

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Florence County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHEEM KEVIN THOMAS,

APPELLANT

APPELLATE CASE NO 2019-001072

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-01032
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Rasheem Kevin Thomas,	)	
	)	
Defendant.	)	
	)	

June 24-26, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge; and a jury

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

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Attorney for the Plaintiff

Matthew Swilley, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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21		or change in thought	
22	ellipses . . .	trailing off	
23	[ph]	phonetically written	
24	[sic]	written as said	
25			

1 JUNE 24, 2018

2 (WHEREUPON, the proceedings began at 11:16 a.m. The
3 defendant was present, along with his counsel of
4 record.)

5 THE COURT: All right. Ladies and gentlemen, I
6 apologize for that delay. I got tied up with some attorneys
7 on other matters not involving -- not involving this matter,
8 so -- but we are ready to proceed and I would recognize the
9 State for the call of the first case.

10 MR. WHITE: Thank you, Judge. At this time, the State
11 would call the following case: The State v. Rasheem Thomas,
12 Indictment 2018-GS-21-01032.

13 THE COURT: Thank you, sir. Ladies and gentlemen,
14 you've heard the solicitor call the first case for trial, the
15 State of South Carolina versus Rasheem Kevin Thomas. You
16 heard the solicitor reference an indictment number, that
17 Indictment Number 2018-GS-21-1032.

18 Folks, an indictment is simply a piece of paper. It is
19 a -- it's a document that contains the allegations that are
20 made against a defendant, in this case Mr. Thomas, but the --
21 and in a moment, I am going to read to you the allegations
22 contained in this -- in this document, but this is simply a
23 charging document. It is not in any sense evidence in this
24 case and the allegations that are contained here are not
25 evidence against Mr. Thomas in this case. It is merely the

1 allegations which the State has made against Mr. Thomas.

2 To these allegations, to this indictment or this charge,
3 he has pled not guilty, and that plea of not guilty does two
4 things. It places upon Mr. Thomas the presumption of
5 innocence and it places upon the State the burden of proof.
6 The State must prove beyond a reasonable doubt the
7 allegations contained in this indictment.

8 Now, I'm going to read to you the allegations that are
9 in this charge so that you'll be aware of what this case is
10 about and be able to answer my questions. This indictment is
11 -- it is a single-count indictment and it charges Mr. Thomas
12 with the offense of armed robbery, and the allegation in the
13 indictment is as follows.

14 That Rasheem Kevin Thomas did in Florence County on or
15 about May the 28th of 2016, while armed with a deadly weapon,
16 to wit: a handgun, did take and carry away the personal
17 property of Anastacia Kauth -- Anastacia Kauth, from or in
18 the immediate presence of Anastacia Kauth with the intent to
19 deprive Anastacia Kauth of the possession of that property by
20 use of force, threats or intimidation, all in violation of
21 Section 16-11-330, subsection (a), of the South Carolina Code
22 of Laws, 1976, as amended.

23 Those are the allegations that have been made to which
24 Mr. Thomas has pled not guilty. Is there any member of the
25 jury panel who knows anything about this case or who has

1 heard anything about this case based upon that information
2 that I've just given you? If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There are none.

5 Folks, I'm going to have the attorneys stand and
6 introduce themselves. If you'd listen carefully, I'll start
7 with the State.

8 MR. WHITE: Good morning, ladies and gentlemen. My name
9 is Ryan White. I'm an assistant solicitor for the 12th
10 Judicial Circuit. I'll be trying this case, alongside Deputy
11 Solicitor Todd Tucker. Thank you.

12 THE COURT: Folks, is there any member of the jury panel
13 who is related by blood, connected by marriage or who has any
14 close business or personal relationship with or who has ever
15 been represented by or prosecuted by either Mr. White or Mr.
16 Tucker or any member of the 12th Circuit Solicitor's staff?
17 If so, please stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Thank you. There are none.

20 Mr. Swilley?

21 MR. SWILLEY: Good morning. My name is Matt Swilley.
22 I'm an attorney with the Swilley Law Firm here in Florence on
23 McQueen Street, and I practice with my paralegal, Katie
24 Weaver. This is Rasheem Thomas. He is from Florence.

25 THE COURT: Thank you, gentlemen.

1 Folks, you've met Mr. Swilley. Is there any member of
2 the jury panel who is related by blood, connected by marriage
3 or who has any close business or personal relationship with
4 or who has ever been represented by Mr. Swilley or any member
5 of his staff? If so, please stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Thank you. There are none.

8 You've met Mr. Thomas. Is there any member of the jury
9 panel who is related by blood, connected by marriage or who
10 has any close business or personal relationship with Mr.
11 Thomas? If so, please stand.

12 THE COURT: Thank you. There are none.

13 Now, ladies and gentlemen, I'm going to call out some
14 names. The names that I'm going to call out are the names of
15 individuals who are possible or potential witnesses. These
16 are people who may testify during the course of this trial.
17 They may or may not testify, but I'm going to read out all of
18 the names of the possible witnesses so that you can respond.

19 Now, the question that I'm going to be asking you as it
20 relates to these names is similar to the question I just
21 asked you about Mr. Thomas. In other words, are you related
22 by blood, connected by marriage or have any close business or
23 personal relationship? That's the question I'm going to be
24 asking as it relates to these folks whose names I'm going to
25 call out.

1 If you hear a name and that question applies to you, go
2 ahead and stand, but if you would, remain standing but
3 continue to listen because it may be that you know more than
4 one of these individuals. As I said, these are folks that
5 are possible or potential witnesses who may testify during
6 the course of this trial.

7 Dwayne Winfield.

8 Thomas McFadden.

9 Ben Price.

10 Levi James.

11 Lance Brackett.

12 Andrew Clendenin.

13 Michael Brumbles.

14 Kevin Wilson.

15 Sara Goodman.

16 Jasmine Ruiz-Yi. Is that correct?

17 William Brookins.

18 Carson McArthur.

19 Anastacia Kauth.

20 Any member of the jury panel related by blood, connected
21 by marriage or have any close business or personal
22 relationship with any of these folks?

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Thank you. There are none.

25 Is there any member of the jury panel who has either

1 read anything or heard anything, whether it be through the
2 news, social media, texting, Facebook, any of these, Twitter,
3 any of these outlets, heard anything about this case or
4 anything said about this case? If so, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Thank you. There are none.

7 Is there any member of the jury panel or your immediate
8 family who has ever -- excuse me -- been the victim of a
9 violent crime? If so, please stand.

10 (WHEREUPON, several people stood.)

11 THE COURT: All right. Folks, if y'all would just
12 remain standing, I'm going to start on this end.

13 Sir, your name, please?

14 JUROR NUMBER 120: Jeffery Allen Platt.

15 THE COURT: All right. Give me one second, Mr. Platt.

16 JUROR NUMBER 120: 120.

17 THE COURT: All right. Juror 120. Mr. Platt, yourself
18 or a member of your family?

19 JUROR NUMBER 120: I was the victim of an armed robbery.

20 THE COURT: All right. The fact that you have had that
21 experience, would that in any way affect your ability to give
22 both the State and the defense a fair and impartial trial?

23 JUROR NUMBER 120: Honestly, likely.

24 THE COURT: Okay. Well, that's understandable. Well,
25 Mr. Platt, what I'm going to do is I'm going to excuse you

1 from participation in this case. If you'll have a seat, I
2 don't -- I don't want you to leave yet, but -- because we
3 have other cases that we may could use your help on, but
4 certainly we'll excuse you from participation in this case.

5 Sir, your name, please?

6 JUROR NUMBER 41: Jay Floyd.

7 THE COURT: All right.

8 JUROR NUMBER 41: Number 41.

9 THE COURT: All right. Mr. Floyd, was it yourself or a
10 member of your family?

11 JUROR NUMBER 41: It was a member of my family.

12 THE COURT: All right. Well, the fact that you've had
13 that experience, would that in any way affect your ability to
14 give both the State and the defense a fair and impartial
15 trial?

16 JUROR NUMBER 41: No, sir.

17 THE COURT: Thank you, sir. You may have a seat.

18 Sir, your name, please?

19 JUROR NUMBER 124: Ja'shay Pressley, 124.

20 THE COURT: All right. All right, 124. Mr. Presley,
21 yourself or a member of your family, sir?

22 JUROR NUMBER 124: A member of my family.

23 THE COURT: The fact that you've had that experience in
24 your family, would that in any way affect your ability to
25 listen to the testimony in this case and judge this case

1 solely on the evidence presented here, giving both the State
2 and the defense a fair trial? Would this --

3 JUROR NUMBER 124: Somewhat.

4 THE COURT: Okay. I'm going to excuse you from
5 participation in this matter, Mr. Pressley, but if you'll
6 stay with us because it might be that you can help us in some
7 other case.

8 Is there any member of the jury panel or member of your
9 immediate family or friends who are either currently or in
10 the past have been employed as law enforcement -- law
11 enforcement officers or worked with a law enforcement agency?
12 If so, please stand.

13 (WHEREUPON, several people stood.)

14 THE COURT: All right. Sir, your name, please.

15 JUROR NUMBER 141: George Smith, 141.

16 THE COURT: All right, sir. Mr. Smith, the fact that
17 you have those relationships, would that in any way affect
18 your ability to give both the State and the defense a fair
19 and impartial trial?

20 JUROR NUMBER 141: No, sir.

21 THE COURT: Thank you, sir. You may have a seat.

22 Sir, your name, please?

23 JUROR NUMBER 56: Loris Hanna, 56.

24 THE COURT: All right, sir. Mr. Hanna, the fact that
25 you have those relationships, would that in any way affect

1 your ability to give both the State and the defense a fair
2 trial?

3 JUROR NUMBER 56: No, sir.

4 THE COURT: Thank you, sir. You may have a seat.

5 All right. Ma'am, your name, please?

6 JUROR NUMBER 102: Emily McKoy, 102.

7 THE COURT: All right. Ms. McKoy, the fact that you
8 have those relationships, would that affect your ability to
9 listen to the testimony, giving both the State and the
10 defense a fair and impartial trial?

11 JUROR NUMBER 102: No, sir.

12 THE COURT: Thank you, ma'am. You may have a seat.

13 Ma'am, your name, please?

14 JUROR NUMBER 117: Emily Pace.

15 THE COURT: All right. This is Juror 1 --

16 JUROR NUMBER 117: 17.

17 THE COURT: -- 17. Ms. Pace, the fact that you have
18 those relationships, ma'am, would that in any way affect your
19 ability to give both the State and the defense a fair trial?

20 JUROR NUMBER 117: No, sir.

21 THE COURT: Thank you, ma'am. You may have a seat.

22 Sir, your name, please?

23 JUROR NUMBER 174: David Spearman, 174.

24 THE COURT: All right, sir. And, sir, the fact that you
25 have those relationships, would that affect your ability to

1 give both the State and the defense a fair trial?

2 JUROR NUMBER 174: No, sir.

3 THE COURT: Thank you very much, sir.

4 Ma'am, your name, please?

5 JUROR NUMBER 94: Holly MacFall, 94.

6 THE COURT: All right. And the fact that you have those
7 relationships, ma'am, would that in any way affect your
8 ability to be fair and impartial?

9 JUROR NUMBER 94: No, sir.

10 THE COURT: Thank you, ma'am. You may have a seat.

11 Is there any member of the jury panel or member of your
12 immediate family who are -- who have -- either has been
13 prosecuted by the 12th Circuit Solicitor's Office, which is --
14 comprises both Florence and Marion counties, whether or not
15 you or a member of your family have either been prosecuted by
16 that office or have been represented by that office as
17 possibly a victim? If so, please stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Thank you. There are none.

20 Is there any member of the jury panel or member of your
21 immediate family who has had a negative experience with
22 regards to law enforcement to the extent that it would affect
23 your ability to give both the State and the defense a fair
24 and impartial trial? If so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Thank you. There are none.

2 Is there any member of the jury panel who has had to
3 make a police report or file a police report with the
4 Florence County Sheriff's Office within the past 10 years?
5 If so, please stand.

6 (WHEREUPON, several people stood.)

7 THE COURT: All right. Ma'am, your name, please?

8 JUROR NUMBER 132: Juror 132.

9 THE COURT: All right.

10 JUROR NUMBER 132: Amy Roberts.

11 THE COURT: And was it you or a member of your family?

12 JUROR NUMBER 132: Me.

13 THE COURT: And you had to make that report within the
14 last 10 years?

15 JUROR NUMBER 132: Uh-huh.

16 THE COURT: What was the nature of the report?

17 JUROR NUMBER 132: Aggravated assault.

18 THE COURT: Okay. And the fact that you've had that
19 experience and had to make that report, would that in any way
20 affect your ability to give both the State and the defense a
21 fair and impartial trial?

22 JUROR NUMBER 132: No, sir.

23 THE COURT: Thank you, ma'am. You may have a seat.

24 Sir, your name, please?

25 JUROR NUMBER 152: Jacob Tucker, 152.

1 THE COURT: All right, sir. And, Mr. Tucker, was it
2 yourself or a member of your family?

3 JUROR NUMBER 152: Myself.

4 THE COURT: And the nature of that report?

5 JUROR NUMBER 152: Just an accident.

6 THE COURT: I'm sorry?

7 JUROR NUMBER 152: It was an accident.

8 THE COURT: Oh, okay. The fact that you had to make
9 that report with the Sheriff's Department and deal with them
10 regarding that, would that in any way affect your ability to
11 give both the State and the defense a fair and impartial
12 trial?

13 JUROR NUMBER 152: No, sir.

14 THE COURT: Thank you, sir. You may have a seat.
15 Yes, ma'am, your name?

16 JUROR NUMBER 47: Jernasia Gaskins, Number 47.

17 THE COURT: All right. And, ma'am, was it yourself or a
18 member of your family?

19 JUROR NUMBER 47: It was myself.

20 THE COURT: Okay. And the nature of the report?

21 JUROR NUMBER 47: My car was stolen.

22 THE COURT: All right. The fact that you've had that --
23 had that experience with the Sheriff's Department in having
24 to make that report, would that in any way affect your
25 ability to give both the State and the defense a fair and

1 impartial trial?

2 JUROR NUMBER 47: No, sir.

3 THE COURT: Thank you, ma'am. You may have a seat.

4 Is there any member of the jury panel who has the belief
5 that a police officer -- simply because that person, he or
6 she, is a member of law enforcement, is there any member of
7 the panel who believes that, because of that, that that
8 person would be more truthful because of their relationship
9 with law enforcement? If so, please stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: Thank you. There are none.

12 Is there any member of the jury panel who is familiar
13 with the area of Cedar Terrace Mobile Home Park, which is
14 here near Florence, or have any close friends or relatives
15 who reside in the Cedar Terrace Mobile Home Park, which is, I
16 believe, off of National Cemetery Road? If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Thank you. There are none.

19 Folks, I've asked you several questions and, those of
20 you who have responded, you've noticed that my follow-up
21 question has always been would that in any way affect your
22 ability to listen carefully to the evidence in this case and
23 give both the State and the defense a fair and impartial
24 trial.

25 That is the -- that is our hope and our purpose anytime

1 we pull a jury in this court, whether it be for a criminal
2 case or a civil case. Our intent is to impanel a jury that
3 can listen carefully to the evidence, set aside anything
4 outside this courtroom, and listen carefully to the evidence
5 and base your judgment of this case, your facts -- the facts
6 of this case solely upon that evidence that is presented in
7 this courtroom, giving both the State and the defense a fair
8 view of that evidence. That's what we hope to do every time
9 we pull a jury.

10 And I guess I could ask questions all afternoon to try
11 to determine whether or not it would affect your ability to
12 be fair and impartial, but maybe the simplest thing to do
13 would simply be to ask this.

14 Is there any member of the jury panel -- whether I've
15 asked the question or not, is there any member of the jury
16 panel who knows of any reason why you would not be able to
17 give both the State and the defense a fair and impartial
18 hearing? If so, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Thank you. There are none.

21 Are there any additional questions or voir dire from the
22 State?

23 MR. WHITE: None on behalf of the State, Judge.

24 THE COURT: Anything additional from the defense?

25 MR. SWILLEY: No, Your Honor.

1 THE COURT: All right. Thank you, gentlemen.

2 Ladies and gentlemen, now, we're going to go about the
3 business of selecting a jury and, while Madam Clerk is doing
4 her thing, I'll explain to you what that involves.

5 She has a program on her computer and what it does is it
6 takes this jury list that your names appear on -- and on this
7 list, your names essentially are just listed in alphabetical
8 order, but what it does is it takes this list and it
9 completely reorders the list. It just completely re-juggles
10 the names. So, like, if I was Tommy Russo, Number 134, on
11 this list, I may appear on this new list as Tommy Russo,
12 Juror Number 14. It's just random.

13 But anyway, that's what it does, and it makes a new list
14 of your names in a random order and she'll generate that list
15 and from that list she'll start with the first name at the
16 top of that list and she'll call out that name. If your name
17 is called, I would ask that you stand and just stand there.

18 Then Madam Clerk will ask of the State words to this
19 effect. What say you for the State? The State has two
20 options. They can excuse you and, if they excuse you, you'll
21 have a seat. If -- or they can present you. If they present
22 you, you'll remain standing.

23 She will then look to the defense, similar words. What
24 say you for the defense? The defense has two options. They
25 can excuse you and, if they do, you'll have a seat, or they

1 can seat you. If they seat you, you'll then gather your
2 belongings that you brought to court and come over and have a
3 seat in the jury box. All right? And we'll go through that
4 process until we have selected our panel.

5 Now, we used to do it where I'd have you come down to
6 the front of the Court, stand here, and face the back of the
7 courtroom and you'd be standing here and everybody would be
8 staring at you and you'd be uncomfortable. I just found it's
9 a little -- it's a little more -- it's a little easier for
10 you as jurors to just stand and let the lawyers turn and look
11 and see who you are rather than have you stand in front of
12 everybody and have everybody stare at you. A little easier
13 for you to do that, I think.

14 Also, it's a little faster. If someone in the back
15 corner was -- name was called, we'd have to wait for you to
16 work your way out and crawl over people and then walk down
17 here. It's just a little faster to do it this way. So I've
18 kind of switched after all these years of doing it the old
19 way and so we're going to do it this way.

20 All right. Is the State ready to proceed to jury
21 selection?

22 MR. WHITE: Yes, sir, Your Honor.

23 THE COURT: Is the defense ready?

24 MR. SWILLEY: We are, Your Honor.

25 THE COURT: All right. Folks, well, if you would,

1 listen carefully while Madam Clerk goes through the -- we're
2 going to do two alternates.

3 THE CLERK: What are the strikes?

4 THE COURT: Ten and five.

5 THE CLERK: 102, Emily McKoy.

6 (WHEREUPON, a white female stood.)

7 THE CLERK: What say the State?

8 MR. WHITE: Please present Ms. McKoy.

9 THE CLERK: What say the defendant?

10 MR. SWILLEY: Please excuse Miss McKoy from the trial of
11 this case.

12 THE CLERK: You've been excused from this trial only,
13 ma'am. You may have a seat.

14 73, Natasha James.

15 (WHEREUPON, a black female stood.)

16 THE CLERK: What say the State?

17 MR. WHITE: Please excuse Miss James.

18 THE CLERK: You've been excused from this trial only,
19 ma'am. You may have a seat.

20 56, Loris Hanna.

21 (WHEREUPON, a black male stood.)

22 THE CLERK: What say the State?

23 MR. WHITE: Please present Mr. Hanna.

24 THE CLERK: What say the defendant?

25 MR. SWILLEY: Please excuse Mr. Hanna from the trial of

1 this case.

2 THE CLERK: You've been excused from this trial only,
3 sir. You may have a seat.

4 53, Reagan Gray.

5 (WHEREUPON, a white female stood.)

6 THE CLERK: What say the State?

7 MR. WHITE: Please present Ms. Gray.

8 THE CLERK: What say the defendant?

9 MR. SWILLEY: Please swear Ms. Gray.

10 THE CLERK: Please come around and have a seat in the
11 jury box, ma'am.

12 JUROR NUMBER 53: Bring my stuff?

13 THE CLERK: Yes, bring all your stuff with you.

14 20, Rita Cagle.

15 (WHEREUPON, a white female stood.)

16 THE CLERK: What say the State?

17 MR. WHITE: Please present Miss Cagle.

18 THE CLERK: What say the defendant?

19 MR. SWILLEY: Please swear Ms. Cagle.

20 THE CLERK: Please come up and have a seat in the jury
21 box, ma'am.

22 174, David Spearman.

23 (WHEREUPON, a white male stood.)

24 THE CLERK: What say the State?

25 MR. WHITE: Please present Mr. Spearman.

1 THE CLERK: What say the defendant?

2 MR. SWILLEY: Please excuse Mr. Spearman from the trial
3 of this case.

4 THE CLERK: You've been excused from this trial only,
5 sir. You may have a seat.

6 166, Trebor Wilson.

7 (WHEREUPON, a black male stood.)

8 THE CLERK: What say the State?

9 MR. WHITE: Please excuse Mr. Wilson.

10 THE CLERK: You've been excused from this trial only,
11 sir. You may have a seat.

12 Number 5, Lester Benjamin.

13 (WHEREUPON, a black male stood.)

14 THE CLERK: What say the State?

15 MR. WHITE: Please present Mr. Benjamin.

16 THE CLERK: What say the defendant?

17 MR. SWILLEY: Please swear Mr. Benjamin.

18 THE CLERK: Please come up and have a seat in the jury
19 box, sir.

20 112, Jocelyn Murtha.

21 (WHEREUPON, a white female stood.)

22 THE CLERK: What say the State?

23 MR. WHITE: Please present Ms. Murtha.

24 THE CLERK: What say the defendant?

25 MR. SWILLEY: Please swear Ms. Murtha.

1 THE CLERK: Please come up and have a seat in the jury
2 box, ma'am.

3 169, Tiffany Woods.

4 (WHEREUPON, a black female stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Ms. Woods.

7 THE CLERK: What say the defendant?

8 MR. SWILLEY: Please swear Ms. Woods.

9 THE CLERK: Please come up and have a seat in the jury
10 box, ma'am.

11 127, Jasmyn Quillen.

12 (WHEREUPON, a black female stood.)

13 THE CLERK: What say the State?

14 MR. WHITE: Please present Ms. Quillen.

15 THE CLERK: What say the defendant?

16 MR. SWILLEY: Please swear Ms. Quillen.

17 THE CLERK: Please come up and have a seat in the jury
18 box, ma'am.

19 66, Katrina Hilton.

20 (WHEREUPON, a white female stood.)

21 THE CLERK: What say the State?

22 MR. WHITE: Please present Ms. Hilton.

23 THE CLERK: What say the defendant?

24 MR. SWILLEY: Please excuse Ms. Hilton from the trial of
25 this case.

1 THE CLERK: You've been excused from this trial only,
2 ma'am.

3 138, Ronald Scott.

4 (WHEREUPON, a black male stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Mr. Scott.

7 THE CLERK: What say the defendant?

8 MR. SWILLEY: Please swear Mr. Scott.

9 THE CLERK: Please come up and have a seat in the jury
10 box, sir.

11 150, Cynthia Thomas.

12 (WHEREUPON, a black female stood.)

13 THE CLERK: What say the State?

14 MR. WHITE: Please present Ms. Thomas.

15 THE CLERK: What say the defendant?

16 MR. SWILLEY: Please excuse Ms. Thomas from the trial of
17 this case.

18 THE CLERK: You've been excused from this trial only,
19 ma'am.

20 33, Evelyn Derry.

21 (WHEREUPON, a black female stood.)

22 THE CLERK: What say the State?

23 MR. WHITE: Please present Ms. Derry.

24 THE CLERK: What say the defendant?

25 MR. SWILLEY: Please swear Ms. Derry.

1 THE CLERK: Please come up and have a seat in the jury
2 box, ma'am.

3 152, Jacob Tucker.

4 (WHEREUPON, a white male stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Mr. Tucker.

7 THE CLERK: What say the defendant?

8 MR. SWILLEY: Please swear Mr. Tucker.

9 THE CLERK: Please come up and have a seat in the jury
10 box, sir.

11 21, Jacqueline Ceaser.

12 (WHEREUPON, a black female stood.)

13 THE CLERK: What say the State?

14 MR. WHITE: Please present Ms. Ceaser.

15 THE CLERK: What say the defendant?

16 MR. SWILLEY: Please swear Ms. Ceaser.

17 THE CLERK: Please come up and have a seat in the jury
18 box, ma'am.

19 35, Kimberly Dodge.

20 (WHEREUPON, a white female stood.)

21 THE CLERK: What say the State?

22 MR. WHITE: Please present Ms. Dodge.

23 THE CLERK: What say the defendant?

24 MR. SWILLEY: Please excuse Ms. Dodge from the trial of
25 this case.

1 THE CLERK: You've been excused from this trial only,
2 ma'am.

3 96, Jakob Marlowe.

4 (WHEREUPON, a white male stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Mr. Marlowe.

7 THE CLERK: What say the defendant?

8 MR. SWILLEY: Please swear Mr. Marlowe.

9 THE CLERK: Please come up and have a seat in the jury
10 box, sir.

11 173, Lindsey Miller.

12 (WHEREUPON, a white female stood.)

13 THE CLERK: What say the State?

14 MR. WHITE: Please present Ms. Miller.

15 THE CLERK: What say the defendant?

16 MR. SWILLEY: Please swear Ms. Miller.

17 THE CLERK: Please come up and have a seat in the jury
18 box, ma'am.

19 THE COURT: It will be one and two on each alternate.

20 THE CLERK: 26, Misty Cox.

21 (WHEREUPON, a white female stood.)

22 THE CLERK: What say the State?

23 MR. WHITE: Please present Ms. Cox.

24 THE CLERK: What say the defendant?

25 MR. SWILLEY: Please swear Ms. Cox.

1 THE CLERK: Please come up and have a seat in the jury
2 box, ma'am.

3 118, Brandon Patrick.

4 (WHEREUPON, a white male stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Mr. Patrick.

7 THE CLERK: What say the defendant?

8 MR. SWILLEY: Please excuse Mr. Patrick from the trial
9 of this case.

10 THE CLERK: You've been excused from this trial only,
11 sir.

12 117, Emily Pace.

13 (WHEREUPON, a white female stood.)

14 THE CLERK: What say the State?

15 MR. WHITE: Please present Ms. Pace.

16 THE CLERK: What say the defendant?

17 MR. SWILLEY: Please excuse Ms. Pace from the trial of
18 this case.

19 THE CLERK: You've been excused from this trial only,
20 ma'am.

21 28, Christian Davis.

22 (WHEREUPON, a black female stood.)

23 THE CLERK: What say the State?

24 MR. WHITE: Please present Ms. Davis.

25 THE CLERK: Does the defendant wish to challenge this

1 juror for cause?

2 MR. SWILLEY: No, ma'am.

3 THE CLERK: Ma'am, please come up and have a seat in the
4 jury box.

5 THE COURT: All right. Are there any motions regarding
6 jury selection from the State?

7 MR. WHITE: None on behalf of the State, Judge.

8 THE COURT: Anything from the defense?

9 MR. SWILLEY: No, Your Honor.

10 THE COURT: All right. Guys, can I get y'all to step up
11 real quick?

12 (WHEREUPON, a bench conference was held in the presence
13 of the jury panel but outside of the hearing of the jury
14 panel off the record, after which the proceedings
15 resumed as follows.)

16 THE COURT: All right. Folks, I just needed to talk
17 with the lawyers to find out kind of what we've got on tap
18 here. I'm informed that we do have another case that we're
19 going to need to pull a jury on, but we're going to do -- not
20 be able to do that until the morning.

21 So I'm going to excuse the balance of the panel and ask
22 that you be back here tomorrow and that you report. When you
23 come back tomorrow, I need you to be here at 9:30 and I need
24 you to report, come back just like you came here, but pass
25 this courtroom and go to 3B.

1 It's B; right?

2 So when you come back in the morning, you'll not go
3 downstairs. You'll come up here and you'll go and have a
4 seat in courtroom 3B, and Judge Brown will be pulling a jury
5 over there tomorrow morning. All right?

6 So if everyone else will remain seated.

7 For the members of the panel, we'll see you back here
8 back in 3B at 9:30 tomorrow morning.

9 (WHEREUPON, the jury panel was released and exited the
10 courtroom at 11:54 a.m.)

11 THE COURT: All right. For the members of the panel, I
12 know you just saw your cohorts leave and I just gave them the
13 afternoon off and you're probably thinking, shoot, they get
14 the afternoon off. Well, don't despair. I'm going to give
15 you the afternoon off as well.

16 We're going to start this trial first thing in the
17 morning. Okay? What we're going to do this afternoon is
18 we're going to take up some pretrial matters. These are
19 things that don't concern the jury, but things that will help
20 the trial go a lot smoother and quicker once we get started.
21 We're going to take up that stuff this afternoon and rather
22 than have you sit here for no reason, we're going to excuse
23 you as well, but I need to send you with a little bit more
24 instruction than I sent them off with.

25 Tomorrow when you come back, we're going to get started

1 with this trial and you're going to take an oath to try this
2 case and to decide this case based solely upon the evidence
3 that is presented during the course of this trial. It's very
4 important that between now and then you do everything within
5 your power to protect your ability to remain fair and
6 impartial.

7 And what I mean by that is you cannot have any
8 conversation with anybody about this case. That's not very
9 hard to do when you're up here working and you're not out and
10 about, but you're fixing to leave now and you're going to go
11 back and be around your friends, family, and loved ones, and
12 they'll be curious as to whether or not you were selected for
13 a trial and you can tell them that you were selected and that
14 you have to be back in the morning, but that's where it has
15 to stop.

16 Saying something as innocent as, yeah, it's a trial
17 about a fellow who's charged with an armed robbery or it's
18 about a fellow by the name of Mr. Thomas, something as
19 innocent as that could possibly elicit a response that might
20 compromise your ability to be fair and impartial.

21 So what you need to do is if they're curious, you can
22 say, no, all I can tell you is I have been selected on a
23 case, I have to be back tomorrow at 9:30 to start, and that
24 when the case is over, I can tell you whatever you want to
25 know, but until that point I'm not allowed to have any

1 conversation. I can't even tell you what the case is about.
2 You just have to respect that. And hopefully they will do
3 that.

4 We used to not have to talk about this to jurors, but,
5 you know, these things that we call phones are simply --
6 they're pocket computers. You can access the Internet. You
7 can access all kind of trash and garbage that's out there in
8 the world. I tell you this -- I tell you that to say this.

9 You are to do no independent investigation on your own
10 regarding this trial. You are not to do any searching or
11 googling or anything like that. Under your oath, you're
12 going to judge this case solely upon the evidence that is
13 presented here and so you should not expose yourself to
14 anything outside of this courtroom that involves this case.

15 I have no idea because I am not a media person. I don't
16 think there's any media people here. I don't think there
17 will be anything on the news or anywhere else, but if there
18 were to be something, you need to turn it off and not listen
19 to it. You have to protect your ability to remain fair and
20 impartial. Okay?

21 It's very important. I guess maybe the easiest way to
22 say it is when you get back here tomorrow, you shouldn't know
23 one more thing about this case than you know right now.
24 Okay?

25 When you do come back tomorrow, we'll get started. So

1 if you need anything, just let the bailiffs know, but when
2 you do report back, you'll come -- you'll come -- right now,
3 I'm going to get you to leave out this door. Ms. Francis is
4 going to show you where your jury room is and where you'll
5 be, you know, while this case is going on and then you --
6 then you'll be free to go.

7 When you return tomorrow, if you'll just -- you're going
8 to go out a door over on this side. When you come back
9 tomorrow, you'll come back up to the same door and there will
10 be someone there to let you in. Okay?

11 So everyone else remained seated while the members of
12 the jury are excused, and we'll see you back here tomorrow
13 morning at 9:30.

14 (WHEREUPON, the jury exited the courtroom at 12:00 p.m.)

15 THE COURT: Okay. I know I've -- I know Robert is here
16 and who else? Lloyd. Y'all have that? Is that plea ready
17 to go?

18 MR. FLORES: Yes, sir.

19 THE COURT: Okay. I need to do that. Do y'all want to
20 break for lunch and then we'll start back with any pretrial
21 matters after that?

22 MR. WHITE: Yes, sir.

23 MR. SWILLEY: Yes, sir.

24 THE COURT: All right. Well, why don't we start back at
25 two?

1 MR. WHITE: Yes, sir.

2 THE COURT: And that'll give us time to get this plea
3 done and then give the staff a break. Okay?

4 (WHEREUPON, there was a break in the proceedings from
5 12:01 p.m. until 2:45 p.m., after which the proceedings
6 resumed as follows.)

7 THE COURT: All right, guys. Tell me what we've got.

8 MR. WHITE: Judge, if it would please the Court, I do
9 want to take up a few pretrial issues in regards to State v.
10 Rasheem Thomas. Judge, but first, if I could give you a
11 little background on what we're dealing with here, the
12 allegation, and a brief timeline.

13 THE COURT: Okay.

14 MR. WHITE: Judge, on May 28th, 2016, an armed robbery
15 home invasion occurs. That's kind of -- you know, that's not
16 kind of, that's what we're here about.

17 THE COURT: Right.

18 MR. WHITE: Three individuals entered that home. Inside
19 that home, there were four victims. When they're forcing
20 their way in, Judge, two of them have something covering
21 their face and one does not. At some time during the course
22 of that home invasion and that armed robbery, one of those
23 individuals had his face covered and it either falls or is
24 removed.

25 Now, the four individuals inside the home are the

1 victims listed on the -- three of them are listed on the
2 witness list. That's Anastacia, then William Brookins, and
3 Carson McArthur. Anastacia and William about a month before
4 this had just had a baby. So the fourth victim in the home
5 is a one-month-old child.

6 THE COURT: Okay.

7 MR. WHITE: They force their way into the home. They go
8 into the back bathroom. They take William Brookins and put
9 him on the ground. Carson -- they take him and put him on
10 the ground at gunpoint, and then ask for the safe to the
11 code. When that is not forthcoming-- or code to the safe.
12 Excuse me. When that is not forthcoming, they then put the
13 pistol on the small child, the baby, and demand that the code
14 be given and, of course, Judge, it is.

15 What we're here before the Court is that during all of
16 that ruckus, the woman, Anastacia, who had the child in her
17 arms, gets a good look at the individual whose covering
18 falls.

19 THE COURT: There's three? You said there were three?

20 MR. WHITE: Yes, sir.

21 THE COURT: And when they initially went in, the three
22 who went in, two covered, one not?

23 MR. WHITE: That's correct.

24 THE COURT: One of the guys that was covered at some
25 point that fell down and this is the one that Ms. Anastacia

1 says she recognized?

2 MR. WHITE: That's correct, Judge, and she described
3 about 15 minutes later where she got a good look at his face
4 and then William Brookins, the father of the child, is on the
5 ground and he's actually tied up with a belt. He said that
6 he got a great look at the guy's face. The other guy never
7 got a good look at him without the covering on. He got a
8 great look at him when he first comes in with a mask on.

9 Judge, they flee the scene and that's all law
10 enforcement has to go on. Anastacia and --

11 THE COURT: Take whatever is in the safe and leave?

12 MR. WHITE: That's right. They take everything that's
13 in the safe, guns, ammunition, that sort of stuff, and they
14 flee the scene. On the way out, they actually drop a
15 magazine.

16 But law enforcement arrives. Of course, Carson gives,
17 you know, kind of a brief description of the individual --
18 individuals, and then also Anastacia and William are able to
19 give more thorough descriptions.

20 Judge, then on February 1st, 2017, there is the murder of
21 Kenny Kemmerlin. During the course of that investigation,
22 the one who pulled the trigger names Mr. Rasheem Thomas as
23 his cohort or co-defendant. That they arrived there more or
24 less for an armed robbery that went south.

25 Judge, on February 23rd, 2017, Mr. Thomas is arrested on

1 that murder. On that same day, a search warrant of his
2 residence takes place. They execute a search warrant. They
3 find a number of items, you know, in regards to that murder
4 case.

5 On that day, they also send out a media release. That
6 media release is put out by WBTW on their Facebook page.
7 Anastacia follows that Facebook page. In fact, it will be
8 her testimony, Judge, that, you know, she's a little bit of a
9 news junkie. She gets on there every day and is following
10 it.

11 And when she sees -- she's scrolling down her newsfeed,
12 she sees the article pop up and it's, of course, Rasheem
13 Thomas's picture. She says she recognizes him immediately,
14 opens the article. At the same time, she's calling her
15 husband in from the back and says, you know, this is the guy.
16 He agrees that's the guy that robbed us. They call
17 Investigator McFadden. He gets the arrest warrant and he's
18 arrested on that or the warrant is served February 28th, 2017.

19 Judge, we're before the Court to deal with the
20 identification here first and I'd like to sparse it out, if I
21 could. I'd like to deal first with the identification of
22 Anastacia and William Brookins of Mr. Thomas off that
23 Facebook page and then deal with that accordingly and, Judge,
24 ask you to make a ruling. Then we can move on to Carson
25 McArthur and his identification and then on to many other

1 pretrial matters.

2 THE COURT: Okay. Matt?

3 MR. SWILLEY: Judge, Mr. White's rendition of the facts
4 I'm sure came probably from the alleged victims, but just --
5 just so the Court knows, this is the most sparse discovery I
6 have ever had in a case of this magnitude. It's a two-page
7 incident report by the reporting -- by the first responding
8 deputy. It's a very small incident report afterwards.

9 And then there's some kind of -- it looks like a Word
10 document from Investigator McFadden after that. In this
11 case, there were no witness interviews to which I have been
12 made aware, audio recorded, video recorded or written. No
13 photo lineups that were ever showed to any of the witnesses.
14 I don't believe there's any body camera footage.

15 Your Honor, what the incident report states is that
16 there was a man who walked up to the door, knocked on the
17 door that was not wearing a mask, asked for a cigarette, and
18 then two other men wearing masks came in. At this point, I'm
19 not sure which one is alleged to have been Mr. Thomas, but I
20 believe it to be one of the people -- the two people wearing
21 masks. One was wearing a baseball cap and I believe one
22 there's not -- there's not a mention of a baseball cap
23 rather.

24 But nevertheless, Your Honor, ultimately, after the day
25 in question, the case lies dormant for, as far as I can tell,

1 until this press release by the Sheriff's Office, and I think
2 that's important for a Neil v. Biggers -- for a Neil v.
3 Biggers analysis. It goes to WBTW, which issues these
4 sensationalist articles all the time when people get arrested
5 with mugshots.

6 And I haven't been tendered with the actual article with
7 the Facebook post. I see Mr. White has got a pre-marked
8 photo of Mr. Thomas. I believe part of that photo -- and
9 rightly so if he wants to introduce it -- is cut off. The
10 orange clothing of Mr. Thomas I believe that he had on at the
11 time, I think that photo has been cut off, if I'm not
12 mistaken.

13 But at the time, Your Honor, this photo that she saw on
14 Facebook shows essentially, for lack of a better term, a mug
15 shot of Mr. Thomas as it pertains to the murder case. At
16 that time, according to Investigator McFadden's notes, she
17 contacts Investigator McFadden and says that's the guy.

18 And I believe that was exactly 9 months to the day after
19 the home invasion occurred, and Investigator McFadden goes
20 and procures a warrant on Mr. Thomas. No further
21 investigation is done. No six-pack photo lineups were ever
22 shown to Ms. Kauth or the other two alleged victims.

23 As far as I'm concerned, I don't have it anywhere in
24 here that they've ever made an identification of Mr. Thomas
25 with this photograph. They may have, but I don't know. I

1 don't know the nature of how they did that.

2 But, Your Honor, I think that under Neil v. Biggers you
3 have two prongs, and I have a copy of State v. Dukes, which
4 is our Supreme Court case which outlines the Neil v. Biggers
5 process to determine whether or not an out-of-court
6 identification or an in-court identification should be
7 suppressed because of an unduly suggestive out-of-court
8 identification.

9 I think what we have here, even though there was not --
10 it wasn't directly presented to Ms. Kauth by Investigator
11 McFadden or anybody else, you have -- you have -- you have a
12 single photo of somebody in a jail uniform presented to --
13 you know, by way of the Sheriff's Office media release to Ms.
14 Kauth and identified as -- as the perpetrator.

15 And, Your Honor, what we have is first the Court has to
16 determine whether or not the identification resulted from
17 unnecessarily suggestive police procedures. And I think it
18 had -- I think there'd be no question about that had she been
19 handed that photo directly from a police officer
20 investigating this case, but what we have is we have it by
21 way of a media release.

22 Once that -- once that prong is satisfied, you know, the
23 Court has to move on to -- well, excuse me. Whether the
24 identification was only from unnecessarily and unduly
25 suggestive police procedures and, if so, the second prong is

1 whether the out-of-court identification was nevertheless so
2 reliable that no substantial likelihood of misidentification
3 existed and I don't -- I don't think that we have that here.

4 I think that the identification did result from an
5 unnecessarily and unduly suggestive police photograph, that
6 procedure being through the media release. I think what the
7 Court has to determine is that -- that second prong of
8 whether or not the identification was nevertheless so
9 reliable that no substantial likelihood of misidentification
10 existed.

11 Some of those factors are -- you know, under the
12 totality of the circumstances, the factors to be considered
13 are the witness's opportunity to view the perpetrator at the
14 time of the crime, the witness's degree of attention, the
15 accuracy of the witness's prior description of the
16 perpetrator, the level of certainty demonstrated by the
17 witness confrontation, and the length of time between the
18 crime and the confrontation. And that -- those factors are
19 talked about also in State v. Marquise Howard on the second
20 page. I've got a copy for the solicitor and the Court as
21 well.

22 THE COURT: Thank you, sir.

23 MR. SWILLEY: But, Your Honor, what we have today is I
24 don't think the Court can determine those factors merely
25 based on the solicitor's argument. We don't have -- I mean

1 we don't have a written statement. We don't have an audio
2 statement or a video statement. We don't have testimony from
3 Ms. Kauth here.

4 So I think that this identification of Ms. Kauth -- and
5 I think the Court and the solicitor narrowed it. She saw it
6 and then she showed it, I think, to Mr. Brookins, who may or
7 may not have showed it to Mr. McArthur.

8 I think that taints all of their identifications and I
9 think that out-of-court identification violates due process
10 and has to be suppressed just because the procedure was
11 impermissibly suggestive and conducive to a substantial
12 likelihood of misidentification.

13 But, you know, I know that Mr. White has had some
14 communications with the victims or with the alleged victims
15 and he's got some information from them. I don't have that
16 from them directly, but it does state in Investigator
17 McFadden's -- if you want to call it supplemental, he does
18 state that he had -- he had spoken with the victims on
19 several occasions and he mentions the dates.

20 He says that one occasion Anastacia Kauth gave me a
21 nickname for one of the suspects, which was Ra Ra, but we
22 have no -- we have no date for that. She stated one of the
23 three suspects that robbed them, but didn't know his real
24 name. She stated she would attempt to get his real name.

25 When he was arrested for another case, the victim called

1 his office and left a message saying that it was Ra Ra that
2 had been arrested and his real name was Rasheem Thomas and he
3 was definitely one of the suspects that robbed them that day.
4 After I got that info, we spoke to Investigator Price and
5 then went and got a warrant.

6 It doesn't state that Investigator McFadden ever even
7 spoke with her face-to-face after getting that message about
8 the identification. I think that identification of Mr. --
9 Mr. Thomas is so -- is so unreliable. It's so unreliable
10 because it's so conducive to a substantial likelihood of
11 misidentification. I mean it's too unduly suggestive.

12 And, Your Honor, also if the Court were to rule that
13 that identification -- her identification can be made, I
14 would ask the Court to limit that identification to seeing --
15 her testimony of seeing a picture of him on the Internet. I
16 mean I don't think it would be proper. I think it would be
17 unduly prejudicial for Mr. Thomas to make mention of another
18 pending -- I mean a pending murder charge during the trial of
19 this case before the jury.

20 MR. WHITE: I have no intentions of getting into that
21 murder charge.

22 THE COURT: Yeah. Well, of course, none of that would
23 be allowed.

24 Let me -- but I need to ask -- well, I don't know.
25 Maybe I should wait.

1 Do you want to respond to any of that, Mr. White?

2 MR. WHITE: Sure. Judge, he's right that Neil v.
3 Biggers does deal with unduly suggestive police practices.
4 This is not one of them, and the Sheriff's Office is required
5 by law to present media with these types of releases when
6 there's a case such as this, and that's exactly what they
7 did, Judge, and I would also bring up the fact that, you
8 know, if she was just going to latch onto any photo because
9 it was unduly suggestive, that in the seven months prior, you
10 know, she would've latched onto any photo that she saw from
11 that same website.

12 THE COURT: Let me -- let me ask. The media release was
13 in relation to an accusation that Mr. Thomas was involved in
14 a murder?

15 MR. WHITE: That's correct, Judge.

16 THE COURT: Mr. Swilley, I mean I don't understand how
17 that's so unduly suggestive. I mean, in other words, from
18 what I understand is she is flipping through the social media
19 and she sees this article about two guys that -- two guys on
20 a murder.

