?

19 MR. STEVENS: What we would show through
20 testimony would show that, yes, he was handcuffed,
21 yes, he felt under duress with guns pointed at his
22 head, he was dragged to --

23 THE COURT: If that's the case, then every
24 defendant is under duress.

25 MR. STEVENS: Yes, ma'am.

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1 Also, at the time he was actually -- well, had
2 several drinks that night beforehand. And under all
3 the conditions --

4 THE COURT: He was pretty clear and cogent at
5 the time and place --

6 I mean, we can -- I guess, you know, there comes
7 a point when you determine -- we'll have the hearing.
8 I don't know that it makes any appreciable difference,
9 but we're going to have it.

10 Usually, you have a Jackson v. Denno hearing
11 when really there is some real good-faith basis that
12 your client -- regarding the voluntariness and whether
13 they were, in fact, Mirandized and whether the
14 statement really, in fact, inculcates your client in
15 some way.

16 In this instance, there might reasonably be the
17 ability for the State to draw some distinction, in
18 these time lines that he provided in the statement,
19 such that it would rise to the level of impeaching
20 him.

21 And I understand you're making that motion to
22 protect yourself on post conviction relief, and I'm
23 not going to fault you for it. But let's move along,
24 because I've got a jury waiting.

25 MR. BELL: The State would call Sargent Dukes,