21 MR. WHITE: That's correct, Judge.

22 THE COURT: Two guys were accused of a murder and their
23 pictures are there. How is that any different than -- I mean
24 if that's overly suggestive, then -- I don't think they do it
25 anymore, but when I was growing up and they probably still do

1 it somewhere, you can go in a post office and there's a --
2 there's a whole board dedicated to the wanted list with
3 people's mugshots up there. Then also you have Crimestoppers
4 that puts people's pictures up. From what you're saying is
5 that if anyone identified anyone from the FBI most wanted
6 list or Crimestoppers, that's overly suggestive and it can't
7 be used.

8 MR. SWILLEY: Your Honor, I always thought that it was
9 of the belief that those -- those were for people that were
10 wanted. If you see these people, report them and turn it in.
11 Those aren't --

12 THE COURT: Right.

13 MR. SWILLEY: -- for victims.

14 THE COURT: Right.

15 MR. SWILLEY: This is -- this is for -- for an alleged
16 victim. Her first identification of an alleged perpetrator
17 is what I feel like is a very suggestive photo of him. It's
18 of his mug shot.

19 THE COURT: Why is -- what is suggestive about it?

20 MR. SWILLEY: That he's a criminal, that he's a
21 murderer. I mean that's what that photo suggests by having
22 it shown, you know, to her in that manner.

23 THE COURT: Is that not -- I mean, if I'm not mistaken,
24 they use mugshots on the FBI most wanted list. They use
25 mugshots on Crimestoppers.

1 MR. SWILLEY: But I don't think those -- those are not
2 made for victims to be able to identify.

3 THE COURT: Does it matter what they're made for? If a
4 victim -- if a victim of a crime recognizes somebody, hey,
5 that's the guy, because they saw it on Crimestoppers, you
6 can't use that?

7 MR. SWILLEY: I don't believe so. I can't find a case
8 that's really on point because I mean most of the time it's
9 usually a situation where someone knew the -- the perpetrator
10 beforehand or, you know, they had a lineup shown to them or
11 they -- you know, they've identified them in some other
12 fashion. I can't --

13 THE COURT: Well, I agree that's the -- that's the
14 typical way we see it, but because this isn't typical, I
15 don't know that it precludes being used. I guess what I'm
16 asking and what I'm not maybe agreeing with you is that
17 simply -- now, if it -- I would -- I would probably agree
18 with you if this was an article about Mr. Thomas being
19 accused of committing this armed robbery.

20 I might would agree with you on that because that is
21 very suggestive to the victim or anyone else in the world
22 that he was involved in this crime, but that's not what this
23 was. This was a completely unrelated, completely separate
24 offense where she sees his photograph. There's nothing that
25 would suggest -- unless -- I don't know. I haven't seen it;

1 so I guess, obviously, I probably need to see that, but from
2 what I'm being told, there's nothing in that article that
3 ties him to the crime that she's the victim of. So I don't
4 understand why that would be unduly suggestive.

5 MR. SWILLEY: Well, I mean it functions as --

6 THE COURT: Other than he's -- other than it's a mug
7 shot. I get that.

8 MR. SWILLEY: It basically functions as a single-person
9 show-up though, I think, and that's --

10 THE COURT: But it's not shown to her by law
11 enforcement. I mean -- and it might be different if they
12 came to her and said, Ms. --

13 MR. SWILLEY: Kauth.

14 THE COURT: -- Kauth, look at this. Is this the guy who
15 robbed you that night? I mean that I might agree with you.
16 This was just out there for the world. She could just as
17 easily not have even seen it.

18 MR. SWILLEY: Yes, but I do think that it does fall
19 under a number of police procedures.

20 THE COURT: Okay.

21 MR. SWILLEY: I can't -- this is a case of first
22 impression with me. I couldn't find any case directly on
23 point with something like that.

24 THE COURT: Sure. Okay.

25 MR. SWILLEY: Anyway.

1 THE COURT: All right.

2 MR. WHITE: And Judge, just -- just for the record, I do
3 have a couple cases and I'll provide those to Your Honor, as
4 well as Mr. Swilley.

5 Judge, our courts have routinely found that ID based on
6 media representations, because the State is not responsible
7 for the alleged tape, are admissible identifications. Judge,
8 in fact, Tisdale goes so far as to say when it occurs in this
9 manner that the Neil v. Biggers analysis is not even
10 necessary. Judge, I will pass those up to Your Honor for
11 your review.

12 THE COURT: Yeah. I think -- well, I think it says that
13 here in Dukes as well. Well, when it -- when it talks about
14 the -- the two-pronged test under Biggers and it's discussing
15 that, I think it even says if the Court -- I know I was just
16 reading that when Mr. Swilley passed it up to me.

17 Yeah, it -- if the Court finds the identification did
18 not result from impermissibly suggestive police procedures,
19 then the inquiry ends there and the Court does not need to
20 consider the second prong. The Court -- and then it goes,
21 first, the Court must determine whether the identification
22 resulted from an unnecessarily suggestive police procedure
23 and, if the Court did not find that it resulted from that,
24 then -- then it ends at that point.

25 (WHEREUPON, there was a pause in the proceedings, after

1 which the proceedings resumed as follows.)

2 THE COURT: In the Tisdale case, it -- it's actually
3 what I mentioned earlier that I mentioned that caused me
4 concern, and that is that the media release was actually Mr.
5 Tisdale and it was as the accused of the bank robbery that
6 occurred that morning --

7 MR. WHITE: That's correct.

8 THE COURT: -- or the next -- earlier in the day, and
9 there the Court found that that was not unduly suggestive.

10 Here, we're even that much more removed. This is not a
11 situation that Mr. Thomas was -- I mean from what I'm told,
12 was it Facebook or was it news? It was a news media outlet?

13 MR. WHITE: Yes, sir.

14 THE COURT: It was a news media outlet that was for a
15 crime that wasn't even related to the one that occurred with
16 the victim in this case.

17 Anything further?

18 MR. SWILLEY: Not -- not at this time, Judge. I would
19 just -- well, I'll go ahead and let you rule and ask later.

20 THE COURT: Okay. Have you got anyone to present any
21 testimony here?

22 MR. WHITE: I do have the -- Ms. Kauth and Mr. Brookins
23 that are here, Judge, but Investigator McFadden is at media
24 day and then the out-of-state witness will be arriving first
25 thing in the morning.

1 THE COURT: Okay. Well, I don't know that I need to --
2 if the testimony is as it's been portrayed here, obviously,
3 that would have to be -- that -- that is testimony that would
4 have to be laid to form a foundation for your identification,
5 and I think I could just rule on that as it's presented.

6 And, of course, Mr. Swilley, any objections that you
7 have, I don't know that that's something that I need to do
8 right now.

9 I would -- I would say though that if that testimony
10 comports with what was shared with the Court, I don't believe
11 that -- I don't believe that that would fall under the unduly
12 suggestive police procedures that Biggers refers to. So I
13 would allow that, but -- but I'll have to see how it's
14 presented.

15 MR. WHITE: Very good, Judge.

16 THE COURT: Now, we have to discuss how that's going to
17 be presented.

18 MR. WHITE: That's correct, Judge.

19 THE COURT: Obviously.

20 MR. WHITE: Yes, sir.

21 THE COURT: And I don't know if that's something that we
22 need to take up.

23 MR. SWILLEY: That's what I was going to ask you about.
24 You know, obviously, I think everybody is in agreement those
25 prior murder charges can't -- can't be brought into evidence.

1 THE COURT: Right.

2 MR. SWILLEY: Judge, I think that she -- she was looking
3 at a Facebook page, WBTW is my understanding.

4 MR. WHITE: She was actually just scrolling down her own
5 news -- her Facebook feed.

6 THE COURT: Her feed.

7 MR. WHITE: Which it --

8 THE COURT: And that's a part of it.

9 MR. WHITE: Right. And it just popped up, but
10 essentially that's correct, Judge.

11 THE COURT: Okay.

12 MR. SWILLEY: Your Honor, I think if it comes in that it
13 was a news article from WBTW, I think the jury is going to be
14 able to infer that it was -- I mean it's not an article about
15 Mr. Thomas opening up a flower shop. I think it's probably
16 going to be pretty obvious that it pertains to some other
17 kind of allegations and I would just ask the Court to limit
18 that identification to she saw a picture of Mr. Thomas on her
19 Facebook newsfeed or on her Facebook feed. Is it newsfeed or
20 feed?

21 MR. WHITE: Feed.

22 THE COURT: Her feed. You could do it as her feed.

23 MR. WHITE: And I totally understand Matt's point. The
24 issue that I have, Judge, is that we have so much kind of
25 crazy stuff on Facebook. I would like to elicit testimony

1 that she says it is a news article and, you know, not that
2 she got it from, you know, some vigilante group out there
3 posting photographs, you know, that might lead down that road
4 of unduly suggestiveness.

5 THE COURT: I mean I'm just -- I'm just kind of
6 brainstorming with you guys right now.

7 If -- if it's just portrayed that as I was going through
8 my Facebook feed this picture came up and I'm -- and I'm --
9 these are my words. Oh, my God, that's the guy. That's the
10 guy. I mean why isn't that sufficient? I mean what -- I
11 guess what I'm asking is what is -- what is necessary for it
12 to be portrayed that it was a news article feed?

13 MR. WHITE: I guess the danger I'm concerned about is
14 that any one juror's mind, you know, can spiral into a
15 million different places --

16 THE COURT: Sure.

17 MR. WHITE: -- that that could have come from and so
18 it's not that --

19 THE COURT: Does it matter where it comes from?

20 MR. WHITE: I think --

21 THE COURT: Does it matter?

22 MR. WHITE: It does that it's -- you know, by saying
23 news article or -- and I don't even have to say news article.
24 I can say, you know, WBTW or, you know, I don't know how else
25 to put it, but I do want -- I like having that --

1 THE COURT: Isn't it --

2 MR. WHITE: -- it's a reputable context, and that's my
3 thing.

4 THE COURT: Here's what I'm going to say again, but I'm
5 assuming that whatever context it ends up being in, it's
6 going to be portrayed to the jury that I recognize that guy
7 as the guy who was -- who held me at gunpoint and held my
8 child at gunpoint. I called Investigator McFadden and showed
9 him that and told him that's the guy, and I'm looking at him
10 now and that's the guy.

11 Saying that it came off the news -- in other words, I
12 guess I know what you're saying is you're saying if it just
13 comes on a Facebook feed, it could have come from anything
14 anywhere, but what does it matter?

15 MR. WHITE: Well --

16 THE COURT: What is she was just at the post office, you
17 know, and he walked by and she goes, whoa?

18 MR. WHITE: Well, then I'd be able to provide that
19 context and it's just all about the context. You know, I
20 don't want them speculating and wondering, you know, or back
21 there saying, hey, hey, guys, this could have come from
22 anywhere.

23 THE COURT: Sure, it could have.

24 MR. WHITE: And it said, you know, this across it or,
25 you know, and it -- that it -- if I don't provide a context,

1 their minds are left to wander in a direction that could have
2 been too suggestive, if that makes sense.

3 THE COURT: But how does simply saying that it came off
4 a news article make it -- how does that change that?

5 MR. WHITE: Well, it just adds just a layer of that it
6 came from a reputable source.

7 THE COURT: Have you been following the news lately?

8 MR. WHITE: And I guess that's up to debate, Judge.

9 THE COURT: I think you're safer saying it just came on
10 a Facebook feed. I mean -- I mean, Mr. White, I understand.
11 I mean when I -- I guess what I'm trying to do is I'm trying
12 to make it as evenhanded as it can be made without
13 compromising either side's positions.

14 I don't -- I don't see that because if all you're going
15 to say is that I saw it as a feed on a news article, to me,
16 that takes the jury in a million different directions. Why
17 was he in the -- why was he in the news? Well, maybe it's
18 because he's a hero or maybe it's because he's a dirt bag or
19 maybe it's because he won the lottery. I mean in other words
20 just saying it was off of a newsfeed doesn't lend it any more
21 credibility than it was just on Facebook, I don't think.

22 MR. WHITE: Well, Judge, now that you bring that up, I
23 do have an example of how it could not go well if we don't
24 provide context and that would be that nine times out of ten
25 your newsfeed involves people you are following, people, you

1 know, who are your friends or you follow. So I don't want to
2 be suggestive.

3 THE COURT: But you -- I mean you could cover that in
4 your examination.

5 MR. WHITE: Sure.

6 THE COURT: I mean you could -- you could say, now, when
7 you -- when you saw that, is that someone you'd ever seen
8 before other than when he had a gun on you and your child.
9 No, I don't know him. I'm assuming -- does she not -- they
10 don't know each other; right?

11 MR. SWILLEY: I believe that's -- that's the narrative.
12 They don't. They don't know each other. Your Honor, I think
13 that having it come from WBTW, that's going to give it a
14 negative connotation. I think if it comes from the Facebook
15 newsfeed, that's no connotation. I mean I think that's --

16 THE COURT: I tend to agree that if it's just on your --
17 on your Facebook feed -- listen, I see a bajillion pictures
18 as I scroll through that. I have Facebook because it's the
19 only way I know whether or not my family is still alive
20 because half the time I don't hear from them except when I
21 see them post things on Facebook.

22 I see a bajillion photographs of a bajillion people and
23 it means nothing. I mean it's just -- you know, I think when
24 you start placing it in the -- in a category of a news
25 article, that's when you can understand people starting to

1 attach improper connotations to it versus if it's just a
2 photograph that they happened to see on Facebook or Snapchat.
3 I guess I know what you're -- I guess what you're saying is
4 is that without any further context they may think that
5 they're Facebook buddies.

6 MR. WHITE: Yes.

7 THE COURT: I think you can cover that.

8 MR. WHITE: Judge, just for further clarification so you
9 know, who she's following is Tonya Parker. I don't know if
10 you --

11 THE COURT: Tonya Brown.

12 MR. WHITE: Tonya Brown.

13 THE COURT: Yeah. I know Tonya well.

14 MR. WHITE: Tonya Brown through her WBTW. So obviously,
15 that would be incredibly suggestive.

16 THE COURT: Yeah, it would be because Tonya is a great
17 reporter, but she only covers criminal stuff pretty much that
18 I see.

19 MR. TUCKER: And, Your Honor, for the record, I'd be
20 remiss if I didn't point out Tonya Brown works for WPDE.

21 MR. WHITE: Oh, yeah.

22 MR. TUCKER: We'd be in trouble.

23 MR. WHITE: Oh, yeah.

24 MR. TUCKER: Tonya might do them bodily harm.

25 MR. WHITE: I'd be in a lot of trouble. Mr. Tucker has

1 seen me on that one.

2 And Mr. Tucker also brings up another good point, Judge,
3 and it's the makeup of my jury and I didn't think of it.
4 There are some fellows on the jury who are in, you know,
5 later stages of life that might not be Facebook savvy and
6 might not know, like you and I know, Judge, that, you know,
7 the newsfeed and how that works without providing context and
8 just say newsfeed, they might really not understand what I
9 mean by that.

10 THE COURT: Well, I thought -- but I guess my point
11 there is, number one, the thing that I'm considering to keep
12 it non-suggestive is to not characterize it as a newsfeed, to
13 just characterize it as a picture that as I'm scrolling
14 through Facebook I see it and I'm like, oh, my God.

15 You know, you've got four, maybe, college kids on that
16 jury who could certainly clear that up to the old folks like
17 me on there, but you can also do that through your direct
18 examination, I think, by emphasizing the fact that she
19 doesn't know Mr. Thomas.

20 MR. WHITE: Yes, sir.

21 THE COURT: Other than through this horrendous
22 experience she had. Other than that, she has no
23 communication or contact with him.

24 And I don't -- and again, you know, I would -- I would
25 -- I would agree with you if it was necessary to put it in a

1 -- put it in a context, but I don't -- I don't know that it
2 is. I think the fact that she recognized -- saw this picture
3 and that triggered her, she then goes to McFadden. Was there
4 any -- subsequent to that, was there any other show-up or
5 lineup or anything done?

6 MR. WHITE: No, sir. Not as far as -- you know, there
7 was not. No, there wasn't at all.

8 THE COURT: Okay.

9 MR. WHITE: But as far as they're concerned, you know, a
10 six-pack at that point would have been tainted. So I do
11 understand law enforcement's --

12 THE COURT: Oh, yeah, because then you're taking that
13 same picture --

14 MR. WHITE: Right.

15 THE COURT: -- and putting it in there. Right.

16 MR. WHITE: Yes, sir. So, no, that was it, Judge, and I
17 would be -- I would be open to that compromise. I would seek
18 a little direction from the Court. Although I don't believe
19 Neil v. Biggers applies, I would like to go through those
20 factors with her on the stand just in case the Court of
21 Appeals or Supreme Court needs to make that analysis on
22 appeal.

23 And in that vein, in that regard, Judge, I would like to
24 discuss the fact that she's not just picking this person as
25 the first, you know, picture she sees. So basically what I'm

1 trying to say, Judge, is if I can elicit testimony as to, you
2 know, type of pages that she follows, her -- her, you know,
3 daily intake, if you will, of Facebook, how often she gets
4 on, so that I can establish, Judge, that it's seven months
5 goes by and she's constantly looking at things.

6 THE COURT: Well, I think that -- I think you can do
7 that.

8 MR. WHITE: Okay.

9 THE COURT: But again, I think you're going to -- I
10 think appellate-wise you're going to run into more issues if
11 you try to get her to talk about that she's a news buff --

12 MR. WHITE: Oh, yes.

13 THE COURT: -- and she follows the news. I think if you
14 elicit the testimony that -- and I don't know this, but she's
15 on Facebook every day and that she sees photographs every day
16 and she sees things that she doesn't remotely recognize, she
17 sees family and friends, and that Facebook is an integral
18 part of her life as far as gathering information from
19 friends, family, and media. I mean -- but I think if you
20 have it generic like that, I think it remains in a more
21 neutral position and doesn't taint it or push it to one side
22 or the other.

23 And that's what I'm really trying to -- and I think
24 because of that, it doesn't fall under Biggers. I think --
25 you know, the thing -- the thing that would take it under

1 Neil v. Biggers is if it was an unduly suggestive or improper
2 police procedure, and there's case law to suggest that that's
3 not the case here.

4 MR. WHITE: Yes, sir.

5 THE COURT: So I think you're on good footing with that.
6 And again, it will have to be fleshed out in your
7 examination.

8 MR. WHITE: Yes, sir.

9 THE COURT: But assuming that it is, I think you're on
10 good footing with that.

11 MR. WHITE: And I'd simply just ask her, you know, if
12 she has diverse content coming from her feed and that sort of
13 thing just so that it's not --

14 THE COURT: Yeah.

15 MR. WHITE: -- implied with them that it might be --

16 THE COURT: That it's not just family and friends.

17 MR. WHITE: That's correct.

18 THE COURT: Sure. I mean, like, you cover all -- you
19 know, you can say, like, on your -- of course, I'd like to
20 keep it diverse and not targeted, but I think you can say so
21 on your Facebook feed do you get local news and newsfeeds.
22 Yeah, I do. Do you get sports? You know, do you get scores,
23 sports scores and stuff? Yeah. Do you get recipes from
24 other -- you know, and cover all of those.

25 MR. WHITE: Yes, sir.

1 THE COURT: And I think that that certainly would cover
2 all of it.

3 MR. WHITE: That sounds fair to me, Judge.

4 THE COURT: Okay.

5 MR. WHITE: I'm okay with that.

6 THE COURT: So there won't be any mention of it being on
7 the newsfeed and there won't be any mention, obviously, that
8 it was in relation to another criminal offense.

9 MR. SWILLEY: That's fine.

10 THE COURT: Anything else?

11 MR. WHITE: Yes, sir. At this time, if the Court would
12 be so inclined, I do want to take up the issue of the
13 photograph and for ID purposes, Judge, it's State's Exhibit
14 10. Judge as you can see, I have taken the liberty to crop
15 all of the shirt out of the photograph and leave --

16 THE COURT: Yeah.

17 MR. WHITE: -- nothing but Mr. Thomas' head. This is
18 the booking photograph that came from that article that we're
19 discussing.

20 THE COURT: This is the thing she saw on Facebook?

21 MR. WHITE: That's correct, Judge. This is it and
22 obviously, you know, the State intends to -- to enter that
23 into evidence and I think -- I think we are on sound footing
24 there.

25 You know, Judge, usually they -- the Court makes its

1 analysis on a photo lineup. Those are routinely left in and
2 the Court relies on State v. Denson and the Denson factors
3 and that, you know, the photograph as shown to the jury does
4 not imply the defendant has a criminal record. Judge, I
5 don't think there's any implication there that he does.

6 The manner of introduction at the trial is such that it
7 does not draw particular attention to the source or
8 implications of the photograph. Judge, we've taken that up
9 at length here and, you know, you never know what a -- what a
10 witness is going to say, but I intend to walk out of here and
11 properly instruct them on what is not allowed through their
12 testimony.

13 And then, Judge, the last is the State has a
14 demonstrable need to introduce a photograph. I mean this is
15 an identification case, Judge. I think there is such a need.
16 So we would ask that it be admitted, and we've done
17 everything we can to make sure that it's -- that anything
18 suggestive is cropped out of there. And I hope --

19 THE COURT: And obviously, that's all going to be
20 subject to the proper foundation being laid and everything.

21 MR. WHITE: Absolutely, Judge.

22 THE COURT: But right now, I think what we're trying to
23 deal with is -- any objection, Mr. Swilley, from the defense
24 as far as the use of that photograph?

25 MR. SWILLEY: Your Honor, I'm trying to be able to

1 discern whether or not --

2 THE COURT: And if you want to look at it --

3 MR. SWILLEY: Yeah, I would.

4 THE COURT: Because I know this screen is not great.

5 MR. SWILLEY: That's not orange, is it?

6 MR. WHITE: I mean it is. Judge, I will say that some
7 of the description that the victims are going to give are
8 about his hairstyle and so I went up as high as I could with
9 leaving the hairstyle intact.

10 THE COURT: Right.

11 MR. WHITE: I think I've done enough. You can see hints
12 of, you know, what we know is orange, you know, but to me
13 really without knowing more it looks just like a -- yeah,
14 like a DMV photo.

15 THE COURT: Well, with all due respect to my Clemson
16 fans who are friends of mine, but, you know, everything
17 orange is not criminal.

18 MR. WHITE: Right.

19 THE COURT: But I haven't seen this. I'd have to look
20 at it.

21 (WHEREUPON, there was a pause in the proceedings for
22 review of the photograph, after which the proceedings
23 resumed as follows.)

24 THE COURT: I don't know how you could have done it any
25 better than that. In looking at that, I don't know. It just

1 -- I don't see anything suggests an orange jumpsuit. But
2 again, I don't want to take away any -- any of Mr. Swilley's
3 argument I mean.

4 MR. SWILLEY: I mean I can't -- I can't represent to the
5 Court that there's a salient factor that there's a prison
6 uniform or anything else in there. I mean it just looks like
7 a -- it just looks like a photograph, a close-up photograph.

8 THE COURT: Yeah.

9 MR. SWILLEY: So I mean I can't --

10 THE COURT: I think it was -- I think you did as good a
11 job as you could do on that. And, of course, obviously, it's
12 all going to be subject to the foundation being laid and
13 we'll deal with that.

14 All right. Anything else on this issue?

15 MR. WHITE: No, sir, not on this issue. That pretty
16 well puts to rest the identification made by Anastacia and
17 William.

18 THE COURT: And I know the concern because it was my
19 concern too as y'all were sharing with me how this came about
20 was going to be the elimination of all of the prior bad act
21 stuff. And I think that's -- I think if it's done the way we
22 just discussed, I think we're -- we're in good standing and
23 there's no -- no mention of any other criminal activity or
24 anything.

25 Anything else we need to take up?

1 MR. WHITE: Yes, sir. Judge, the State has two more
2 issues to take up.

3 The next issue is in the same category. It's
4 identification and that's of Carson -- Carson McArthur's ID
5 of Rasheem Thomas.

6 Now, Judge, I met with Anastacia and William some months
7 ago and in our discussions I asked, you know, what their
8 conversations were after they sent -- you know, after they
9 told law enforcement, hey, this is the guy. They -- they
10 told me that they seem to remember -- now, keep in mind,
11 Judge, this is 2016 -- that at some point after telling law
12 enforcement about the photograph, this article, that they
13 remembered either sending the article via Facebook to Carson
14 or either telling him about it on the telephone. They can't
15 remember which one.

16 So, Judge, I bring Carson in. It must've been a couple
17 weeks ago. He lives in North Carolina, Judge. He actually
18 met these folks. He was in Cat school, Caterpillar school.

19 THE COURT: Okay.

20 MR. WHITE: And anyway, he moves back. So he's in
21 Lumberton.

22 He comes and meets with me and I'm asking him about the
23 case and getting his rendition of the facts, Judge, and then
24 I asked him about, well, tell me about when they sent this
25 Facebook message. He said I swear I don't remember that. I

1 can't swear to it, you know. They could have, but I just
2 don't remember. Do you remember them talking to you about
3 it? They could have, but, Judge, again -- or, Mr. White,
4 again, I don't remember that.

5 So I had somebody in our office pull up the article and
6 I said do you remember this article. Well, the article has
7 got the photograph. So I went ahead and said, well, I'll ask
8 you do you recognize this fellow, and he said, again, you
9 know, he didn't get as good a look as the other two.

10 THE COURT: His view was with the mask in place?

11 MR. WHITE: That's right, Judge. But he told me -- I
12 think it will be his testimony and I want to say I told Mr.
13 Swilley's investigator that he was 90 percent sure that the
14 fellow in that article was the guy. He looks just like him.
15 Before I showed it to him, he described the hairstyle and the
16 beard, and it would be his testimony that he can't say for a
17 hundred percent, but that photograph looks just like the guy
18 he saw.

19 And that's the testimony I would like to elicit and, for
20 a lot of reasons, I think that's proper, but most notably,
21 Judge, I think it's inevitable discovery.

22 THE COURT: Did he give a description of the person that
23 he saw that evening prior to receiving anything from the
24 other victims or Facebook or anything of that nature?

25 MR. WHITE: All three of these --

1 THE COURT: Did he give law enforcement a --

2 MR. WHITE: All three of these victims -- you know, a
3 lot of law enforcement arrived on scene and all three of them
4 recall giving descriptions to the first responders. In his
5 report, Lt. Brumbles does briefly, very briefly, discuss
6 that, but not any detail. They don't recall if they gave it
7 to Brumbles or gave it to another officer, but they do all
8 recall giving a description of these -- not only, you know,
9 Mr. Thomas, but these three individuals.

10 THE COURT: All three of them, yeah.

11 MR. WHITE: That's correct, Judge. And then they -- you
12 know, Anastacia and William said that they sent it or talked
13 to him about it and he just can't remember.

14 So, Judge, I would like to listen to his testimony for a
15 lot of reasons, but I would like to ask him if he could make
16 an in-court identification. He might -- he might not be able
17 to. He really wasn't able to make a hundred percent ID with
18 me in the office, but that could change once he sees him in
19 the courtroom. I'm not sure.

20 But, Judge, I don't think that me showing him the
21 article is tainted because it's inevitable that he is going
22 to be confronted with this fellow in the courtroom and his
23 description, you know, from the time before I showed it to
24 him is sound and it kind of checks off all the boxes.

25 That's right, Judge. At the end of the day, I wasn't --

1 because I assumed that he would remember it so I wasn't
2 showing it to him to ID the guy. I was showing it to him to
3 refresh his recollection as to that certain communication and
4 so, for those reasons, I believe that I should be allowed to
5 elicit that in-court identification.

6 THE COURT: Mr. Swilley?

7 MR. SWILLEY: It sounds like that's going to be a bridge
8 that we cross when we get to it.

9 THE COURT: Yeah.

10 MR. SWILLEY: But, you know, I wasn't there. I mean I
11 wasn't there, obviously, when Mr. White was showing him the
12 --

13 THE COURT: Yeah.

14 MR. SWILLEY: -- photo, I guess this photograph. So I
15 mean I don't know. We don't really know whether or not he
16 had seen the photograph of Mr. Thomas before. I don't have
17 -- I don't have anywhere that law enforcement had any
18 communication with Mr. McArthur after the date of the alleged
19 robbery at all. So I mean I don't -- I guess we have to wait
20 until he testifies to see whether or not his identification
21 stands or not.

22 THE COURT: Yeah. I think you're probably right as to
23 what he testifies and what he recollects and when he
24 recollected that and everything.

25 MR. WHITE: Sounds good, Judge.

1 THE COURT: Okay.

2 MR. WHITE: And if you're ready, I'll take up the last
3 issue and I'll --

4 THE COURT: Yeah.

5 MR. WHITE: -- give it a rest.

6 Judge, as I indicated at the start of this hearing, that
7 on February 23rd, 2017, Mr. Rasheem Thomas was arrested on the
8 murder charge. On that same day, a search warrant was
9 executed on that home.

10 And let me back up. At the armed robbery, Judge,
11 several guns are stolen and I mean there's probably six or
12 seven ranging in all calibers. The State plans to elicit
13 testimony from Sgt. Clendenin over at forensics who worked
14 the armed robbery and then worked the murder, including the
15 execution of the search warrant at Mr. Thomas' home.

16 Judge, the reason -- you know, yesterday -- and I'm
17 thinking about the reason why I want to elicit that testimony
18 is because -- well, twofold. The items that were recovered
19 -- some of the items recovered in the home are ammunition and
20 it's not just a little bit of ammunition, Judge. It's a lot
21 of ammunition and a good portion of it matches the calibers
22 that are reported stolen by William Brookins. He would
23 testify that not only guns were stolen, but a good bit of
24 ammo and that sort of thing.

25 Also, Judge, as you are well aware, armed robbery I have

1 to prove that he did enter and rob with a deadly weapon. The
2 amount of ammunition -- and I'll show it to you. It is not
3 an amount of ammunition that someone would just have without
4 also having guns around, access to guns. So it would serve
5 as corroboration for my victim's testimony.

6 Like it was said to me earlier -- I think it was Mr.
7 Tucker. It was a great analogy. You wouldn't have a 50-
8 gallon drum of gasoline in your garage and not have a
9 vehicle.

10 But furthermore, Judge, when I'm getting -- preparing
11 that aspect of it and getting the photographs printed off on
12 the search warrant, I do want to bring the Court's attention
13 to one issue and also Mr. Swilley's attention to that same
14 issue.

15 So, Judge, I'm going to show you State's Exhibit 11
16 through 21. This is all the ammo that was recovered, Judge,
17 and as I'm flipping through these with the witness, the
18 victim, Mr. Brookins, not an hour and a half ago, I flipped
19 through and he's saying, yeah, that kind of looks like mine,
20 but, you know, I can't be sure. And, you know, I go on to
21 the next photograph. That kind of looks like mine, but I
22 can't be sure. And, Judge, then the same thing. He said
23 that looks exactly like my ammo case, but, you know,
24 obviously, I have no way to know. So I say, well, and we
25 keep going along and along and the same thing on that one,

1 Judge, and then again on this one, and I can pass these up to
2 you, Judge.

3 And then this one, but something funny happens when I
4 get to this particular photograph, Judge, where he goes from
5 saying that could be mine to this is most definitely mine,
6 and that's pointing to the AR-15 magazine there on the right
7 bottom corner, and I'll show you State's Exhibit 18 is a
8 blown up picture of it.

9 And I said, well, Mr. Brookins, how could you know that
10 that's yours, and he says that mark, that white mark. I
11 remember putting that mark on it because it hurt my feelings.
12 I had just got this, you know, brand-new AR-15 and that
13 magazine from Academy Sports and that magazine -- I went to
14 shoot the AR-15 one day. That magazine was lodged in my safe
15 and I kind of got impatient and yanked it out and it put that
16 mark on it and I had this pristine AR-15 --

17 THE COURT: Are you talking about up in the corner right
18 there in the top?

19 MR. WHITE: That's correct, Judge.

20 THE COURT: Yeah.

21 MR. WHITE: And I'll show it to you and you can see it a
22 little bit better. It's more distinctive on the actual
23 photograph.

24 THE COURT: Yeah.

25 MR. WHITE: But he would testify that a hundred percent

1 he can't say about the other stuff that I've shown you, but
2 he said a hundred percent he recognizes that mark. He
3 remembered making that mark himself and he can describe all
4 the circumstances surrounding it. He's a hundred percent
5 sure that's the magazine -- one of the magazines that was
6 stolen out of --

7 THE COURT: The safe.

8 MR. WHITE: -- the safe. And that's corroborated at
9 least in part, Judge, by the fact that an AR-15 magazine --
10 he would testify that he had multiple magazines. An AR-15
11 magazine is dropped as these three individuals are fleeing
12 the scene. So they loaded up everything in the safe, but
13 they dropped one of the magazines. He's saying he recognized
14 that one.

15 Judge, then I'm going to show you three more pictures
16 and I promise I'll be done. I was really pointing his
17 direction to this bag because he remembers that he had a bag
18 in the safe and I said, well, do you recognize the bag. And
19 I showed him this, Judge, and he said I don't recognize the
20 bag, but I recognize that quad rail. That's my quad rail.

21 And I said okay and I showed him this next photograph,
22 and he said a hundred percent that's my quad rail. I said --
23 and, Judge, I'm not as familiar with guns, but, you know, I
24 think the quad rail is -- you put it on the grip up here and
25 you can get a personalized or more, I guess, militaristic

1 style of that particular part.

2 THE COURT: Right.

3 MR. WHITE: And I said how do you know that that's your
4 quad rail. He said I guarantee you the original is in that
5 box because I remember taking the original off myself and
6 putting the new part that I bought from Doc's Gun Exchange --

7 THE COURT: On the gun.

8 MR. WHITE: -- on the gun. So I flipped to the next
9 photograph, Judge, and he was a hundred percent right.
10 There's the original. So, Judge --

11 THE COURT: That's the original that was on the AR when
12 he purchased the AR, but not what would have been in that
13 box?

14 MR. WHITE: Correct.

15 THE COURT: Okay. I understand what you're talking
16 about.

17 MR. WHITE: That was the first time he had seen those
18 photographs and it seemed highly credible to me, and I'd like
19 to elicit that testimony and I'm not aware of anything that
20 would prevent me from doing so. I just want to make the
21 Court aware of my intention.

22 THE COURT: Mr. Swilley?

23 MR. SWILLEY: Your Honor, first of all, this search
24 warrant was executed in accordance with the other murder
25 case, solely because of that. What was found is not -- is

1 not a lot of bullets in my opinion. I mean there is -- there
2 is an AR-15 magazine and, of course, this is the first I've
3 heard about any of this stuff being identified by Mr.
4 Brookins. There was a Glock .45 magazine.

5 What was listed as stolen -- and there's an inventory.
6 It lists five guns in the inventory list. A Sig Sauer. It
7 lists a SCCY -- a pink SCCY firearm. It lists a G21 Gen 4
8 firearm. It lists a Smith & Wesson fire -- well, that's a
9 Glock G21, a SCCY, and a Sig Sauer, a Smith & Wesson M&P
10 Sport AR-15, and a Taurus Judge. There five guns that are --
11 that are listed as missing.

12 It doesn't mention anything about any ammunition or any
13 ammunition boxes missing. It doesn't mention anything about
14 a quad rail being missing. It just mentions those specific
15 guns, no ammo. It doesn't mention any kind of box or bag.

16 I understand that, you know, now at the eleventh hour he
17 says he can identify the -- he can identify the AR-15
18 magazine, but -- but Your Honor, I mean this search warrant
19 was executed in the course of the murder case for the
20 purposes of the murder case. It was executed before Mr.
21 Thomas was arrested on this charge. It was executed before
22 Anastacia Kauth contacted the Sheriff's Office and told them
23 she saw his picture and that she recognized that that was
24 him.

25 I mean that's going to tell the jury that he's involved

1 in it. If they're executing search warrants on his house in
2 accordance with another case before he's charged with this,
3 that's going to tell them that there's an investigation into
4 another case.

5 And I just -- I find -- I find -- I find Mr. -- Mr.
6 Brookins' identification of these small markings kind of --
7 kind of dubious at this juncture. It's been three years --
8 over -- I think over three years later, and I think the
9 introduction of this stuff if he can't identify any of these
10 ammunition boxes, according to Mr. White, but I just think
11 that's -- that's substantially more -- more prejudicial than
12 probative simply because the search warrant was executed by
13 Ben Price, who is not involved in this case, this case we're
14 here for today, and Mike Jack, who is not involved in this
15 case today, and that's going to show the jury that he's
16 involved in something else, which I think is in violation of
17 Rule 404(a), you know, prior allegations of bad acts.

18 And this is kind of the first I've heard about, you
19 know, anything that was found in the course of this search
20 warrant being pertinent to this case. The first I've heard
21 about it is today.

22 MR. WHITE: And, Judge, clearly, the identification and
23 Mr. Brookins' identification goes to the weight and not to
24 the admissibility. And I do apologize to Mr. Swilley for the
25 late notice, but he just told it to me.

1 But again, I'm not aware -- you know, if the roles were
2 reversed, if they were serving a warrant on an armed robbery
3 with a murder defendant and they found the murder weapon, you
4 know, the State would be able to get into that on the murder.
5 Right. As long as it's within the scope of the original
6 warrant.

7 And certainly, you know, a murder warrant is going to be
8 within the scope of an armed robbery. You know, it's kind of
9 -- they go part and parcel. It's the same type of thing.

10 And, Judge, just as we have limited the testimony and
11 gladly so as to the identification, we can certainly I mean
12 probably much easier, because we'll be dealing with a law
13 enforcement officer instead of a lay witness, limit the scope
14 of how it comes out and that sort of thing. There's no need
15 for us to go into that the search warrant was obtained in
16 relation to a murder case, certainly not.

17 There's no real reason to state the date that it was
18 obtained and, Judge, you know, although the arrest warrant
19 wasn't served until the 28th, I mean law enforcement -- she
20 called on the 23rd and they just -- you know, the
21 investigations were unfolding at the exact same time.

22 So I don't think for those reasons it should be
23 prevented. I can certainly tailor my questions and instruct
24 law enforcement where to go and where not to go.

25 MR. SWILLEY: And, Judge, I also wanted to point out as

1 a result of the search warrant there were also some other
2 items in there I think in some of those pictures that are
3 really irrelevant as well. I think there's some nominal
4 amount of marijuana found in there and some fake currency.

5 THE COURT: Are they in the pictures?

6 MR. WHITE: Not at all. And I will not be mentioning
7 them. Oh, well, in the --

8 THE COURT: In the discovery --

9 MR. WHITE: Right, right.

10 THE COURT: -- there are some?

11 MR. WHITE: There are some, but not in the photographs
12 that we've marked for identification. Absolutely not.

13 THE COURT: That's all ammunition and boxes and such?

14 MR. WHITE: That's correct, Judge.

15 THE COURT: Well, obviously, it's going to need to be
16 done to where there's no mention of the other -- the other
17 accusation. I mean I guess you could ask the question as a
18 result of the search warrant, do you find these items?

19 MR. WHITE: It's that simple, I believe, Judge.

20 THE COURT: Well, again, as long as the proper
21 foundation is laid, you know, I do believe you can do it if
22 you do it appropriately without it bringing in any bias or
23 prejudicial information. You know, again, it's all subject
24 to cross-examination as to -- I mean if the -- if the police
25 say they have an inventory of five guns and nothing else,

1 there could be testimony as to what they actually have, but
2 we'll just have to see how the testimony comes out.

3 But assuming that -- and I agree with Mr. Swilley as far
4 as -- and I guess you're talking about just the pictures you
5 have that you're going to use?

6 MR. WHITE: That's it, Judge.

7 THE COURT: Because I wouldn't want anything in there --

8 MR. WHITE: No, sir.

9 THE COURT: -- regarding marijuana or anything --

10 MR. WHITE: Absolutely not.

11 THE COURT: -- not related to this case.

12 MR. WHITE: He wasn't charged with those offenses.

13 THE COURT: Yeah. Yeah. All right. All right.

14 Anything else?

15 MR. WHITE: None. Nothing on behalf of the State,
16 Judge.

17 THE COURT: Mr. Swilley, anything that we can take up
18 from the defense?

19 MR. SWILLEY: Briefly, Your Honor. I'm going to ask the
20 Court, Your Honor, under -- I think it's Rule 615. I want to
21 move that the Court sequester the witnesses, obviously, in
22 this case -- you know, in this case.

23 THE COURT: Yeah. I -- I agree this is a case that
24 would certainly support that.

25 MR. SWILLEY: And, Your Honor --

1 THE COURT: Because you're talking about identification
2 and it's very fact heavy.

3 MR. SWILLEY: Correct. That's correct, Your Honor.

4 MR. WHITE: I would just ask that Investigator McFadden
5 be able to stick around and I would ask for one other thing,
6 Judge. If you are so inclined, if we have them -- for ease
7 of coming in and out have them wait in one of the little
8 conference rooms. Would that be appropriate?

9 THE COURT: I have no problem with that. Just I never
10 understood, you know, the brand-new building, everything
11 should have been built for a purpose. They've got a TV in
12 there and I don't know why, but as long as they can't hear
13 what goes on in here and there's no speaker --

14 MR. WHITE: Yes, sir.

15 THE COURT: -- or anything, I don't mind. I'd rather
16 you have them --

17 MR. WHITE: Okay.

18 THE COURT: -- close by and then there's another room
19 over here so that if there's a reciprocal request, if Mr.
20 Swilley has any witnesses that he -- you know, then he can
21 have the other room.

22 MR. WHITE: Absolutely.

23 THE COURT: So that y'all don't have to run downstairs
24 or run down the hall.

25 MR. WHITE: And I believe the -- the television and the

1 speaker in there are for child victims, Judge, which will
2 come in handy at some point.

3 THE COURT: Yeah. I mean is that what they're there
4 for?

5 MR. WHITE: I believe so.

6 THE COURT: Is that so a child victim in a child abuse
7 case can see what's going on without having to --

8 MR. WHITE: And I believe there's case law that allows
9 them to actually testify from that room --

10 THE COURT: Yeah.

11 MR. WHITE: -- instead of coming out on the stand.

12 THE COURT: Okay.

13 THE CLERK: That also goes out from the jail.

14 THE COURT: Okay. But --

15 THE CLERK: So we can talk to them through those.

16 THE COURT: But none of that -- is it operable?

17 THE CLERK: It is.

18 THE COURT: Okay. Obviously, as long as all that is
19 turned off and the witnesses can be truly sequestered, I
20 don't have a problem with that.

21 MR. WHITE: Okay. Very good, Your Honor.

22 THE COURT: As a matter of fact, I think it would be
23 good that yours and Mr. Swilley's witnesses be close by so
24 that they can be accessible.

25 MR. WHITE: Sounds good to me.

1 THE COURT: So I would grant your motion regarding the
2 sequestration of the witnesses. Now, that would be -- the
3 lead investigator, obviously, can remain in.

4 MR. WHITE: Yes, sir.

5 THE COURT: But everyone else.

6 MR. SWILLEY: Thank you, Judge.

7 MR. WHITE: Thank you very much, Judge.

8 THE COURT: Anything else, guys?

9 MR. WHITE: That's it from the State.

10 MR. SWILLEY: No, Your Honor.

11 THE COURT: All right. So 9:30. We'll -- I'll be here
12 early if y'all need anything in the morning, but we'll start
13 at 9:30.

14 MR. WHITE: Sounds good, Judge.

15 THE COURT: Okay. All right. Thank you, guys.

16 (WHEREUPON, the proceedings adjourned for the day at
17 3:57 p.m.)

18 JUNE 25, 2019

19 (WHEREUPON, the proceedings resumed as 10:11 a.m. The
20 defendant was present, along with his counsel of
21 record.)

22 THE COURT: All right. Mr. White?

23 MR. WHITE: Judge, if it please the Court, the last
24 issue before we start this morning is the issue of the
25 photographs. We took it up briefly in chambers, Judge.

1 THE COURT: Right.

2 MR. WHITE: The State has about nine photographs of the
3 crime scene. That's what we're dealing with here, Judge, and
4 we think that the nine photographs adequately convey
5 everything that needs to be addressed during the duration of
6 this trial.

7 Now, the defense has marked for identification I think
8 about 35 photographs, Judge, and for a number of reasons, but
9 the main one being that their probative value is outweighed
10 by the prejudicial effect, we would object to the entirety of
11 the photographs, the entire series, but we would obviously
12 allow you to take a look at it, if I may, Judge.

13 THE COURT: Yeah.

14 MR. WHITE: Judge, I'm going to hand you up first
15 State's Exhibit for ID purposes -- this is 1 through 9.

16 THE COURT: Are there any objections to these from the
17 defense?

18 MR. SWILLEY: No, Your Honor. There's no objection to
19 these. Just let me make sure --

20 THE COURT: Yeah.

21 MR. SWILLEY: -- these are the same ones I looked at.

22 THE COURT: Right.

23 MR. SWILLEY: There are none to State's 1 through 9.

24 THE COURT: Okay.

25 (WHEREUPON, State's Exhibits Number 1 through 9,

1 photographs, were admitted into evidence.)

2 THE COURT: So then we have the defense exhibits that
3 are marked for identification. All right. Well, I think
4 State's 1 and Defense 3 are identical.

5 MR. SWILLEY: Okay.

6 THE COURT: It also appears that State's 2 and Defense 2
7 -- excuse me. State's 2, yeah, and Defense 2 are identical.
8 State's 3 and Defense 1 are identical.

9 Guys, can y'all -- would it not have been a lot easier
10 for y'all to look through these and see that these are
11 identical than to have the Court doing it now?

12 MR. WHITE: Yeah. And, Judge, I mean that's part of my
13 objection. I mean some of them are just unnecessary.

14 THE COURT: I mean if you look at -- if you look at
15 these three, these are State's witnesses [sic], and you look
16 at these three defense witnesses, they are just identical.

17 What -- you know, I don't know if this can be shortcut.
18 Maybe it can't be and I've got to go through all 30-some odd.
19 What is the purpose of all of these --

20 MR. SWILLEY: Your Honor, it depicts --

21 THE COURT: -- Mr. Swilley?

22 MR. SWILLEY: It depicts the house. It depicts the
23 scene. I mean the State does have a map that's drawn, I
24 guess, hand drawn or uses some kind of computer program of
25 the house, but these actually depict the scene, photographs

1 taken by law enforcement subsequent to the --

2 THE COURT: You're showing a very nasty house. What's
3 the purpose?

4 MR. SWILLEY: Well, I mean, Your Honor, it shows --

5 THE COURT: That they live in filth?

6 MR. SWILLEY: Well, Judge, it also shows that there were
7 several items that were not taken from the house. I think
8 that's going to become relevant at another time. It shows
9 several, you know, I think trash bags of beer cans that would
10 seem to show the people that come in the house frequently
11 consume alcohol. I mean he's not keeping these beer cans
12 outside the house where it would tip off anybody that he's a
13 bootlegger.

14 THE COURT: What relevance is that to any issue in this
15 case?

16 MR. SWILLEY: Well, I mean I anticipate it being an
17 issue, but there's not -- those cans, I believe, and the
18 other stuff blocks the other door to the trailer so there's
19 one way in and one way out.

20 THE COURT: Okay. Is that an issue in this matter?

21 MR. SWILLEY: Well --

22 THE COURT: Again, I'm trying to get to relevance.
23 That's what I'm -- if you can -- and the same with the State.
24 I mean both -- both of y'all are held to the same standard.
25 Evidence has to be relevant for it to be admissible.

1 MR. SWILLEY: Right.

2 THE COURT: And I don't know the relevance to all of
3 this. What's the relevance to that?

4 MR. SWILLEY: Well, I think that's one of the -- I think
5 that's one of the bedrooms of the house.

6 THE COURT: Correct.

7 MR. SWILLEY: I mean I think -- I think it just -- it
8 shows -- it shows the scene. It shows the house where this
9 crime is alleged to have taken place.

10 THE COURT: Did anything happen in the bedroom?

11 MR. WHITE: No, sir, Judge.

12 THE COURT: Then what relevance is it? Again, Mr.
13 Swilley, the appearance is that you're trying to portray
14 these people as being trashy, unsympathetic. I don't know
15 what it is, but I need to know what the relevance is to this
16 case of that. What is the relevance to any issue in this
17 case to these photographs?

18 I'm not going to allow them in if there's not -- if
19 they're not relevant and I'm not going to take the time here
20 to go through 35 photographs because unless I guess I hear
21 them in context, I'm not going to know whether they're
22 relevant or not.

23 MR. SWILLEY: Yes, sir.

24 THE COURT: But I don't know. We'll just have to deal
25 with it as they come up.

1 MR. SWILLEY: Yes, sir.

2 MR. WHITE: Judge, the only issue I perceive in that
3 particular scenario is -- and I believe full well, Judge,
4 that every -- that everything that -- legitimate purpose that
5 he has put forth as to why he wants to show those photographs
6 is achieved in the State's photographs.

7 THE COURT: Well, it might be. I don't know.

8 MR. WHITE: Yes, sir.

9 THE COURT: Because several of them were inclusive.

10 MR. WHITE: Yes, sir.

11 THE COURT: They were the same.

12 MR. WHITE: And --

13 THE COURT: But if there's something that is not there
14 that the defense feels is relevant, then they certainly will
15 have that opportunity at that point and I'll rule on the
16 relevance, depending on what it is. I guess I can't
17 speculate.

18 MR. WHITE: I beg the Court's indulgence for a moment.

19 THE COURT: Yeah.

20 MR. WHITE: Okay. My apologies, Judge. Thank you.

21 THE COURT: That's okay. Anything else we need to take
22 up then before we bring the jury out?

23 MR. WHITE: Not that I'm aware of.

24 THE COURT: Anything from the defense?

25 MR. SWILLEY: No, Your Honor.

1 THE COURT: All right. Let's bring them in, please.

2 (WHEREUPON, the jury entered the courtroom at 10:20
3 a.m.)

4 THE COURT: Ladies and gentlemen, welcome back. I want
5 to apologize for the delay in getting started and to tell you
6 that it is one hundred percent my fault. The parties were
7 all here ready to go at 9:30 and I got tied up with some
8 other matters that don't involve this case. We've got three
9 judges here holding court this week and so I'm the reason
10 that we're delayed and I apologize to you. I don't like to
11 waste your time and certainly don't do it intentionally, but
12 be that as it may, we are ready to begin.

13 And before I -- I'm going to address you with a couple
14 of opening remarks, but before I do that, I'm going to ask
15 you, if you would, to give Madam Clerk your attention. She
16 is going to place you under your oath for your role as jurors
17 in this case. So --

18 THE CLERK: If all of y'all would please stand and raise
19 your right hand.

20 (WHEREUPON, the jurors complied.)

21 THE CLERK: You shall well and truly try and a true
22 deliverance make between the State of South Carolina and the
23 defendant at the bar, whom you shall live in your charge, and
24 a true verdict render according to the law and evidence, so
25 help you God.

1 Please be seated.

2 THE COURT: Before I get into my preliminary remarks,
3 let me do a few administrative things.

4 Folks, one of the things that's important is that you
5 hear everything that goes on and that you see everything that
6 goes on. So if at any time during this trial, whether it's
7 myself, any of the attorneys or any witness, if you can't
8 hear us or if you can't hear something that's said, please
9 don't hesitate to raise your hand or get my attention and ask
10 me to get that person to repeat it because it's important
11 that you hear everything.

12 There are going to be exhibits throughout this trial.
13 There are going to be photographs. If you can't see a
14 photograph or whatever, let me know, or an exhibit and we'll
15 make sure that we arrange it that you can see it. It is very
16 important that you are able to hear and see all of the
17 evidence that is presented during the course of this case.

18 The other thing is to the extent that we can make you
19 comfortable, we will try to do that. As far as the
20 temperature in the courtroom, I don't have a whole lot of
21 control over that and, plus, temperature is a difficult
22 thing. As we sit here right now, my wife would be freezing
23 in here. I'm about to sweat. So it's an individual thing.
24 We'll try to keep the temperature kind of in a range that
25 everyone can find some level of comfort.

1 But when I talk about comfort, the other thing that I
2 want to address is there may come a time that Mother Nature
3 calls and you need to take a break. I don't want you to be
4 shy and not -- or try to wait until we take a regular break.
5 We can break any time you need to. Okay? For any reason.

6 If any member of the jury needs to take a break, get my
7 attention or Ms. Francis' attention and we will stop what
8 we're doing, we'll take a short break, and we can always pick
9 up where we left off. But it's very important that you are
10 comfortable and that you are able to focus on the evidence
11 that's presented.

12 You know, it may be -- and I've done this before where
13 I'm thinking, you know, I need to use the restroom, but I
14 think I'll wait until that person is done, and then that
15 person goes on and on and on. The next thing you know,
16 rather than listening to what they're saying, I'm sitting
17 here going, oh, my God, when are they going to get done?

18 I don't want you to be that way. If you need to take a
19 break, let me know. We'll stop right in the middle of a
20 question because we can always pick up where we left off.
21 Okay? So if you'd do those things for me.

22 Also, at some point -- I haven't done it yet, but at
23 some point, I'm going to ask one of you to serve as the
24 foreperson of the jury, and I will explain that in a little
25 bit more detail whenever we get to that, but in the jury box

1 there are only three assigned seats: the seat where the
2 foreperson sits -- whoever I end up selecting to be the
3 foreperson, that person would sit in that same seat that they
4 are in -- and then the two alternates. You would always sit
5 in those seats that you all are in.

6 The rest of the panel, you can sit wherever you want.
7 So in other words, if you've started on the front row here
8 and we take a break and when we file back in the front row
9 was full, just go to the back row. I mean, in other words,
10 there's no assigned seating except for those three seats, the
11 two alternates and the foreperson.

12 But we are ready at this time, ladies and gentlemen, to
13 begin the trial of this case of the State versus Rasheem
14 Kevin Thomas. I don't know if any of you have ever sat in on
15 an actual jury trial before. Some of you may have.

16 But most people do not have the opportunity that you're
17 -- that you have this week. Most people never get the
18 opportunity to sit in on an actual jury trial. Most people's
19 exposure to jury trials is what they've watched on
20 television, what they've seen in the movies or what they read
21 in books. We know about those trials. They're always full
22 of high drama and intense action and riveting circumstances.
23 That's Hollywood's effort to entertain us.

24 Now, while any of those things could occur during the
25 course of this trial, the important thing for you to keep in

1 mind is that this trial is not for your entertainment. This
2 trial is a fundamental part of our democracy and, unlike the
3 movies or television or what you see in books, this trial may
4 be slow. It may be fast. It may be very deliberate. It may
5 be repetitive. In other words, it's very different from TV,
6 movies or books.

7 This courtroom is a place of honor that is dedicated to
8 the protection and to the preservation of citizens' rights
9 through what many have called the greatest justice system
10 ever created. The attorneys that appear before you -- they
11 are advocates for the parties that they represent, but first
12 and foremost, they are officers of the Court sworn to uphold
13 the integrity and the fairness of our judicial system. You
14 should expect them to be professional, competent, and ethical
15 in the representation of their client's interest.

16 Now, you've just taken an oath to try this case and to
17 reach a fair and just verdict; so you are also expected to be
18 professional, reasonable, and ethical in the performance of
19 your duties. I have every doubt -- I have no doubt and every
20 confidence that you will do just that and I want to thank you
21 for your contribution to our system of justice here in
22 Florence County.

23 Now, I'm going to share a few things with you before I
24 turn it over to the attorneys. These are just basic -- this
25 is not a charge on the law. I will give you the law at the

1 close of the case before you retire to conduct your
2 deliberations, but what I'm going to do right now is
3 basically give you an overview of the way the trial is going
4 to flow.

5 In this case, Mr. Thomas is charged by that indictment
6 that I read to you yesterday. He's charged with the offense
7 of armed robbery. The elements of that crime I will give to
8 you later when I give you the charge on the law.

9 But as I told you yesterday, the indictment is simply
10 the charge by which the case is brought into this court. It
11 is not in any sense evidence in this case, nor is it proof of
12 any evidence in this case.

13 To that charge or that indictment, Mr. Thomas has pled
14 not guilty and the State, therefore, has the burden of
15 proving each element of that crime beyond a reasonable doubt.
16 It will be your -- your duty, ladies and gentlemen, to decide
17 whether or not the case has met that burden. Your purpose as
18 jurors is to find and to determine the facts.

19 You are the sole judges of the facts in this case. If
20 at any time I make any comment about the facts or the
21 evidence, you must disregard those comments because only you,
22 the jury, are allowed to decide what the facts of a case are.

23 You are to determine those facts from the testimony that
24 you hear from the witness stand and any other evidence that
25 may be introduced during the course of the trial. It will be

1 up to you to determine what inferences that you feel are --
2 that you may properly draw from the evidence. It is
3 especially important that you perform your duty of
4 determining the facts diligently and conscientiously because
5 ordinarily there's no way that the Court could correct an
6 erroneous determination of facts by a jury.

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

12 I cannot tell you what I think about the facts in this
13 case and you're not allowed to disagree with me about what
14 the law is or what you think the law should be. Your job is
15 to take the law as I give it to you and apply it to the facts
16 as you find the facts to be from the evidence that is
17 presented in arriving at your verdict.

18 Now, it's very important throughout this case that,
19 until I tell you it's appropriate, you are not to have any
20 conversation with anyone about this case at all, and that
21 includes amongst yourselves. There will come a time when you
22 will be able to talk about the case and to do your
23 deliberations, but that won't be until all of the evidence
24 has been put into the record.

25 So it is very important that throughout the trial that

1 you keep an open mind and that you do not decide any issue in
2 this case until all of the evidence has been presented, the
3 parties have had an opportunity to address you with their
4 closing remarks, and I've given you the charge on the law.
5 Only then would it be appropriate for you to begin your
6 deliberations.

7 It is your solemn responsibility to determine the guilt
8 or the innocence of the defendant, and your verdict in this
9 case must be based solely upon the evidence as it is
10 presented to you during this trial and on the law as I
11 instruct it to you at the close of the case.

12 Now, in just a moment, I'm going to recognize the
13 attorneys and I'll start with the State and then move to the
14 defense for their opening statements. Now, the opening
15 statements -- folks, I don't know what they'll -- or what
16 will be shared with you during the opening statements, but
17 typically, what you'll hear is, when I recognize the State,
18 they typically will tell you what they believe the evidence
19 in this case will show.

20 Once they've concluded their opening statement, I will
21 recognize the defense, if the defense chooses to put up an
22 opening statement. They're not required to, but they
23 certainly would have that opportunity.

24 The thing to understand about opening statements or what
25 the lawyers tell you is this. It's important that you listen

1 carefully to what they have to say, but it's also important
2 that you understand this clearly. What they tell you is not
3 evidence. It is their contention as to what they believe the
4 evidence will show.

5 They're not under oath. They're not testifying. So,
6 therefore, what they share with you is not evidence. The
7 evidence in this case will be presented to you from witnesses
8 who are placed under oath and testify from the witness stand,
9 as well as any exhibits that may come in during the course of
10 the trial.

11 Now, when we get started with the case, you may from
12 time to time hear one of the attorneys say something along
13 these lines. Judge, I've got -- we've got a matter of law we
14 need to take up with the Court or, Your Honor, may we
15 approach the bench. If I can resolve an issue up here at the
16 bench, I'll do that, but it may be that I need to ask you to
17 step back into your jury room while I take up a matter of
18 law.

19 If I ask you to step back into the jury room while I do
20 that, the only reason I would ask you to do that is this.
21 There are times when I'm dealing with an issue of law that it
22 requires me to make a comment about the testimony or the
23 evidence that's being presented. As I told you earlier, I'm
24 not to have any influence over you about the evidence. So to
25 protect you from those comments, I may ask you to step back

1 into the jury room, allow me to resolve an issue of law and
2 then, once I've resolved that issue, bring you back out and
3 pick up where we left off.

4 You, as I said earlier, ladies and gentlemen, are the
5 factfinders in this case. In determining what the true facts
6 are in this case, you're going to have to decide whether or
7 not the testimony of a witness is believable. It's my job to
8 rule as a matter of law whether certain testimony is allowed
9 into this record, but once testimony is allowed into the
10 record, whether or not you believe it is solely up for you to
11 decide.

12 In deciding whether to believe a witness, you have the
13 right to consider the interest of any witness, the bias of
14 any witness, the opportunity for that witness to have seen
15 the things or the matters about which they testify, the way
16 the witness acts on the witness stand.

17 You have the right, ladies and gentlemen, to consider
18 anything in this record that will help you to evaluate the
19 credibility or the believability of the witnesses. That
20 means it is very important and your duty to pay close
21 attention to the witnesses, observe the witnesses, listen
22 carefully to the witnesses, as well as to the attorneys and
23 to the Court.

24 Try not to let your thoughts wander, but pay strict
25 attention to all of the testimony in this case and all of the

1 evidence so that at the close of the evidence, the attorneys
2 will have an opportunity to address you with their closing
3 remarks and I will give you the charge on the law. After you
4 have all of that, you will then be in a position to step back
5 into your jury room and to begin your deliberations.

6 Now, before I turn it over to the attorneys for their
7 opening remarks, let me first inquire from the State are
8 there any objections or exceptions to the Court's opening
9 remarks?

10 MR. WHITE: None on behalf of the State, Judge.

11 THE COURT: Anything from the defense?

12 MR. SWILLEY: No, Your Honor.

13 THE COURT: All right. Thank you, gentlemen.

14 Now, ladies and gentlemen, if you would, please give the
15 attorneys your undivided attention as they address you with
16 their opening remarks.

17 Mr. White?

18 MR. WHITE: Thank you, Judge.

19 THE COURT: Yes, sir.

20 OPENING STATEMENT ON BEHALF OF THE STATE

21 MR. WHITE: A face that she'll never forget. A face
22 that she'll never forget, and on April 23rd, 2016, Anastacia
23 Kauth met a face she'll never forget. It was the face of her
24 little girl who had just been born. There was something
25 about that moment.

1 I imagine some of us have experienced it. I remember
2 when the doctor put my little girl in my arms and I looked
3 down and she gave me this little smirk and it's a smirk that
4 she still gives me today at five years old. It's a smirk I
5 could pick out of a crowd of a million people.

6 There's something strange about what the mind does in
7 moments of overwhelming emotion, isn't it? Anastacia Kauth
8 knows that feeling and she knew it the day she met her little
9 girl.

10 Thirty-five days later after the birth of that little
11 girl was a quiet Saturday morning for Anastacia. Her
12 boyfriend and father of that child was getting ready in the
13 bathroom. His name is William Brookins. You're going to
14 hear from him.

15 William's best friend was in town from out of state. He
16 was in the living room sitting on the couch. You're going to
17 hear from him too.

18 And that little girl was resting comfortably in
19 Anastacia's arms on that quiet Saturday morning, 35 days
20 after she had been born and, on that morning, there came a
21 knock at the door and that quiet was interrupted. And with
22 that knock came violence and she was about to meet another
23 face that she would never forget. It was May 28th, 2016.

24 Now, Carson got up. He went to answer that door and,
25 when he did, there was a man there asking if he could buy

1 beer. He turned around with the money in hand and, when he
2 did, two other men plus that fellow wanting to buy beer
3 entered that home by force.

4 Now, the two other men had things covering their faces
5 and one of them ordered Carson down on the ground and he held
6 him there by gunpoint. The other two fellows went into the
7 bathroom where they found William Brookins getting ready. He
8 had no clothes on. They forced him out of that bathroom, out
9 into the hall. They forced him down on the ground and
10 because he put up a struggle, they tied him up with a belt.
11 One of those men stayed right there and held him at gunpoint.

12 Now, that last man -- he walked right to where they had
13 planned to go from the start, to the safe, the safe that was
14 locked with a code, and he asked the people in that house to
15 give up that code and they were hesitant. Ladies and
16 gentlemen, because they were hesitant, that man pointed a gun
17 right at that baby and said give me the code to the safe or
18 I'm going to kill your child. Well, there was no hesitation
19 then. William gave up the code and those men began to rifle
20 through that safe, taking a gun collection that William and
21 his girlfriend owned.

22 But when he was doing so, that man who put the gun right
23 on that little baby made a mistake. The do-rag that he had
24 wrapped around his face fell down, exposing the entirety of
25 his face. It was a face that Anastacia Kauth will never

1 forget. He was in such a hurry, he didn't even bother
2 putting it back.

3 They fled the scene, and Anastacia and William and
4 Carson called law enforcement and law enforcement arrived.
5 And although they had seen two of them clearly, they didn't
6 know them. And so the case kind of grows cold until February
7 23rd, 2017, when Anastacia Kauth was on Facebook. She's
8 scrolling through Facebook and she sees a face, the face of a
9 man by the name of Rasheem Thomas, sitting right over there.

10 It's a face she'll never forget. It's a face she'll
11 never forget because it's the face of the man who put that
12 gun right on her child. It's the face of the man who put
13 that child and her, Anastacia's life, in jeopardy, and it's
14 the face of the man who is on trial here today.

15 And at the end of this trial, I'm going to ask you to
16 find him guilty for a lot of reasons, but most importantly
17 because it's a face she'll never forget.

18 THE COURT: All right. Mr. Swilley?

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

20 MR. SWILLEY: Nine months. Nine months is a long time.
21 Nine months is how long it takes to conceive and have a
22 child. It's three quarters of a year.

23 In this situation, nine months is how long it took for
24 Anastacia Kauth to point a finger at Rasheem Thomas, nine
25 months to the day from when somebody came in and robbed them

1 and did whatever he did to them -- whatever they did to them.

2 Rasheem Thomas had nothing to do with that robbery or
3 whatever and I say whatever went on in that -- in that
4 trailer because, you see, you've heard a lot of things and
5 you've heard a lot of allegations from the State. When you
6 hear the testimony from the witnesses in this case, you'll
7 see these things don't add up.

8 See, what happened was at the time based on the
9 information that the police had, three men come to the house.
10 One guy knocked on the window and, according to the
11 information the police had, asked for a cigarette, not a
12 beer. That was the information that law enforcement had when
13 they got out there and that's important and I'll get to that
14 in the second. This was a house, not a store.

15 But what happened was three men apparently came in.
16 Only one man, according to the information they had, didn't
17 have a mask and two others had a mask on. At no time during
18 the course of that robbery or that alleged robbery or
19 whatever happened in there or whatever quarrel they had or
20 whatever, whatever happened within that house -- and I'm not
21 downplaying anything that these people went through, but
22 whatever happened, there's -- there's no mention made of any
23 mask coming off. There's no mention made of anybody who was
24 going into the safe had a bandanna or a do-rag that came
25 down. There's no -- there's no mention of Ms. Kauth did see

1 the person who was going in that safe and there's no mention
2 whatsoever of anybody pointing a gun at a child, none
3 whatsoever.

4 Three law enforcement officers came out to that house
5 that day. They investigated. They took, if I'm not
6 mistaken, 203 photographs. They spoke to all three people
7 who were in that trailer and, supposedly, the people who came
8 in went straight to the safe in this house, forced -- they
9 did force -- supposedly, forced Mr. Brookins off that toilet,
10 took him out, got the code from the safe, and went to the
11 safe and took, based on the information the police have when
12 they did their investigation, five guns, five guns that have
13 never been recovered.

14 So they did their investigation. They made their
15 reports. There was a 9-1-1 call made to get them there and
16 then after about an hour and a half after doing their
17 investigation, they left. There was -- there was no
18 information that they could have used based on what they had
19 to identify anybody. It wasn't enough.

20 Supposedly, by happenstance, nine months later to the
21 day or around that time, but nine months later, Anastacia
22 Kauth calls the police and says I know the man that did it.
23 I saw his picture on Facebook. This is him. They go and
24 arrest my client and they charge him after that.

25 That brings me to another point. You see, you guys

1 don't work within the justice system so you probably need to
2 know and I think Judge Russo mentioned it. Do not let the
3 fact that he is charged with this offense, that he's accused
4 of this, have any bearing on you. It's not difficult to get
5 somebody charged. What you have to do is you have to go to a
6 magistrate judge and you have to get a warrant signed. An
7 officer has to do that to get a warrant signed for probable
8 cause and that standard will be talked about later on, but
9 it's not difficult.

10 And then to get an indictment to try somebody in here,
11 what you have to do is you go to a grand jury that convenes
12 in secrecy and they have to make a finding of probable cause,
13 basically is there any evidence whatsoever. Not anything
14 near the standard that the State has to meet when trying to
15 take somebody's liberty for a crime.

16 Today is the first time this man right here has gotten
17 to participate in the proceedings that are against him, the
18 first time. I mean, hopefully, you're able to see at the
19 conclusion of this case is that Rasheem Thomas did not have
20 anything to do with this robbery, with this assault or this
21 home invasion.

22 Now, I'm not trying to downplay whatever it is that they
23 -- that these folks went through in the house, Mr. McArthur,
24 Mr. Brookins, Ms. Kauth. Whatever they went through, they
25 didn't deserve, but this man doesn't deserve to be accused of

1 something that he didn't do.

2 Now, if you were thinking earlier or you may have been
3 thinking earlier that why is somebody coming to the door to
4 buy a cigarette or a beer or whatever they said he was trying
5 to buy. Well, what was going on here is that the same
6 trailer where this young infant laid her head, Mr. Brookins
7 was selling stuff around the trailer park, alcohol, the
8 evidence will show cigarettes, perhaps more in his home, and
9 these individuals who came in -- and what the evidence should
10 also show is that people came there all the time for stuff,
11 whenever they wanted to. It wasn't uncommon for somebody to
12 walk up and say knock, knock, I want this or I want that.

13 They didn't think anything of it. You know, somebody
14 comes to your house and asks for a cigarette, ordinarily, you
15 know them, but that's a common occurrence in this home.
16 That's why these guys came in. There's no forced -- there's
17 no evidence of any forced entry into this house because
18 whoever came in was let in and whoever came in had one goal
19 was to go directly to that safe because the evidence showed
20 that whoever wanted to go in that safe knew or thought they
21 knew what was in there, firearms. That's what was taken.

22 What the evidence will show is that these people didn't
23 know Rasheem Thomas from Adam. Rasheem Thomas had nothing to
24 do with this and there's no evidence that the State can show
25 other than the testimony of these people that say he did.

1 There's no evidence that they can show that he had anything
2 to do with this.

3 What the evidence should also show is that one of the
4 assailants dropped a ball cap on the floor, dropped it, left
5 it, whoever came in there. Well, as the police were supposed
6 to, they collected that cap. They sent it down to SLED for
7 DNA analysis. There were a couple hairs on there. It didn't
8 come back -- they didn't -- it didn't come back to Mr.
9 Thomas.

10 The government also -- what the police also did is they
11 at some point were able to lift what they thought was a
12 fingerprint off of a FedEx envelope within that safe and, for
13 whatever reason, the police decided it wasn't available for
14 analysis and it was never sent to -- down to SLED. Perhaps
15 if it had been, we wouldn't be in this position right now and
16 they could've found the real robbers.

17 Make no mistake about it. Despite anything that happens
18 during this trial, the State is asking you to deprive a man
19 of his liberty and convict him of armed robbery because --
20 because these people said so. The State has adopted these
21 people's allegations, what these people have accused him of
22 doing. They've adopted it as their own. It's not right and
23 he's not guilty.

24 THE COURT: Call your first witness.

25 MR. WHITE: Thank you, Judge. At this time, the State

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 would call Anastacia Kauth.

2 THE COURT: All right.

3 (WHEREUPON, there was a pause in the proceedings until
4 the witness entered the courtroom, after which the
5 proceedings resumed as follows.)

6 THE CLERK: Yes, ma'am, if you'll come up to the front
7 of the courtroom, please. If you will, please place your
8 left hand on the Bible and raise your right hand. Do you
9 swear the testimony you give in this case to be the truth,
10 the whole truth, and nothing but the truth, so help you God?

11 THE WITNESS: So help me God.

12 THE CLERK: Okay. Just walk around and have a seat and
13 state your full name for the record.

14 THE WITNESS: My name is Anastacia Elizabeth Kauth.

15 ANASTACIA KAUTH, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WHITE:

19 Q: Good morning, Anastacia. How are you doing?

20 A: Good morning. I'm all right. How about you?

21 Q: Good. A little bit nervous?

22 A: Yeah.

23 Q: All right. Well, just listen to my questions and answer
24 and everything will be fine. Okay? I'll walk you right
25 through it.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Okay.

2 Q: Anastacia, where are you from?

3 A: I'm from here in Florence.

4 Q: And how long have you lived here in Florence?

5 A: I've lived in Florence all my life. I moved to Georgia
6 a couple years back for one year with my mom.

7 Q: Now, back in May of 2016, where were you living at that
8 time?

9 A: In Cedar Terrace Trailer Park on National Cemetery Road.

10 Q: And how long had you been living there?

11 A: About two years.

12 Q: Who all was living there with you?

13 A: It was me and my fiancé and our newborn daughter.

14 Q: And how old was the newborn at that time?

15 A: She was born [REDACTED].

16 Q: And, you know, what -- what was life like in Cedar
17 Terrace?

18 A: It was -- I mean we were -- I don't know. We were just
19 young. I was working at Belk. I was on maternity leave and
20 then I had come back from work at Belk. I mean I had come
21 back from maternity leave and our parents lived with us for a
22 while and then we had just kicked them out because they were
23 arguing over the baby. So it was me and William by ourself.

24 Q: You said you were young. How young were you?

25 A: I was 21.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: Twenty-one? And I'm going to show you, if you don't
2 mind, what's been marked as State's Exhibit 23 for
3 identification purposes only. I want you to tell me,
4 Anastacia, just briefly, do you recognize that as Cedar
5 Terrace?

6 A: Yes.

7 Q: Is that National Cemetery Road right there?

8 A: Yes, sir.

9 Q: Does that depict a number of trailers in that trailer
10 park?

11 A: Yes, sir.

12 Q: Okay. Now, you mentioned you were working at Belk; is
13 that correct.

14 A: Yes, sir.

15 Q: And what was William doing? Did he have a job?

16 A: He was working part-time for Bucky Godbold.

17 Q: And what did he do for Bucky Godbold?

18 A: He -- like, it was weed control, chemicals. They
19 sprayed -- sprayed for weeds.

20 Q: Okay. And how about in the trailer park? Did he do
21 anything to make some money?

22 A: Yes, sir. He sold some stuff on the side.

23 Q: And --

24 A: He was like a little convenience store.

25 Q: A little convenience store?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Yeah.

2 Q: Now, let me ask you this. Was he the only convenience
3 store out there?

4 A: No, sir.

5 Q: I'm going to ask you about the general, you know, people
6 living in that trailer park. Were there would you say a good
7 number of people who didn't have transportation?

8 A: Yes, sir. There was a lot.

9 Q: Would you sell items to those people who didn't have
10 transportation at that time?

11 A: Yes, sir.

12 Q: Did they find that your, you know, convenience store as
13 you called it was convenient?

14 A: Yes, sir.

15 Q: And did you sell beer?

16 A: Yes, sir.

17 Q: Did William sell, like, potato chips?

18 A: Yes, sir.

19 Q: Candy bars?

20 A: Yes, sir.

21 Q: That sort of thing?

22 A: Yes, sir.

23 Q: Was it normal to have somebody come by and knock on the
24 door?

25 A: Yes, sir.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: And people stopped by often?

2 A: Yes, sir.

3 Q: Let me ask you this. When you had the baby, did things
4 slow down?

5 A: I put a sign up on the door and told them not to knock
6 and, like, everybody that knew us knew if the sign was up do
7 not knock on the door because I had a daughter and she was
8 there.

9 Q: And that brings me to my next question. You know, were
10 you wanting William to maybe stop selling that stuff?

11 A: Yes. We were trying.

12 Q: But it was a convenient thing for the people living
13 there?

14 A: Yes, sir.

15 Q: Now, you mentioned that people would come by often. Did
16 anybody ever come by with guns in hand?

17 A: Yes, sir. One time.

18 Q: Okay. Was that on May 28th, 2016?

19 A: Yes, sir.

20 Q: Prior to that time, had anybody ever come to that
21 location with a gun in their hand?

22 A: No, sir.

23 Q: Did anybody come with bandannas on their face?

24 A: May 28th.

25 Q: How about prior to that?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Oh, no. No, sir.

2 Q: All right. If you could, walk us through what happened
3 to you on May 28th, 2016. Was that a Saturday?

4 A: I believe it was. Yes, sir.

5 Q: And what were y'all doing that morning when you woke up?

6 A: I was -- I got up and I was feeding the baby and William
7 and our friend, Carson, were getting ready to go buy a blower
8 motor for our vehicle.

9 Q: Okay. Who is Carson?

10 A: Carson was William's best friend at the time.

11 Q: Okay. And William is your --

12 A: He's my fiancé.

13 Q: Okay. And your child is William's child?

14 A: Yes, sir.

15 Q: All right. Was it a pretty quiet Saturday?

16 A: Yes, sir.

17 Q: Was it a pretty normal Saturday for you guys?

18 A: Yes, sir.

19 Q: If you could, tell us what happened next?

20 A: Okay. I woke up and I got on the couch and I was
21 feeding my daughter. Carson -- he was sitting on the other
22 couch. He was scrolling his newsfeed on his phone. William
23 was going to the bathroom, like he did every morning. He
24 went -- he goes straight to the bathroom after he gets out of
25 the bed and he sits there on his Facebook for an hour at a

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 time.

2 He was sitting there and there was a knock on the door
3 and I had my sign up still because we had just woke up and
4 when there was a knock on the door, Carson got up and he went
5 to the door. He opened the door and there was a guy. He was
6 just -- there was no mask or anything.

7 So he asked for a beer and when Carson turned around to
8 go get the beer, you know, the guy was -- everything was good
9 and he handed him the beer and he was, like, do you have
10 change and he handed him a \$20 bill. Carson turned around to
11 get the change and two other guys walked up at that point and
12 they had bandannas over their, like, lower part of their
13 faces. They all three pulled out guns and had guns and they
14 told us where's Billy at. They told Carson to get on the
15 ground.

16 One of them immediately went to the back of the house to
17 where William was and then one of them was standing there
18 with a gun on Carson and told him to get on the ground. One
19 of them had the gun pointed towards me and my daughter.
20 William was fighting the one in the hallway. That was the
21 one with no mask. That was the guy that I had never seen him
22 before. The bigger guy -- he was still --

23 Q: Anastacia, I want to stop you for just a second.

24 A: Okay.

25 Q: Is it hard for you to recount that?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: It is, a little bit.

2 Q: All right. Nothing to worry about. I just want to stop
3 you and make sure that we're all on the same page. You said
4 Billy?

5 A: He's William.

6 Q: Does William go by Billy?

7 A: He did. That's what everybody but me calls him. I'm
8 the only one that calls him William.

9 Q: Okay. And now, at this point in your story, they had
10 William, Billy, down on the ground?

11 A: Yes.

12 Q: Did they have him tied up at all?

13 A: No, not yet.

14 Q: You said not yet?

15 A: Not yet.

16 Q: Did they have Carson down on the ground?

17 A: Yes, sir.

18 Q: Okay. And just nice and slow, I know it's difficult,
19 but just pick up from there.

20 A: Okay. They started asking where the money was and
21 everything and William told them it was in his wallet. So
22 they went to my bedroom, which is -- our bedroom, which is in
23 the very back of the house behind where William and the guy
24 were fighting at and, at this point, the bigger guy walks to
25 the hallway with William to -- I guess towards the hallway to

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 keep an eye on him and make sure he doesn't go anywhere. The
2 other guy walks to the back room, grabs the wallet, and he's,
3 like, this ain't the money. This isn't what I'm looking for.

4 He's, like, I'm going to go to the safe and, at that
5 time, William is, like, I'm not giving you the code to my
6 safe. He's, like, give me the code to your safe or I'm going
7 to kill your little girl and, of course, he gives them the
8 code to the safe at that point.

9 Whatever he has covering his face, a bandanna or
10 whatever it is, it falls down a little bit, like enough where
11 you could -- I guess he uses that to open the safe. I'm not
12 sure if it was that or what it was, but the bandanna was off
13 his face at this point. I could see his face. He's --

14 Q: I'm going to stop you there. Okay?

15 A: Okay.

16 Q: I know it's hard.

17 A: I know.

18 Q: You said bandanna or whatever it is?

19 A: It was a bandanna, I believe.

20 Q: Okay.

21 A: A do-rag. I'm not sure what it was.

22 Q: What did it look like?

23 A: It was black. I do remember that, but I don't remember
24 what it was exactly.

25 Q: All right. Was it thin?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Yes.

2 Q: All right. Now, that particular individual --

3 A: Uh-huh.

4 Q: Although at that point, he had that, you know, cloth
5 around his face, could you tell whether or not he had any
6 facial hair?

7 A: Yes. Once the bandanna fell down, I could see
8 everything.

9 Q: Now, I want to stop you though. Before it comes down --

10 A: Oh.

11 Q: -- could you tell?

12 A: I could. I could, yes. I couldn't see anything here.
13 I couldn't see anything up here. I could see his hair. I
14 could see everything. I just couldn't see, like, from the
15 mouth down.

16 Q: Okay. You could see his hair on top?

17 A: Uh-huh.

18 Q: Okay. You could tell he had facial hair; is that
19 correct?

20 A: Yes, sir.

21 Q: All right. Now, once that piece of cloth falls down,
22 could you describe his -- you know, what he looked like?

23 A: Yes, sir.

24 Q: Tell us just a little bit about that.

25 A: He was light-skinned. He has nappy hair kind of. He

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 had braids or it was braids, dreads, cornrows. I'm not sure
2 what it is, what it looked like at that point. I just know
3 it was, like, kind of nappy I guess is what you would call
4 it. He was small and he had some weird facial hair going,
5 like a long goatee beard or something.

6 Q: Okay. Was his general description unkempt?

7 A: Yes.

8 Q: Okay. Now, once that cloth falls down, did he make any
9 effort to put it back up?

10 A: No, sir. I believe that is what he used to get into the
11 safe to keep his fingerprints from being on the safe is what
12 I feel like.

13 Q: All right. And just walk us through what happened from
14 that point?

15 A: He started putting the code into the safe and he was --
16 William gave him the code and he put it in and I guess he was
17 in a rush and he was getting really frustrated and William
18 was, like, man, you're not helping either one of us here.
19 You know, just calm down. I'm giving you the code to the
20 safe. Just put it in.

21 And the guy -- he put it in finally and they got into it
22 and it was like they were the happiest people alive. They
23 started -- they went and grabbed a bag off of the rocking
24 chair. It was a gift bag, and they started shoving
25 everything they could in there and they were, like, well,

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 where's the money at, where's the money, because they
2 couldn't see the money. All they could see was guns and they
3 were taking the guns.

4 We told him what box the money was in. They immediately
5 -- they just took the whole box. It had a copy of my kid's
6 Social Security card in it. It had everything in it. They
7 took it all. Then --

8 Q: Now, I'm stopping you just so the jury, you know, has
9 all of the information. Okay? Now, inside that safe, you
10 mentioned guns; is that correct?

11 A: Yes, sir.

12 Q: Were most of those guns -- did they belong to William?

13 A: All of them except for one. Well, mine and Carson's
14 gun.

15 Q: Okay. Now tell me -- now, Carson -- is that William's
16 best friend?

17 A: Uh-huh.

18 Q: One of those guns belonged to you; correct?

19 A: That's right.

20 Q: What kind of gun was it?

21 A: It was a pink SCCY 9-millimeter.

22 Q: A pink one, huh?

23 A: Uh-huh.

24 Q: And how about did you have any ammunition or anything in
25 the -- in the safe?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Yes, sir. We always kept ammunition because we liked to
2 go shooting for fun. We'd go down to the Godbold's land and
3 we'd shoot at targets. We'd target practice.

4 Q: Okay. And you mentioned cash. Do you recall about how
5 much?

6 A: It was close to \$3,000 because we had not long got our
7 tax return back, and William at that point didn't believe in
8 the bank. He thought his safe was safer than the bank.

9 Q: All right. Now, you described everything in the safe.
10 And did they take most everything that was in there?

11 A: They did. They left a shotgun and I don't remember the
12 -- it was something else and it wasn't -- it was a gun, but
13 it wasn't, like, a good -- it was a shotgun of some kind and
14 a hunting rifle I believe is what was left.

15 Q: Did it seem to you that they took as much as they could
16 carry?

17 A: Oh, yes. More than they could carry really, I felt
18 like.

19 Q: Now, during this whole ordeal, did they say anything
20 that stuck out to you in your mind?

21 A: They told us that it was an inside job and that we had
22 no friends around here. That's what they told us.

23 Q: And when they said friends around here, did you take
24 that to mean the trailer park?

25 A: Yes.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: Okay. If you could, just start from where you were and
2 tell us what happened next?

3 A: They -- well, I don't remember at what point, but at
4 some point, I had my phone under the blanket and I tried to
5 call 9-1-1. This is before they got into the safe and the
6 bigger guy -- he said, no, ma'am, and he caught me calling
7 them and I couldn't even get the -- hit the send button
8 before he caught me. He came and took my phone. He said --
9 I said, please, don't take it, it's got all my pictures of my
10 baby. She was just born. He said I'll leave it outside and,
11 at that point, that was when the light-skinned guy with the
12 braids or dreads told him, no, we can't do that. You can't
13 leave it outside. So the --

14 Q: And the light-skinned guy, is that the guy who
15 threatened to kill your child?

16 A: Yes, it is.

17 Q: And is that the one that you just described?

18 A: Yes, it is.

19 Q: Okay. If you could, continue.

20 A: Okay. Once they got into the safe and they started,
21 they just were chunking everything they could. They were
22 making a mess. They were just dropping everything. They
23 made sure they had all the guns. They were shoving them in
24 their pants and the bag because this was a small gift bag,
25 nothing really. I mean they -- what fit in the gift bag was

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 -- I believe they were putting the ammunition and the money
2 in the gift bag and they were just stuffing the guns
3 everywhere.

4 Once they got what they needed, they were, like, timing
5 themselves. They were, like, okay, we've got to leave.
6 We've got to go. We've got to go. It got close to time for
7 them to leave and they told -- the light-skinned guy told his
8 buddies, like, tie Billy up, tie Billy up. So they knew his
9 name. He knew -- you know, he knew he would fight back. He
10 told them to tie him up. So he then took off his belt --
11 some -- one of them, I don't know which one, took off their
12 belt and they used their belt to tie him up in the hallway,
13 and they left. They went -- they ran out the front door.
14 One of the guys dropped something on his way out. The bigger
15 guy dropped the magazine.

16 Q: All right. Now, I'm going to stop you right there. You
17 said he dropped the magazine?

18 A: He dropped it.

19 Q: Was it one from the safe?

20 A: Yes.

21 Q: Okay.

22 A: And it's -- I believe they got it. The cops got it.

23 Q: All right. Now, during this whole -- how long would you
24 say this whole ordeal lasted, if you had to guess?

25 A: Probably 15 minutes, maybe 20, 20 at the max.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: All right. This is an obvious question, but were you
2 scared?

3 A: Yes, I was. I couldn't stop just whispering to my baby
4 that everything was going to be okay.

5 Q: What was she doing that whole time?

6 A: She was just sitting there. She didn't know anything
7 was going on. I was feeding her.

8 Q: About then -- if this happened over the course of 15
9 minutes, about how long did you get a look at, you know, the
10 guy who threatened to kill her?

11 A: Probably about 10 minutes at least.

12 Q: Okay. So for 10 minutes, you could see him without
13 anything obstructing his face?

14 A: Yes, sir.

15 Q: Now, when you -- you know, when you're in a state of
16 fear like that, were you particularly attentive?

17 A: Yeah. I was -- I was trying to do every -- if they told
18 me to, like, not say anything, they told me to be quiet, I'd
19 be quiet. I wouldn't say anything. I was -- you know, I
20 screamed as soon as they walked in the door the first time
21 and that let William know something was wrong and, before he
22 could even get up and check if I was -- I mean they were back
23 there. He was back there. So --

24 Q: Now, even though you saw two of them, did you have any
25 idea who they were?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 MR. WHITE: Madam Clerk, do we have -- there's a box of
2 tissues right there, Anastacia.

3 BY MR. WHITE:

4 A: No, sir. I didn't know who they were.

5 Q: At that point, you know, do you all call law
6 enforcement?

7 A: Yes, sir.

8 Q: And does law enforcement arrive?

9 A: Yes. They get there fairly quick.

10 Q: Okay. And then you, you know, tell them all -- all --

11 A: I told them everything that I know, you know,
12 everything. They know that we sell beer at this point. They
13 know everything. I told them I didn't know who they were. I
14 gave them the description of what they were wearing that day.
15 I don't remember that description now, but I told them
16 exactly what they looked like that I could tell. I told them
17 everything.

18 Q: And then one individual in particular, the one that, you
19 know, walked up to you and threatened to kill your baby, will
20 you ever forget that face?

21 A: No, sir.

22 Q: When that cloth dropped down, is that something that
23 will be in your memory forever?

24 A: Yes, sir.

25 Q: All right. Now, it's my understanding that on February

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 23rd, 2017, you saw that face again; is that correct?

2 A: That's correct.

3 Q: And were you on Facebook at that time?

4 A: I was.

5 Q: Now, how often do you get on Facebook?

6 A: I get up every morning and I -- you know, I talk to
7 William if he's here. If he's at work, I just get up and if
8 my daughter is awake already, then I'll talk to her, but if
9 not, I scroll my Facebook newsfeed.

10 Q: Now, do you follow a lot of people on Facebook?

11 A: Yes, I do.

12 Q: Do you have a lot of friends and family that you connect
13 with on Facebook?

14 A: Yes, sir.

15 Q: Like everybody?

16 A: Yes, sir.

17 Q: Do you follow local and national news on your Facebook?

18 A: Yes, sir.

19 Q: How about weather? Do you follow weather on your
20 Facebook?

21 A: Yes, sir.

22 Q: Do you have any hobbies or anything like that?

23 A: Yes, sir. I follow Cricut pages for my little sticker
24 machine and my heat press and stuff.

25 Q: I'm going to have to plead ignorance. What's a Cricut?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: It's a little machine that prints, like, stickers and I
2 can make decals for -- like, car decals and stuff like that.
3 I can make shirts and cups and stuff.

4 Q: Now, on that date when you're scrolling through Facebook
5 like you do every day, did you see a face that you found
6 familiar?

7 A: Yes, sir, I did.

8 Q: And is it a face that you won't soon forget?

9 A: Yes, sir.

10 Q: Is it the face of the man who put that gun on you and
11 threatened to kill your child?

12 A: Yes, sir, it is.

13 Q: Now, I'm going to show you what's been marked for
14 identification purposes as State's Exhibit 10. Okay. Don't
15 tell me anything about it. All right, Anastacia? But I just
16 want you to tell me if you can recognize this photograph?

17 A: Yes, sir.

18 Q: And is this the photograph that you saw when you were
19 scrolling through Facebook?

20 A: Yes, sir.

21 Q: And is it a fair and accurate depiction of the face of
22 the man who threatened to kill your child?

23 A: Yes, sir.

24 Q: And is this the photograph -- I'm sorry.

25 A: It's okay.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: I apologize.

2 A: It's not your fault. You can keep going now. I'm good.
3 I've got it together.

4 Q: Is this the photograph that you then pointed out to law
5 enforcement?

6 A: Yes, sir.

7 Q: And is this the photograph of Rasheem Thomas?

8 A: Yes, it is.

9 MR. WHITE: Judge, at this time, I would move State's
10 Exhibit 10 into evidence.

11 THE COURT: Any objection?

12 MR. SWILLEY: No objection.

13 THE COURT: Without objection, State's 10 is in
14 evidence.

15 (WHEREUPON, State's Exhibit Number 10, photograph, was
16 admitted into evidence.)

17 MR. WHITE: Okay. And, Judge, I would ask for
18 permission to publish to the jury?

19 THE COURT: Yes, sir.

20 BY MR. WHITE:

21 Q: And again, is that the photograph you saw on Facebook?

22 A: Yes, it is.

23 Q: And at that time, how certain were you that that's the
24 man who threatened to kill your child?

25 MR. SWILLEY: Objection, Your Honor.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: A hundred percent.

2 THE COURT: All right.

3 MR. SWILLEY: Your Honor, I think it's improper
4 bolstering of the witness.

5 THE COURT: No. He can ask that question. Overruled.

6 BY MR. WHITE:

7 Q: How certain were you that that's the man who threatened
8 to kill your child?

9 A: A hundred percent.

10 Q: And how certain are you that he was one of the three
11 that came in and robbed you of your possessions with a deadly
12 weapon?

13 A: A hundred percent.

14 Q: And what -- once you saw that photograph, did you -- was
15 William in the house?

16 A: Yes, sir, he was.

17 Q: Did he -- did you call him in?

18 A: I did.

19 Q: And at that point, did he recognize --

20 MR. SWILLEY: Objection to hearsay.

21 MR. WHITE: That's -- that's fair, Judge. I'll -- I'll
22 withdraw.

23 THE COURT: Sustained.

24 BY MR. WHITE:

25 Q: Did you then call law enforcement?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: Yes, I did.

2 Q: And did you point them in the direction of that -- that
3 photograph?

4 A: Yes, sir.

5 MR. WHITE: Judge, I would beg the Court's indulgence
6 for just one moment.

7 THE COURT: Yes, sir.

8 MR. WHITE: Okay. I --

9 THE BAILIFF: Excuse me just a minute.

10 MR. WHITE: Yeah.

11 THE BAILIFF: Judge, one of these are not working.

12 THE COURT: Which? The one on the end here?

13 THE BAILIFF: Right here.

14 MR. WHITE: That's all right. We can deal with that at
15 next break, Judge. I'll pass it around so everybody can see
16 it.

17 THE COURT: All right. That's fine.

18 BY MR. WHITE:

19 Q: Now, Anastacia, when these men come in, what time of day
20 was it?

21 A: It was first thing in the morning. We were not -- we
22 were not normally awake at this time. It was, like, 10
23 o'clock in the morning.

24 Q: Okay. And what -- what were the lighting conditions
25 inside the home?

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 A: We had the lights on. I believe we had just turned the
2 lights on because we were waking up because they had the
3 alarm set to get up early.

4 Q: And you could see well?

5 A: Yes, sir.

6 Q: And you had no problem seeing all three of these
7 individuals?

8 A: No, sir.

9 Q: But most particularly the one who threatened to kill
10 you?

11 A: No, sir.

12 Q: And you didn't have any problem then in identifying that
13 photograph; correct?

14 A: No, sir.

15 Q: And now I'm going to ask you -- the man who came in and
16 robbed you and threatened to kill your child that you
17 identified in that photograph, is that man present in the
18 courtroom today?

19 A: I can't see.

20 MR. WHITE: Judge, I'm going to slide this out of the
21 way. She indicates she's unable to see. I'm going to see if
22 this thing will move.

23 BY MR. WHITE:

24 Q: Can you see everybody in the courtroom now?

25 A: Yes, sir.

ANASTACIA KAUTH - DIRECT BY MR. WHITE

1 Q: Can you see the individual?

2 A: Yes, sir.

3 Q: Could you point him out to me, please?

4 A: He's right there in the blue shirt.

5 Q: And in the blue shirt seated with his defense attorney?

6 A: Yes, sir.

7 MR. WHITE: Judge, I'd like to let the record reflect
8 that Anastacia has just identified Mr. Rasheem Thomas in the
9 courtroom today.

10 THE COURT: All right. So noted.

11 MR. WHITE: And I beg the Court's indulgence for just
12 one moment.

13 Anastacia, thank you so much. Okay. Please answer any
14 questions the defense may have.

15 CROSS-EXAMINATION

16 BY MR. SWILLEY:

17 Q: Good morning, Ms. Kauth.

18 A: Good morning.

19 Q: Ms. Kauth, a lot of people were coming in and out of
20 your -- out of your home at that time; is that correct?

21 A: Yes, sir.

22 Q: All right. And I think you testified on direct
23 examination that there was a sign that said go or don't knock
24 or something in the nature?

25 A: Yes, sir.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Okay. And you don't have -- you don't have any
2 knowledge as to why that's not documented by the police, do
3 you?

4 A: No, sir.

5 Q: Okay. And I think that, you know, people would go in
6 and out and they would be purchasing beer and cigarettes and
7 whatnot; is that correct?

8 A: Yes, sir.

9 Q: All right. And we can agree that Mr. Rasheem Thomas had
10 never been in your house before that; is that correct?

11 A: Yes, sir.

12 Q: I'm sorry. I'm hard of hearing. Can you speak in the
13 microphone?

14 A: Yes, sir.

15 Q: Thank you. Mr. Rasheem Thomas has never been in your
16 house since then; correct?

17 A: No, sir.

18 Q: All right. We can agree with that? And you don't know
19 Mr. Thomas, do you?

20 A: No, sir. Besides from that date.

21 Q: Okay. Now, during the -- during when these people were
22 in your house, I think you said that you gave descriptions to
23 the police about them?

24 A: Yes, sir.

25 Q: Okay. And I think you said that you told the police

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 that one person came in and was not wearing a mask and two
2 other people were wearing masks; is that correct?

3 A: Bandannas.

4 Q: Okay. You don't have any reason why that wouldn't be
5 documented by the police, do you?

6 A: No.

7 MR. WHITE: Judge, I am going to object, and I'm fine
8 with this line of questioning. I would just ask that Mr.
9 Swilley save the questions about what law enforcement did or
10 did not do for law enforcement. She has no knowledge of what
11 is documented and what is not.

12 THE COURT: Okay. Well, you can ask her what she saw
13 and observed, but you can't ask her what law enforcement did
14 unless she actually watched it.

15 MR. SWILLEY: Correct, Your Honor. I was asking if she
16 knew of any reason why they wouldn't have that information.

17 THE COURT: That's a fair question.

18 MR. SWILLEY: Okay.

19 MR. WHITE: And, Judge, my objection is that does call
20 for speculation on her part. She doesn't have any knowledge.

21 THE COURT: Well, I mean I think her response is she
22 doesn't know or have any reason.

23 MR. WHITE: All right.

24 THE COURT: So I think that's appropriate.

25 BY MR. SWILLEY:

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: And, Ms. Kauth, you never gave any kind of written or
2 recorded statement to law enforcement, did you?

3 A: I don't believe so. I don't think so.

4 Q: Okay. And that -- that day at your house is the only
5 face-to-face you ever had with any police in this case; is
6 that correct?

7 A: Yes, sir. I believe.

8 Q: Okay.

9 A: And -- yes.

10 Q: Okay. And you weren't able to give the police any kind
11 of facial descriptions about any the people that were in your
12 home that day; is that correct?

13 A: I don't remember. I think I did tell them some of what
14 I saw because I know I gave them a description of the one guy
15 because I saw him with his face --

16 Q: Okay.

17 A: -- out.

18 Q: Okay. And you described -- and you described the one
19 who was at the safe and the bandanna came down as being
20 light-skinned?

21 A: Fairly light-skinned. He wasn't -- like, he was not
22 dark.

23 Q: Okay. That's light-skinned for an African-American
24 person?

25 A: Yes.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Okay. And I think you testified on direct that the
2 individual used a bandanna to open the safe?

3 A: He put -- yes, sir. He put it over his fingers. I
4 guess that's what you would call it, over his hands so that
5 way he wasn't using his hands to touch the safe.

6 Q: Okay. You told -- you yourself told law enforcement
7 that the person used a shirt to do -- to open the safe; is
8 that correct?

9 A: I don't know what he used, but I'm pretty sure it was
10 the bandanna. That's what I told them to start with, I
11 thought. I don't know.

12 Q: Okay. All right. Nobody in the house ever called
13 anybody else by any names or any nicknames; is that correct?

14 A: No, sir. Only they knew Billy is the only name that was
15 ever called.

16 Q: Okay. And you told -- and it is true that you did tell
17 the police that you -- all the property that was taken; is
18 that correct?

19 A: Yes, sir.

20 Q: All right. And it's your testimony you told the police
21 that \$3,000 was taken?

22 A: Yes, sir.

23 Q: Okay. And I think you told the police that there were
24 guns taken as well; is that correct?

25 A: Yes, sir.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Okay. And I think that based on your recollection you
2 contend there were other people that saw anybody fleeing the
3 scene?

4 A: I know there was somebody else. Living in a trailer
5 park, there's always people outside.

6 Q: Okay. But you can't -- you don't know of any -- isn't
7 it true you don't know of any individuals that saw anybody
8 that was fleeing the scene; is that correct?

9 A: No. No, sir.

10 Q: Okay. And you would agree with me that \$3,000 as a
11 bunch of money; is that correct?

12 A: Yes, sir.

13 Q: And I think you testified on direct that one of the
14 people said that this was an inside job and that you didn't
15 have any friends in that particular trailer park?

16 A: Yes, sir.

17 Q: Okay. And I think you testified someone took your cell
18 phone as well; is that correct?

19 A: Yes, sir.

20 Q: All right. And you were not able to track that cell
21 phone?

22 A: No, sir.

23 Q: The cell phone hasn't been recovered, has it?

24 A: No, sir.

25 Q: All right. And it's your testimony that you told law

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 enforcement that Billy or William, as you call him, was tied
2 up; is that correct?

3 A: Yes. They didn't -- he got -- he was able to get out by
4 himself. Like, he wasn't -- they tied him up enough to where
5 he would struggle so they could get out of the house.

6 Q: Okay. And based on -- based on your recollection, no
7 one with the police took any belts with them, did they?

8 A: Yes. They have it, the police, and there was a hat that
9 was also left.

10 Q: About the belt though, were any belts taken as evidence?

11 A: Yes, sir.

12 Q: Okay. And you're certain you told the police and 9-1-1
13 everything that happened; is that correct?

14 A: Yes, sir.

15 Q: And, Ms. Kauth, it was your testimony that you called
16 the police directly after the people left your house?

17 A: Yes, sir.

18 Q: All right. Was that before or after you got any other
19 illegal stuff out of the house?

20 A: It was as soon as it happened.

21 Q: Okay. It's your testimony you didn't move anything out
22 of the house?

23 A: Yes, sir.

24 Q: That's your testimony?

25 A: Yes, sir.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Now, this sign you put on the door, was that on the door
2 at the time the police arrived?

3 A: Yes, sir. I believe so.

4 Q: All right. Did anybody -- anybody take that sign off
5 the -- off the house?

6 A: No, sir.

7 Q: Okay. And you continued to live in this house with this
8 sign several weeks -- months after this; is that correct?

9 A: It was two weeks.

10 Q: Okay. I think you testified that William and these
11 assailants had fought; is that correct?

12 A: Can you say that again?

13 Q: They fought?

14 A: Yeah, like tussled kind of. They didn't, like, fist
15 fight or anything. It was the guy -- he smacked him in the
16 back of the head with a gun one time because William was --
17 they were tussling on the ground.

18 Q: Okay. Just so I'm correct, you testified that Mr.
19 Brookins was pistol whipped?

20 A: Yes, sir.

21 Q: All right. And there wasn't any blood that was
22 anywhere; is that correct?

23 A: No, sir. He didn't hit him hard. He barely hit him,
24 but I guess it was just to get his attention to make him
25 stop.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Okay. There weren't any kind of physical revelations of
2 any kind of bruising or of any assault; correct?

3 A: It was in the back of his head.

4 Q: Okay.

5 A: I mean you wouldn't be able to see anything.

6 Q: Okay. Nobody sought any medical care after this --
7 after this happened; is that correct?

8 A: No, sir. We were not worried about any medical care.
9 We were worried about trying to find our stuff.

10 Q: Okay.

11 A: And find out who did it.

12 Q: Okay. I think Billy -- you testified Billy grabbed a
13 shotgun and ran out of the house chasing somebody trying to
14 find out what happened?

15 A: He ran out with a shotgun -- out of the house with a
16 shotgun to see if anybody was still out there, but they were
17 gone.

18 Q: Okay. And you remained in the house; is that correct?

19 A: Yes, sir.

20 Q: Now, the entire time you remained on the couch while
21 this was going on; is that correct?

22 A: Yes, sir.

23 Q: Okay. And during that time, you didn't get up from the
24 couch; is that correct?

25 A: No, sir.

ANASTACIA KAUTH - CROSS BY MR. SWILLEY

1 Q: Okay. Now, you didn't get up and walk around; is that
2 correct?

3 A: Yes, sir.

4 Q: Ms. Kauth, you never looked at any kind of photo lineups
5 after the -- or as a part of the investigation in this case,
6 did you?

7 A: No, sir.

8 Q: Okay.

9 MR. SWILLEY: One moment, Your Honor.

10 Nothing further, Your Honor.

11 THE COURT: Anything on redirect?

12 MR. WHITE: Just briefly, Judge.

13 REDIRECT EXAMINATION

14 BY MR. WHITE:

15 Q: Just a few questions, Anastacia, and we'll be done.

16 That money that was in the safe, was it your testimony that
17 that came from tax returns?

18 A: Yes, sir.

19 Q: Now, did you stay in that trailer park after this
20 happened?

21 A: We stayed until we -- like, until we could find
22 something else and afford to move out because all of our
23 money was gone and I was working at the time. William was
24 working part-time. Our parents ended up loaning us some
25 money and helping us get out of there. We got out of there

ANASTACIA KAUTH - REDIRECT BY MR. WHITE

1 in about two weeks. I would say roughly two weeks after.

2 Q: Now, when did you want to get out of there?

3 A: That day. I didn't want to stay there anymore. We
4 slept with stuff under the doorknob and William slept with
5 his shotgun beside him.

6 Q: All right. Did it change you for that two weeks?

7 A: Yes, sir. It still changed my life today.

8 Q: But two weeks and you were out?

9 A: Yes, sir.

10 Q: All right.

11 MR. WHITE: Judge, I beg the Court's indulgence. Thank
12 you, Anastacia. I have nothing further.

13 THE WITNESS: Okay.

14 THE COURT: Anything on recross?

15 MR. SWILLEY: Nothing further, Your Honor.

16 THE COURT: Thank you very much, ma'am. You may step
17 down.

18 We're going to take a short break.

19 MR. WHITE: Yes, sir.

20 THE COURT: Ladies and gentlemen, we're going to take a
21 short break. If you need anything, let Ms. Francis know.

22 Have no conversation about the case. All right? Talk
23 about anything else. Just don't talk about the case. And
24 we'll get -- we'll start back in just a few minutes.

25 Everyone else remain seated while the members of the

1 jury are excused.

2 (WHEREUPON, the jury exited the courtroom at 11:30 a.m.)

3 THE COURT: All right. We'll be at ease for a little
4 bit.

5 MR. WHITE: Thank you, Judge.

6 (WHEREUPON, there was a break in the proceedings from
7 11:30 a.m. until 11:50 a.m., after which the proceedings
8 resumed as follows.)

9 THE COURT: Yes, sir.

10 MR. WHITE: Judge, one thing. I would ask that, if at
11 all possible, that Anastacia Kauth be allowed -- now that her
12 testimony has concluded, be allowed to sit in the audience.

13 THE COURT: Is there any -- do you see any need to
14 recall her?

15 MR. SWILLEY: Judge, I would just ask that she just
16 can't -- she can't -- as far as the sequestration order, she
17 can't be recalled as a witness. If that's -- if that's the
18 State's position, I'm fine with her staying in here.

19 THE COURT: That would -- I think that would preclude
20 you from calling her as a -- recalling her.

21 MR. WHITE: Right, Judge.

22 THE COURT: I don't know that you would, but I'm just --

23 MR. WHITE: And at this point, I know foresee it and --

24 THE COURT: Or you -- and I apologize. I didn't mean to
25 interrupt you.

1 MR. WHITE: No problem.

2 THE COURT: But I mean that wouldn't preclude you from
3 recalling her if it was involving an issue that no one had
4 testified to.

5 MR. WHITE: Correct.

6 THE COURT: But certainly, the whole purpose for the
7 sequestration is that she can't piggyback off someone else's
8 testimony and, obviously, that would --

9 MR. WHITE: Yes, sir.

10 THE COURT: -- preclude anything like that.

11 MR. WHITE: Yeah. I'm just trying to accommodate her
12 status as a victim and, Judge, I don't foresee any scenario
13 where we'd have to call her. So I --

14 THE COURT: It's rare.

15 MR. WHITE: Yes, sir.

16 THE COURT: I can't tell you if I've ever seen it
17 happen, but -- so, you know, with that caveat, if she wants
18 to remain in, she can.

19 MR. WHITE: Okay. Thank you very much, Judge.

20 THE COURT: Okay. Ready to bring the jury in, folks?

21 MR. SWILLEY: Yes, Your Honor.

22 MR. WHITE: And just from a timing standpoint, Judge, I
23 think I'm -- and if it's all right with you, Your Honor, I'll
24 put up one more and ask that we break for lunch.

25 THE COURT: Okay. Sounds good.

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 (WHEREUPON, the jury entered the courtroom at 11:52
2 a.m.)

3 THE COURT: All right. Ladies and gentlemen, if you
4 recall when we took the break, we were on the State's case
5 and would recognize Mr. White for the State's next witness.

6 MR. WHITE: Thank you, Judge. At this time, the State
7 would call Lt. Michael Brumbles.

8 THE COURT: All right. Tell them to bring Lt. Brumbles
9 in.

10 (WHEREUPON, there was a pause in the proceedings until
11 the witness entered the courtroom, after which the
12 proceedings resumed as follows.)

13 THE COURT: All right. Lieutenant, if you would, please
14 come around the witness stand to be sworn, sir.

15 THE CLERK: Please place your left hand on the Bible and
16 raise your right hand. Do you swear the testimony you give
17 in this case to be the truth, the whole truth, and nothing
18 but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full name
21 for the record.

22 THE WITNESS: Michael Brumbles.

23 MICHAEL BRUMBLES, being first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 BY MR. WHITE:

2 Q: Lt. Brumbles, how are you doing this morning?

3 A: Good, sir. How about you?

4 Q: Where are you employed?

5 A: Florence County Sheriff's Office.

6 Q: How long have you been employed there?

7 A: Seventeen years.

8 Q: And in what capacity are you currently employed?

9 A: A lieutenant on patrol.

10 Q: And what, you know, different things have you done in
11 your time with the Sheriff's Office?

12 A: I've done a little bit of it all.

13 Q: Seen it all?

14 A: Yes, sir.

15 Q: Now on April -- excuse me -- May 28th, 2016, what
16 capacity were you employed at that time?

17 A: A lieutenant on patrol.

18 Q: And on that date, did you receive a call to respond to
19 an incident location regarding this particular incident?

20 A: I did, sir.

21 Q: What was the address on that call?

22 A: [REDACTED] National Cemetery Road, Lot [REDACTED], in Florence.

23 Q: And is that in Florence County?

24 A: Yes, sir, it is.

25 Q: And how did you receive that call?

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 A: Via 9-1-1 dispatch.

2 Q: And what was the nature of the -- of the -- the call? I
3 mean what were you responding to, to the best of your
4 knowledge?

5 A: If I'm not mistaken, it was a break-in in progress, a
6 home invasion.

7 Q: Okay. And what did you find when you arrived on scene?

8 A: When I got there, it was -- I saw the three victims and
9 the child there on scene and just started trying to gather
10 information from them about where the suspects possibly went.

11 Q: Did you speak to victim Anastacia Kauth?

12 A: Yes, sir.

13 Q: Did you speak to victim Carson McArthur.

14 A: Yes, sir.

15 Q: And did you speak to victim William Brookins?

16 A: Yes, sir.

17 Q: How many officers were on scene? Did you arrive alone?
18 How did -- how many were on scene when you arrived?

19 A: I got there first. That's why I ended up with the
20 report.

21 Q: Now, how many ended up trickling in?

22 A: I'm not even sure. That's been three years ago. I
23 couldn't tell you how --

24 Q: Yes, sir.

25 A: -- many was there.

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 Q: Were there several?

2 A: Yes, sir.

3 Q: Did forensics arrive on scene?

4 A: Yes, sir. After I called -- after I called him and the
5 investigator.

6 Q: And who would've been there for the forensics unit?

7 A: Sgt. Clendenin.

8 Q: Now, how about Investigator Thomas McFadden? Did he
9 arrive on scene?

10 A: Yes, sir.

11 Q: Were you the only officer that spoke to the victims on
12 scene?

13 A: To my knowledge, yes, sir, and some more might have
14 spoke with them as far as trying to find a suspect direction
15 of travel or that kind of stuff.

16 Q: Did you see the victims conversing with any other
17 officers while you were on scene?

18 A: They may have spoke with one or two of them while we
19 were trying to gather everything and get the information.

20 Q: Okay. Now, I want to talk to you a little bit about
21 your police report. Now, everything that you do on scene,
22 you can't put all of that in a report, can you?

23 A: That's correct. It's kind of hard to do all of it.

24 Q: Do you just try to put a summary of your involvement in
25 any particular case?

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: And is that what you feel you did here?

3 A: Yes, sir.

4 Q: Did you -- or did they -- did the victims in this case
5 give you a description of the individuals involved?

6 A: Yes, sir. It's in my report.

7 Q: Okay.

8 MR. WHITE: Judge, I beg the Court's indulgence for just
9 one moment.

10 BY MR. WHITE:

11 Q: Now, of the property that was reported stolen, were
12 there guns?

13 A: Yes, sir.

14 Q: Now, do guns have serial numbers?

15 A: Yes, sir.

16 Q: Now, how about ammunition. Does ammunition have a
17 serial number?

18 A: No, sir.

19 Q: So is it -- you know, if you're trying to track down
20 property, is it easier to track down a gun or ammunition?

21 A: It's the gun.

22 Q: Gun? So although in this case if ammunition and guns
23 would've been stolen, the guns, because of the serial number,
24 may have been the only things that make it into your report;
25 is that correct?

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: Now, did the victims -- did they give you a description
3 of the individuals involved? I think I may have already
4 asked you that.

5 A: Yes, sir.

6 Q: And what was that general description?

7 A: According to my report, there was one black male that
8 had a thin beard wearing a brown shirt, another one was a
9 black male wearing a black hat with a neck and ponytail, and
10 another one had a hood on. Really didn't have a description
11 of that one. It looks like I only got a description of two
12 of them in the report.

13 Q: Now, did you get a description of a vehicle they may
14 have left in?

15 A: It says that they spoke with the neighbor. According to
16 my report, it says that -- it said that whenever they ran --
17 when Mr. Brookins chased the subjects, when he got to the
18 front he talked to some females and they stated that they got
19 into a vehicle and left, but could not tell what kind of
20 vehicle it was.

21 Q: Now, if you were able to get that vehicle description,
22 could you then issue a BOLO?

23 A: Yes, sir.

24 Q: And can you tell us what is a BOLO?

25 A: Be on the lookout for.

MICHAEL BRUMBLES - DIRECT BY MR. WHITE

1 Q: Okay.

2 A: You can BOLO it to different agencies and other officers
3 that's working.

4 Q: But is it fair to say now at this time without a
5 description of the vehicle, you have very little to go on but
6 the, you know, victims' identification --

7 MR. SWILLEY: Objection to leading, Your Honor. He's
8 leading the witness.

9 THE COURT: All right. Sustained to any leading.
10 BY MR. WHITE:

11 Q: What all did you have to go on at this point?

12 A: As to suspects, nothing other than a direction of
13 travel, they went towards the road, and the description of
14 them.

15 MR. WHITE: I beg the Court's indulgence.

16 Judge, I have nothing further.

17 Or, Lt. Brumbles, I have nothing further. Please answer
18 any questions the defense may have.

19 THE WITNESS: All right. Thank you.

20 CROSS-EXAMINATION

21 BY MR. SWILLEY:

22 Q: Good morning, Lt. Brumbles.

23 A: Good morning, sir.

24 Q: And, Lt. Brumbles, just to be clear, you were the first
25 officer to respond to this -- this incident; is that correct?

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 A: Yes, sir.

2 Q: Okay. And I think when you got there you got all of the
3 information you could get relevant to the investigation from
4 the witnesses; is that correct?

5 A: Yes, sir.

6 Q: Okay. And at that point, I think you -- you gathered
7 all the information and you produced the incident report Mr.
8 White mentioned; is that correct?

9 A: Correct, sir.

10 Q: Now, Lt. Brumbles, you've been to the Criminal Justice
11 Academy, haven't you?

12 A: Yes, sir.

13 Q: All right. And when you were at the Justice Academy,
14 you learned how to do all sorts of stuff that police are
15 supposed to do; right?

16 A: Pretty much.

17 Q: All right. Writing an incident report is one of those;
18 correct?

19 A: Yes, sir.

20 Q: All right. Now, on that incident report that you put,
21 everything on that report has got to be correct; right?

22 A: For the most part, yes, sir.

23 Q: Well, I mean it's true to say that everything on the
24 incident report has to be true; correct?

25 A: Yes, sir. It's all true.

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

- 1 Q: To the best of your knowledge?
- 2 A: Yes, sir.
- 3 Q: And it's got to be -- it's got to be complete; right?
- 4 A: Yes, sir.
- 5 Q: You can't leave out important stuff; isn't that true?
- 6 A: Yes, sir.
- 7 Q: Okay. And everything in there has got to be precise as
- 8 well; is that correct?
- 9 A: Yes, sir.
- 10 Q: All right. You don't want to leave anything in any kind
- 11 in general terms to confuse anybody later on; is that
- 12 correct?
- 13 A: Correct.
- 14 Q: Okay. And when you were at the Justice Academy, the
- 15 Criminal Justice Academy in Columbia, you learned how to do
- 16 that; correct?
- 17 A: Correct.
- 18 Q: All right. And you've been a law enforcement officer
- 19 for how long?
- 20 A: Seventeen years.
- 21 Q: Seventeen years?
- 22 A: Yes, sir.
- 23 Q: And you've written many incident reports; right?
- 24 A: Yes, sir.
- 25 Q: All right. This wasn't your first one; is that correct?

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 A: Right.

2 Q: Okay. And I think on this report you got -- you got a
3 correct address, don't you? [REDACTED] East National Cemetery
4 Road?

5 A: Yes, sir.

6 Q: All right. You've got the correct dispatch time; is
7 that right?

8 A: Yes, sir.

9 Q: All right. And that dispatch time it appears is 11:08;
10 right?

11 A: Yes, sir.

12 Q: All right. I think you got the correct arrival time.
13 That arrival time is 11:17 a.m.?

14 A: Yes, sir.

15 Q: All right. And you got the correct depart time. That's
16 12:51 p.m.; is that correct?

17 A: Yes, sir.

18 Q: And if I'm -- correct me if I'm wrong. That's an hour
19 and 34 minutes you remained on scene; is that correct?

20 A: Either myself or whenever the last unit left. Yes, sir.

21 Q: Okay. Well, that's the entire amount of time that law
22 enforcement remained on scene?

23 A: Correct. Yes, sir.

24 Q: Okay. And during that time, I think you -- in your
25 report, it makes mentions -- it makes mention of a mask,

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 people wearing masks; correct?

2 A: Yes, sir.

3 Q: All right. Nowhere in the report does it make mention
4 of any bandannas; is that correct?

5 A: No, sir. It just said a mask.

6 Q: Okay. And I think nowhere does it make mention that any
7 kind of mask or bandanna fell off so that one of the people
8 could see someone's face; is that correct?

9 A: That's correct.

10 Q: Okay. And when you draft these reports, I mean you
11 don't have a time limit to draft them, do you?

12 A: What do you mean?

13 Q: I mean you -- I mean you can take all the time necessary
14 to do the report that you need; right?

15 A: No, sir. We have to get it in before the end of the
16 shift.

17 Q: All right. And the shift is 12 hours; right?

18 A: Yes, sir.

19 Q: All right. So you have the remaining time to the end of
20 your shift, which would have been 7 o'clock?

21 A: I think I got off then around four. So I had about
22 three hours.

23 Q: Three hours to write the report; right?

24 A: Yes, sir.

25 Q: Okay. And when you're finished, you read the report to

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 yourself, don't you?

2 A: Yes, sir.

3 Q: All right. And you were satisfied that this report
4 included every important fact that needed to be in there;
5 right?

6 A: Yes, sir.

7 Q: Okay. And in the -- in your report, it doesn't make any
8 mention of anybody being tied up with a belt; correct?

9 A: No, sir. Not in my report. No, sir.

10 Q: Okay. Your report doesn't make mention of anybody's
11 skin tone or light or darkness of any skin; is that correct?

12 A: No, sir.

13 Q: Okay. It makes mention of someone wearing a blue hat;
14 is that correct?

15 A: Yes, sir.

16 Q: All right. And that hat was later recovered on scene;
17 is that correct?

18 A: I'm not sure if that hat was recovered, but a hat was
19 recovered in the hallway.

20 Q: Okay. And I think the -- it makes mention of the person
21 wearing the blue hat having a, quote/unquote, nappy ponytail?

22 A: Yes, sir.

23 Q: Okay. And it makes mention of the individual that came
24 up first having the thin beard and brown shirt; correct?

25 A: Yes, sir.

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 Q: All right. And then it goes on to make mention that the
2 other guys came in with masks on; is that correct?

3 A: Yes, sir.

4 Q: Okay. And you did -- you did a pretty thorough job. We
5 can agree that you did a pretty thorough job taking down the
6 inventory list of the firearms that were stolen, didn't you?

7 A: From what he told me, yes, sir.

8 Q: From what they told you?

9 A: Yes, sir.

10 Q: You gave the corresponding serial numbers of these
11 firearms, didn't you?

12 A: That's correct.

13 Q: All right. You took the time to make sure you got those
14 right?

15 A: Yes, sir.

16 Q: And then on the third page of your report we've got a
17 list of property that was taken; is that correct? Page 3 of
18 three?

19 A: Yes, sir.

20 Q: And you listed those firearms as being taken; is that
21 correct?

22 A: I'm not sure if I did the actual property part or who
23 put the actual property part in the actual report. I could
24 have done that.

25 Q: You don't recall?

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 A: I don't recall whether I did that or not.

2 Q: All right. When you make an incident report, you want
3 to make sure that you have all of the property listed in that
4 report; correct? If you can?

5 A: Yes, sir. It's all in the narrative. Yes, sir.

6 Q: Right. And that's so that, you know, whoever gets the
7 property taken can get it back; is that right?

8 A: That's correct.

9 Q: And that's so that the investigator can know what was
10 stolen; is that correct?

11 A: Yes, sir.

12 Q: And that's so he can try to get that -- recover that
13 property; is that correct.

14 A: Correct. Yes, sir.

15 Q: And that's also so that the State or the prosecutor can
16 know what was stolen; is that correct?

17 A: That's correct.

18 Q: And that's to help them prosecute the case; right?

19 A: Yes, sir.

20 Q: Okay. And we can agree that you wouldn't want to leave
21 out property that was stolen on any incident reports or
22 documentation; right?

23 A: That's correct.

24 Q: You wouldn't want to do that; is that correct?

25 A: That's correct.

MICHAEL BRUMBLES - CROSS BY MR. SWILLEY

1 Q: Okay. And, Lt. Brumbles, just to be -- just to be
2 clear, this is the only report that you did in this case; is
3 that right?

4 A: That's right.

5 Q: Okay. And after you left that day and did your report,
6 that's the extent of your involvement in this case; is that
7 correct?

8 A: Absolutely.

9 Q: All right.

10 MR. SWILLEY: Thank you very much, sir.

11 THE WITNESS: Yes, sir.

12 THE COURT: Anything on redirect?

13 MR. WHITE: Just briefly.

14 REDIRECT EXAMINATION

15 BY MR. WHITE:

16 Q: Lt. Brumbles --

17 A: Yes, sir.

18 Q: When you arrive as a first responder, what are your
19 duties when you arrive on scene?

20 A: First off, make sure everyone is okay, make sure
21 everyone doesn't need any medical attention, make sure
22 everybody is safe, make sure the scene is secure for
23 everybody else that needs to come in and do what we need to
24 do.

25 Q: So it's fair to say that security is your number one

MICHAEL BRUMBLES - REDIRECT BY MR. WHITE

1 priority?

2 A: Absolutely. Yes, sir.

3 Q: And you're not an investigator, are you?

4 A: No, sir.

5 Q: Is it the job of the investigator who arrives on scene
6 to find out exactly, you know, what happens?

7 A: Yes, sir. They always go a little bit further beyond
8 than my scope of my incident report. It's normally just a
9 basic and then the investigator normally follows up with more
10 information from there.

11 Q: Now, during your 17 years, have you responded to a fair
12 number of home invasions?

13 A: Yes, sir.

14 Q: A fair number of burglaries?

15 A: Yes, sir.

16 Q: A fair number of armed robberies, grand larcenies, and
17 other, you know, property crimes?

18 A: Yes, sir.

19 Q: A lot of violent property crimes?

20 A: Yes, sir.

21 Q: A lot of -- there's been a lot of reports that you
22 include the property that was stolen?

23 A: Yes, sir.

24 Q: How often would you say that the report that you submit
25 at a later date there's a discovery that more property than

MICHAEL BRUMBLES - REDIRECT BY MR. WHITE

1 you initially thought was actually stolen?

2 MR. SWILLEY: Objection. That's on the basis of
3 relevance, Judge.

4 MR. WHITE: It's in direct --

5 THE COURT: It's in direct questioning along the line of
6 questions that you had.

7 MR. SWILLEY: He's asking about other situations in
8 other cases not pertaining to this case.

9 THE COURT: He can -- I'll overrule it. He can allow --
10 if he can answer it. I don't know.

11 THE WITNESS: Yes, sir.

12 BY MR. WHITE:

13 A: Normally what happens on a larceny or a burglary or a
14 break-in or vandalism to a vehicle, if they find stuff later
15 on throughout the course of their -- after we leave, they're
16 in shock, they just got robbed or whatever the case may be,
17 other stuff comes up and were told then to notify the records
18 division or another officer to come back at a later date and
19 add that to the incident report.

20 MR. WHITE: I beg the Court's indulgence.

21 Thank you, Lt. Brumbles.

22 THE COURT: Anything on recross?

23 RECROSS-EXAMINATION

24 BY MR. SWILLEY:

25 Q: Just one question.

MICHAEL BRUMBLES - RECROSS BY MR. SWILLEY

1 A: Yes, sir.

2 Q: Lt. Brumbles, in this particular case, was a
3 renotification of what was stolen done by the alleged victims
4 in this case?

5 A: I have no idea.

6 Q: All right.

7 MR. SWILLEY: Thank you.

8 THE WITNESS: All right, sir.

9 THE COURT: Thank you very much, sir.

10 THE WITNESS: Thank you.

11 THE COURT: You may step down.

12 Any objection to Lt. Brumbles being excused?

13 MR. WHITE: None whatsoever, Judge.

14 MR. SWILLEY: No, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 MR. WHITE: Judge, at this time, if it would please the
17 Court, this may be an appropriate time for a lunch break.

18 THE COURT: Okay. All right. It's about twelve minutes
19 after twelve; so we'll do that.

20 Ladies and gentlemen, I'm going to ask you, if you
21 would, to be back here at a quarter to two. That gives you a
22 little over two -- excuse me -- a little over an hour and a
23 half. So please be back here at 1:45.

24 While you're on your lunch break, enjoy your break. Let
25 your minds rest. Do not allow anyone to talk with you about

1 the case. Do not talk about the case with anyone and then
2 when you return from lunch and we have everyone back, we'll
3 pick up at that point.

4 So everyone else please remain seated.

5 Ladies and gentlemen, we'll see you back here at 1:45.

6 (WHEREUPON, the jury exited the courtroom at 12:12 p.m.)

7 THE COURT: All right. Anything we need to take up
8 before we break?

9 MR. WHITE: Judge, just briefly. As you're, you know,
10 aware, Judge, Anastacia has testified. The victims, William
11 Brookins and Carson McArthur, will testify this afternoon. I
12 have provided their criminal histories to defense counsel. I
13 do want to pass those up to you, Judge.

14 THE COURT: Okay.

15 MR. WHITE: I don't believe -- I don't see anything that
16 could be used, but I do want to pass it up to you.

17 THE COURT: Would you concur with that, Mr. Swilley?

18 MR. SWILLEY: Judge, I think that -- is Mr. Brookins --
19 I think he had a shoplifting conviction on there. I think
20 that's under 609. Is that not a crime of dishonesty?

21 THE COURT: That would be.

22 MR. WHITE: Not anymore. I think the case law points in
23 the opposite direction. It used to be, you know, anybody who
24 steals or lies, but the case law changed that. So I think
25 that is outside the scope.

1 THE COURT: All right. Well, you can look at that over
2 the break.

3 MR. SWILLEY: I'll check and see. It's been a minute.

4 THE COURT: Yeah. Here's -- here's another thing. I
5 keep forgetting Anastacia's last name.

6 MR. WHITE: Kauth.

7 THE COURT: Pronounce it?

8 MR. WHITE: I pronounce it Kauth.

9 MS. KAUTH: It's Kauth.

10 MR. WHITE: Yes, sir.

11 THE COURT: Couch?

12 MR. WHITE: Kauth.

13 THE COURT: Kauth.

14 MR. WHITE: Yes, sir. K-a-u-t-h.

15 THE COURT: All right. Ms. Kauth, during the lunch
16 break, it's extremely important that you have no conversation
17 with anyone about your testimony.

18 MS. KAUTH: Yes, sir.

19 THE COURT: You're not allowed to discuss your
20 testimony. We have -- the witnesses have been sequestered,
21 as you're aware. It would be highly improper for you to have
22 any conversation with any other witness about your testimony.

23 MS. KAUTH: Yes, sir.

24 THE COURT: So that needs to completely be off-limits.

25 MS. KAUTH: Yes, sir.

1 THE COURT: I would highly suggest that y'all don't even
2 discuss the case during lunch.

3 MS. KAUTH: No, sir, we won't.

4 THE COURT: All right. Okay.

5 MR. WHITE: Thank you very much, Judge.

6 THE COURT: Now, we're going to start back at 1:45. I
7 will be back. I will be here. So if y'all need anything
8 before then, just let me know and we'll deal with it. Okay?

9 MR. SWILLEY: Yes, Your Honor.

10 THE COURT: All right.

11 MR. WHITE: Thank you, Judge.

12 (WHEREUPON, there was a break in the proceedings from
13 12:15 p.m. until 2:08 p.m., after which the proceedings
14 resumed as follows.)

15 THE COURT: All right. Folks, anything we need to take
16 up before we bring the jury back out?

17 MR. SWILLEY: I think there is, Your Honor.

18 THE COURT: Okay.

19 MR. SWILLEY: I think we talked about the prior
20 conviction of Mr. Brookins for shoplifting. Your Honor,
21 based upon my admittedly limited research, I think that State
22 v. Shaw states that a prior conviction for shoplifting can be
23 used to impeach a witness under Rule 609(a)(2) of our Rules
24 of Evidence. Your Honor, I think under 609(a)(2) if a crime
25 is viewed as one involving dishonesty, the Court must admit a

1 prior conviction because prior convictions involving
2 dishonesty or false statement must be admitted regardless of
3 the probative value or prejudicial effect.

4 I don't -- I think that conviction is within 10 years,
5 if I'm not mistaken.

6 THE COURT: And you said that was State v. Shaw?

7 MR. SWILLEY: Yes, sir. I think Mr. White mentioned
8 something about State v. Cheeseborough [ph] maybe had
9 reversed that, but I can't -- I can't find anything online
10 about that. I don't know, but this is the -- the South
11 Carolina Rules of Evidence book published -- or 13th edition,
12 copyright 2018.

13 MR. WHITE: I may be incorrect about the actual case
14 that set it out, but it was in 2016 that, you know, there was
15 a notable change to the law that said that now a crime of
16 moral turpitude -- you have to have -- the element of the
17 crime has to be one where there's some fraud or some deceit,
18 some lying, not one where --

19 THE COURT: And stealing wouldn't do that?

20 MR. WHITE: And that was the distinction that the Court
21 made. They changed it. And before, you know, shoplifting or
22 any type of theft, the implication was always that there was
23 some element of lying or deceit in there, but the State -- or
24 the case that I'm talking about, the Court made a distinction
25 where it has to be an element of the crime. Cases like

1 forgery, Judge, they have given false pretenses where there
2 is a misrepresentation as an actual element.

3 MR. SWILLEY: And, Your Honor, I think it would appear
4 that the Shaw case specifically identifies shoplifting as a
5 crime that can be used for impeachment under 609(a)(2).

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 THE COURT: Can I look at that, Mr. Swilley?

9 MR. SWILLEY: Your Honor, I believe that the -- do you
10 need a citation?

11 THE COURT: Yeah.

12 MR. SWILLEY: Okay. Your Honor, that's at 328 S.C. 454.

13 THE COURT: 454?

14 MR. SWILLEY: 454. That's correct. Court of Appeals,
15 1997.

16 THE COURT: Okay.

17 (WHEREUPON, there was a pause in the proceedings, after
18 which the proceedings resumed as follows.)

19 THE COURT: I think -- I think State v. Johnson, which
20 cites Shaw, does provide that a witness may be impeached
21 under Rule 609(a)(2) with a prior shoplifting conviction.
22 The Court of Appeals decided this exact issue and it says
23 that it's common sense.

24 It tells us that anyone who in violation of the
25 shoplifting statute takes and carries away a storekeeper's

1 merchandise with the intent to deprive the owner of its
2 possession without paying for it or alters or removes the
3 label or price tag. It goes further. It says for the
4 purposes of depriving the storekeeper of its value acts
5 dishonestly.

6 In here, it says because the trial judge erred in
7 preventing the respondent from impeaching the witness with
8 her shoplifting conviction, the Court must determine whether
9 or not that was prejudicial, that it would prejudice the
10 respondent. So right now, it appears to me that you would be
11 allowed.

12 MR. WHITE: Judge, if you don't mind me asking, what
13 year is that?

14 THE COURT: 1999.

15 MR. WHITE: And I -- you know, I could be wrong, Judge,
16 and I have been wrong in the past and if I am wrong here, I'd
17 be the first one to say it.

18 THE COURT: Well, you'll have to show it to me.

19 MR. WHITE: I've got the smartest guys in the building
20 right now. John Jepertinger is on the case, and I think
21 we've got some time before we call that particular witness,
22 Judge.

23 THE COURT: I think some of us would take issue that
24 Jepertinger is the smartest guy in the building.

25 MR. WHITE: I thought so.

1 THE COURT: We do have some time, I'm assuming. I don't
2 know when the witnesses are going to take the stand.

3 MR. WHITE: I think we've got at least one witness in
4 between. So hopefully, they'll find that and pass it up to
5 you, Judge, and Mr. Swilley.

6 THE COURT: Okay. Well, I'm open to whatever the
7 current law is.

8 MR. WHITE: Yes, sir.

9 THE COURT: That's what I'm looking for. So --

10 MR. WHITE: Yes, sir. And my apologies for not having
11 that ready.

12 THE COURT: All right. Anything else we need to take up
13 then before we get started back?

14 MR. WHITE: Nothing from the State, Judge.

15 MR. SWILLEY: No, Your Honor.

16 THE COURT: All right. Let's bring the jury out,
17 please.

18 (WHEREUPON, the jury entered the courtroom at 2:18 p.m.)

19 THE COURT: All right. Ladies and gentlemen, welcome
20 back. I hope everyone had a good lunch break and are ready
21 to get started back.

22 If you'll recall when we broke, the State was presenting
23 their case and so we'll pick up where we left off and
24 recognize Mr. White for the State's next witness.

25 MR. WHITE: Thank you, Judge. At this time, the State

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 would call Sgt. Andrew Clendenin.

2 THE COURT: All right. Sergeant, if you'd please come
3 around to be sworn, sir.

4 THE CLERK: Sir, if you will, please place your left
5 hand on the Bible and raise your right hand. Do you swear
6 the testimony you give in this case to be the truth, the
7 whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated and state your full name
10 for the record.

11 THE WITNESS: Andrew Robert Clendenin.

12 ANDREW CLENDENIN, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WHITE:

16 Q: Sgt. Clendenin, where are you employed?

17 A: At the Florence County Sheriff's Office.

18 Q: And how long have you been employed there?

19 A: Since 2000.

20 Q: And in what capacity?

21 A: I'm currently a sergeant with the crime scene unit or
22 known as forensics.

23 Q: And what do you do in that unit? What's your role when
24 you arrive on scene?

25 A: To collect, document, and preserve evidence until the

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 time it's used again.

2 Q: Now, in this particular case, did you become involved in
3 an investigation at the address [REDACTED] E. National Cemetery
4 Road in Florence?

5 A: That is correct.

6 Q: And did you arrive at that incident location on May 28th,
7 2016?

8 A: Yes, I did.

9 Q: And what did you do upon your arrival?

10 A: Upon my arrival, I received information from Lt. Michael
11 Brumbles about the situation and then I went on to
12 documentation of the scene using photographs.

13 Q: And your role on that scene, as well as every scene, is
14 to document and collect?

15 A: That's correct.

16 Q: Now, I'm going to show you what's been marked for ID
17 purposes as State's Exhibit 1 through 9 and I'm going to ask
18 you to just take a look at them and tell me if you recognize
19 those photographs?

20 A: I do recognize those photographs.

21 Q: Are they a fair and accurate depiction of the crime
22 scene as you arrived?

23 A: Except for two of the details were missing when I got
24 there that had already been collected.

25 Q: Now, were those -- and we'll get into that. Were those

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 two items turned over to you?

2 A: Yes, they were.

3 Q: And did you process those items?

4 A: Yes, I did.

5 Q: Did you turn whatever you could over to SLED at that
6 time?

7 A: Yes, I did.

8 Q: Okay.

9 MR. WHITE: I'd move, Judge, if I could, State's Exhibit
10 1 through 9 be admitted into evidence.

11 THE COURT: All right. Any objection?

12 MR. SWILLEY: No objection, Your Honor.

13 THE COURT: All right. State's 1 through 9 are in
14 evidence without objection.

15 (WHEREUPON, State's Exhibits 1 through 9, photographs,
16 were again admitted into evidence.)

17 BY MR. WHITE:

18 Q: Now, Sgt. Clendenin --

19 THE COURT: If that monitor is still out -- is it still
20 out?

21 THE BAILIFF: Yes, Judge.

22 THE COURT: Can -- can you see the other monitors?

23 A JUROR: Uh-huh.

24 THE COURT: Okay.

25 MR. WHITE: Judge, I'd be happy to after just pass them

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 around.

2 THE COURT: And by the way, folks, also, you will have
3 these -- these items are in evidence; so you will have them
4 in the jury room when the time comes. So -- all right.

5 BY MR. WHITE:

6 Q: Now, is that the incident location picture there?

7 A: Yes, it is.

8 Q: Now, State's Exhibit 2, is this the safe in question?

9 A: Yes, it was.

10 Q: State's Exhibit 3, does this photo depict inside the
11 safe?

12 A: Yes, it does.

13 Q: And State's Exhibit 4, does it show the same?

14 A: Same, just different angle.

15 Q: Now, I noticed there is a FedEx package in the top of
16 that safe. Did you do anything with that particular FedEx
17 package?

18 A: I did. I processed it for latent prints.

19 Q: Now, I want to ask you a little bit about fingerprints.
20 You know, we get caught up in the CSI world, but let's talk
21 about fingerprints for a little bit. Does it depend on the
22 surface that you're pulling the prints from?

23 A: It does. The smoother the surface, the better the
24 print.

25 Q: Now, this particular surface on the FedEx package, how

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 would you describe it?

2 A: It was a glossy paper; so it held the oil very, very
3 well.

4 Q: Now, is it difficult to pull a print off of a surface
5 like that?

6 A: Not uncommon for glossy paper to have prints on it.

7 Q: Now, were you able to pull a print off of the FedEx
8 package?

9 A: Yes, I was.

10 Q: And were you able to determine anything from that print?

11 A: No, I was not. The quality of the print was unable to
12 match against anything else.

13 Q: Now, I'm going to show you State's Exhibit 5. Now,
14 what's pictured here, I guess, in the bottom left corner and
15 then up here beside the foot of that officer?

16 A: That's just inside the doorway.

17 Q: And those two items, it looks like a box there with some
18 writing on it?

19 A: Yes. A military ammo can.

20 Q: That's an ammo can?

21 A: Yes, it is.

22 Q: And how about the box beside the left foot of that
23 officer?

24 A: It's a cardboard box of ammunition.

25 Q: Now, I'm going to show you what's been marked and

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 entered into evidence as State's Exhibit 6. What do we have
2 there?

3 A: That is a baseball cap.

4 Q: Now, did you do anything with that baseball cap?

5 A: Yes, I did. It was forwarded on to the South Carolina
6 Law Enforcement Forensic Division.

7 Q: And were there any -- anything that was able to be done
8 with that particular ballcap?

9 A: It was identified to four unidentified males had wore
10 the cap.

11 Q: All right. And did Rasheem Thomas's DNA match anything
12 on that particular ballcap?

13 A: No, it did not.

14 Q: Now, I'm going to show you State's Exhibit 7. Where is
15 that located in the house?

16 A: If you're walking into the front door, it's just to the
17 right.

18 Q: Does it appear as though there's been some sort of
19 scuffle in that area?

20 A: It does.

21 Q: Now, I'm going to show you State's Exhibit 8 briefly and
22 then a close-up on 9. If you could, tell me what that item
23 is there, Sgt. Clendenin?

24 A: That is a rifle magazine given to me by Lt. Brumbles
25 that he collected from the front yard.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: Now, did you attempt to do anything -- let me ask you
2 this. Were you able to ascertain how that item came to be in
3 the front yard?

4 A: I was advised that it was dropped in the front yard.

5 Q: Okay. And were you able to determine if that belonged
6 to the victims in this case?

7 A: I processed it, but I was unable to get any latents on
8 that particular item.

9 Q: Tell me about -- and what do we -- what do we call that
10 again? What is that? What is the shorthand for that thing?

11 A: It's referred to as a PMAG, put out by Magpul Company.
12 It holds 5.56 caliber rounds. It has a 30-round magazine.

13 Q: Now, the surface on that, is that hard to get
14 fingerprints off of?

15 A: It's a very textured composite plastic and it's very
16 hard, yes.

17 Q: Is it hard to get touch DNA off of that?

18 A: Yes, it would.

19 Q: Now, despite what we see on television, is it difficult
20 to get touch DNA off of most items?

21 A: It's very difficult. It depends on how long the item
22 has been worn by the subject or anything.

23 Q: Now, I do want to show you, if I could -- well, let me
24 ask you this. Once that scene was wrapped up, was a search
25 warrant then executed at the home of Rasheem Thomas?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 A: Yes, it was.

2 Q: And were you involved in the execution of that search
3 warrant?

4 A: Yes, I was.

5 Q: And was your involvement in your forensic capacity?

6 A: Yes, it was.

7 Q: Okay.

8 A: It was documentation of the search warrant.

9 Q: Just like if you arrived on any scene?

10 A: Yes. Documentation and collection.

11 Q: Now, I'm going to show you what's been marked for ID
12 purposes only as State's Exhibit 11 through 21. If you
13 could, Sgt. Clendenin, tell me if you recognize those
14 photographs?

15 A: I do recognize those are the photographs that I took of
16 the scene.

17 Q: And so you took these photographs?

18 A: Yes, I did.

19 Q: And the items depicted therein, did you collect those
20 items?

21 A: Yes, I did.

22 Q: Are those items that are depicted in these photographs
23 here in the courtroom today?

24 A: Yes, they are.

25 Q: And are they -- the photographs a fair and accurate

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 depiction -- I know I just asked you this -- of the items as
2 you collected them and as they sit here in the courtroom?

3 A: Yes, they are.

4 MR. WHITE: Judge, I'd move State's Exhibit 11 through
5 21 into evidence, if I could, please.

6 MR. SWILLEY: Just briefly?

7 THE COURT: Yeah.

8 MR. SWILLEY: No objection.

9 THE COURT: All right. Without objection, those items
10 are in evidence without objection.

11 (WHEREUPON, State's Exhibits Number 11 through 21,
12 photographs, were admitted into evidence.)

13 BY MR. WHITE:

14 Q: All right. Sgt. Clendenin, I'm going to show you what's
15 been marked for ID purposes as State's Exhibit 11. As I go
16 through these, if you could just give us a brief description
17 of what those are. Some of these have shorthand
18 abbreviations on them. So if you could just kind of
19 elaborate for us? State's Exhibit 11, Sgt. Clendenin, what
20 do we have there?

21 A: That is an open box of Speer Gold Dot .40 caliber Smith
22 & Wesson 165 grain jacketed hollow-point rounds.

23 Q: And those were recovered from the residence of Mr.
24 Rasheem Thomas?

25 A: That is correct.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: And how about State's Exhibit 12?

2 A: That is a photograph of the plastic tray with the
3 bullets inside once I opened that package we viewed just a
4 second ago.

5 Q: All right. Now, State's Exhibit 13?

6 A: That is a plastic piano can commonly used to store items
7 inside.

8 Q: Is it in your practice commonly stored -- commonly used
9 to store ammunition?

10 A: It is.

11 Q: And is State's Exhibit 14 a close-up of the same?

12 A: That is correct.

13 Q: Now, did you then remove those items to go through them
14 one by one, the items contained in that piano can as you
15 described?

16 A: Yes, I did.

17 Q: Are these those items?

18 A: Those are the items found inside the box.

19 Q: Are these some of the items as well?

20 A: That is correct.

21 Q: And then I'm just going to show you a picture there. It
22 has two items there in the right-hand corner that, I believe,
23 we're seeing for the first time, those black objects. Sgt.
24 Clendenin, what are those?

25 A: Just a second. I've got one Glock magazine containing

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 seven rounds and one 5.56 PMAG.

2 Q: And again, you touched on it earlier. Tell us what a
3 PMAG is?

4 A: It's a plastic composite that holds 5.56 caliber rounds
5 for a rifle.

6 Q: Is it commonly used with an AR-15?

7 A: Yes, it is.

8 Q: Is this a close-up of the same?

9 A: Yes, it is.

10 Q: Now, do you notice any distinctive marks on that PMAG,
11 as you call it, the one on the right-hand side of the
12 photograph?

13 A: The top right-hand side had some kind of marring on it
14 that caused it to bend the composite plastic, kind of scuffed
15 it up a little bit.

16 Q: And State's Exhibit 19, we're seeing a bag here, but it
17 looks like you're drawing our attention to the item that's
18 therein. What do we have?

19 A: You have a handrail inside of a box.

20 Q: Let's stop there and tell us what a handrail is because
21 you had to educate me.

22 A: It is a front handrail for the AR.

23 Q: And kind of walk us through that. I mean what is a
24 handrail?

25 A: Handrail -- it's common for an AR barrel to heat up when

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 fired. So you use a heat shield with a plastic guard over
2 top, commonly referred to as a front handrail.

3 Q: And can those be replaced? Does an AR-15 come with a
4 stock handrail?

5 A: Yes. It comes with a stock composite plastic. A lot of
6 people switch them out for aluminum, different side rails,
7 whatever the customer enjoys.

8 Q: Now, is this the same thing but pulled out of the bag?

9 A: That is correct. That's a picture of the outside of the
10 box.

11 Q: Now, is this a picture of the inside of the box?

12 A: That is correct.

13 Q: Let me ask you what's pictured inside that box, is that
14 a stock handrail for an AR-15?

15 A: It is a stock handrail.

16 Q: So you wouldn't go to the -- to the store and pull this
17 off the shelf and find this inside of it; is that correct?

18 A: No, you would not.

19 Q: Okay. So that is the original in there, but this
20 photograph here would be the aftermarket?

21 A: That is correct.

22 Q: And again, all of those items were recovered from the
23 home of Rasheem Thomas?

24 A: That is correct.

25 Q: And, you know, in your experience, you've been doing

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 this a while, is that a lot of ammunition?

2 MR. SWILLEY: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. WHITE:

5 Q: Well, let me ask you this way. Did we go through
6 photographs that depicted bullets from several different
7 calibers?

8 A: Yes, we did.

9 Q: So it's not like all those could've been used on one
10 gun?

11 A: No, they could not.

12 Q: All right. I'm going to show you State's Exhibit 24.

13 If you could, tell me what's inside that bag?

14 A: Would it be okay to open the bag?

15 Q: Yeah. That would be great. I'll tell you what. If you
16 don't mind, Sgt. Clendenin, let's glove up for that purpose.

17 A: Here we have a brown paper bag containing one 9-
18 millimeter round, one .45 round, one box containing 25 .40
19 caliber rounds.

20 Q: And where was -- where were those rounds recovered
21 during the execution of your search warrant?

22 A: On the top of the dresser in the hallway --

23 Q: Okay.

24 A: -- of the residence. Here, we have two 9-millimeter
25 rounds inside of a paper bag.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: Where were those items recovered?

2 A: They were inside of the shed out in the backyard of the
3 residence. We have the PMAG.

4 Q: Is that the magazine that you referenced with the -- the
5 marking?

6 A: Yes, I did. The mark on --

7 Q: And --

8 A: -- the top right-hand side here.

9 Q: And I know you're covered it, but I just want to make
10 sure we're clear. Where was that particular item recovered
11 from?

12 A: It was in the -- it was on top of the dresser inside the
13 home.

14 Q: Inside the home of Rasheem Thomas?

15 A: In the hallway. A Glock .45 caliber magazine with
16 rounds.

17 Q: All right. And then I'm just going to ask you -- it
18 might save you some time. The rest of what's in that box,
19 are those the ammunition and the bullets that were recovered
20 and photographed in this series of photographs?

21 A: Yes, they are.

22 Q: Okay. And you can close that up.

23 MR. WHITE: And, Judge, at this time, I'd move State's
24 Exhibit 24 into evidence.

25 MR. SWILLEY: Your Honor, I'm going to object. The

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 proper foundation hasn't been laid on these items.

2 BY MR. WHITE:

3 Q: Sgt. Clendenin, did you recover those from the scene?

4 Did you take those items from -- from the -- not from the
5 scene, from the location of the search warrant?

6 A: Yes, I did.

7 Q: And did you take those back to the Sheriff's Office?

8 A: Yes, I did.

9 Q: Did you log them into evidence?

10 A: Yes, I did.

11 Q: Did you retrieve them from the evidence storage and
12 bring them to the courtroom here today?

13 A: Yes, I did.

14 Q: And are those the same exact items that you pulled from
15 the home of Rasheem Thomas in the location of that particular
16 search warrant?

17 A: Yes, I did.

18 MR. WHITE: Judge, I'd move State's Exhibit 24 into
19 evidence.

20 MR. SWILLEY: Same objection and on the basis of
21 relevance.

22 THE COURT: Overruled.

23 (WHEREUPON, State's Exhibit Number 24, bag of
24 ammunition, was admitted into evidence.)

25 MR. WHITE: All right. Thank you, Sgt. Clendenin. And

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 actually, I'll tell you what. At the risk of cluttering
2 everything up, let's set that right here and just leave it
3 out for a time.

4 BY MR. WHITE:

5 Q: All right. Now, I'm going to show you State's Exhibit
6 25 and ask you if you could please tell us what that is?

7 A: Inside this bag is the quad rail and box.

8 Q: Is that the quad rail you were telling us about earlier?

9 A: Yes, it is.

10 Q: And where -- where did you find that one from?

11 A: Inside the shed.

12 Q: Inside the shed and that was pursuant to the execution
13 of your search warrant?

14 A: That is correct.

15 Q: Did you take that item right there and take it to the
16 Sheriff's Office?

17 A: Yes, I did.

18 Q: Did you log it into evidence?

19 A: Yes, I did.

20 Q: Did you retrieve it from evidence this morning and bring
21 it here to be in the courtroom today?

22 A: Yes, I did?

23 MR. WHITE: Judge, I'd move State's Exhibit 25 into
24 evidence.

25 MR. SWILLEY: Same objection.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 THE COURT: All right. Overruled.

2 (WHEREUPON, State's Exhibit Number 25, quad rail in box,
3 was admitted into evidence.)

4 BY MR. WHITE:

5 Q: You can go ahead and pop that one open for us. Can you
6 show us? Pull that out. I think it will be a little bit
7 more clear what exactly that is if you show it to the jury.

8 A: They're -- the front hand guard would be mounted.
9 Usually, there's a heat shield on the inside that is made out
10 of aluminum. They come together in this fashion. They are
11 -- they are pressed on the front and then a clip holds them
12 in the back and your hand would rest on it as you're firing
13 the weapon.

14 Q: All right. Very good. Thank you, Sgt. Clendenin. If
15 you'd put that back in the box and close that right up for
16 me? Thank you. Now, I think lastly here -- well, two more
17 and we'll be done. State's Exhibit 26, could you tell us
18 what that item is?

19 A: Sure. This is also -- this is also a PMAG that was
20 found at the front yard of the residence at the scene.

21 Q: All right. Very good. So just so we're clear -- and
22 you can toss that back in the bag. In the manila envelope is
23 an item recovered from the crime scene; correct?

24 A: That's correct.

25 Q: The brown bag is items recovered from the search warrant

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 executed on the home of Rasheem Thomas; is that correct?

2 A: That's correct.

3 Q: Now, during the execution of your search warrant, did
4 you find any weapons, any actual guns?

5 A: No, I did not.

6 Q: But you did find a good bit of evidence or ammunition;
7 is that correct?

8 A: That is correct.

9 Q: All right. Now, I'm going to show you -- we're not
10 going to go over this in detail, Sgt. Clendenin. I just want
11 to show it to you. I'll show you State's Exhibit 22. If you
12 could, tell me do you recognize this diagram?

13 A: Yes, it is. That is the field sketch that I drewed of
14 the residence.

15 Q: So you completed this?

16 A: Yes, I did.

17 Q: That's pretty neat. How do you do it?

18 A: Some of it is done computerized, some of it's done by
19 hand.

20 Q: All right. Now, is that a fair and accurate depiction
21 of the crime scene, the location on National Cemetery Road?

22 A: Yes, it is.

23 Q: All right.

24 MR. WHITE: I beg the Court's indulgence for just a
25 moment.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 THE COURT: Yes, sir.

2 MR. WHITE: I apologize, Sgt. Clendenin. All right.

3 Thank you, Sgt. Clendenin. I have nothing further. Please
4 answer any questions the defense may have.

5 THE COURT: All right. Mr. Swilley?

6 MR. SWILLEY: All right.

7 CROSS-EXAMINATION

8 BY MR. SWILLEY:

9 Q: Now, Sgt. Clendenin, you came out -- back on May the 28th
10 of 2016, you actually along with Lt. Brumbles came out to the
11 trailer in question; is that correct?

12 A: That's correct.

13 Q: Okay. Now, you were the second person to arrive; right?

14 A: I wasn't the second person to arrive. I was -- Thomas
15 McFadden and Lt. Brumbles were both on scene by the time I
16 arrived.

17 Q: Third person to arrive; correct?

18 A: Yes.

19 Q: Okay. And you got there sometime after -- it looks like
20 11 o'clock; is that correct?

21 A: Yes. I didn't arrive until 12:09.

22 Q: 12:05?

23 A: 12:09.

24 Q: 12:09?

25 A: Yeah. Approximate time.

ANDREW CLENDENIN - CROSS BY MR. SWILLEY

1 Q: Okay. And is it true to say I think you departed the
2 scene about 12:51?

3 A: That is correct.

4 Q: Okay. So about 45 minutes you were out there?

5 A: That is correct.

6 Q: You were out there taking pictures; correct?

7 A: That's correct.

8 Q: And you were out there and I think you collected the --
9 you collected the actual PMAG that fell off in the yard; is
10 that correct?

11 A: Yes. I was given custody of that, yes.

12 Q: And it was your understanding that fell out of one of
13 the -- of the AR-15 that was stolen from the house?

14 A: Yes, sir.

15 Q: Okay. And, Officer Clendenin, just to be clear, it was
16 Officer Brumbles who made the itemized list of property that
17 had been stolen in the incident report; is that correct?

18 A: That's correct.

19 Q: Okay. And it's true to say there were five firearms
20 that were listed as taken from the -- from the residence; is
21 that correct?

22 A: I have no idea. I was advised of the money box. I was
23 never given a full itemized list of what was stolen.

24 Q: Okay. Going back, so you never produced an itemized
25 list of things that were actually taken from the residence;

ANDREW CLENDENIN - CROSS BY MR. SWILLEY

1 is that correct?

2 A: No, I did not.

3 Q: And I think you testified you were never apprised of a
4 list of things that were actually taken; is that correct?

5 A: That's correct.

6 Q: Okay. And that was -- that would have fallen on either
7 Investigator -- or Officer -- or Deputy Brumbles or McFadden;
8 is that correct?

9 A: That would fall under the initial responder, yes.

10 Q: To itemize the things that were stolen is the initial
11 responder?

12 A: Yes. He would interview the victim and get an itemized
13 list, as much as they can -- as they can remember at the
14 time.

15 Q: That would be Brumbles; correct?

16 A: That would be Brumbles, yes.

17 Q: And later on, if they can't -- if they find other stuff
18 that they're missing, they can -- they notify law enforcement
19 and tell them that?

20 A: Yes. They can phone us and we'll add it to the report.

21 Q: Okay. And I think in this -- in this case, you -- you
22 were apprised of what happened by Officer Brumbles; correct?

23 A: That is correct.

24 Q: All right. And you didn't -- did you -- you didn't
25 individually talk to any of the people that lived in the --

ANDREW CLENDENIN - CROSS BY MR. SWILLEY

1 or that were in the trailer; is that correct?

2 A: No, I did not.

3 Q: Okay. And you collected the baseball cap; correct?

4 A: I was given custody of it, yes.

5 Q: Okay. Well, you were given -- you were given custody of
6 it by Lt. Brumbles?

7 A: Yes, that's correct.

8 Q: Okay. And I think you developed a fingerprint off the
9 FedEx envelope that you testified earlier; correct?

10 A: That is correct.

11 Q: Okay. And based upon your report you got back and you
12 yourself determined that that fingerprint was not usable;
13 right?

14 A: That's correct.

15 Q: Okay. You didn't -- you didn't consult with anybody
16 else before you made that decision; is that correct?

17 A: That is correct.

18 Q: You didn't send it to SLED before you made that
19 decision; is that correct?

20 A: No, I did not.

21 Q: Okay. And it wasn't put into the Automatic Fingerprint
22 Identification System, was it?

23 A: No, it was not.

24 Q: Okay. You were the one who made that decision and
25 discarded the fingerprint?

ANDREW CLENDENIN - CROSS BY MR. SWILLEY

1 A: That's correct.

2 Q: Okay. Bear with me one moment. Now, Officer Brumbles
3 [sic], based upon your information about your involvement in
4 this case -- in this case, none of the items you've seen here
5 were attributed to what was -- none of the items that were
6 recovered in the search warrant were attributable to the
7 residence; is that correct?

8 A: That's -- no. I'm not part of that investigation.

9 Q: Yes, sir.

10 MR. SWILLEY: Thank you.

11 THE COURT: Anything on redirect?

12 MR. WHITE: Just briefly, Judge.

13 REDIRECT EXAMINATION

14 BY MR. WHITE:

15 Q: Sgt. Clendenin, you've been doing this a long time;
16 right?

17 A: Yes.

18 Q: Why did you discard that fingerprint?

19 A: It did not match the identification marks that we
20 require to enter to identify.

21 Q: And you've dealt with a lot of fingerprints in your
22 career; correct?

23 A: Yes, I have.

24 Q: And based on your training and experience, it didn't
25 meet the standards for further analysis; is that right?

ANDREW CLENDENIN - REDIRECT BY MR. WHITE

1 A: That's correct. We require what -- points of
2 identification, which is referred to as minutia. In this
3 case, it did not match up to the points that were required to
4 enter into AFIS.

5 Q: Okay.

6 MR. WHITE: Thank you, Sgt. Clendenin.

7 THE COURT: Anything further?

8 MR. SWILLEY: Nothing further.

9 THE COURT: Thank you very much, sir. You may step
10 down.

11 THE WITNESS: Thank you, Your Honor.

12 MR. WHITE: And, Judge, I would ask that Sgt. Clendenin
13 be released from his subpoena.

14 THE COURT: Any objection?

15 MR. SWILLEY: No objection.

16 THE COURT: Thank you very much, sir. You're free to
17 go.

18 MR. WHITE: Judge, I would request about a five-minute
19 recess, if possible.

20 THE COURT: Okay. I also need to get this stuff cleared
21 up from here while we're -- while we're on break.

22 MR. WHITE: Yes, sir.

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to take a short break. Please have no conversation
25 about the case and we'll bring you back out quickly.

1 (WHEREUPON, the jury exited the courtroom at 2:51 p.m.)

2 THE COURT: All right. We'll be at ease for a few
3 minutes.

4 (WHEREUPON, there was a break in the proceedings from
5 2:51 p.m. until 3:09 p.m., after which the proceedings
6 resumed as follows.)

7 THE COURT: All right. Anything we need to take up
8 before we start back?

9 MR. WHITE: Judge, just briefly, Madam Court Reporter
10 has indicated that I have neglected to enter State's Exhibit
11 26 into evidence. I have gotten Andrew Clendenin, who was
12 well on his way, you know, away from this place to come back
13 and it will take maybe a minute to recall him and go ahead
14 and enter that into evidence, Judge. I'd like to do so.

15 THE COURT: Why don't you -- I don't know. Have you got
16 the same objection?

17 MR. SWILLEY: What's -- what's 26?

18 THE COURT: I can't remember. I think it's the -- the
19 --

20 MR. WHITE: It's the PMAG.

21 THE COURT: The PMAG from the -- that was found in the
22 yard.

23 MR. SWILLEY: The yard of the scene?

24 THE COURT: At the scene.

25 MR. SWILLEY: No objection.

1 MR. WHITE: It's in. Very good.

2 THE COURT: It's in without objection.

3 (WHEREUPON, State's Exhibit Number 26, PMAG, was
4 admitted into evidence.)

5 MR. WHITE: You're free to go. Thank you, Sgt.
6 Clendenin.

7 THE COURT: But now, because you made it all the way
8 back, if you just want to testify.

9 MR. WHITE: Thank you.

10 THE COURT: Thank you for coming back though.
11 Appreciate it.

12 MR. WHITE: Judge, the second issue, I did find the case
13 that I was referring to. It's State v. Broadnax. It doesn't
14 go as far as maybe I had thought.

15 THE COURT: Maybe you had hoped.

16 MR. WHITE: Had hoped, but it does say, Judge, that it
17 kind of -- it kind of makes a shift towards the federal rule
18 and it does say in the case that theft is not in and of
19 itself probative of truthfulness. It's not -- shoplifting
20 doesn't per se come in. It's subject to a balancing test.

21 And there are several factors that do go into
22 determining -- right. And Mr. Tucker is absolutely right.
23 The federal rule does, in fact, say, you know, that unless it
24 speaks to somebody's truthfulness, that they lie and the
25 element of the crime and it can't come in. It does seem like

1 Broadnax is shifting in that direction, but it says that the
2 Court can undergo a balancing test.

3 THE COURT: But here's what I don't understand.

4 MR. WHITE: Yes, sir.

5 THE COURT: Even about the federal rule. When you steal
6 something from somebody, I'm not understanding. I don't know
7 what balancing test I'm looking at is what -- I guess is what
8 I'm saying. That -- I mean that's being dishonest. When you
9 take something that's not yours knowingly to deprive the
10 other person of that item, that's dishonesty.

11 MR. WHITE: And I agree with you, Judge, and then what
12 we have here I think is what the Courts are trying to guard
13 against. The fellow who is going to testify is -- has a
14 conviction for shoplifting. It's a misdemeanor. It's on his
15 record from when he was 18 years old and he's had nothing
16 since then.

17 So he tells me that what happened is when he was 18, he
18 went into Schofield Ace Hardware and stuck a Browning sticker
19 in his pocket. There was an officer in there and as he was
20 walking out, they caught him, and I think he would agree that
21 that was wrong and that was a dumb mistake, but I think
22 that's the type of thing that the Court is trying to get away
23 from and employ a balancing test so that the Court has the
24 discretion over those cases that are kind of, you know, on
25 the fence.

1 And one of the factors that the Courts have said that
2 the trial judge has discretion to look at is the point in
3 time of conviction. This was eight years ago when he was 18,
4 and the witness's subsequent history, Judge, which there is
5 none.

6 THE COURT: Is Broadnax -- but they're discussing the
7 defendant's prior robbery conviction; right?

8 MR. WHITE: That's correct, Judge.

9 THE COURT: And the balancing test as it relates to
10 that. That -- was that under 609(a)(2)? Because --

11 MR. WHITE: Yes, sir. There is a 609 analysis that goes
12 along in that case. So yes, sir, I believe that even though
13 they are dealing with what you're referring to, I think it
14 applies to witnesses and defendants alike.

15 And, Judge, because I would argue that when you are, you
16 know, viewing this and making a balancing test, the fact that
17 he's a victim, you know, should weigh in in some regard. The
18 defendant's rights should always be scrupulously honored, but
19 I would argue that so should the victim's.

20 MR. SWILLEY: Judge, that balancing test -- I don't have
21 a copy of that case.

22 MR. WHITE: Oh, I'm sorry. Here you go.

23 MR. SWILLEY: Is that -- is that the Colf factors?

24 MR. WHITE: Yes, it is.

25 THE COURT: Does the balancing test apply? That's why I

1 was asking if it's under Section 1 or Section 2 or whatever.
2 I'm not sure the -- does the balancing test apply when you're
3 talking about a crime of dishonesty? I think it applies if
4 you're talking about -- well, I don't know. Let me look at
5 something real quick. I'll let y'all know.

6 MR. SWILLEY: Your Honor, I know the --

7 THE COURT: Now, I've got a case, State v. Bryant, which
8 is a 2006 case at 369 S.C. 511, and I'm just quoting under
9 the case.

10 It says under Rule 609(a)(2) of the South Carolina Rules
11 of Evidence, if a crime is viewed as one involving
12 dishonesty, the Court must admit the prior conviction because
13 prior convictions involving dishonesty or false statement
14 must be admitted, regardless of their probative value or
15 prejudicial effect. Thus, the petitioner's convictions for
16 shoplifting and writing bad checks were properly admitted.

17 MR. WHITE: And, Judge, in 2016, Broadnax, you know,
18 says that theft in and of itself isn't probative of
19 truthfulness and so the balancing factors should be applied
20 or, you know --

21 THE COURT: Well, what are the -- what are the balancing
22 factors?

23 MR. WHITE: Judge, it appears to me that it's the Colf
24 factors, and Matt can correct me if I'm wrong, but that's the
25 impeachment value of the prior crime, the point in time of

1 the conviction, and the witness's subsequent history, the
2 similarity of the crime and, you know, what he would be
3 testifying to here, the importance of the testimony that will
4 be elicited, and I'll argue that that importance is great
5 and, you know, the credibility issue, how central that is to
6 the case.

7 THE COURT: Have you got those cites from Broadnax?

8 MR. WHITE: I've got the case there. I handed it to
9 Matt. Matt, I apologize for not making two copies.

10 THE COURT: 414 468?

11 THE LAW CLERK: Yes.

12 THE COURT: Okay. I got it.

13 MR. SWILLEY: I think it's the opinion.

14 MR. WHITE: Are you sure?

15 MR. SWILLEY: That's fine. Judge, I think the Colf
16 factors are only applicable to criminal defendants. I know
17 they're -- they're treated differently under our -- under the
18 case law.

19 THE COURT: I've got it here, Ryan.

20 MR. WHITE: Okay. And on the Colf factors, I could be
21 wrong. The factors do apply, but I think that Broadnax is
22 the most recent case to take this up and it -- and it does
23 say that some balancing test, some discretion by the judge,
24 and that is steering away from Bryant, that theft in and of
25 itself is not probative of truthfulness and dishonesty.

1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)

3 THE COURT: I'm reading a different Broadnax case than
4 you are, Mr. White. This case supports Bryant. I mean it
5 says right here we take this opportunity to overrule Al-Amin
6 and we reaffirm the rule as formulated in Bryant that armed
7 robbery is not a crime of dishonesty or false statement for
8 purposes of impeachment under 602 -- 609(a)(2). While many
9 states have adopted the broader interpretation rule, we find
10 the analysis to be more nuanced than that undertaken in Al-
11 Amin court. Let's see.

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 THE COURT: Apparently, in State v. Bryant, they were --
15 the difference was it was a -- they admitted evidence of a
16 prior firearms conviction. Broadnax seems to say that when
17 it's a crime that involves a larceny, that is different than
18 in Bryant where they were dealing with a crime that involved
19 a firearms conviction and that in that situation there needed
20 to be the weighing of the probative value versus the
21 prejudicial effect.

22 And then in this -- and then in Broadnax, in the
23 Broadnax case, there they're dealing with the defendant
24 testifying, which I think is a higher standard than that of a
25 witness.

1 MR. WHITE: Well, Judge, I guess, you know, it's open
2 for interpretation. What I hope Broadnax says and what I
3 really hope that we're going towards is it seems that, you
4 know, in Broadnax, armed robbery would not be a crime of
5 dishonesty, but yet shoplifting is. So you've got like the
6 facts we've got here where somebody on an armed robbery goes
7 in with three other people and forces people down on the
8 ground at gunpoint and takes things from them, but yet that
9 -- that is not a crime of dishonesty.

10 THE COURT: I agree with you.

11 MR. WHITE: But then somebody who takes a sticker and --

12 THE COURT: And it doesn't say -- listen, the case
13 doesn't say that it's not allowed. It says that you have to
14 do the balancing test.

15 MR. WHITE: Right. Yes, sir.

16 Judge, I'm probably articulating this terribly, but I
17 think that's the change in the law that it's no longer per se
18 a crime of dishonesty, that it now must be weighed. And I
19 believe, if I'm reading it correctly, that those factors that
20 I mentioned are the factors that the Court looks at.

21 THE COURT: But you understand 609(a)(2) is very
22 different from 609(a)(1) because 609(a)(1) is -- let's see.

23 It says in 609(a)(1) evidence that a witness other than
24 the accused has been convicted of a crime shall be admitted
25 subject to Rule 403, which I find a little odd as well

1 because 403 is the rule talking about prejudice.

2 MR. WHITE: Right.

3 THE COURT: And it says that evidence that a witness
4 other than the accused has been convicted of a crime shall be
5 admitted subject to the prejudicial effect outweighing the
6 probative value.

7 MR. WHITE: Right.

8 THE COURT: If the crime was punishable by death or
9 imprisonment in excess of one year under the -- under the
10 law, which the witness was convicted, and the evidence that
11 the accused has been convicted of such a crime shall be
12 admitted if the Court determines that the probative value of
13 admitting the evidence outweighs its prejudicial effect.

14 It seems like it's saying the same thing.

15 MR. WHITE: And, Judge --

16 THE COURT: I don't know why it differentiates between
17 the accused and someone who is not the accused.

18 MR. WHITE: It is convoluted to say the least, but,
19 Judge, I would argue that --

20 THE COURT: But then you go to 2.

21 MR. WHITE: Right.

22 THE COURT: Evidence that any witness has been convicted
23 of a crime shall be admitted if it involved dishonesty or
24 false statement, regardless of the punishment.

25 MR. WHITE: And I would point out that under subsection

1 1, it says excess of one year, which a misdemeanor
2 shoplifting would not be.

3 THE COURT: Well, I mean -- but I don't think we're
4 under section 1.

5 MR. WHITE: Right, right. Just throwing that out there.

6 THE COURT: And that's -- that's my point.

7 MR. WHITE: Yes, sir.

8 THE COURT: So with this analysis that we're looking at,
9 the rule doesn't seem to make the distinction that you have
10 to do the balancing test. It it's -- now, listen, I'm
11 confused too because then you've got these cases that want to
12 say that simply -- well, I don't know because in Broadnax to
13 me they do a lot of talking here which seems to support --
14 let's see.

15 You know, they say the Court of Appeals concluded it is
16 the larcenous element of taking property of another which
17 makes the action dishonest. Larceny is a lesser-included
18 offense of armed robbery. The Court of Appeals citing
19 several dictionary definitions found further -- and then they
20 said to restrict the application only to those offenses which
21 evidence an element of affirmative misstatement or
22 misrepresentation of fact wouldn't be to ignore the plain
23 meaning of the word dishonesty.

24 Dishonesty is by definition a disposition to lie, cheat
25 or steal. To be dishonest means to deprive, defraud or to

1 steal. In common human experience, acts of deceit, fraud,
2 cheating or stealing are universally regarded as conduct
3 which reflects adversely on a man's honesty and integrity.

4 So they go through all that and then they land on armed
5 robbery not --

6 MR. WHITE: Right.

7 THE COURT: -- being -- well, not -- after doing the
8 balancing test, that it shouldn't have been done. So --

9 MR. WHITE: And I think 609(a)(2) is clear in that it
10 should be admitted if it involved dishonesty or false
11 statement. The question becomes is whether you decide that
12 the shoplifting here involves dishonesty or false statement
13 as to honor the spirit of this rule.

14 THE COURT: It clearly does.

15 MR. WHITE: And I would argue --

16 THE COURT: If I -- if I go into your office and steal a
17 Montblanc pen that your parents gave you when you graduated
18 from law school and they had it engraved and you love that
19 pen and I went in there and stole that pen, shoplifted that
20 pen, that's dishonesty. How can it be anything other?

21 MR. WHITE: Well, they say if you come in with a gun and
22 do the same thing, it's not.

23 THE COURT: Well, they didn't say it's not. They did a
24 balancing test as to whether or not the prejudice outweighed
25 the probative value. And -- and that was in context of the

1 defendant testifying and he was on -- if I'm not mistaken, he
2 was on trial for armed robbery. And I think where they --
3 where they landed on that was that the prejudicial effect
4 outweighed the probative value.

5 MR. WHITE: Sure. And I would -- I would argue that,
6 yes, this victim is not on trial here today, but once he
7 takes that stand with that questioning, his character will
8 become on trial and in that way I don't see -- it's going to
9 -- it's going to be prejudicial. I mean that's just the
10 nature of it. So the question becomes is it probative and I
11 just -- I can't see where an 18-year-old kid who makes a
12 mistake and grabs a sticker --

13 THE COURT: Because you can't go into all of that.

14 MR. WHITE: Yeah.

15 THE COURT: You can't do -- you're allowed -- for
16 example, if you're allowed to go into someone's prior record,
17 you're not allowed to go into the details behind it. So I
18 know what you're saying.

19 Here we have an 18-year-old kid who was stealing versus
20 that 18-year-old kid that went in there and lifted \$300 out
21 of the cash register, you know, but I don't -- I don't know
22 -- I don't know that that matters for purposes of this. I
23 may be wrong, but if he's got a prior conviction for
24 shoplifting within the timeframe, I'm going to allow it.

25 MR. WHITE: All right.

1 THE COURT: But again, restricted to simply saying isn't
2 it true that back in 2011 you were convicted of shoplifting
3 and leave it at that.

4 All right. Anything else? Was there anything else on
5 any of the other witnesses? Anything that was questionable?

6 MR. WHITE: No, sir, Judge.

7 MR. SWILLEY: No, Your Honor.

8 THE COURT: Okay. All right. All right. Anything else
9 then before we bring them out?

10 MR. WHITE: No, sir, Judge.

11 MR. SWILLEY: No, Your Honor.

12 THE COURT: All right. Let's bring them out.

13 (WHEREUPON, the jury entered the courtroom at 3:37 p.m.)

14 THE COURT: All right. Ladies and gentlemen, we're
15 going to pick up where we left off and recognize the State
16 for their next witness.

17 MR. WHITE: Thank you, Judge. At this time, the State
18 would call William Brookins to the stand.

19 THE COURT: All right. Mr. Brookins, if you would,
20 please come around to the witness stand to be sworn in, sir.

21 THE WITNESS: Yes, sir.

22 THE CLERK: Sir, if you will, please place your left
23 hand on the Bible and raise your right hand. Do you swear
24 the testimony you give in this case to be the truth, the
25 whole truth, and nothing but the truth, so help you God?

WILLIAM BROOKINS - DIRECT BY MR. WHITE

1 THE WITNESS: I do.

2 THE CLERK: Please be seated and state your full name
3 for the record.

4 THE WITNESS: William Charles Brookins, Jr.

5 MR. WHITE: Thank you, William.

6 WILLIAM BROOKINS, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WHITE:

10 Q: William, where are you from?

11 A: I'm from right here in Florence.

12 Q: And you've lived here all your life?

13 A: No. I was born at the beach, but I've been back and
14 forth between there and here most my life.

15 Q: Now, back in May of 2016, were you living in Florence?

16 A: Yes, sir.

17 Q: And where exactly were you living?

18 A: I was staying on National Cemetery in a little trailer
19 park called Cedar Terrace.

20 Q: All right. I'm going to show you a photograph, if I
21 could, State's Exhibit 23. If you could -- you can probably
22 see it now. Could you tell me if you recognize that
23 particular photograph?

24 A: I've never seen it from that angle, but yeah, that's the
25 trailer park.

WILLIAM BROOKINS - DIRECT BY MR. WHITE

- 1 Q: That's the trailer park you were just referring to? Is
2 that Cedar Terrace?
- 3 A: That is. Yes, sir.
- 4 Q: Can you see your trailer on there?
- 5 A: I can.
- 6 Q: And which one is it?
- 7 A: It would be the second row down. One -- two -- three --
8 four -- five -- about five trailers in.
- 9 Q: Okay. So is this the second row?
- 10 A: Yep. That would be the second row.
- 11 Q: When you say in, do you mean in from National Cemetery
12 Road?
- 13 A: In from National Cemetery. Yes, sir.
- 14 Q: So is that one -- two -- three -- four -- five?
- 15 A: One more back to your left.
- 16 Q: Right here?
- 17 A: To your left.
- 18 Q: To the left?
- 19 A: Right there. That would be your right. I apologize.
20 That's it.
- 21 Q: Okay. Good deal. Are you familiar with this area?
- 22 A: Uh-huh.
- 23 Q: And how long did you live there?
- 24 A: Roughly 2 years.
- 25 Q: Okay. Did you, you know, cover the grounds and that

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1 sort of thing?

2 A: I did. You know, I had a four-wheeler and stuff while I
3 was out there. I used to ride around and be back and forth.
4 I was pretty familiar with the neighborhood.

5 Q: Is there a lot of people living out there? Do the
6 trailers usually --

7 A: Yeah.

8 Q: -- have residents?

9 A: It was pretty full when I was out there.

10 MR. WHITE: Judge, at this time, I'd move State's
11 Exhibit 23 into evidence, if I could.

12 THE COURT: Any objection?

13 MR. SWILLEY: No objection.

14 THE COURT: All right. Without objection, State's 213
15 is in evidence.

16 (WHEREUPON, State's Exhibit Number 23, large overhead
17 view of trailer park, was admitted into evidence.)

18 BY MR. WHITE:

19 Q: Now, while you were living out there -- well, let me
20 back up. When you moved in, did you meet the fellow who was
21 moving out of that trailer?

22 A: Yep.

23 Q: And did you have a chance to talk to him?

24 A: Yep. Me and him became good friends.

25 Q: And what did he do at that trailer before you moved in?

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1 A: Bootleg. He sold candy and soda and stuff.

2 Q: And he sold candy and soda. Did he sell beer?

3 A: Yep.

4 Q: When you were moving out, did he give you anything to
5 encourage you to try the same?

6 A: Yeah. He gave me a little list with prices on it and
7 stuff, yeah, soda and candy, miscellaneous items on it.

8 Q: And is this a practice that's been happening out in
9 Cedar Terrace for some time?

10 A: It probably still is.

11 Q: When you were out there and you were doing the same
12 thing, were there other trailers that were doing -- doing the
13 same?

14 MR. SWILLEY: Objection. I object to that on the basis
15 of relevance.

16 THE COURT: I'm going to overrule on that basis, but he
17 can only testify to what he knows --

18 MR. WHITE: Sure.

19 THE COURT: -- not what he's guessing.

20 MR. WHITE: Yes, sir.

21 BY MR. WHITE:

22 Q: And you witnessed firsthand other people carrying on the
23 same kind of --

24 A: Yes.

25 Q: -- convenience store?

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1 A: Yes, I did.

2 Q: Now, on May 28th, 2016, you had a new addition in the
3 home there with you, didn't you?

4 A: Yes, sir, we did.

5 Q: A baby?

6 A: Yep. My little girl.

7 Q: Who else was living in the home with you?

8 A: It was me, my wife, and my daughter. That was it.

9 Q: Okay. And when this incident occurs, there was another
10 fellow in the home; is that correct?

11 A: Yeah. My buddy, Carson, was there with us.

12 Q: How did you and Carson meet?

13 A: We met through a friend of mine, Blake Wall. They were
14 all going to school and doing the Cat diesel program together
15 and we used to buddy up and hang out and stuff. We just met
16 through each other.

17 Q: And is Carson from here?

18 A: No. I believe he's from North Carolina.

19 Q: Does he live in North Carolina now?

20 A: Yes, sir.

21 Q: And where is the Cat diesel program? Where is that
22 located?

23 A: From what I was understood and told, it was out there at
24 Tech.

25 Q: Okay. And y'all became buddies. How long have y'all

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1 been friends?

2 A: We've been friends now four years.

3 Q: All right. Now, May 28th, 2016, was that a Saturday? Do
4 you recall?

5 A: It was.

6 Q: And what was your plans for that -- that Saturday
7 morning?

8 A: We were going to get up that morning, work on my truck
9 and stuff like that. Didn't really have anything extravagant
10 planned, I mean just normal stuff.

11 A: Was it a quiet Saturday?

12 A: Yeah.

13 Q: Now, when you get up, what was the first thing you did?

14 A: I went to use the bathroom.

15 Q: All right. What, if anything, occurred while you were
16 in the restroom?

17 A: I heard a knock on the door while I was in the restroom
18 and I heard Carson answer the door, and I couldn't quite
19 understand what they were saying and then I heard my wife
20 scream from the bathroom that I was in and I heard some
21 commotion in there and somebody ran down the hallway.

22 Q: Okay. Did you lay eyes on these -- these folks?

23 A: I saw the first one when I first turned from the
24 bathroom to look. He was standing at the door with a gun in
25 his hand and a mask on.

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1 Q: Okay. What did they tell you to do?

2 A: I mean at the point when I first saw the guy with the
3 mask on and the gun in his hand, I got up off of the toilet
4 and started fighting the guy with the gun, you know, because
5 I realized what was happening immediately. And, you know, we
6 tussled around in the hallway a little bit and, as we
7 tussled, I heard get this guy off of me, get this guy off of
8 me, and one of the bigger fellows ran in from in the living
9 room and pretty much popped me in the back of the head with a
10 revolver. And I woke up a couple seconds later and I was on
11 the ground face first into the ground with a guy on top of me
12 with a gun in the back of my head.

13 Q: Now, y'all say -- you keep saying -- you said mask.
14 Describe in detail, you know, what was covering these
15 fellows' faces?

16 A: I mean a bandanna, like a do-rag or something like that,
17 a wave cap.

18 Q: So when you say mask, are you referring to the fact that
19 a cloth masked the face?

20 A: Yeah.

21 Q: Okay. But it wasn't like a -- like a Halloween mask?

22 A: No. No.

23 Q: Okay. And from there, what, if anything, happened?

24 A: You know, they were arguing back and forward in the
25 living room telling everybody not to move and stuff and they

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1 were -- they were talking to me. They were asking me where
2 everything was in the house and they were threatening. They
3 were telling me, you know, that they wanted the guns and they
4 wanted the money and this and that.

5 So I wasn't telling them anything and the guys kept
6 pressing and kept pressing and saying, you know, we'll kill
7 somebody, we'll kill somebody, and one of them put the gun to
8 the little girl's head and said they'd kill the little girl
9 if I didn't give them the combination to my safe. So I did,
10 you know. They struggled to get into the safe and a couple
11 times later they got into it, but they got -- they got what
12 they wanted, you know. So --

13 Q: When you say little girl, you mean your little girl?

14 A: I mean my daughter, yeah.

15 Q: And so you gave up the code?

16 A: Of course.

17 Q: And they made away with the stuff that was in the safe?

18 A: Yeah.

19 Q: Now, what all did you have in the safe that went
20 missing?

21 A: I had probably four handguns and an assault rifle, some
22 ammunition, and some money and personal information in a box
23 in the top of the safe.

24 Q: Now, do you, you know, consider yourself a gun
25 enthusiast? Are you a gun collector?

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1 A: I am, yeah.

2 Q: Now, I may have missed it. Did you say you had -- you
3 had ammunition?

4 A: I did.

5 MR. WHITE: I'll tell you what. Judge, I beg the
6 Court's indulgence for one moment.

7 THE COURT: Yes, sir.

8 BY MR. WHITE:

9 Q: All right. Now, you said they were wearing bandannas,
10 which you also called like masks or masking their face;
11 right? At some point -- well, let me ask you this. Was
12 there one person out of these three that appeared to be
13 instructing the others?

14 A: Yeah.

15 Q: Was there one that appeared to be calling the shots?

16 A: Yes, sir.

17 Q: Is he the one that put the gun on your little girl?

18 A: Yes, sir.

19 Q: Did you ever see his mask, his bandanna, his cloth fall?

20 A: I never saw it fall. His face was exposed when I saw
21 him.

22 Q: Okay. When I say fall, I don't mean fall to the ground.
23 I mean fall and expose his face?

24 A: Possibly while I was moving. I was on the floor in the
25 hallway for the first three quarters of the -- of the entire

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1 situation.

2 Q: And I probably worded it all terribly. Did you -- did
3 you see that particular guy's face exposed?

4 A: Yeah.

5 Q: Okay. And could you describe his features? What did he
6 look like?

7 A: Yeah. He had -- he was kind of light-skinned, not
8 really light, but not dark either. He had cornrows or braids
9 of some sort that were kind of disheveled, like he didn't
10 take care of his hair and stuff. And big lips, really
11 abnormally big lips and just dark eyes. I mean just dark
12 eyes.

13 Q: All right. Now, what was the lighting conditions inside
14 the house?

15 A: It wasn't never great, but I mean it wasn't dark either.

16 Q: Was this the daytime? Nighttime?

17 A: It was probably around 9 o'clock in the morning or
18 something.

19 Q: And about how long did this last, do you think?

20 A: It couldn't have lasted any longer than 15 minutes.

21 Q: Okay. Now, you were on the floor for the majority of
22 it; is that right?

23 A: Yes, sir.

24 Q: All right. Now, although you got a look, you didn't get
25 as good a look as your wife?

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1 MR. SWILLEY: Objection, Your Honor. Objection to the
2 leading.

3 THE COURT: Sustained to the leading.

4 BY MR. WHITE:

5 Q: Did you get as good a look as your wife?

6 THE COURT: How can he say that? I mean he doesn't
7 know. I mean unless he's testifying for his wife.

8 MR. WHITE: All right.

9 BY MR. WHITE:

10 Q: Let's just jump right into it. On February 23rd, 2017,
11 did your wife on Facebook think she had found the man who put
12 the gun on your little girl?

13 A: Yes, sir.

14 Q: Did she tell you to come look?

15 A: Yep.

16 Q: And how sure was she that that was who it was?

17 MR. SWILLEY: Objection, Your Honor. It calls for
18 speculation.

19 THE COURT: Unless she told him. He can testify.

20 BY MR. WHITE:

21 Q: Did she tell you how sure she was?

22 A: There was no doubt.

23 Q: And then when she asked you to look, how sure were you?

24 A: Instantly.

25 Q: And is this the photograph that she pulled up?

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1 A: Yep.

2 Q: And is that the fellow who put the gun on your little
3 girl?

4 A: Yep.

5 Q: All right. Now, I'm going to ask you, if you could --
6 I'm going to move this out the way so you can see everybody
7 in the courtroom, if I don't break it first. Do you see that
8 fellow, the one who put the gun on your -- on your wife in
9 the courtroom today?

10 A: I do.

11 Q: And could you point him out for me?

12 A: He's right there in the blue shirt.

13 MR. WHITE: Judge, let the record reflect that Mr.
14 Brookins has identified the defendant, Mr. Rasheem Thomas.

15 THE COURT: All right, sir.

16 MR. WHITE: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. WHITE:

19 Q: Now, did law enforcement -- did you call law
20 enforcement?

21 A: Not I, no. Not me personally.

22 Q: But law enforcement arrived. Somebody at that location?

23 A: Yes, sir.

24 Q: Now, did you talk to law enforcement about the
25 description of the individuals involved?

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1 A: We talked about a lot. We did, yes, sir.

2 Q: Okay. Did they question you about the events?

3 A: They did.

4 Q: And did you give them an account of the event?

5 A: Yes, sir.

6 Q: All right. Now, you told us a little bit about the guns
7 that were stolen and, if I could, I'm just going to reach
8 right here and grab these gloves. And actually, I'm going to
9 back up. I'm going to show you what's been marked and
10 entered into evidence as State's Exhibit 11 through 12, and
11 I'm going to go first to State's Exhibit 13. Actually, 14 is
12 a little bit closer. Is your screen working okay?

13 A: It's --

14 Q: How about now?

15 A: Yes, sir.

16 Q: All right. Take a look at that photograph. Are those
17 the types of ammo that would have been in your safe?
18 Anything in there look familiar?

19 A: I notice a couple things.

20 Q: Now, you know, those are pretty general stuff. Can you
21 be sure?

22 A: Well, I mean they sell -- they sell multiple boxes of
23 the stuff, but I shoot specific ammo. I recognize a couple
24 things.

25 Q: Okay. Now, I'm going to show you State's Exhibit 18 and

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1 tell me do you recognize anything in that photograph?

2 A: Yes, sir. Both of the magazines.

3 Q: All right. And that one on the right, right there, do
4 you recognize that one?

5 A: It's a -- it's a magazine for the AR that got stolen
6 from me.

7 Q: Okay. And how -- how can you know that that particular
8 magazine is the one that was stolen out of your safe?

9 A: Well, first off, it's a high-capacity magazine. It's
10 not what comes with one. It's a Magpul, so you have to spend
11 the extra money to buy it instead of just getting the cheap
12 metal ones or whichever ones you get from your pawnshop or
13 wherever you go to get your stuff. And it's got some
14 scratching up here on the side of it that I specifically
15 remember happening to one of my magazines.

16 Q: Are you referring to the marks on the top of that
17 magazine?

18 A: I am.

19 Q: And you recognize those marks?

20 A: I recognize one of the marks.

21 Q: Okay. And how do you recognize that one mark? How did
22 that mark occur?

23 A: I had it in a big Cannon Sentinel gun safe in my house
24 and the safe got put together by me, the insides, the shelves
25 did, and I misplaced one of the tabs for the shelves and it

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1 would never quite sit right in the safe and if you didn't
2 balance everything just right on it, the back of the shelf
3 would tip and fall.

4 And I sat all my extra magazines and stuff up on the
5 shelf and one day I didn't balance everything right and it
6 fell and, when it fell, this stuff got lodged down in between
7 all the rifles and everything in the bottom of the safe and I
8 started pulling stuff out and I noticed that I had scratched
9 the Magpul magazine when I pulled it out because I tried to
10 keep everything in impeccable condition when I had spent that
11 much money on it. So --

12 Q: Now, as a gunowner and a gun collector, did that
13 aggravate you that you put that mark on it?

14 A: It did. It did. I went and bought another magazine not
15 too long after that for the AR I'd got.

16 Q: And I'm going to show you that magazine that was in
17 State's Exhibit 24 and I'm going to show it to you. If you'd
18 just look really close, is that the magazine in this
19 photograph?

20 A: Yes, sir, it is.

21 Q: And is that the magazine that was stolen from your safe?

22 A: One of multiple.

23 Q: And is that the magazine that the mark occurred just the
24 way you said it?

25 A: Yes, sir, it is.

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1 Q: And that's a pretty distinctive mark that it left, is it
2 not?

3 A: Yes, sir, it is.

4 Q: And although you can't identify some of those items as
5 yours, you can identify this one; is that correct?

6 A: That's right.

7 Q: All right. Now, I'm going to show you State's Exhibit
8 20 and tell me do you recognize that item?

9 A: I do.

10 Q: All right. What is that? What's a quad rail?

11 A: It's an attachment for assault rifles or whatever you
12 want to call them that you put on it. So instead of just
13 having a regular hand guard, you've got pickets in your rails
14 so you can attach laser lights, scopes, flashlights, whatever
15 you want to put on it, instead of just plain Jane, you know.

16 Q: To make it cooler?

17 A: Fancy, yeah.

18 Q: Do you recall buying this quad rail system for your gun?

19 A: I do.

20 Q: And where did you buy it?

21 A: I bought it from Doc's Gun Exchange.

22 Q: Now, did they -- now, Doc's Gun Exchange will often do
23 that transition for you; correct?

24 A: Yep. They will, if you want them to.

25 Q: Did you want them to?

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1 A: Nope. I wanted to do it myself.

2 Q: Did you do it yourself?

3 A: Yes, sir, I did.

4 Q: What did you do with the original that came off the AR-

5 15?

6 A: I put it back in the box and chucked it in the safe.

7 Q: Now, is that the original there?

8 A: Yes, sir.

9 Q: Is that the original back in the quad rail box?

10 A: It is the original off of the Smith & Wesson AR. Yes,

11 sir.

12 Q: And that came out of your safe?

13 A: Yes, sir.

14 Q: Now, I'm going to show you State's Exhibit 25, if you

15 don't mind. Do you recognize that as the picture I just

16 showed you?

17 A: Yes, sir.

18 Q: And is that the quad rail box that was in your safe?

19 A: And the sea star. Yes, sir.

20 Q: Is this the one that you bought from --

21 A: Doc's.

22 Q: -- Doc's Gun Exchange?

23 A: Yes, sir.

24 Q: Is that the original there?

25 A: Uh-huh. That's the one that came off of the rifle to

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1 start with.

2 Q: Thank you.

3 MR. WHITE: Judge, I beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. WHITE: Thank you, Mr. Brookins. I have nothing
6 further. Please answer any questions that Mr. Swilley may
7 have.

8 CROSS-EXAMINATION

9 BY MR. SWILLEY:

10 Q: Good afternoon, Mr. Brookins.

11 A: Good afternoon.

12 Q: Now, Mr. Brookins, that trailer that you -- or mobile
13 home -- excuse me -- that you lived at, multiple people
14 frequented that mobile home multiple times a day; right?

15 A: Yep.

16 Q: And if you could you speak into the mic for me so I can
17 hear you, I'd appreciate it.

18 A: Yes, sir.

19 Q: And people would come up wanting to buy stuff; right?

20 A: Yep.

21 Q: All right. They were wanting to buy beer; right?

22 A: Yep.

23 Q: Cigarettes?

24 A: Yep.

25 Q: They wanted to buy other things; right?

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

- 1 A: What do you mean by other things?
- 2 Q: They wanted to buy marijuana?
- 3 A: Yep.
- 4 Q: They wanted to buy pills?
- 5 A: Nope.
- 6 Q: Okay. Crack cocaine?
- 7 A: Nope.
- 8 Q: Powder cocaine?
- 9 A: Nope.
- 10 Q: Okay. And this is the house where you lived full-time;
- 11 correct?
- 12 A: Yes, sir.
- 13 Q: All right. And we can both agree you've never seen --
- 14 before this particular day, we can both agree you'd never
- 15 seen Mr. Thomas before; right?
- 16 A: Before the day of the robbery?
- 17 Q: Is that correct? Before May the 28th, you'd never seen
- 18 Mr. Thomas before; right?
- 19 A: Not that I recall.
- 20 Q: Okay. And you haven't seen Mr. Thomas again until
- 21 today; right?
- 22 A: Nope.
- 23 Q: Okay. And during this robbery, the people who came in
- 24 your house -- they wanted to get in the safe; right?
- 25 A: Yep.

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1 Q: All right. They didn't take any other property from you
2 other than what was in the safe; right?

3 A: Cell phones from me and my wife, my wallet.

4 Q: We'll get to that shortly, but -- well, actually, we'll
5 get to it now. Now, you say your cell phone was taken;
6 right?

7 A: Yep.

8 Q: You say your wallet was taken?

9 A: Yep.

10 Q: All right. And you say that this quad rail here was
11 taken; right?

12 A: Yes, sir.

13 Q: And you say that this -- this magazine right here was
14 taken?

15 A: Yes, sir.

16 Q: Okay. Now, when you -- when you were meeting with law
17 enforcement, you provided descriptions of property that was
18 taken from you; right?

19 A: Yes, sir, I did.

20 Q: Five firearms that were taken; right?

21 A: Yes, sir.

22 Q: You provided the -- the actual serial numbers of those
23 firearms, didn't you?

24 A: I did. Yes, sir.

25 Q: All right. And do you know -- do you, William Brookins,

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 know of any reason why none of that other stuff was listed as
2 taken?

3 A: What do you mean it's not listed?

4 Q: I'm asking do you know -- do you know of any other
5 reason why the other stuff that you mentioned is not listed
6 as being stolen?

7 A: Other than somebody failing to write it down, then I
8 wouldn't know why it wasn't listed.

9 Q: Okay. So you don't know; is that correct?

10 A: No. I told them everything that I could remember at the
11 time that had got gone that I noticed.

12 Q: And you never called law enforcement again and informed
13 them of other things that you discovered missing, did you?

14 A: I actually did have to call them back and give them the
15 serial number off of the Ruger handgun, the LCP .380.

16 Q: Okay. And when you did that, you didn't notify them of
17 anything else that was taken; right?

18 A: I mean they already knew about everything that had been
19 taken.

20 Q: Okay. The law enforcement officer spent about an hour
21 and a half at your house after this event; correct?

22 A: Give or take, yes, sir.

23 Q: Okay. And I think you met with Deputy Brumbles, who was
24 the first to get there; correct?

25 A: I met with about four or five officers at the same time.

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1 Q: All right. And you gave -- you told them what -- what
2 happened; correct?

3 A: Yes, sir.

4 Q: All right. And it's your testimony you gave them
5 descriptions of the individuals; is that correct?

6 A: Yes, sir.

7 Q: All right. It's your testimony you gave them
8 descriptions of the face of someone who had been wearing or
9 who had been covering their face; is that correct?

10 A: I don't recall.

11 Q: You don't recall giving any facial descriptions to the
12 police?

13 A: I recall describing them, but not to an exact detail
14 from two years ago.

15 Q: Okay. Based on your recollection from three years ago
16 on May the 28th, do you recall giving any description of any
17 facial -- of any facial description of any of these people?

18 A: Yeah.

19 Q: Okay. And you gave those to the police; is that
20 correct?

21 A: I gave them to one of the officers I spoke to.

22 Q: Okay. And I believe at some point you -- after the --
23 well, during the -- during the -- during the robbery, is it
24 true that you were tied up with belts?

25 A: Barely. I was barely tied, barely restrained. Yes,

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1 sir.

2 Q: Did you inform law enforcement about this?

3 A: Yes, sir, I did.

4 Q: All right.

5 A: They took the belt into evidence.

6 Q: They took the belt with them in evidence?

7 A: They took the belt with them. I don't know what they

8 did with it, but I would hope it made it to evidence.

9 Q: Okay. Mr. Brookins, based upon your observation and the

10 information you have, it would appear that your house wasn't

11 selected randomly; is that correct?

12 A: No, sir.

13 Q: Okay. Did the individuals -- did the individuals behave

14 as they knew what was in that safe?

15 A: Yes, sir.

16 Q: Okay. No one stole any -- any tablets at your house;

17 correct?

18 A: No, sir.

19 Q: No one stole any televisions?

20 A: No, sir.

21 Q: No one stole any computers?

22 A: They weren't there for that. No, sir.

23 Q: No one stole any Playstations from you; right?

24 A: No, sir.

25 Q: Okay.

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1 A: I had plenty of them though.

2 Q: All right. And at some point, you left the trailer with
3 the shotgun to try to track down these individuals; is that
4 correct?

5 A: That's correct.

6 Q: Okay. And I think you claimed you encountered some
7 women who had seen these individuals?

8 A: I did.

9 Q: Okay. And, of course, you let law enforcement know
10 about this; right?

11 A: I did.

12 Q: Okay. And you don't have the names of any of these
13 ladies, do you?

14 A: No, sir.

15 Q: Okay. And I think after that you started to confront
16 some various people in the community with the shotgun about
17 what happened?

18 A: I did.

19 Q: Okay. And just to be clear, you confronted various
20 other people with your gun; right?

21 A: What do you mean by various?

22 Q: Different -- more than one person?

23 A: I confronted one person.

24 Q: Okay. It's your testimony you confronted one person
25 with a shotgun?

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 A: I confronted one person in particular.

2 Q: With a shotgun; is that correct?

3 A: With a shotgun. Yes, sir.

4 Q: You were taking the investigation in your own hands; is
5 that correct?

6 A: At that point in time.

7 Q: Okay.

8 A: I wouldn't say I was taking the investigation into my
9 hands. I would say that I had a gut feeling about what had
10 happened.

11 Q: Okay. And you weren't in debt to anybody, were you?

12 A: No.

13 Q: All right. I want to fast forward. You know, Mr. White
14 showed you these pictures that are in evidence here about
15 your -- what you say was the ammunition, that you weren't
16 sure about and the quad rail and whatnot. Now, the first
17 time you saw these pictures was this week; right?

18 A: Yes, sir.

19 Q: Like, as in yesterday; correct?

20 A: As in yesterday.

21 Q: And the first time anybody showed you this stuff right
22 here in person is today; right?

23 A: In person, today.

24 Q: Today. Nobody reached out to you to try to speak with
25 you about these particular items before the trial in this

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 case; is that correct?

2 A: No, sir. Well, that is -- that is correct in what
3 you're saying. Yes, sir.

4 Q: I gotcha. I understand. And I think during the --
5 during this -- this event, you were struck -- you testified
6 you were struck in the back of the head?

7 A: Yep.

8 Q: And then you said you woke up later?

9 A: I came back to a couple seconds later.

10 Q: So --

11 A: It couldn't have been long.

12 Q: So that I understand, your testimony is you lost
13 consciousness during the robbery?

14 A: Yes, sir. I was knocked unconscious.

15 Q: You were knocked unconscious during the robbery?

16 A: Yes.

17 Q: Okay. And then you say you came to after that; is that
18 correct?

19 A: Yep.

20 Q: And then these individuals -- one of them made you give
21 him the code to the safe; is that correct?

22 A: Yeah.

23 Q: All right. And I think you testified that someone
24 actually stuck a gun at your child; is that correct?

25 A: They did.

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

- 1 Q: Okay. And you don't know of any reason why that
2 wouldn't have been mentioned in any of the documentation?
3 You yourself, you don't know why that wouldn't be documented?
- 4 A: I don't know why it wouldn't be documented. It was
5 mentioned several times.
- 6 Q: Okay. Just give me one moment, Mr. Brookins.
- 7 A: Yes, sir.
- 8 Q: Now, there's only -- at this time, there was only one
9 way in and one way out of your home at this time; correct?
- 10 A: Yes, sir.
- 11 Q: There's two doors and one was blocked off; is that
12 right?
- 13 A: One of them was blocked, chained and barred. There was
14 only one door to get in or out of the house.
- 15 Q: All right. At the time, I think your wife, Anastacia,
16 she remained on the couch; is that correct?
- 17 A: Yes, sir.
- 18 Q: All right. And she never got off the couch; is that
19 correct?
- 20 A: Nope. Not from what I could see.
- 21 Q: Okay.
- 22 A: They told her to get up and get down on the ground, but
23 she said, no, I've got the baby. So --
- 24 Q: Just to be clear, she never got off of the couch?
- 25 A: Not that I knew of.

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 Q: Her vantage point never changed; is that correct?

2 A: Not that I could hear.

3 Q: And I think no one ever took -- no one ever took your
4 written or recorded statement as a result of this event; is
5 that correct?

6 A: They were writing a lot of stuff down when I was talking
7 to them, but I don't -- he didn't mention that it was a
8 statement per se when I was talking to him. So --

9 Q: Just to clarify, you never wrote down a statement, an
10 official statement, to the --

11 A: Handwrote, no, sir.

12 Q: They never brought you into the Sheriff's Office in
13 Effingham to give you a video or audio interview, did they?

14 A: No, sir.

15 Q: All right. And based upon the information, to your
16 knowledge, they didn't do that with anybody else; is that
17 correct?

18 A: Not that I'm aware of.

19 Q: Okay.

20 A: I was in the dark.

21 Q: Okay. And no one ever gave you a photo line-up to look
22 at for any of these individuals, did they?

23 A: Nope.

24 Q: I think it's your testimony that when you -- when you
25 left the trailer running with the shotgun, you weren't able

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 to get any kind of information as to any kind make or model
2 of any vehicle that anyone left in; right?

3 A: Small silver car.

4 Q: All right. Now, you're telling me that the information
5 is a small silver car?

6 A: Small silver white four-door car.

7 Q: All right. You -- you gave that information to law
8 enforcement?

9 A: I did. I stressed it multiple times.

10 Q: Okay. And based on your recollection, is that what
11 Anastacia told the people in the -- in the 9-1-1 call? Did
12 you hear that?

13 A: I don't believe I was at the house at the time. Like,
14 she stayed on the phone with the people while I left.

15 Q: Okay.

16 A: I left.

17 Q: You were present with her at the initial time when she
18 called 9-1-1; is that correct?

19 A: Yeah. I told her to call the police.

20 Q: You could hear what she was saying; is that correct?

21 A: Yep.

22 Q: And it's your testimony that she gave a description of
23 the car?

24 A: On the initial phone call, no, I don't think so.

25 Q: And it's your testimony that she called 9-1-1 directly

WILLIAM BROOKINS - CROSS BY MR. SWILLEY

1 after this event happened?

2 A: As quickly as she was able to.

3 Q: You didn't move anything out of your house before she
4 called the police?

5 A: Nope.

6 Q: You didn't move anything out of the house before she got
7 there?

8 A: Nope.

9 Q: All right. Thank you, Mr. Brookins.

10 A: Yes, sir.

11 Q: I'm sorry. One more thing. I apologize. Mr. Brookins,
12 you were convicted of shoplifting in 2013; is that true?

13 A: Yes, sir, it is.

14 MR. SWILLEY: Thank you.

15 THE WITNESS: You're welcome.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. WHITE:

19 Q: How old were you when you had that shoplifting?

20 A: I was 18.

21 Q: Now, what would you say -- when these guys run in and,
22 you know, run back out and you're left there to pick up the
23 pieces, what was your emotional state?

24 MR. SWILLEY: Objection, Your Honor.

25 A: I was a wreck.

WILLIAM BROOKINS - REDIRECT BY MR. WHITE

1 MR. SWILLEY: That's irrelevant.

2 THE COURT: All right.

3 MR. WHITE: His emotional state. I mean he went into
4 great detail about what he did after these events. I want to
5 ask him why he did it.

6 THE COURT: All right. Overruled. I'll allow it.

7 BY MR. WHITE:

8 Q: And were you --

9 A: I was outraged.

10 Q: You were mad?

11 A: I was angry.

12 Q: Were you mad that somebody put a gun on your little
13 girl?

14 A: To my little girl's head, yeah, I was.

15 MR. WHITE: Thank you. I have nothing further.

16 THE COURT: Anything further?

17 MR. SWILLEY: No, sir.

18 THE COURT: Thank you very much, sir. You may step
19 down.

20 THE WITNESS: Thank you.

21 MR. WHITE: Judge, at this time, the State would call
22 Carson McArthur.

23 THE COURT: All right. Have Mr. McArthur brought in,
24 please.

25 (WHEREUPON, there was a pause in the proceedings until

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 the witness entered the courtroom, after which the
2 proceedings resumed as follows.)

3 THE COURT: Sir, if you'd please come on up here to this
4 the witness stand to be sworn.

5 THE CLERK: Sir, please place your left hand on the
6 Bible and raise your right hand. Do you swear the testimony
7 you give in this case to be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Please be seated and state your full name
11 for the record.

12 THE WITNESS: My name is Carson McArthur.

13 CARSON MCARTHUR, being first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WHITE:

17 Q: Carson, where are you from?

18 A: I'm from Lumberton, North Carolina.

19 Q: And how long have you been living in Lumberton?

20 A: All my life up until I went to school here in Florence
21 for about two-and-a-half years and I stayed here in Florence
22 during that time, but when I was interning at my Caterpillar
23 dealership, I would stay back in Lumberton. But other than
24 that though, I've lived in Lumberton most of my life.

25 Q: And while you were living here and going to school, did

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 you befriend William Brookins?

2 A: Yes, sir.

3 Q: And did y'all become best friends?

4 A: Yes, sir.

5 Q: Hang out a lot?

6 A: Oh, yes.

7 Q: About how long would you say you have known William?

8 A: Probably about five years.

9 Q: All right. And back in May 2016 and specifically on the
10 weekend of May 28th, were you visiting William that weekend?

11 A: Yes, sir.

12 Q: Did you visit him often?

13 A: When I was in school, I visited him about every day.

14 When I graduated from college, it wasn't as often, but I'd
15 say at least once every two weeks I'd see him.

16 Q: All right. When you came on May 28th, 2016, was that the
17 first opportunity you had to meet his little girl?

18 A: No, sir, but I believe it was the first time though at
19 his house. It may have been the second time.

20 Q: Did you come to the hospital when she was born?

21 A: Yes, sir.

22 Q: Now, what were y'all's plans that weekend? What were
23 you planning on doing?

24 A: Well, I showed up the day before May 28th. I came that
25 afternoon. Myself and William Brookins -- we had drank that

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 night just to celebrate Memorial weekend coming up and we
2 were planning on working on his truck the next day. I
3 believe his alternator or his AC compressor or something went
4 out though and we were going to get up early that morning and
5 go work on his truck and then just hang out at his house.

6 Q: And what happened that next morning when you woke up?
7 What was William doing when you got up?

8 A: William was using the -- well, at first, he was asleep
9 and I woke him up and I said, hey, man, we need to go ahead
10 and get the part for your truck. So he got ready to go, used
11 the bathroom, and at that point someone had knocked on the
12 door.

13 And normally, I don't answer anybody's door that I'm a
14 guest in, but me and Billy being so close, I was trying to
15 help him out because Anastacia was feeding Karson at the time
16 in the living room. And he said go ahead and answer the door
17 and see what they want.

18 And there was a gentleman at the door who asked for some
19 beer and I described him to Billy and Anastacia and they said
20 it was fine, just tell him to give you, like, two dollars and
21 he handed me a 20. So I turned around to go get the change
22 for him, as well as the beer, and as I proceeded to turn back
23 around, he was coming in the door along with two other men
24 and at that point the two other men had masks or bandannas
25 covering this part of their face and they were holding us at

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 gunpoint and --

2 Q: I want -- I want to stop you right there --

3 A: Okay.

4 Q: -- because I want to ask you something about your
5 testimony there. You said you described that fellow who
6 wanted to buy beer to Anastacia and William. Did it appear
7 to you that they knew who he was by your description?

8 A: In the sense maybe a little bit, but I don't think they
9 were completely sure of him, but that's why I told him to
10 stay at the door and I shut the door back too. I didn't lock
11 it though. That was one thing I didn't do.

12 Q: Did it seem that maybe they thought it was some regular
13 customer?

14 A: Yes, sir.

15 Q: Did it become clear that it was not?

16 A: Yes, sir.

17 Q: All right. What happened next?

18 A: So they held us at gunpoint. They asked where Billy was
19 and I wasn't going to tell them and nor was she at that time.
20 So at that point, they were threatening us to kill us and
21 that's when they started looking down through the house and
22 they found Billy on the toilet.

23 Billy got off the toilet and started fighting them.

24 Another one ran to try and help his buddy fight Billy. They
25 bound Billy up with belts on the ground and came back into

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 the room. And at this point, they were asking me the
2 combination to Billy's safe and I don't know it and I
3 wouldn't want to know that.

4 So then they turned it on to Anastacia. Anastacia
5 didn't want to tell them either. And then they threatened to
6 kill Karson if they did not open the safe and that's when
7 they gave them the combination and they took everything.

8 Q: Now, up until this point, we've been just referring to
9 her as little girl.

10 A: That's fine.

11 Q: It might confuse the jury a little bit. You called her
12 Karson?

13 A: Yes, sir. I understand.

14 Q: Is there a coincidence there?

15 A: Yes, sir. She's named after me.

16 Q: Okay.

17 A: I'm her godfather.

18 Q: Now, during this whole thing, what was your emotional
19 state? Were you stressed?

20 A: Oh, yes. I was very stressed and in shock for the most
21 part.

22 Q: Was it a blur?

23 A: Yes, sir, very much so. It's a lot different me coming
24 from a military background learning to do all this stuff and
25 actually having someone point a gun in your face and

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 realizing this is the real deal at this point.

2 Q: Well, tell us a little bit about that military
3 background?

4 A: I joined the military straight out of high school,
5 signed up when I was 17 and went off in 2013 to start my
6 basic training and did six years with the North Carolina
7 National Guard as a satellite terminal operator and squad
8 leader for that satellite terminal, and recently got out of
9 the military last June with an honorable discharge and that's
10 where my military background came from. It helped me get
11 through college and taught me a lot along the way.

12 Q: Let me ask you this. Is it fair to say that during your
13 military experience you were around a lot of men toting guns?

14 A: Oh, yes, sir.

15 MR. SWILLEY: Objection, Your Honor. I don't see the
16 relevance in that.

17 THE COURT: Overruled.

18 BY MR. WHITE:

19 Q: Did it -- did these fellows strike you as meaning
20 business?

21 A: Yes, sir, very much so.

22 Q: And were you afraid for your life?

23 A: I was, as well as everyone else there.

24 Q: Now, at some point, they flee, but before they do so,
25 were you able to get a good look at any of them?

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 A: The one that was going to the safe. I got a pretty good
2 look, very, very much so.

3 Q: All right. Well, let me stop right there. I'm going to
4 show you -- if it's all right with you and you're comfortable
5 with it, Carson, I'm going to ask you to step down here.

6 A: Okay.

7 Q: And I'm going to show --

8 MR. WHITE: If I may, Judge?

9 THE COURT: Yeah. He just needs to keep his voice up so
10 the court reporter can hear everything.

11 BY MR. WHITE:

12 Q: So the speaker won't be there anymore. So when you come
13 down, just keep your voice up because the court reporter has
14 got to type everything we say. All right?

15 A: Yes, sir.

16 Q: Come on down here. Now, we talked about this a little
17 bit earlier, Carson, with the officer who made this diagram,
18 but is this a fair and accurate depiction of the layout of
19 William and Anastacia's home, the home you were in?

20 A: Yeah, it's fairly accurate. I would say this is a
21 little further back. Other than that, it's fairly accurate.

22 Q: All right. And if you could, whenever that first knock
23 comes, if you could tell us where was Billy located in the
24 house?

25 A: Right here.

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 (WHEREUPON, the witness drew an X on the diagram.)

2 Q: Okay. And when he -- when they come in --

3 A: Uh-huh.

4 Q: And they -- is your testimony they force him out of the
5 bathroom?

6 A: Yes, sir. Well, you know, I'm in here; so I really
7 can't tell exactly what's going on in this area, but I did
8 hear commotion and at this point, whenever Billy was subdued,
9 he was in this area.

10 (WHEREUPON, the witness drew an X on the diagram.)

11 Q: Okay. And you say this would be just a bit further
12 back; is that right?

13 A: Yes, sir.

14 Q: With the line of sight, would you have been able to see
15 William from where you were?

16 A: No, sir.

17 Q: Okay. Now, did they then force you on the ground?

18 A: Yes, sir.

19 Q: Okay. Where? Where did you -- where were you forced on
20 the ground?

21 A: Well, if this is a little further back up, he's right
22 about in here.

23 (WHEREUPON, the witness drew an X on the diagram.)

24 Q: Okay. And where was Anastacia?

25 A: She was on the couch. I want to say right here.

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 (WHEREUPON, the witness drew an X on the diagram.)

2 Q: All right. Now, was there a gentleman with you the
3 entire time holding you at gunpoint?

4 A: There was a gentleman right here.

5 (WHEREUPON, the witness drew an X on the diagram.)

6 A: Right here.

7 (WHEREUPON, the witness drew an X on the diagram.)

8 A: And I want to say there was another one over here.

9 (WHEREUPON, the witness drew an X on the diagram.)

10 Q: All right. Now, I'm going to ask that this be entered
11 into evidence and I want you to kind of differentiate between
12 the X's.

13 A: Okay.

14 Q: So on this X, would that be --

15 A: That would be --

16 Q: -- William Brookins?

17 A: -- where Billy is subdued right there.

18 Q: If you would put beside that just a small WB, that would
19 be great.

20 (WHEREUPON, the witness complied.)

21 Q: And beside your name, Carson McArthur, if you could just
22 put your initials?

23 (WHEREUPON, the witness complied.)

24 Q: And beside Anastacia, if you could put hers?

25 (WHEREUPON, the witness complied.)

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 Q: Now, during this whole event, was there one person in
2 particular that seemed to be calling the shots?

3 A: Yes, sir.

4 Q: What, if anything, did that person say?

5 A: He said it was an inside job and that Billy and
6 Anastacia did not have any friends.

7 Q: Okay. When he was referring to not having any friends,
8 did he mean not any friends in the trailer park?

9 MR. SWILLEY: Objection, Your Honor.

10 A: Yes, sir.

11 MR. SWILLEY: That calls for speculation.

12 THE COURT: All right. Hold on. Sustained as to any
13 speculation.

14 MR. WHITE: Okay.

15 BY MR. WHITE:

16 Q: Now, if you could, which one of these three X's was the
17 one that seemingly was calling the shots?

18 A: (Indicating.)

19 Q: Now, he's kind of in the middle of these two vantage
20 points. Would he stay stationary or would he bounce kind of
21 back and forth?

22 A: Yes, sir. He bounced. Whenever the tussle was going
23 down here, he went in there, and the one that was here moved
24 to here so that way he had line of sight here and here.

25 Q: And then when Billy was subdued, he came back into the

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 room and that's when the threats were being made, more
2 threats.

3 Q: All right. Thank you, Carson. I appreciate it. You
4 can have a seat.

5 A: Yes, sir.

6 MR. WHITE: I beg the Court's indulgence for just one
7 moment.

8 THE COURT: Yes, sir.

9 BY MR. WHITE:

10 Q: All right. Now, the one who was calling the shots, the
11 one who threatened Karson, could you describe what that
12 person looked like? What was that person's hair? What did
13 it look like?

14 A: It was braided or almost braided or dreaded in a style
15 about this high, shoulder height, a little bit over the
16 shoulder.

17 Q: Okay. Did that person have any facial hair?

18 A: Yes, sir. He had a -- I call it a chinstrap. It goes
19 from your sideburns all the way down, no mustache, no goatee
20 piece.

21 Q: And was it thin?

22 A: No. It was a little thick.

23 Q: Okay. And would you describe that person as Caucasian?
24 African-American?

25 A: He was African-American.

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 Q: Was he dark complexioned? Light-skinned?

2 A: He was a little on the light-skinned side.

3 Q: Okay. If you saw him again -- well, you know what. If
4 you saw him again in this courtroom, do you think you could
5 point him out?

6 A: Yes, sir.

7 Q: All right. And I'm going to try this again and hope for
8 the best here.

9 (WHEREUPON, there was a pause in the proceedings to move
10 the podium, after which the proceedings resumed as
11 follows.)

12 BY MR. WHITE:

13 Q: I just want you to look around the courtroom and see if
14 you see the fellow that you're describing?

15 A: Yes, sir, I do.

16 Q: Okay. Could you point him out for me?

17 A: He's right there. (Indicating.)

18 Q: Is he wearing a blue shirt?

19 A: Yes, sir.

20 Q: Is he seated beside his defense attorney?

21 A: Yes, sir.

22 Q: All right. Now, are you aware that the original ID in
23 this case was made by Anastacia after scrolling through
24 Facebook?

25 A: Yes, sir.

CARSON MCARTHUR - DIRECT BY MR. WHITE

1 Q: Okay. Do you recall a time when they reached out to you
2 to discuss the photo that they had found?

3 A: Verbally, not electronically. It was in person.

4 Q: Okay. And have you seen the photograph that they --
5 they found on Facebook? And I'm referring to State's Exhibit
6 10.

7 A: Yes, sir.

8 Q: And is that the fellow?

9 A: That is a direct depiction.

10 Q: All right. And is that the same fellow you just pointed
11 out in the courtroom?

12 A: Yes, sir.

13 Q: Okay.

14 MR. WHITE: Thank you, Carson. I have nothing further.
15 Please answer any questions the defense may have.

16 THE COURT: All right. Cross?

17 CROSS-EXAMINATION

18 BY MR. SWILLEY:

19 Q: All right. Mr. McArthur, I think you testified that the
20 person who knocked on the door asked for -- you said the
21 person knocked on the door and asked for a beer; is that
22 correct?

23 A: That is correct.

24 Q: All right. You told law enforcement he'd asked for a
25 cigarette?

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 A: I don't recall. That's been three years ago, sir.

2 Q: Okay. And during this time, I think you said that you
3 were in the, I guess, living room area of the home?

4 A: Yes, sir.

5 Q: All right. And you -- when these individuals came in, I
6 think you testified that they were wearing bandannas; is that
7 correct?

8 A: That is correct.

9 Q: And is your testimony that's what you told law
10 enforcement about bandannas?

11 A: Yes, sir.

12 Q: Okay. And at some point, you said there was a tussle
13 with Billy and -- and these people; is that correct?

14 A: That is correct.

15 Q: All right. Was anybody wounded during this tussle?

16 A: I mean not to the point where you saw visible injuries.
17 No, sir. But I mean Billy was getting slammed on the ground
18 from what it sounded like from me being in the living room
19 and hearing and feeling the vibrations. So I'm sure he had
20 some bruises later on.

21 Q: Nobody lost consciousness?

22 A: No, sir.

23 Q: All right. Nobody needed any medical care; is that
24 correct?

25 A: No, sir.

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 Q: Okay. And y'all had been drinking since the night
2 before; is that correct?

3 A: We drank the night before. Yes, sir. Not that morning.

4 Q: All right. And then woke up afterwards?

5 A: Yes, sir.

6 Q: Okay. And was there test -- or was there a sign on the
7 door of the trailer that said don't come here or anything of
8 that nature, don't knock or something of that nature?

9 A: Not to my recollection.

10 Q: Okay. So it wouldn't have been -- it would not have
11 been out of the ordinary for a random person to come up and
12 ask to purchase something; is that correct?

13 A: That is correct.

14 Q: Okay. And you'd spent a good amount of time there,
15 didn't you, Carson?

16 A: Yes, sir.

17 Q: All right. And people purchased beer there; is that
18 correct?

19 A: Yes, sir.

20 Q: And purchased cigarettes there; is that correct?

21 A: Yes, sir.

22 Q: And purchased other type of stuff there; is that
23 correct?

24 A: Yes, sir.

25 Q: Marijuana?

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 A: Yes, sir.

2 Q: Pills?

3 A: I don't know about pills. I know about the marijuana
4 and snacks. It was more or less like a convenience store at
5 the time.

6 Q: Okay. And that -- that was -- based upon your
7 observation, that was how Billy made the majority of his
8 money?

9 A: No, sir. That wasn't how he made the majority of his
10 money. He also had a job working for a lawn care service.

11 Q: Okay. And I think you -- you maintained that one of
12 these firearms that was stolen out of -- that was stolen was
13 a firearm that belonged to you; is that correct?

14 A: Yes, sir. Billy and Anastacia actually bought it for me
15 for my graduation present.

16 Q: Okay. And you informed law enforcement about this; is
17 that correct?

18 A: To my recollection, I'm sure I did.

19 Q: Okay. I think you testified that I think your wallet
20 had been stolen as well?

21 A: Yes. Well, it was a money clip, but same concept.

22 Q: Okay. You told that to law enforcement; is that
23 correct?

24 A: Yes, sir.

25 Q: Okay. And you were present the whole time the police

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 were at the house; correct?

2 A: Yes, sir.

3 Q: In fact, the whole hour and a half; right?

4 A: Yes, sir.

5 Q: And it's your testimony that you gave a description of
6 the person whose face you saw?

7 A: Yes, sir.

8 Q: Okay. And you were never brought back in by anybody
9 with law enforcement to give any kind of a formal statement;
10 right?

11 A: No, sir, other than that day. That's the only time I
12 spoke to law enforcement.

13 Q: Okay. You never filled out a written statement; is that
14 correct? Of the accounts of what happened that day?

15 A: I might have that day. Like I said, it was three years
16 ago and I've tried to block a lot of that out. I don't think
17 so though, but I'm not sure, to tell you the truth.

18 Q: All right. No one ever brought you out to the Sheriff's
19 Office and had a videotaped interview or anything like that?

20 A: No. Nothing like that.

21 Q: Okay. No one ever put together a photo lineup for you
22 to try to pick anybody out?

23 A: No, sir.

24 Q: Okay. And I think after that day you never had any more
25 contact with anybody from the police; right?

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 A: No, sir. No police contact after that about that
2 incident.

3 Q: Okay. And you -- the next time you got contacted about
4 this was when the Solicitor's Office contacted you about the
5 trial; is that correct?

6 A: Yes, sir.

7 Q: Okay. Nobody ever -- based on your recollection, you
8 don't know if anybody ever tried to reach out to you again;
9 is that correct?

10 A: I mean other than me and William talking casually, but
11 that's it. Not law enforcement or judicial wise, no, sir.

12 Q: Okay. And you remained inside the -- inside the house
13 while Anastacia called 9-1-1?

14 A: No. Actually, I was outside smoking a cigarette. I was
15 in there, you know, while William went out after them.

16 Q: Okay.

17 A: After that when he came back, I walked outside with him
18 and she was inside.

19 Q: Okay. So just so I'm clear, you went outside and went
20 back inside and you were present when she -- when she called
21 9-1-1 or you were not?

22 A: I was outside with William.

23 Q: Okay. You didn't accompany Mr. Brookins to chase these
24 people, did you?

25 A: No, I did not because I wanted to be there to help

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 protect them if they were to circle back.

2 Q: Okay. You didn't get a chance to see where anybody
3 might've gone; correct?

4 A: No, sir. I mean whenever William came back to the house
5 --

6 Q: Don't tell me what anybody said.

7 A: No. It's not what anybody said. It's what I saw.

8 Q: Okay. Go ahead.

9 A: But when he came back to the house, I walked around the
10 corner of the trailer and there was ammo laying in between
11 two trailers behind Billy's house and the trailers adjoining
12 him. So to my recollection, that would be the path that they
13 took.

14 Q: And that was the clip that was found by law enforcement?

15 A: I believe it was the clip or an ammo box. It was
16 something along that lines.

17 Q: Okay.

18 A: It wasn't a weapon. It was ammunition of some sort.

19 Q: And that's the one item that law enforcement recovered;
20 right?

21 A: Yeah.

22 Q: Okay. From the assailants; is that correct?

23 A: Yes, sir.

24 Q: Okay. So you were actually the one that found that
25 item?

CARSON MCARTHUR - CROSS BY MR. SWILLEY

1 A: No. I wasn't the one that found it. I just -- he
2 showed me it was out there.

3 Q: Okay. Billy showed you it was out there?

4 A: Yeah. I mean we saw it together. It wasn't like I saw
5 it first. We saw it together at the same time.

6 Q: Okay. Bear with me just a second. All right. And just
7 to -- just to make sure I'm clear, Mr. McArthur, you had
8 spent a lot of time over at Billy's since you got to know him
9 in Florence; right?

10 A: Yes, sir.

11 Q: You'd never seen Mr. Thomas before that, had you?

12 A: No.

13 Q: And you were over there when multiple people would be
14 coming in and out purchasing various items; right?

15 A: I mean I wasn't there for a lot of it, but I saw
16 occasional people, yes.

17 Q: Okay. And that was multiple times; is that correct?

18 A: Yes, sir.

19 Q: Okay.

20 MR. SWILLEY: Thank you.

21 THE COURT: Anything on redirect?

22 MR. WHITE: Briefly, Judge. Judge, I would ask that
23 State's Exhibit 22 be entered into evidence.

24 THE COURT: Any objection to State's 22?

25 MR. SWILLEY: No objection.

CARSON MCARTHUR - REDIRECT BY MR. WHITE

1 THE COURT: All right. Without objection.

2 (WHEREUPON, State's Exhibit Number 22, large diagram of
3 home, was admitted into evidence.)

4 REDIRECT EXAMINATION

5 BY MR. WHITE:

6 Q: Now, from your vantage point, the only knowledge you
7 have of an altercation -- is the only knowledge you have of
8 an altercation between Billy and the assailant hearing it?

9 A: Hearing it and, like I said, the vibrations within the
10 house. I knew that there was a tussle.

11 Q: So if he'd have been hit in the head with a pistol, you
12 wouldn't have known it?

13 A: I wouldn't have, other than, you know, someone telling
14 me.

15 Q: If he'd have lost consciousness for a brief second, you
16 wouldn't have known, would you?

17 A: No, sir.

18 Q: Now, let me ask you this. You know, he's your best
19 friend. Is William a tough guy?

20 A: Very much so.

21 Q: Now, if he were hit over the head and lost consciousness
22 -- well, before I ask that, the same vantage point, was his
23 wife -- was Anastacia -- would she have had the same vantage
24 point as you did?

25 A: She might've been able to see a little bit further down

CARSON MCARTHUR - REDIRECT BY MR. WHITE

1 the hall, but not much further, not much further than I could
2 see.

3 Q: Now, if he were hit in the head and then lost
4 consciousness and she didn't see it, would he be the type of
5 guy to downplay that fact to his wife?

6 MR. SWILLEY: Objection, Your Honor. That calls for
7 speculation.

8 THE COURT: Sustained.

9 A: No. Most --

10 THE COURT: You can't --

11 MR. WHITE: Hold on one second. That's good, Carson. I
12 appreciate it so much. Okay?

13 THE WITNESS: Okay.

14 MR. WHITE: Thank you, Judge. I have nothing further.

15 THE COURT: All right. Anything further from defense?

16 MR. SWILLEY: No, Your Honor.

17 THE COURT: Thank you, sir. You may step down.

18 THE WITNESS: Yes, sir.

19 MR. WHITE: Judge, might we approach?

20 THE COURT: Step up.

21 (WHEREUPON, a bench conference was held in the presence
22 of the jury but out of the hearing of the jury off the
23 record, after which the proceedings resumed as follows.)

24 THE COURT: All right. Folks, I was just trying to get
25 a little bit of lay of the land here from the attorneys on

1 where we're at. This is probably a good stopping point.

2 So please tell your family, friends, and loved ones that
3 you're -- you're still working and that you're not allowed to
4 have any conversation about the case. You didn't know very
5 much yesterday; so I don't know if you could've told them
6 much, but you've heard a lot of evidence and a lot of
7 testimony today. But that needs to -- you need to keep that
8 inside and not have any conversation. Just ask them to be
9 patient, that you will -- there'll come a time when you'll be
10 able to share it all with them, but it's just not right now.
11 Okay? So do everything you can to maintain your ability to
12 remain fair and impartial.

13 Also, you've probably experienced it today. Jury
14 service is not necessarily physically taxing from a muscular
15 standpoint, but it can be from a mental standpoint. So there
16 have been countless studies that show that our brains and our
17 minds operate much more efficiently and much better if we're
18 well rested. To the extent you can get a good night's rest
19 tonight, try to do that. Okay?

20 But when you come back in the morning, we'll pick up
21 where we've left off here today. I'm going ask you, if you
22 would, to please be here ready to go at 9:30 and we'll start
23 back at that time.

24 If everyone else would please remain seated while the
25 members of the jury are excused for the -- for the afternoon.

1 (WHEREUPON, the jury exited the courtroom at 4:42 p.m.)

2 THE COURT: All right. The State -- you think you have
3 one, possibly two witnesses. What time -- I realize this is
4 not easy to predict, but do you think you'll be done in the
5 morning?

6 MR. WHITE: Yes, sir, I believe so. I believe
7 Investigator McFadden might be fairly lengthy, but, you know,
8 given everything, I think we'll finish before noon. That's
9 what I'm hoping for. However, it might be an occasion where
10 we want to have an early start to the afternoon session,
11 break for lunch and then -- and then argue and charge and
12 close and all that.

13 THE COURT: Well, I'll -- and I'll -- Mr. Swilley, I'll
14 talk with you tomorrow about -- well, I'll tell you what.

15 How about, if you don't mind, Solicitor, when we're done
16 here, if I can speak with Mr. Swilley, not ex parte, but just
17 kind of want to get an idea so that I'll have an idea of what
18 our schedule is like. I mean I'm not going to ask him to,
19 you know, tell us today what the defense intends to do, but I
20 just want to get a feel from him where they're going to be.

21 MR. WHITE: Sure, Judge. That's no problem.

22 THE COURT: All right. And then we'll start back then
23 at 9:30. Anything we need to take up before we wrap it up
24 here this afternoon?

25 MR. SWILLEY: I don't believe so.

1 THE COURT: Okay. All right. We'll be in recess then
2 until 9:30.

3 (WHEREUPON, the proceedings adjourned for the day at
4 4:44 p.m.)

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6 (WHEREUPON, the proceedings resumed at 9:55 a.m. The
7 defendant was present, along with his counsel of
8 record.)

9 THE COURT: As the holdup, it's usually my fault. It's
10 not today. Juror Number 112, Jocelyn Murtha, has just told
11 Nicole that she overslept and she's still 20 or 25 minutes
12 away.

13 We have two alternates. We can put them in a hat and
14 draw a name out and substitute one of the alternates or we
15 can wait 25 minutes.

16 MR. WHITE: I have no problem waiting on Ms. Murtha,
17 Judge, for 25 minutes. Obviously, I'd like for her to be
18 here on time, but that would be my preference, Judge.

19 And it actually -- it might work out with the
20 scheduling. Now, I don't know what Mr. Swilley plans to
21 introduce in his case, if he plans to put up a case at all,
22 but, Judge, we would -- we've got one witness to call and
23 then the State is going to rest. It might put us in a good
24 window as far as taking a somewhat early lunch.

25 THE COURT: We're not taking lunch.

1 MR. WHITE: No lunch. Okay.

2 THE COURT: So we're going to power through and get the
3 case to the jury. So that's why it's frustrating to me that
4 we can't start because then it runs us into the possibility
5 of keeping a jury here late.

6 Mr. Swilley, do you have a preference one way or the
7 other as far as would you rather wait for Ms. Murtha or
8 substitute an alternate?

9 MR. SWILLEY: I was looking for my jury list to try to
10 figure out who Ms. Murtha was.

11 THE COURT: She's a 21-year-old. What type of work does
12 she do?

13 THE LAW CLERK: She's a student.

14 THE COURT: She's a student.

15 THE LAW CLERK: The two alternates are an RN and a
16 cafeteria manager.

17 THE COURT: Yeah.

18 MR. SWILLEY: Judge, I mean, you know, she's on the
19 jury. I reckon we should wait for her.

20 THE COURT: All right. Well, we'll do that. Don't go
21 anywhere far though because she told Nicole, but she might
22 get here quicker. Who knows? And we'll just start whenever
23 she gets here. Okay?

24 MR. WHITE: Thank you, Judge.

25 THE COURT: All right, guys. So we'll just be at ease.

1 We'll get started when she -- when she comes back.

2 All right. Oh, did -- did y'all have a chance to look
3 at the proposed charge and all that?

4 MR. WHITE: No objection to the charge on behalf of the
5 State, Judge.

6 MR. SWILLEY: There is none, Your Honor.

7 THE COURT: Okay. It was pretty straightforward.

8 MR. WHITE: Yes, sir.

9 THE COURT: So I thought it would be good. All right.
10 We'll be at ease and Ms. Francis will let us know as soon as
11 she gets here and we'll get started. Okay?

12 MR. WHITE: Thank you, Judge.

13 THE COURT: Yes, sir.

14 (WHEREUPON, there was a break in the proceedings from
15 9:59 a.m. until 10:24 a.m., after which the proceedings
16 resumed as follows.)

17 THE COURT: Well, the late Ms. Murtha has arrived.

18 I probably should've asked this before I stepped out,
19 but is there anything we need to take up before we get
20 started?

21 MR. WHITE: Nothing from the State, Judge.

22 MR. SWILLEY: Not at this -- no, Your Honor.

23 THE COURT: All right. Let's bring the jury in, please.

24 (WHEREUPON, the jury entered the courtroom at 10:25
25 a.m.)

1 THE COURT: Ms. Derry? Let me get you to sit in that
2 front seat. I'm going to get you to be the foreperson of the
3 jury.

4 So, ma'am, if you'd --

5 THE FOREPERSON: Me?

6 THE COURT: Yeah.

7 So, ma'am, if you don't mind letting Ms. Derry have that
8 seat and I'll -- I'll talk to you a little bit about that in
9 just a moment.

10 Ladies and gentlemen, I've asked Ms. Derry to serve as
11 the forelady of the jury. Let me just kind of touch base
12 with you on that as far as what that means.

13 We've found in dealing with juries that it's -- it's
14 just easier when you deal with a group of folks to deal with
15 one person on behalf of the group. So the foreperson -- the
16 main role of the foreperson is really to be the liaison, so
17 to speak, the communicator between the jury panel and the
18 Court. That's the main role.

19 So that if any time when you're -- when you do begin
20 your deliberations or at any time, if any member of the panel
21 has a question about anything or needs to ask the Court
22 anything, Ms. Derry, I would basically deal through you on
23 behalf of the group. And so if someone has a question, you
24 just write that question out and pass it to me. Depending on
25 the question, I may just write my answer and send it back or

1 I'll bring you out as a panel and address the question, but
2 that's the main role of the foreperson is to be the go-
3 between between the jury panel and the Court.

4 I will tell you now and I will also instruct it to you
5 when I give you the charge on the law that your decision in
6 this case must be unanimous. In all cases tried here, the
7 decision must be unanimous, and I tell you that to say this.

8 Because you all must agree on the verdict, whatever it
9 is, the foreperson's vote or the foreperson's opinion carries
10 no more weight than anyone else. You're all equal members of
11 the jury and so when you do begin your deliberations, you
12 know, I encourage everybody to listen carefully to each other
13 and go through that deliberation process, but the -- when you
14 begin your deliberations, the twelve of you are all equal
15 members of the jury, and so the foreperson is not any more
16 important than anyone else. It's just she has a little bit
17 more of a role in being the communicator between the jury
18 panel and the Court. Okay?

19 We're ready now to begin and we left off yesterday and
20 we were on the State's case and so that's where we're going
21 to pick up today and recognize Mr. White on behalf of the
22 State.

23 MR. WHITE: Thank you, Judge. At this time, the State
24 would call Investigator Thomas McFadden.

25 THE COURT: All right. Investigator McFadden, if you'd

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1 please come around to be sworn, sir.

2 THE CLERK: Sir, if you'll please place your left hand
3 on the Bible and raise your right hand. Do you swear the
4 testimony you give in this case to be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your full name
8 for the record.

9 THE WITNESS: Thomas McFadden. Thomas Jermaine
10 McFadden.

11 THOMAS MCFADDEN, being first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WHITE:

15 Q: Investigator McFadden, where are you employed?

16 A: Florence County Sheriff's Office.

17 Q: How long have you been employed there?

18 A: Since 2002. I was in '97, but I left and came back in
19 2002.

20 Q: And in what capacity are you currently employed?

21 A: Criminal investigator.

22 Q: How long have you been an investigator?

23 A: 2004.

24 Q: And I understand you have a second job; is that correct?

25 A: Yeah. I'm a football coach at Timmonsville High School.

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1 Q: Very good. Well, good luck this season.

2 A: Thank you.

3 Q: Investigator McFadden, I want to get right to the heart
4 of it and talk to you about May 28th, 2016. Did you become
5 involved in an investigation on that date?

6 A: Yes. I was the on-call investigator. We go on call
7 every nine weeks; so I was on call when this took place.

8 Q: So you were called to that scene?

9 A: Yes, I was.

10 Q: And how does that call come out? I mean, you know, what
11 were you responding to?

12 A: They said a home invasion that was in progress.
13 Individuals went into a home armed with guns and took stuff
14 from that location.

15 Q: And what was the location? Where was it?

16 A: [REDACTED] National Cemetery Road, Lot [REDACTED].

17 Q: Okay. And is that a mobile home park?

18 A: Correct.

19 Q: And what did you find when you arrived on scene?

20 A: There was an individual -- well, he testified earlier,
21 but a heavyset individual with shorts on, big guy. As a
22 matter of fact, he was smaller today. He was about 400
23 pounds that day, big guy, upset, saying he was -- they was
24 robbed, somebody put a gun to his child's head.

25 He asked some people if they were witnesses out there

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1 because there were people standing around in the trailer
2 park. You know, he wanted us to get to the bottom of it.

3 Q: Now, how many officers were on scene when you arrived?

4 A: Several, at least. I know at least three vehicles were
5 there when I got there. I know Lt. Brumbles. There was a
6 couple other deputies on scene when I got there.

7 Q: And now, you mentioned one victim. Was that William
8 Brookins?

9 A: Correct. William, but they called him Billy at that
10 time.

11 Q: Did you also talk to Carson McArthur?

12 A: Yeah. He was in the house when I got there. Well,
13 maybe on the back side of the house when I got there.

14 Q: And did you speak to Anastacia Kauth?

15 A: Yes. The mother.

16 Q: And, you know, all three of them, what was their general
17 state?

18 A: Anastacia was crying and upset, saying how --

19 MR. SWILLEY: Objection to hearsay.

20 BY MR. WHITE:

21 A: Yeah. Well, Anastacia was upset.

22 Q: All right.

23 A: She was upset.

24 Q: Now, did you talk to them about the actual events that
25 transpired?

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1 A: Yes. They said there was a knock at the door.

2 MR. SWILLEY: Objection to hearsay.

3 MR. WHITE: Okay. And --

4 THE COURT: All right. Sustained.

5 BY MR. WHITE:

6 Q: Well, let me ask you this. Did you meet with them and
7 go over a description of the individuals involved?

8 A: Yeah. He was trying to explain it to me that day.

9 Q: And did they each give you a description of the three
10 individuals that arrived in the home?

11 A: Yes, they did.

12 Q: Did they give you a description of the individual who
13 placed the gun on the child?

14 A: Yes, they did.

15 Q: And did that description -- now, you were present in the
16 courtroom throughout the testimony of the three victims, were
17 you not?

18 A: Correct.

19 Q: Did that description match the description they gave on
20 the witness stand?

21 A: Correct.

22 Q: Did that description that they gave on the witness stand
23 and that they gave to you back on the 28th of May, 2016 --

24 MR. SWILLEY: Judge, I'm going to object for leading,
25 leading the witness.

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1 THE COURT: All right. I'm going to sustain the
2 objection. Try to be a little bit more open-ended on your
3 questions.

4 BY MR. WHITE:

5 A: What I did when they was telling me how he looked, I
6 told them I would call a few people in the neighborhood that
7 I knew. I spoke to a few of the neighbors. I told them if
8 -- I asked them if they saw the person again, would they
9 recognize him, and they said yeah, they would. If they saw
10 two of them, they would be able to tell me exactly who it was
11 so I could get a lineup.

12 So I made phone calls to see can I find out the person
13 with the puffy little afro they talked about and the cornrows
14 with dreads and the little beard. And I called the guy that
15 stayed at the other trailer park because I knew he smoked.
16 So I figured with Billy staying there, he said he was a
17 bootlegger. He didn't say much about the marijuana that day,
18 but they were saying about the guns, the ammo, and pointing
19 out the stuff that was on the ground out there.

20 Q: Let me ask you specifically about the individual who put
21 the gun on the child. What description did they give as to
22 that individual?

23 MR. SWILLEY: Same objection to hearsay.

24 THE COURT: Hold on.

25 MR. WHITE: That's -- that's as open-ended as I can.

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1 THE COURT: What was your question?

2 MR. WHITE: What description did they give, you know.

3 THE COURT: He can ask him what information he gathered
4 as part of his investigation.

5 MR. WHITE: The other -- I asked it the other way was
6 did it match the description and that was --

7 THE COURT: He said it did.

8 MR. WHITE: So I don't know how to do it any
9 differently.

10 MR. SWILLEY: Judge, I would just object to what he --
11 as to testimony as to what anyone said out there.

12 THE COURT: Those witnesses testified here in court and
13 were subject to cross-examination. I'm going to allow the
14 question.

15 MR. WHITE: And I'll just kind of get around it. Okay?

16 BY MR. WHITE:

17 Q: The description they gave you, did it match the
18 description of this individual in this photograph?

19 A: Yes, it did.

20 Q: And is that a photograph of Rasheem Thomas?

21 A: Yes, it is.

22 Q: Okay. Now, did you go over the -- let me put this back
23 up here -- the property that was stolen with the victims in
24 this case?

25 A: Some of it. That day, he was just telling he could get

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1 his serial numbers. There were guns and ammunition. There
2 was stuff that was taken. He needed the serial numbers. He
3 would give the information to the deputies, but I always tell
4 them if you don't get everything -- because it's hard to
5 remember everything the first day. Every victim I had in a
6 burglary or robbery, they call back and say I've got a list.
7 I got something else I'm missing. So make a list, call back,
8 email it to records or call records to have it added to the
9 report or call me and we'll get it added.

10 Q: Now, did they -- you know, they mentioned guns; correct?

11 A: Correct.

12 Q: And I believe -- were there six in total guns?

13 A: Yes, correct.

14 Q: Did they also mention ammunition?

15 A: Yes.

16 Q: Did they mention cash?

17 A: Yes, he also did say -- he mentioned the cash at the --
18 at the time too.

19 Q: Now, let me ask you this. The guns -- do they make it
20 into the reports?

21 A: Yes.

22 Q: Now, those guns, they have serial numbers; correct?

23 A: Correct.

24 Q: And because they have serial numbers, are they easy --
25 easier to track than other items?

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1 A: Yes. We've got Carl Leeds over there. He put them in
2 the system. Sometimes they sell them to a pawn shop.
3 Certain locations, you can go in and locate them and find
4 them. The main gun I was continuing to look for because
5 Anastacia called probably once a week and it was her pink
6 gun. She was adamant about this gun. So about once a week
7 she would call. I did find a pink gun, but it wasn't her
8 gun. I thought I had it at that point in time. So she kept
9 continuing to call and they would -- her and Billy was
10 supposed to make a list of all the other items that you saw
11 that they were talking about in their testimony, but almost
12 every email referenced the guns.

13 Q: Now -- but they -- on the day in question, they did
14 mention ammunition?

15 A: Yes, they did.

16 Q: Now, does ammunition, bullets, do they have serial
17 numbers?

18 A: No. No.

19 Q: Are they harder to track down?

20 A: Yeah. That's common, some of the stuff he was talking
21 about, yeah.

22 Q: Now, at that time, once you leave the scene on May 28th,
23 2016, did you have a lot to go on other than description?

24 A: No, not much at all at that point.

25 Q: And you mentioned I think just a minute ago you were

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1 trying to track down --

2 A: Correct.

3 Q: -- information?

4 A: Yes.

5 Q: How did you go about doing that?

6 A: Well, for one thing, I spoke to people in the trailer
7 park. Of course, some of them wanted to cooperate, some of
8 them didn't cooperate. I would give them a card and the
9 people would get involved. You know, they would say they
10 heard and they saw, but they didn't want to get involved. I
11 started calling people in the neighborhood. Tell me if you
12 heard about somebody robbing a bootlegger in the trailer park
13 out there. If you get some information, call me back, and I
14 gave them the description they gave.

15 Q: And did you ever get any leads on that?

16 A: No.

17 Q: At that time, does the investigation kind of go cold?

18 A: Yes.

19 Q: And is that normal?

20 A: Yes.

21 Q: Does that happen a lot in your investigations?

22 A: Correct.

23 Q: Do you sometimes get leads out of the blue?

24 A: Yes.

25 Q: Now, let me ask you this. Now, you've been in

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1 investigations since 2002; is that correct?

2 A: '04.

3 Q: 2004. My apologies. Would you say that Facebook is
4 more or less prevalent now than it was back in 2004 in
5 regards to your investigations?

6 A: Oh, no, it's more now. Yeah, social media.

7 Q: Do you -- is it social media and Facebook specifically?

8 A: Yes.

9 Q: Does it come into play in a lot of cases?

10 A: A lot of my cases now, yeah, we get information from
11 harassments, threats, all kinds of stuff come from social
12 media. People put everything on social media. I got cases
13 now where they put stolen items they're selling on social
14 media. So yeah, we get a lot from social media.

15 Q: Now, on February 23rd, 2017, did you receive a call from
16 Anastacia Kauth?

17 A: Yes, I did. She said she saw the guy.

18 MR. SWILLEY: Objection to hearsay again.

19 A: Yes, I did.

20 THE COURT: Sustained.

21 MR. WHITE: All right.

22 BY MR. WHITE:

23 Q: Did she direct your attention -- attention to this
24 photograph?

25 A: Correct.

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1 Q: And at that time, did you believe that this man was the
2 man who put a gun on her child that day?

3 A: Yes, a hundred percent sure it was Rasheem Thomas was
4 the guy we was looking for, one of the guys anyway.

5 Q: And at that time, Anastacia had seen this picture; is
6 that correct?

7 A: Correct.

8 Q: And William Brookins had seen the picture?

9 A: Yes. I talked to both of them on the phone when I was
10 talking to them

11 Q: Did you know whether or not Carson McArthur had seen the
12 picture?

13 A: I didn't know if Carson saw it or not, but I knew both
14 of them confirmed it.

15 Q: Now, I want to talk to you about a lineup. I think law
16 enforcement refers to it as a six-pack; is that right?

17 A: Correct.

18 Q: In the case of Anastacia and William, would it have been
19 worthwhile to show them a six-pack?

20 A: No. I would do a lineup if they don't go on a website
21 or go on social media and they see the person. Most of the
22 time, I do. If they don't see it, if I identify a person, I
23 say let me show you some line-ups of the guys. Is this the
24 person? But once they pick them out on social media, that's
25 like beating a dead horse. You already picked them out. So

THOMAS MCFADDEN - DIRECT BY MR. WHITE

1 I'll show it to you again. Yeah, I seen them, but then
2 they'll say, well, they already picked them out on social
3 media. Why you doing a lineup? They already knew who it
4 was. So that's why they picked him out. So there wasn't no
5 need for me to do a photo lineup then once they identified
6 him and said without a doubt a hundred percent sure that's
7 the guy. So --

8 Q: Now, on that same day that you received this information
9 from Anastacia and William, was a search warrant executed at
10 the home of Rasheem Thomas?

11 A: Yes.

12 Q: And I'm going to show you what's been entered into
13 evidence as State's Exhibit 11 through 21. Just flip through
14 those briefly. I'm going to also ask you to multitask a
15 little bit.

16 A: Go ahead.

17 Q: I'm going to ask you if you have the list of the guns
18 that were stolen?

19 A: Uh-huh.

20 Q: All right. From your list of guns, is there a Sig Sauer
21 .40 caliber pistol listed?

22 A: Yes.

23 Q: Are there .40 caliber ammunition pictured there that
24 were recovered from Rasheem Thomas' home? I want to direct
25 your attention to State's Exhibit 11.

THOMAS MCFADDEN - DIRECT BY MR. WHITE

- 1 A: Hold on. I don't see 11. Hold on. I might have went
2 through it. Yes.
- 3 Q: All right. I also want to ask you is that pink gun that
4 Anastacia kept calling you about, what -- what caliber was
5 that particular gun?
- 6 A: It was a nine.
- 7 Q: Is it the SCCY 9-millimeter pistol?
- 8 A: Yes, it was a 9-millimeter.
- 9 Q: Are there 9-millimeter rounds --
- 10 A: Yes.
- 11 Q: -- in a photograph that were recovered from Rasheem
12 Thomas' home?
- 13 A: Yes. Yes, it was.
- 14 Q: Is there a Glock .45 caliber pistol reported stolen?
- 15 A: Yes.
- 16 Q: Are there .45 caliber --
- 17 A: Yes.
- 18 Q: Is there a Smith & Wesson AR-15 reported stolen?
- 19 A: Yes.
- 20 Q: Is there an AR-15 magazine recovered from the home of
21 Rasheem Thomas?
- 22 A: Yes.
- 23 Q: Is there a Ruger .380 caliber reported stolen?
- 24 A: Yes.
- 25 Q: Is there .380 caliber ammunition recovered from the home

THOMAS MCFADDEN - DIRECT BY MR. WHITE

1 of Rasheem Thomas?

2 A: Yes.

3 MR. WHITE: I beg the Court's indulgence.

4 BY MR. WHITE:

5 Q: Based on that information and the identification, did
6 you seek the arrest of Rasheem Thomas?

7 A: Yes.

8 Q: Okay.

9 MR. WHITE: Thank you, Investigator McFadden. I have
10 nothing further. Please answer any questions that Mr.
11 Swilley may have for you.

12 THE COURT: Cross, Mr. Swilley?

13 CROSS-EXAMINATION

14 BY MR. SWILLEY:

15 Q: Good morning, Investigator McFadden. How are you doing?

16 A: Good morning, Mr. Swilley.

17 Q: All right. Now, just to clarify, you were the lead
18 investigator in this case; right?

19 A: Correct.

20 Q: All right. The investigation of this case was your sole
21 responsibility?

22 A: Yes.

23 Q: Correct?

24 A: Yes.

25 Q: You were the only investigator assigned to this case; is

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 that right?

2 A: Correct.

3 Q: All right. Now, investigating this case and finding out
4 who was involved and recovering stolen property, that's --
5 that's your job; right?

6 A: Correct.

7 Q: Okay. And that's more specific duties than a deputy
8 sheriff; is that correct?

9 A: Correct.

10 Q: And, in fact, what Lt. Brumbles said is that the
11 investigation is a more thorough job than what he did; is
12 that correct?

13 A: Correct.

14 Q: Okay. Now, you've had -- and Mr. White went over your
15 background a little bit. I just wanted to delve into that
16 for a moment. You've been to the Criminal Justice Academy;
17 correct?

18 A: Correct.

19 Q: You've been a cop since 2002; right?

20 A: Correct.

21 Q: An investigator since '04?

22 A: Correct.

23 Q: You've been to the Criminal Justice Academy; correct?

24 A: Correct.

25 Q: You've been trained on how to conduct investigations;

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

- 1 right?
- 2 A: Correct.
- 3 Q: This was not your first home invasion investigation; is
- 4 that correct?
- 5 A: No.
- 6 Q: You've conducted several before; right?
- 7 A: Correct.
- 8 Q: All right. You're -- you're comfortable with the
- 9 process as to how to investigate these types of cases; right?
- 10 A: Correct.
- 11 Q: You know well enough how to interview people; right?
- 12 A: Correct.
- 13 Q: You know how to interview witnesses; right?
- 14 A: Correct.
- 15 Q: You know how to interview victims?
- 16 A: Correct.
- 17 Q: All right. You know how to initiate a be on the lookout
- 18 or a BOLO; right?
- 19 A: Yes. Usually the deputy do that though.
- 20 Q: Right. But you're aware how to do that as well; right?
- 21 A: I don't have to. I got them to do that.
- 22 Q: Excuse me?
- 23 A: I don't do that. I let them do the BOLO.
- 24 Q: Okay. But you're capable of doing that; right?
- 25 A: If I had to, but they do it.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

- 1 Q: Okay. And you know how -- you know how to put together
2 a photo lineup, as he -- as he discussed; correct?
- 3 A: Correct.
- 4 Q: You know how to do that? And you know how to make --
5 you know how to look for footprints, make footprint
6 impressions; is that correct?
- 7 A: Forensics does that.
- 8 Q: Say what now?
- 9 A: Forensics.
- 10 Q: Forensics does that?
- 11 A: Yeah. Clendenin.
- 12 Q: Okay. But you're familiar with that process too; right?
- 13 A: They do it, not me.
- 14 Q: Okay. All right. Now, one of the things you've got to
15 do as part of -- as part of conducting an investigation is
16 you've got to put together an incident report; right? Or a
17 supplemental?
- 18 A: Yeah, I do. Yes. Correct, my supplemental.
- 19 Q: All right. And you do that in every investigation;
20 right?
- 21 A: Yes.
- 22 Q: All right. Now, that supplemental, when you make it,
23 has to be -- everything has to be correct; right?
- 24 A: Correct.
- 25 Q: It has to be thorough; right?

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: Yes. Correct.

2 Q: It has to be complete; right?

3 A: Correct.

4 Q: All right. And that's so that other officers can know
5 what's going on if they look at it; correct?

6 A: Correct.

7 Q: And so that the State knows what's going on when they
8 look at it; right?

9 A: Correct.

10 Q: That's important; is that correct?

11 A: Correct.

12 Q: Okay. Now, in this case, I think you came on and you
13 went out to the trailer. I keep calling it a trailer. You
14 went out to the mobile home at [REDACTED] East National Cemetery
15 Road that morning; correct?

16 A: Correct.

17 Q: All right. And then you met with the -- Ms. Kauth, Mr.
18 Brookins, and Mr. McArthur; right?

19 A: Correct.

20 Q: You stayed out there for about an hour and a half; is
21 that right?

22 A: Yes, sir.

23 Q: All right. Now, I think you testified on direct that
24 you -- you asked around the neighborhood trailer park about
25 if they had noted any suspicious activity; right?

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: Correct.

2 Q: All right. And that -- I think you testified that
3 yielded no leads; right?

4 A: Right.

5 Q: And that's -- that's not mentioned anywhere in your
6 supplemental, is it?

7 A: No.

8 Q: Okay. I think you also mentioned that Anastacia called
9 you once a week; is that correct?

10 A: Correct.

11 Q: All right. Now, you don't mention in your supplemental
12 that she called you that frequently; correct?

13 A: No, I didn't mention that.

14 Q: And you also mentioned that typically when -- you know,
15 subsequent or after a robbery takes place or a theft takes
16 place that you'll be provided with another inventory of stuff
17 that's stolen that they didn't tell you about beforehand;
18 right?

19 A: Correct. They call about it.

20 Q: That didn't -- that didn't happen in this case though?

21 A: They were supposed to make a list. Whether they emailed
22 it to the records department or not, I don't see it. So
23 evidently, it didn't happen.

24 Q: Okay. So based upon the information you have, you never
25 got one from them; right?

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: No, not from them. They were supposed to do one.

2 Q: Based upon the information you know of, the only thing
3 that was documented by the Sheriff's Office were it looks
4 like these -- these five guns; right? In the initial
5 incident report by Brumbles?

6 A: Correct.

7 Q: All right. And in the property department, it makes no
8 -- it makes no mention of any ammunition being stolen; right?

9 A: No. They didn't -- they didn't add it.

10 Q: Okay. And, Investigator McFadden, you want to catch
11 these guys quick; right?

12 A: If I could.

13 Q: Well, I mean that's -- that's what you want to do;
14 right?

15 A: If I can, yeah.

16 Q: Sure. And you were not at any time given a description
17 of a vehicle that these people might have been in; correct?

18 A: Yes. They gave one that day.

19 Q: All right. Are you telling me that there was a
20 description of the vehicle that was given to you?

21 A: That was given to them too.

22 Q: Right.

23 A: They was -- when you say in the trailer park, that's
24 what most people were saying. I saw the car leaving up
25 front. So I don't know why if it wasn't in his report, but

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 they gave it to him that day.

2 Q: Okay.

3 A: Even William. Billy gave it to them that day.

4 Q: Even -- okay. And to your -- to your information, there
5 was no BOLO put out for three black males in a -- in a
6 vehicle, in a silver vehicle?

7 A: True. Correct. That's what I found out.

8 Q: Okay.

9 A: There wasn't one put out.

10 Q: Okay. And that's important; right? You want -- that's
11 an important thing to have out if you can identify someone?

12 A: If you're able to identify them. They could run into
13 anybody while they're leaving.

14 Q: All right. Now, at the time that you -- at the time
15 that you spoke with the three individuals that we've seen
16 testify this week, you didn't -- let me clarify. You didn't
17 put together a photo lineup for them to look at at that time;
18 right?

19 A: No. The description they gave, they didn't give a name
20 and they -- I couldn't -- I couldn't put one together at that
21 time.

22 Q: So you were unable to put together a photo lineup at
23 that time based on the description that they gave you?

24 A: Correct.

25 Q: Not enough information; right?

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

- 1 A: No.
- 2 Q: Okay. In order to put together one of those lineups,
3 you have to have specific information about people's facial
4 features; right?
- 5 A: Yeah. I could have called in -- I could have called and
6 got a sketch artist to let them draw a sketch out for them,
7 you know. Hindsight is 20/20, but no, I didn't. They had
8 enough information to do that.
- 9 Q: But at the time, you were of the belief that you didn't
10 have enough information to have a six-pack lineup?
- 11 A: No, not for me to develop a six-pack to show the people.
- 12 Q: Based on what they gave you?
- 13 A: Yeah.
- 14 Q: All right. Not --
- 15 A: Too many people.
- 16 Q: All right. And, you know, it's also important you want
17 to review all of the emergency management system records too;
18 right?
- 19 A: Say that again?
- 20 Q: Did you -- you didn't review any emergency management
21 system calls or records, any 9-1-1 calls or records as part
22 of your investigation, did you?
- 23 A: No.
- 24 Q: Okay.
- 25 A: I heard the callout. I heard it come across the radio.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 Q: Okay. And I think you mentioned some -- a description
2 of somebody. There was a puffy afro of some kind; right?

3 A: Correct. And one guy was a heavysset guy.

4 Q: Okay. And that's -- you don't make any mention of that
5 in your report either, did you?

6 A: No. I didn't even say he was running to the car trying
7 to keep his pants up. I didn't put that in there.

8 Q: Okay. And let's see. I want to talk to you about --
9 you know, as part of your -- and from the point where you --
10 you were assigned this case up until, you know, the arrest is
11 made, you know, that's your case still, you're working on
12 that case still, right?

13 A: Correct.

14 Q: For nine months, this was your case; right?

15 A: Correct.

16 Q: Okay. And as part of your -- so it was still your
17 responsibility up to when you got the warrant; right?

18 A: Correct.

19 Q: All right. And this stuff that was found as a result of
20 the search warrant, that -- you never showed that to Mr.
21 Brookins or anybody in that house; right?

22 A: No. When they got it, he was saying that's stuff he
23 had. Brookins was, like, yeah, I got stuff like that, but
24 that's general basic stuff anybody could have, you know. It
25 didn't have a smoking gun, the pink gun or the firearms, but

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 we had the ammunition, which was enough probable cause for
2 the judge to say I'll give you the warrant.

3 Q: Probable cause aside --

4 A: Yeah.

5 Q: So as far as factually what you did, you never -- you
6 never talked to Mr. Brookins about what was found as a result
7 of the search warrant?

8 A: Yeah. We told him what was --

9 Q: Okay.

10 A: -- what was located in the house.

11 Q: All right. And that's not a -- that's not in your
12 report; is that correct?

13 A: No, that's not in the report.

14 Q: And Mr. Brookins never specifically identified any of
15 that property as being his while you had the case; correct?

16 A: Yeah. I never brought him in to say, look at this, come
17 look at this stuff and tell me if this is yours.

18 Q: It's too general; right?

19 A: It was basic, yeah, bullets. It could have been
20 anybody's bullets.

21 Q: There's nothing identifiable about that stuff; right?

22 A: Not the ammunition, no.

23 Q: Okay. And based upon the information you had that there
24 was nothing, there was no reason to consult with Mr. Brookins
25 about what was found in the house; right?

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: No. I consulted with him, but to bring him up there to
2 just look through all of this and tell me did you buy
3 bullets, when he named the bullets, he was, like, yeah, I
4 have them. That's the kind of gun I have missing, da, da,
5 da, but there was enough probable cause for the judge to say
6 --

7 Q: All right.

8 A: -- give him the warrant.

9 Q: We're just talking about the facts right now about what
10 you did. I think Mr. White went over, you know, they found
11 -- there was .40 caliber bullets in -- in the house. There
12 was some .40 caliber bullets; right?

13 A: Correct.

14 Q: All right. Now, .40 caliber bullets will go in any .40
15 caliber pistol; right?

16 A: Correct.

17 Q: They'll go in a Glock?

18 A: Correct.

19 Q: They'll go in a Sig Sauer?

20 A: Correct.

21 Q: That's the only three guns I can think of right now. It
22 also you found some 9-millimeter bullets as well; right?

23 A: Correct.

24 Q: Nine-millimeter is a common gun; is that correct?

25 A: Correct.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

- 1 Q: Those billets will go in any 9-millimeter; is that
2 correct?
- 3 A: Correct.
- 4 Q: Now, also a 9-millimeter will fire .380 bullets as well;
5 correct?
- 6 A: Correct.
- 7 Q: All right. And, you know, .380 bullets will fire from a
8 9-millimeter pistol; right?
- 9 A: One of them won't. One of them will jam.
- 10 Q: All right.
- 11 A: One of them will jam.
- 12 Q: Say that --
- 13 A: One of them will jam.
- 14 Q: Okay.
- 15 A: It will jam going through the rifle.
- 16 Q: All right. Anyway, .380 bullets can be fired in any
17 .380 --
- 18 A: Correct.
- 19 Q: -- pistol; right?
- 20 A: Correct.
- 21 Q: And then an AR-15 can -- AR-15 ammunition magazine or --
22 well, AR-15 magazine -- okay, slow down. AR-15 bullets can
23 be fired in any AR-15 model rifle; right?
- 24 A: Correct.
- 25 Q: Okay. And based upon your investigation -- based upon

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 your investigation, there was nothing specific about these
2 things found that corresponded to any of the weapons that are
3 alleged to have been stolen?

4 A: Yes. That -- it was the brand of ammunition. So yeah,
5 it corresponded. I told the judge what was found in that
6 house -- in his house during the search warrant matched up to
7 the weapons that was stolen and they identified him as the
8 suspect.

9 Q: But the specific weapons that had been stolen -- they
10 can't be corresponded with those specific weapons, only those
11 caliber? Only caliber of the weapons?

12 A: Just the caliber, yeah.

13 Q: Right. Okay. Now, as far as the individuals -- and Mr.
14 Brookins testified when you were in here. You never
15 interviewed any of these female -- females that said that
16 they saw anybody flee the scene; right?

17 A: Yes. There was a female on the outside. I talked to
18 her, but her mom pulled her in the house. I gave her my
19 card. They called me back, but mom, like, get in. She
20 didn't want her rambling on about what she saw out there.

21 Q: Okay. That's not mentioned in your report either; is
22 that correct?

23 A: No.

24 Q: Okay. And that individual was not able to give you a
25 description of anybody that --

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: She's the one that saw the fat guy running trying to
2 keep his pants up.

3 Q: Okay.

4 A: Getting in the car.

5 Q: All right. And I think you recovered -- as part of the
6 investigation, Investigator Clendenin recovered a hat; right?

7 A: Correct.

8 Q: And that supposedly was a hat that was worn by one of
9 the assailants?

10 A: Correct.

11 Q: That was sent to SLED; right?

12 A: Correct.

13 Q: All right. And no evidentiary -- that hat is of no
14 evidentiary value in this case; correct? The results?

15 A: The results didn't match. It came back to four
16 unidentified males. So I would have to send a profile to any
17 other guys that were there to see if it matched up to any of
18 them. So no.

19 Q: Okay.

20 A: It's still sitting in the system.

21 Q: Okay. Now, Investigator McFadden, I think you testified
22 on direct -- we'll get into that too. You know, typically,
23 when you were going to the scene, you noticed all the cases
24 of beer; right?

25 A: Correct.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 Q: All right. And it came to your attention that this was
2 a house in which the individual sold beer; right?

3 A: Correct.

4 Q: Now, that's a bootlegger; is that right?

5 A: Yes. Correct.

6 Q: Now -- and based upon your experience in law
7 enforcement, bootleggers are common in mobile home parks;
8 right?

9 A: Correct.

10 Q: Okay. And people usually -- people that usually
11 patronize these types of people are within walking distance;
12 right?

13 A: Correct.

14 Q: Okay. And, you know, nobody -- nobody drives from far
15 away if you want to go to a bootlegger; is that correct?

16 A: Depend on what the bootlegger got.

17 Q: Okay.

18 A: Yeah.

19 Q: Well, typically, in your -- in your investigative
20 experience, bootleggers are selling to people who are in
21 short distances; is that -- do you agree with that?

22 A: It depend on they got.

23 MR. WHITE: Objection. Calls for speculation. In fact,
24 I think he may have already answered the question.

25 THE COURT: I think it's been answered.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 BY MR. SWILLEY:

2 Q: And it was your understanding, Investigator McFadden,
3 that the individuals within the home further believed this
4 was a, quote/unquote, inside job; right?

5 A: Correct.

6 Q: All right. And that's why I guess now you say that you
7 tried to interview some people in the neighborhood; is that
8 correct?

9 A: Correct. To make sure that Carson -- he was there. So
10 had to make sure that he wasn't involved, yeah. So yeah,
11 anybody. I guess somebody in the trailer park could have
12 been jealous of them, saying, hey, they're selling this out
13 here. Y'all can come out here and get them. They got stuff
14 in here. Normally, bootleggers don't call law enforcement.

15 Q: Right. And I think it was -- I think Carson -- and
16 Carson was the one that opened the door; right?

17 A: Correct.

18 Q: Okay. And you were never made aware of Mr. Brookins
19 going around and pulling a shotgun on anybody to question
20 them?

21 A: No. He said he did.

22 Q: But before, before this week, you weren't aware of that,
23 were you?

24 A: No, no. He was -- he did that day.

25 Q: I know he did do that, but I'm asking you if you knew.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 A: No, no. He said he did it out there. He had a shotgun.
2 He had already put it up.

3 Q: Okay. You weren't aware that he confronted anybody else
4 with a gun about -- about this case, were you?

5 A: I don't know. You said about four people. I didn't
6 know about four. I know he said he had a shotgun asking who
7 was involved, but I didn't know how many people he confronted
8 with it.

9 Q: Based on your investigation, it would appear that
10 whomever came in here knew what they were looking for; right?

11 A: Correct.

12 Q: Okay. Based on your investigation, these people went
13 directly to this very large safe; is that correct?

14 A: Most of them -- if they say somebody tell these -- tell
15 the guys this guy got a safe in the house, he's a bootlegger,
16 they'll come in and they'll start asking where it at, give it
17 up. So yeah.

18 Q: That's -- that's a heavy duty safe from your -- based on
19 your investigation?

20 A: Yes.

21 Q: For somewhere like that; right? It's a very expensive
22 nice safe for a mobile home; right?

23 A: No. For what he got, the guns and everything he got, he
24 had to have that kind of safe. He said he collect guns
25 though too.

THOMAS MCFADDEN - CROSS BY MR. SWILLEY

1 Q: And that safe is visible right when you walk in the
2 home; right? Right in front of the front door?

3 A: From the front door, you've got to go down to his room
4 -- down to his room, but he had it down the hallway.

5 Q: All right. The safe was located in the -- directly in
6 front of the front door; right?

7 A: The front door, yeah. As you go, like, down -- I guess
8 it was what they call shotgun homes. You have one shot and
9 you see straight through.

10 Q: Okay.

11 A: Yeah.

12 Q: And after -- after the 28th of May of 2016, you never
13 went back out there, did you?

14 A: No. I drove by there trying to -- on another case, but
15 no, not for him.

16 Q: Okay. So you never went back out there after the 28th to
17 try to interview anybody else?

18 A: No. They called. They said they moved. They never
19 stayed out there. So they were gone.

20 Q: Okay.

21 MR. SWILLEY: Thank you, Investigator McFadden.

22 THE WITNESS: Thank you.

23 THE COURT: Anything on redirect?

24 REDIRECT EXAMINATION

25 BY MR. WHITE:

THOMAS MCFADDEN - REDIRECT BY MR. WHITE

1 Q: Investigator McFadden, I do want to briefly just kind of
2 refresh your recollection. I'm going to show you State's
3 Exhibit 1. I believe you can see the safe from right there?

4 A: Correct.

5 Q: Does that refresh your recollection?

6 A: Yes, yes.

7 Q: And where was the safe located?

8 A: Right at that back door when you open it up.

9 Q: I do want to ask you something that I thought
10 interesting during the questioning by the defense. Now, Mr.
11 Swilley walked you through the ammunition and the caliber; is
12 that correct?

13 A: Correct.

14 Q: And he walked you through Sig Sauer and Smith & Wesson
15 and Ruger and Glock. All of these weapons that could be used
16 with that caliber bullet; is that right?

17 A: That's correct.

18 Q: So it could've been any gun; right?

19 A: Correct.

20 Q: Well, let me ask you this. Were there any guns
21 recovered from Rasheem Thomas' house?

22 A: Negative. None.

23 Q: Not a one?

24 A: Not one.

25 Q: None?

THOMAS MCFADDEN - REDIRECT BY MR. WHITE

1 A: None.

2 Q: All right. I want to ask you, now, you know, not
3 everything is going to make it into your report, is it?

4 A: Correct.

5 Q: You went to the Criminal Justice Academy. Did they
6 teach you to put every little single detail in your report?

7 A: No.

8 Q: Are you just trying to put the pertinent facts that you
9 feel pertinent for the case?

10 A: Correct.

11 Q: Now, there was mention about the execution of the search
12 warrant. The officers that executed the search warrant would
13 have given reports; correct?

14 A: Correct.

15 Q: A detailed report?

16 A: Correct.

17 Q: And that wouldn't have necessarily made it into your
18 report?

19 A: No.

20 Q: Now, you mentioned Carson. Now, he wasn't ultimately
21 charged, was he?

22 A: Negative. They cleared him. They were adamant that he
23 didn't have nothing to do with it. I was, like, let me get
24 his phone number. Let me make sure. They were adamant that
25 he had nothing to do with letting -- allowing the guys to

THOMAS MCFADDEN - REDIRECT BY MR. WHITE

1 come in.

2 Q: Now, when you're investigating any case, I mean you --
3 you want to look at everybody?

4 A: Yeah.

5 Q: Is that right?

6 A: Yeah. Especially when they say it's inside, you know.
7 It had to be somebody that knew them to tell them to come
8 there.

9 Q: Now, from May 28th until the time that you get a warrant
10 for Mr. Thomas, was this your only case?

11 A: No. I was working homicide. That's why I was already
12 -- already out.

13 Q: At any given time, are you juggling --

14 A: Multiple cases.

15 Q: And when you give attention to one, you got to --

16 A: Give attention to another.

17 Q: I see.

18 A: Anastacia called and another victim may call, but I
19 would pay attention to everybody who called to try to give
20 them that attention when they call. So when she called, I
21 would go back to Leeds and look up guns, have any of these
22 guns -- I'd call dispatch. Have any of the guns been
23 located? Have they been sold anywhere? Anybody got a hit on
24 them? No.

25 Q: Now, you testified on cross that whenever the ammunition

THOMAS MCFADDEN - REDIRECT BY MR. WHITE

1 is recovered, you called William regarding it?

2 A: Yeah.

3 Q: Is that right?

4 A: Because they -- when they called back, they would say I
5 had this missing too. A lot of callbacks so I said, well,
6 what I need y'all to do is make a list of what you all have
7 and then call records and email it to records or email it to
8 me so it could be added to the report. Usually, I tell them
9 to email it to records because it's easier for records to do
10 it so I won't be tied up. I can be hands-free to do what I
11 need to do. Email it to records and let them scan it in and
12 add it to the report. Some do, some don't.

13 Q: But when you had the ammunition in your possession after
14 the execution of the search warrant, you called William to
15 tell him?

16 A: Yeah. I told him what we had.

17 Q: And from your point of view, nothing about it was
18 distinctive; right?

19 A: No. Not with ammunition.

20 Q: But you didn't show him any photographs of it?

21 A: No. I never showed him the photograph.

22 Q: And you didn't show him the actual ammunition?

23 A: No.

24 Q: Now, I want to stop and I want you to explain something
25 to the jury, if you can. Once you've signed a warrant --

THOMAS MCFADDEN - REDIRECT BY MR. WHITE

1 A: Uh-huh.

2 Q: -- that case is turned over to our office; is that
3 correct?

4 A: Correct.

5 Q: And is it your belief -- is it your -- do you have
6 information that it was our office that showed it to him and
7 then he identified it?

8 A: Correct.

9 Q: And he made a positive identification of two of the
10 items you retrieved from Rasheem Thomas' home?

11 A: Correct.

12 Q: Is that right?

13 A: Correct.

14 MR. WHITE: I beg the Court's indulgence.

15 I have nothing further, Investigation McFadden. Thank
16 you.

17 THE COURT: Anything on recross?

18 MR. SWILLEY: No, Your Honor.

19 THE COURT: All right. Thank you very much, sir.

20 THE WITNESS: Thank you.

21 THE COURT: You may step down, sir.

22 Mr. White?

23 MR. WHITE: Judge, at this time, the State would rest.

24 THE COURT: All right. Thank you, sir.

25 Ladies and gentlemen, the State has rested their case

1 and so what I am required to do at the close of the State's
2 cases is I have to take up some matters of law with the
3 attorneys. So because those are issues of law for the Court
4 to deal with and not matters of fact, I'm going to excuse you
5 to go back to the jury room.

6 It won't take terribly long to go through these matters
7 of law, but so while I do that, I'm going to let you all step
8 back into the jury room. Please have no conversation about
9 the case. We're not there yet, but I'll bring you back out
10 shortly. Okay? So --

11 (WHEREUPON, the jury exited the courtroom at 11:08 a.m.)

12 THE COURT: All right. At this time, I'll take up any
13 motions at the close of the State's case.

14 MR. SWILLEY: I would make a motion for a directed
15 verdict of not guilty on the charge of armed robbery.

16 THE COURT: All right. All right. Thank you, Mr.
17 Swilley. I'm going to respectfully deny the motion.

18 I think it's a factual issue for the jury to determine
19 and, I guess, would depend on how the jury views that
20 evidence as to whether or not the State has met their burden,
21 but I think there is enough evidence in the record, depending
22 on how the jury views it, whereby they could find or reach a
23 determination. So I'm going to respectfully deny that.

24 Anything further regarding motions?

25 MR. SWILLEY: No, Your Honor.

1 THE COURT: Mr. Swilley, have you had an opportunity
2 then to sit down with Mr. Thomas and to decide how the
3 defense wishes to proceed?

4 MR. SWILLEY: That's correct, Your Honor. We're not
5 going to put up any -- we're not going to put up a case. Mr.
6 Thomas has been apprised of his Fifth Amendment rights. He
7 has elected not to testify.

8 THE COURT: Okay.

9 MR. SWILLEY: He's been duly informed about that he can,
10 if he so desires, and that if he were to, he would be subject
11 to cross-examination and impeachment for any past
12 convictions, and he has certainly elected not to do so.

13 THE COURT: All right. Well, Mr. Thomas, if I may, let
14 me just kind of review that with you briefly.

15 Anytime anyone faces a criminal charge, you have
16 constitutional rights, obviously. Some of those rights
17 involve your right to be present for your trial and to
18 confront the State's witnesses and if you choose to put up
19 witnesses in your defense or to testify yourself, you have
20 those rights.

21 You also though have the right to remain silent. In
22 this country, a person charged with a criminal offense is
23 never required to prove themselves innocent. The burden of
24 proof is on the State. You don't have to prove a thing and
25 so you could choose to remain silent.

1 Let me first kind of talk with you about your right to
2 testify, if you chose to do that. You understand that if you
3 did choose to testify that obviously you would answer
4 questions from Mr. Swilley, but you understand you would also
5 be required to answer questions from the State's attorney?
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. And -- and I don't know whether or
9 not you have any criminal record that would be subject to
10 cross-examination or to impeachment, but if you did, you
11 understand that they would be able to ask you about that.

12 However, I would not allow them to go into details about
13 any prior criminal history, if you had anything. I would
14 only allow them -- if you recall yesterday, one of the
15 State's witnesses had a shoplifting charge. They were able
16 to ask him -- you know, I think Mr. Swilley asked him isn't
17 it true that you were convicted of shoplifting back in
18 whatever year it was. In other words, they could ask that
19 question, but that's as far as I would allow them to go. In
20 other words, they couldn't go into details.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. And so you have the right to put up
24 evidence and to testify, if you choose to, but you also have
25 the right, the constitutional right, to remain silent.

1 If you decided to exercise that constitutional right to
2 remain silent, then I would instruct the jury -- when I give
3 them the charge on the law, I would tell them that the fact
4 that you chose to remain silent could not be considered by
5 them at all in their deliberations. I would explain to them
6 that the burden of proof rests on the State.

7 The State has the burden of proving guilt. You do not
8 have to prove anything and if you did chose -- if you did
9 choose to remain silent, I would tell them the fact that you
10 chose to remain silent could not even be discussed in the
11 jury room. They are to give it no consideration at all. Do
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. The other thing -- now, y'all correct
15 me if I'm -- because I know we talked about stuff outside the
16 jury's presence, but at this point, I don't think the defense
17 has put anything in record into evidence; is that correct?

18 MR. SWILLEY: That's correct.

19 MR. WHITE: Not that I'm aware of, Judge.

20 THE COURT: Okay. So if you decided to remain silent
21 also, then the State would be required to go first with their
22 closing argument and then Mr. Swilley would have the
23 opportunity to speak last.

24 Do you understand these rights that I've just gone over
25 with you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Have you decided what you would like
3 to do?

4 THE DEFENDANT: Can I talk with my lawyer?

5 THE COURT: Absolutely. Take whatever time you need.

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 THE DEFENDANT: I would like to exercise my right to
9 remain silent and not testify.

10 THE COURT: All right, sir. Well, we certainly will
11 honor that, Mr. Thomas, and so we'll -- we'll proceed
12 accordingly then. Thank you, sir.

13 MR. SWILLEY: Thank you, Judge.

14 THE COURT: Now, gentlemen -- and I don't -- oh, here it
15 is. John gave you -- gave you an opportunity to look over
16 this charge. When I -- I presented it to you and I still
17 present it to you at this point as a rough draft. I think
18 it's inclusive of everything that is necessary, but if
19 there's anything -- let me first ask of the State you
20 reviewed the charge that John showed you earlier?

21 MR. WHITE: Yes, sir, Judge.

22 THE COURT: Are there any additions or corrections or
23 substitutions that you need to make?

24 MR. WHITE: None, Judge.

25 THE COURT: You're okay with the charge as it was?

1 MR. WHITE: Yes, sir.

2 THE COURT: All right. Mr. Swilley, how about the
3 defense? Have you had an opportunity to review it?

4 MR. SWILLEY: I have, Your Honor. It looks -- there's
5 nothing. There's nothing wrong with the charge.

6 THE COURT: Okay.

7 MR. SWILLEY: It's all appropriate.

8 THE COURT: All right. Well, then -- then we'll do
9 that.

10 If -- just so that the record is clear and I don't want
11 to run the jury back and forth, if it's okay with y'all, let
12 me go ahead and recognize Mr. Swilley as far as -- since the
13 defense is not going to put up a case, to -- let's go ahead
14 and take up the motions at the close of the evidence while
15 the jury is out and then when they come in, I'll recognize --
16 Mr. Swilley, I'll recognize you for the defense and you can
17 then stand and rest on the record and then I'll explain to
18 the jury that we're going to move into closing arguments.

19 So at this time, I'll take up any motions at the close
20 of all of the evidence.

21 MR. SWILLEY: Your Honor, I would renew my motion for a
22 directed verdict of not guilty.

23 THE COURT: All right. And I'm going to respectfully
24 again deny that. I think, as we said earlier, the same
25 decision as far as I think it's a jury question and it needs

1 to go to the factfinders.

2 That being said, why don't we take a few minutes so
3 y'all can gather your thoughts and, when we come back, we'll
4 bring the jury out and we'll begin the closing arguments.
5 Okay? So let's just take a few minutes.

6 (WHEREUPON, there was a break in the proceedings from
7 11:16 a.m. until 11:25 am., after which the proceedings
8 resumed as follows.)

9 THE COURT: All right. The State is ready then?

10 MR. WHITE: Yes, sir, Judge.

11 THE COURT: Is the defense ready?

12 MR. SWILLEY: We are, Your Honor.

13 THE COURT: All right. Let's bring the jury in, please.

14 (WHEREUPON, the jury entered the courtroom at 11:27
15 a.m.)

16 THE COURT: All right. Ladies and gentlemen, I have --
17 while you were out, I took up the matters of law that I
18 needed to take up and we're ready to proceed. I would
19 recognize Mr. Swilley on behalf of the defense.

20 MR. SWILLEY: Your Honor, the defense would rest at this
21 time.

22 THE COURT: All right. Thank you, sir.

23 Folks, while I was taking up the matters of law at the
24 close of the State's case, we did that and, once we completed
25 that, Mr. Swilley was kind enough to let me know that the

1 defense would be resting as well, which -- and the reason I
2 appreciate him letting me know that is because typically what
3 happens is I have to take up matters of law at the close of
4 the State's case and then I have to take up matters of law at
5 the close of the -- of the defense's case.

6 So because he let me know that the defense would be
7 resting, we went ahead and took up the matters of law at the
8 close of the defense's case as well so that when I brought
9 you out here, the defense rested, then I'd have to send you
10 back out and take up those matters of law, but we've already
11 done that.

12 So now we're ready to proceed to the next phase of the
13 trial, and that is what is typically referred to as closing
14 arguments or final summation. This is the portion of the
15 case where the attorneys have an opportunity to speak to you
16 or argue to you what they believe the evidence in this case
17 has shown.

18 The evidence -- and as I told you with their opening
19 statements, their closing argument is not evidence, just as I
20 told you the same about their opening statements. Again,
21 they're not under oath. They are not presenting the evidence
22 as far as what they say is not evidence, but this is their
23 opportunity to argue to you what they believe the evidence
24 has shown.

25 The evidence is going to be the items that have been

1 admitted during the course of the trial -- and you'll have
2 all those back in your jury room with you when you go to
3 deliberate -- as well as the testimony from the witnesses.
4 That's the evidence in the case and this is their opportunity
5 to present to you what they believe that evidence has shown.

6 Once they've concluded their closing arguments, I will
7 then give you the charge on the law and then you will be in a
8 position to have the case for your deliberations. Since the
9 State has the burden of proof, they will go first and I would
10 recognize Mr. White for his closing remarks.

11 MR. WHITE: Thank you, Judge.

12 THE COURT: Mr. White.

13 CLOSING ARGUMENT ON BEHALF OF THE STATE

14 MR. WHITE: A feeling that they'll never forget, a
15 moment they'll never forget, and a face they'll never forget,
16 the face of the man who put a gun on a 35-day-old baby and
17 threatened to take that baby's life. Now, that is a face a
18 parent, a mother, will never forget.

19 Rasheem Thomas is charged with armed robbery. There's
20 no question that this is armed robbery, ladies and gentlemen.
21 Armed robbery is the taking and carrying away of another's
22 personal property with intent to deprive them of possession
23 by use of force, threats or intimidation while armed with a
24 deadly weapon. They took property away with gun in hand and
25 they threatened that baby's life.

1 You heard from Anastacia on the morning of May 28th
2 Anastacia was feeding that little girl. Three men forced
3 their way into the home. One of the men points a gun at her
4 daughter and threatens to kill her if they do not turn over
5 the code to the safe.

6 The man's face covering falls off, remains down through
7 the remainder of the robbery. She estimates -- ladies and
8 gentlemen, she testified they were there for about 15
9 minutes. Now, that's probably a guess. I mean her heart was
10 thumping. All of their hearts were racing. She said for
11 about 10 minutes she was able to look at the man who pointed
12 a gun at her newborn, who 35 days earlier she was in the
13 hospital giving birth to that child. It would've taken me
14 one second of looking at that man to remember him for the
15 rest of my life. One second. She had 10 minutes.

16 Two weeks later after getting that loan from her
17 parents, they were out of there, buddy. They were gone. And
18 what happened in the interim? She testified they were
19 stacking stuff against the door, sleeping with guns, scared.
20 All right? Scared during that two weeks and then they were
21 out of that trailer park.

22 Let me tell you something. Guns were stolen, ammunition
23 was stolen, cash was stolen, but what was really stolen that
24 they'll never get back ever, I promise you, is peace of mind.
25 They will never be the same.

1 February 23rd, Anastacia is scrolling through Facebook
2 when she sees a photograph of Rasheem Thomas and she
3 recognizes him immediately and she calls her husband in and
4 he recognizes him immediately and they call McFadden and
5 they're adamant this is the man. A hundred percent, they
6 said. A hundred percent sure.

7 They pointed them out in the courtroom. That's the man.
8 That was the man in the photograph. That's the man in the
9 courtroom. That was the man in the house. That was the man
10 who pointed a gun at my child because it's a face you don't
11 forget.

12 She recognized him immediately. She calls William. I
13 said that. That's the face, a face you don't forget. Ten
14 minutes after that face put a gun on her baby, 10 minutes
15 she's staring at him. It only took once to see him again.

16 And the description they gave, it matches. They saw him
17 and said this is the guy and it's the guy who is on trial
18 today.

19 Then William. What was he doing that quiet Saturday
20 morning? He was in his bathroom. Can you imagine naked,
21 Saturday morning, you hear a knock on the door, you wonder
22 what that might be, and you hear a scream. The next thing
23 you know, you're forced down on the ground, naked, to watch
24 your child being threatened, your newborn child. Restrained
25 with the belt. He also got a good look.

1 He is a gun enthusiast. I think you can tell that from
2 his testimony. He knew a lot. You know, he knew stuff I
3 never even heard of. He knew his stuff. It's like a
4 mechanic, you know. They know their tools and their marks.
5 They know that's my wrench and I know it. You know, he knew
6 his stuff.

7 And although he admitted, ladies and gentlemen, that he
8 could not say for sure if the boxes of bullets were his, now,
9 he said -- he said it from that stand. He said I think all
10 this stuff is mine. When I pressed him on it, I said, now,
11 can you be sure about those bullets, and he said, well, I
12 guess, you know, I can't be sure. They look like every other
13 bullets, but those -- those are the bullets that came out of
14 my safe. But what was he sure about? When he got to that
15 AR-15 magazine; right? When he got to that quad rail, he was
16 absolutely sure those are mine. Those came out of my safe.

17 Now, if he were lying, wouldn't he just say look at that
18 box of bullets, look at that little indentation on there,
19 that's definitely mine. No, he admitted I can't say for
20 sure.

21 I know that mark. I know it. That was a descriptive
22 story. He knew exactly. I think it hurt his feelings a
23 little bit when he marked up that thing because it was
24 pristine and he liked to keep his stuff pristine. But he
25 positively identified those two items and those items, let me

1 be clear, were taken from the home of Rasheem Thomas.

2 The gun enthusiast. He reports six guns stolen. Right?
3 What was inside the safe? He said a .40 cal pistol, a 9-
4 millimeter, a .45, an AR-15, a Judge, a Ruger .380. All
5 right? That's a lot of different calibers. It requires a
6 lot of different bullets. Where are they? Right? That's
7 his safe. Where are they? I'll tell you where they are.
8 They are in the home of Rasheem Thomas. Every caliber, every
9 one.

10 And again, he goes through each box of bullets. He
11 says, you know, that's -- that's my brand, that's my caliber,
12 but yeah, you're right. I don't know for sure. But I know
13 that mark. I know that mark because I built that safe and
14 one of the shelves didn't reach all the way back and when I
15 went to get the magazine and I went to go out and shoot that
16 AR-15 with a buddy, it got lodged and I got impatient and I
17 yanked it out and it left that mark. It left that mark.
18 That's a pretty descriptive story.

19 And it just so happens, now, that's a -- that's a
20 magazine that was left when Rasheem and his buddies were
21 fleeing the scene. And I want to let you know, ladies and
22 gentlemen, an AR-15 magazine -- you know, they make all
23 kinds. You know, there's all different shapes, materials,
24 sizes. This is an exact match to this one except for that
25 one mark he recognized. That's one heck of a coincidence.

1 And you get to that quad rail. He says a hundred
2 percent. Well, how do you know? I mean people have a quad
3 rail. He said because I put the original back in the box.
4 That's an original AR-15. That's the front grip. He got a
5 specialized one, that quad rail. He put the original right
6 back in the box. That box, with the original, is found in
7 the home of Rasheem Thomas.

8 How about Carson? Military service, had some training
9 and knows, you know, what kind of situation he was in. He
10 was just visiting his buddy. All right? He's the godfather
11 to their child. He's forced down on the ground at gunpoint.

12 He testifies. Along with Anastacia, he said this is an
13 inside job. You don't have any friends here. I asked him
14 what did that -- what did you take that to mean. He said I
15 took that to mean they didn't have any friends in that
16 trailer park.

17 And you heard William testifying there was some other
18 bootleggers there, you know. He said there was probably
19 three. Well, I submit to you, ladies and gentlemen, that in
20 a trailer park that size, there is only room for so many
21 convenience stores.

22 He also got a good look. He identified him right here
23 in court. That's him. He gave a description before he did
24 so. It matched. How could he forget? I mean what an honor,
25 right? Hey, buddy, I want you to be the godfather of my

1 child and then 35 days later that child is being threatened
2 at gunpoint and you have military service and you're forced
3 to lay down on the ground and watch. He identifies him.

4 He testified about his military background. He
5 testified and he said it, ladies and gentlemen. You heard
6 it. He had been in situations with guns in the military. He
7 knew these men meant business, those three men that came in
8 and changed their lives forever, and one of those men is
9 Rasheem Thomas.

10 A feeling you never forget, a moment you never forget,
11 and a face that will be emblazoned on your mind forever.
12 Thank you.

13 THE COURT: Thank you, Mr. White.

14 Mr. Swilley?

15 MR. SWILLEY: Thank you, Your Honor.

16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

17 MR. SWILLEY: You know, one of the things you can't get
18 around, no matter what anybody says, no matter what anybody
19 does in this case, the things you can't get through, you
20 can't get around, is in order to do what Mr. White just asked
21 you to do, that is take away Mr. Thomas' freedom and convict
22 him of armed robbery, you cannot do that without doing it
23 because these people said so, Anastacia, Billy, Carson.

24 If you do what they want you to, if you were to do what
25 he asked you to do, it has to be because they said so. They

1 said so. I want you to think about that for a moment and I
2 want you to take that back to the jury room. Because they
3 said so.

4 Now, I don't have a PowerPoint for you to follow along
5 with, but I hope that's all right. But I'll tell you this.
6 Every time I got to get up and do one of these things, you
7 know, I've got to try to relate it or try to use kind of a
8 story, a real-life story, to try to put things in
9 perspective.

10 So I was thinking this morning, you know, I don't -- it
11 gets harder and harder every time and I'll tell you what. I
12 don't have any hobbies, but I've got a lot of people, a lot
13 of friends who take up fishing. If you know anybody that
14 does a lot of fishing, you know, they like those fishing
15 stories; right? And if you hang around enough people that
16 like those fishing stories, a fish always gets bigger as time
17 goes by. The fish always gets a little more feisty, a little
18 bigger every time they tell that fishing story.

19 What you have up here is a fishing story because, look,
20 you know, a fishing story you just have to take the person's
21 word for it. You're just getting their version of what's
22 being told to you, but what we have in this case is we can
23 compare that to law enforcement's investigation and what they
24 have said up here doesn't comport with what the investigation
25 says.

1 And Mr. White mentioned six firearms in his -- in his
2 closing that were stolen. There were five firearms listed in
3 that -- in that report. Just five. He mentioned that ammo
4 supposedly was claimed to have been stolen. Ammo is not
5 listed anywhere of any of law enforcement's materials. They
6 do a thorough job. What also is not listed and what
7 Anastacia testified to was \$3,000, and that's not an
8 inconsequential amount of money to anybody. That is not
9 going to be left out.

10 I know Investigator McFadden got up here and said, well,
11 yeah, there was a description of the car. Well, these guys
12 want to catch the people that did this. Right? If there was
13 a description of a car and three individuals that you could
14 describe, give a description, they would have put out a be on
15 the lookout. They would have caught them.

16 A face you can't forget or a face you can't describe?
17 Because, if you'll remember, you heard a -- you heard a
18 general description of all three people up here. This
19 picture, oh, it's definitely him, but they couldn't give a
20 general description.

21 If you recall William Brookins, he described the
22 individual as having dark eyes and unusually big lips. You
23 can take a look at that picture. You can take a look at Mr.
24 Thomas across the courtroom. He doesn't have that. His
25 description does not comport with that photograph.

1 Now, look, they probably believed that Rasheem had
2 something to do with it, but they don't know. Okay? They
3 don't know because he didn't. No matter what they say up
4 there would change that because when you compare the
5 investigation, like I said, with what they say up here, they
6 don't match up. Truth -- truth and time always -- always
7 matches up.

8 When do you think they'd give a better description? At
9 the time that this happened or today, three years later? If
10 they -- if they had had anywhere near a description of any
11 individual that you could use, they would have given it to
12 them, which brings me to another point I wanted to go over.

13 This -- this stuff that was acquired in the search
14 warrant, law enforcement knows what they're doing. Okay?
15 And I know Investigator McFadden said they called him and
16 there was nothing -- you know, there was nothing important
17 about that stuff and it wasn't any use in showing it to him.

18 And miraculously, over three years later, there just
19 happened to be. When the trial of Mr. Thomas started, oh, I
20 recognize that quad rail is mine, that little marking over
21 there. I recognize that -- that magazine that's never
22 mentioned in any reported materials, but I recognize it
23 today, over three years later at the trial of this case.
24 How's that for coincidence for you?

25 And that's if you believe that that stuff was found at a

1 home in which Mr. Thomas lives and there was no -- there was
2 made no mention of anybody else that lived there, but that
3 stuff is not his. He wants it to be his. He wants it to be
4 his, but it's not.

5 Yeah. And Mr. White said why would he lie about that?
6 Well, it's pretty obvious that he knows what he wants you
7 guys to do and probably wants some free stuff out of it, but
8 if that had been his, the State, be it the Solicitor's Office
9 or the Sheriff's Office, is not so remiss that they -- that
10 that wouldn't have come up before this week. He would have
11 seen that property and been able to compare before he got on
12 that witness stand. Nobody flies by the seat of their pants
13 like that.

14 So what we have here, we have Anastacia that says that
15 she comes in, she sits on the couch the whole time; right?
16 And she's sitting there and she's holding the baby. She's
17 got her 35-day-old baby with her. And the State has done a
18 good job to try to make you feel sympathetic towards them.
19 And nobody deserves to be robbed like this. Okay? But don't
20 let that cloud your judgment about what's really going on.

21 And supposedly, this individual, who was wearing a
22 bandanna, as they say, but law enforcement materials say
23 there were two men with a mask, one who apparently knocked on
24 the door with no mask who was never -- who wasn't well
25 described and has never been found. Right?

1 So supposedly this man with a mask, the mask comes down
2 and he's walking around and she gets to view him for 10
3 minutes. That's not mentioned anywhere in there. Right?
4 And that's important because that's what she said up here,
5 but it doesn't reflect here. There's the fish. There's the
6 fish getting bigger. Right? We've got this material. We
7 can see that that's not the case. The fish stays the same
8 size.

9 All right. Now, you've got -- also, Anastacia said
10 there was a tussle and here's the -- it's the little things.
11 It's the little things that are going to help y'all determine
12 people's credibility. Remember, she said William got taken
13 down and hit on the head with a gun. I said William got hit
14 on the head with a gun? Well, it was just a tap.

15 Well, you know, William wasn't in here when she was
16 testifying luckily. So when William comes in, he goes -- I
17 said you lost consciousness? I was knocked unconscious. All
18 right. Look. You know, if you had been knocked unconscious
19 with a gun and woke up, you would need some medical
20 attention. Nobody is that tough. It's not true, along with
21 a lot of other stuff. And then Carson, of course, didn't see
22 -- didn't see anything that went on there, but that's the
23 kind of thing you need to be mindful of to determine
24 credibility, people's credibility.

25 And I'm not -- I'm not trying to disparage anybody. I'm

1 not trying to pick on anybody, but what was going on here is
2 here's a guy living in a mobile home with his new baby that's
3 doing stuff he shouldn't be doing, selling beer and selling
4 drugs. All right. He admitted some of that. He didn't
5 admit all of it, but he was selling drugs and that type of
6 thing invites this type of thing to happen. They don't
7 deserve it. They didn't deserve to have that happen, but
8 that's why it happened.

9 And this is supposedly an inside job. He's not on the
10 inside. He doesn't live in that trailer park. There is no
11 nexus between Rasheem Thomas -- and I say nexus. I'm sorry.

12 There's no connection between Rasheem Thomas and anybody
13 that lives in that trailer park. Rasheem Thomas, based on
14 the testimony you heard from all three of those people, had
15 never been inside that -- that mobile home. He had never
16 patronized them there. They hadn't seen him supposedly any
17 time before the 28th at any time and then supposedly an inside
18 job and he supposedly all of a sudden becomes the ringleader.

19 And then Investigator McFadden, even though he didn't
20 have a -- he didn't keep a very good report as far as records
21 about the important stuff that happened, it looks like he did
22 recall some stuff. Nobody is described as being really fat
23 and having to pull up their pants at any point. No one is
24 described as having an afro puff. I think he mentioned that.

25 And also, no one ever mentioned to the police that

1 anybody was ever tied up with a belt. The fish is getting
2 bigger now. According to Billy, oh, they got the belt. They
3 took the belt into evidence. Where's the belt? If they
4 would've taken that into evidence, they would have sent that
5 down to SLED. They would try to get some kind of touch DNA
6 off of it or it would have been in police custody. It didn't
7 happen. That didn't happen. That part of the story came up
8 between May the 28th, 2016, and today or this week rather.

9 Now, we don't know what their conversations were. We
10 don't know at what point the fish got bigger, but it got
11 bigger, and that's credibility. That's what you have to take
12 into consideration. Don't send an innocent man to prison for
13 armed robbery because some -- because these people say so.

14 That's what we're dealing with. Luckily, we have these
15 law enforcement materials that can show the fish isn't
16 getting any bigger, show that the fish is the same size it
17 was at the time this happened.

18 You will notice that these witnesses that testified,
19 Anastacia, Carson, and Billy, their stories only line up when
20 it comes to supposedly them being able to recognize that
21 picture of Rasheem. There's too many inconsistencies in all
22 the rest of it. A face you could never forget or a face you
23 can't describe?

24 There's a lot of inconsistencies about whether or not --
25 and I hope this really didn't happen, but there's a lot of

1 inconsistencies about somebody threatening I'll shoot the
2 child or whether somebody pointed a gun at the child or the
3 other person, but the law enforcement materials and the
4 testimony is inconsistent. There's too many inconsistencies
5 in this case.

6 And you heard all the police get on the stand. They
7 know how to do a report. They know how to be thorough. They
8 know how to make it precise and they know how to make it
9 complete. All right. They're not going to leave out these
10 important details because they want to catch the guys. Their
11 job, their full-time job, is to catch criminals. That's what
12 they want to do. They're not -- they're not going to leave
13 out this important stuff.

14 And when we get here, they may -- hopefully, you believe
15 that, that it was all an inadvertent mistake, but that's not
16 the case. The case is somebody was improperly identified,
17 the wrong person was identified, and they went and arrested
18 him.

19 And the fact that there's any -- these common bullets
20 happen to be found from common guns in a house doesn't
21 corroborate anything. And the fact that he says some of the
22 stuff was his most definitely this week should tell you
23 everything. That's not true. That would've happened before
24 now. Look at the timing. There was nine -- it was nine
25 months between this happening and Rasheem Thomas being --

1 being arrested for it. Nine months. If that had really been
2 Rasheem Thomas, it would've happened way sooner, but it
3 wasn't Rasheem Thomas; so it went down like this.

4 It may have very well have been an inside job. It may
5 have very well have been some guys from that trailer park or
6 the next trailer park next door. We'll never know,
7 unfortunately. It doesn't look like it. If things would've
8 gone down differently, maybe they would have gotten caught.
9 They got the wrong guy. Don't let them send the wrong guy to
10 prison.

11 Now, I've been in charge of Rasheem's case a long time
12 and I've probably been talking for way longer than I should
13 have. When I sit down, I'm finished. I'm not in charge of
14 it anymore. That transfers to you all. Please do the right
15 thing and find him not guilty because he's not guilty.

16 (WHEREUPON, the Court left the bench and approached the
17 front of the jury box.)

18 CHARGE ON THE LAW

19 THE COURT: All right. Ladies and gentlemen, as I told
20 you when we started this case, you are the judges of the
21 facts and the Court is the judge of the law and so during the
22 trial as the attorneys have been presenting to you the facts
23 and the evidence, it's been appropriate for me to be up on
24 the bench out of the way and allow that process to take
25 place.

1 But we are now at the point of this trial where you and
2 I are in this together, you as the judges of the facts and me
3 as the judge of the law. So I think it is appropriate that I
4 come down to be with you to give you the charge on the law.
5 I am going to read this verbatim because I don't want to
6 leave anything out or misquote anything.

7 Madam Forelady and members of the jury, you have heard
8 all of the evidence and the arguments of both parties. I am
9 now going to explain to you the law which applies to this
10 action.

11 The indictment charges the defendant, Rasheem Kevin
12 Thomas, with the offense of armed robbery. I remind you that
13 the fact that the defendant was arrested, charged, and
14 indicted in this case is not evidence in this case and cannot
15 be considered by you as evidence of guilt. The indictment,
16 as I've told you, is simply the formal written instrument
17 which contains the charge made against the defendant. It is
18 the formal document which brings this case into this court.

19 To that indictment, Mr. Thomas has pled not guilty, and
20 that plea puts the burden on the State to prove the defendant
21 guilty. A person charged with committing a criminal offense
22 in South Carolina is never required to prove him or herself
23 innocent.

24 I charge you that it is an important rule of law that a
25 defendant in a criminal trial, no matter what the seriousness

1 of the trial -- of the charge may be, will always be presumed
2 to be innocent of the crime for which the indictment was
3 issued unless guilt has been proven by evidence satisfying
4 you of that guilt beyond a reasonable doubt. This
5 presumption of innocence does not end when you begin your
6 deliberations, but it accompanies the defendant throughout
7 the trial until you reach a verdict of guilt based on
8 evidence satisfying you of that guilt beyond a reasonable
9 doubt.

10 The presumption of innocence is not a mere legal theory.
11 It is not just a legal phrase, but it is a substantial right
12 to which every defendant is entitled unless you, the jury,
13 are satisfied from the evidence of the defendant's guilt
14 beyond a reasonable doubt.

15 So what is a reasonable doubt in the law? Some of you
16 maybe have served on a jury in civil cases where you were
17 told that it is only necessary to prove that a fact is more
18 likely true than not true, such as by the greater weight or
19 the preponderance of the evidence. In criminal cases, the
20 State's proof must be more powerful than that. It must be
21 beyond a reasonable doubt. Proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the defendant's
23 guilt.

24 Now, there are very few things in this world that we
25 know with absolute certainty and in criminal cases the law

1 does not require proof that overcomes every possible doubt.
2 The State's burden simply requires proof beyond any
3 reasonable doubt.

4 I remind you that during this trial you and I have
5 certain duties to perform. As the trial judge, it is my
6 responsibility to preside over the trial of this case and I
7 also have the duty to rule on the admissibility of the
8 evidence offered during the trial.

9 You are to consider only the competent evidence that is
10 before you. You are to consider the testimony which has been
11 presented from the witnesses in the witness stand and any
12 exhibits which have been made a part of this record.

13 I have the additional duty to charge you the law that is
14 applicable to this case. As the presiding judge, I am the
15 sole judge of the law of this -- in this case and it is your
16 duty as jurors to accept and apply the law as I know state it
17 to you. If you already have any idea as to what the law is
18 or what the law ought to be and it does not agree with what I
19 now tell you the law is, you must abandon your idea because
20 you are sworn to accept the law and to apply the law exactly
21 as I state it to you.

22 In every case tried in this court before a jury, the
23 jury becomes the sole and the exclusive judge of the facts in
24 a case. A trial judge cannot intimate, state, comment on or
25 make any statement to a trial jury about the facts in a case.

1 Since you, the jury, are the sole judges of the facts in
2 this case, you are not to infer from what I have said during
3 the progress of this trial in ruling upon the admissibility
4 of evidence or otherwise or anything that I say now during
5 the course of this instruction to you that I have any opinion
6 about the facts in this case. The law does not allow me to
7 have an opinion about the facts. This is a matter solely up
8 for you, the members of the jury, to determine. As jurors,
9 it is your duty to determine the effect, value, and weight of
10 the evidence presented during the trial.

11 Now, there are two types of evidence which are generally
12 presented during a trial. There is direct evidence and there
13 is circumstantial evidence.

14 Direct evidence is the testimony of a person who claims
15 to have actual knowledge of a fact, such as an eyewitness.
16 Circumstantial evidence is proof of a chain of facts and
17 circumstances which indicate the existence of a fact.

18 Crimes may be proven by circumstantial evidence and to
19 the extent that the State relies on circumstantial evidence,
20 all of the circumstances must be consistent with each other
21 and when taken together point conclusively to the guilt of
22 the accused beyond a reasonable doubt. If these
23 circumstances merely portray the defendant's behavior as
24 suspicious, then that proof has failed.

25 The law makes absolutely no distinction between the

1 weight or the value to be given to either direct or
2 circumstantial evidence, nor is there any greater degree of
3 certainty required of circumstantial evidence than of direct
4 evidence. You should weigh all of the evidence in this case.

5 The State has the burden of proving the defendant guilty
6 beyond a reasonable doubt, and this burden rests with the
7 State regardless of whether the State relies on direct
8 evidence, circumstantial evidence or some combination of the
9 two.

10 Now, necessarily, you must determine the credibility of
11 the witnesses who have testified in this case. And, folks,
12 credibility simply means believability. It becomes your duty
13 as jurors to analyze and to evaluate the evidence and to
14 determine which evidence convinces you of its truth. In
15 evaluating eyewitness testimony, you should remember that the
16 State must prove the identity of the defendant as the person
17 who committed the crime beyond a reasonable doubt.

18 In determining the believability of witnesses who have
19 testified in this case, you may believe one witness over
20 several or several witnesses over one. You may believe a
21 part of the testimony of a witness and reject the remaining
22 part or you may believe the testimony of the witness in its
23 entirety or reject it in its entirety.

24 You may consider whether any witness has exhibited to
25 you any bias or other motive in this case. You may consider

1 whether the witness is seeking a personal gain, as well as
2 the appearance and the manner of a witness while on the
3 witness stand. You have the right, ladies and gentlemen, to
4 consider anything in this record that will help you in
5 judging the credibility of the witnesses who have testified.

6 Now, while the arguments of counsel is a beneficial part
7 of every trial, you should remember that the statements made
8 by the attorneys are not evidence. In presenting arguments,
9 attorneys often refer to the evidence. However, you should
10 base your verdict on the evidence as you remember it.
11 Therefore, if there are any conflicts between the
12 recollection of counsel about the evidence and your own
13 recollection, you should rely upon your own understanding of
14 the evidence.

15 Now, I instruct you and I emphasize the fact that the
16 defendant, Rasheem Kevin Thomas, the fact that he did not
17 testify is not a factor to be considered by you in any way in
18 your deliberations and in your consideration on the question
19 of guilt or innocence of Mr. Thomas. It must not be
20 considered by you in any manner whatsoever.

21 A defendant has the constitutional right to remain
22 silent and the assertion of this right must not be considered
23 by you in your deliberations. I repeat, under your oath, you
24 are to draw no conclusion whatsoever from the fact that Mr.
25 Thomas did not testify in this case. The fact that he did

1 not testify should not even be discussed in the jury room.

2 The burden of proof, as I have stated to you, is on the
3 State. A defendant is not required to prove his innocence
4 and the burden remains upon the State to prove guilt beyond a
5 reasonable doubt.

6 Now, in this case, Mr. Thomas is charged with the
7 offense of armed robbery. In order to prove this offense,
8 the State must first prove beyond a reasonable doubt that the
9 defendant took personal property from the person or presence
10 of another person. Property is in the presence of a person
11 if it is within the person's reach, inspection, observation
12 or control so that the person could, if not overcome with
13 violence or prevented by fear, could keep possession of that
14 property.

15 The State must also prove beyond a reasonable doubt that
16 the defendant carried the property away, intending to
17 permanently deprive the owner of the property and to keep the
18 property for his own use. The slightest removal of the
19 property or the complete possession of the property for even
20 an instant by the defendant is sufficient to show a taking or
21 a carrying away of the property. The taking and carrying
22 away of the property must have been done with violence or by
23 putting the owner of the property in fear of violence.

24 And finally, the State must prove beyond a reasonable
25 doubt that the defendant was armed with a deadly weapon or

1 what reasonably appeared to be a deadly weapon during the
2 commission of the robbery. A deadly weapon is any article,
3 instrument or substance which is likely to cause death or
4 great bodily injury.

5 Whether an instrument has been used as a deadly weapon
6 depends on the facts and circumstances of each case. The
7 following are examples of instruments which may be deadly
8 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
9 knife, a slingshot, metal knuckles, a razor, gasoline,
10 firebomb or lighter fluid. A gun may be a deadly weapon even
11 if it is not operable.

12 Now, ladies and gentlemen, your verdict in this case, as
13 I told you earlier, must be unanimous. In other words, you
14 must all agree on the verdict, whatever it may be. Your
15 deliberations are secret and you will never have to explain
16 your verdict to anyone.

17 However, your verdict in this case cannot be based on
18 sympathy, compassion or any other type of emotion or any
19 consideration that's not found in the evidence. Each of you
20 must decide this case for yourself but only after fully
21 considering the evidence along with your fellow jurors. So
22 you must discuss the case with one another and try to reach
23 an agreement.

24 While you're discussing the case, don't hesitate to re-
25 examine your own opinion and to change your mind if you

1 become convinced that you were wrong, but don't give up your
2 honest or your firmly held beliefs just to be in agreement
3 with others or just simply to get the case over with.

4 Now, in a moment I'm going to send you back into the
5 jury room and I'm going to ask you, Madam Forelady, don't
6 begin the deliberations yet.

7 I'm going to send you back. I'm going to just review
8 briefly with the lawyers to make sure that I've covered
9 everything that I need to cover. If there's anything else
10 that I need to share with you or charge you, I will bring you
11 back out and we'll do that. But if the charge is good as is,
12 we'll collect these items that were placed into evidence and
13 send them back to you.

14 Along with the items will be a verdict form and the
15 verdict form is very simple. It just has the caption of the
16 case at the top and then it's -- basically, it's just the one
17 charge. We, the jury, either find the defendant guilty or
18 not guilty. Whatever your decision is, you will mark the
19 appropriate slot and just sign it as the forelady.

20 But -- and so I'm going to send you back now. Don't
21 begin your deliberations until you receive the evidence.
22 Once the evidence is sent back, that will be your cue to
23 begin your deliberations. Okay?

24 So if you would, step back and await these items.

25 (WHEREUPON, the jury exited the courtroom at 12:13 p.m.)

1 THE COURT: All right. Are there any objections or
2 exceptions to the charge from the State?

3 MR. WHITE: None from the State, Judge.

4 THE COURT: Anything from the defense?

5 MR. SWILLEY: None from the defense, Your Honor.

6 THE COURT: All right. Guys, if y'all would, get with
7 Krystal, look over and make sure.

8 (WHEREUPON, there was a pause in the proceedings to
9 check the evidence, after which the proceedings resumed
10 as follows.)

11 THE COURT: And, Ms. Francis, when you take that back,
12 if you would please ask the two alternates to step out for
13 me.

14 THE BAILIFF: I will.

15 (WHEREUPON, the evidence and verdict form were delivered
16 to the jury and the jury deliberations began at 12:15
17 p.m.)

18 THE COURT: All right. So we've got Ms. Cox and Ms.
19 Davis as the two alternates. Right?

20 (WHEREUPON, the alternate jurors entered the courtroom.)

21 THE COURT: All right. Ms. Davis and Ms. Cox, I was
22 just going to thank you for your service. I think your
23 fellow jurors are all healthy and able to proceed with their
24 deliberations. So I'm going to excuse you at this time and
25 thank you for your service. I tell folks all the time you've

1 been here and you've listened to everything. You are free to
2 go. Your service is concluded. You don't have to come back
3 or anything, but if you -- if you want to hang around and
4 stay, you're welcome to, but you certainly aren't required
5 to.

6 But if you would, just -- oh, and I spoke with Nicole.
7 They're going to mail your checks out tomorrow. I told
8 Nicole -- she said that, well, they're not that much, I said,
9 well, it's better than a kick in the teeth, I guess. So you
10 get a little bit of money, but they'll send those out
11 tomorrow and there will be a work excuse with those when they
12 send them out, if you need that.

13 But that does conclude your service. So you are free to
14 go and you can either leave or you can come have a seat and
15 stay with us if you want to see how it turns out. That's up
16 to you. I'll leave it up to you. Thank you.

17 (WHEREUPON, the alternate jurors were released at 12:18
18 p.m.)

19 THE COURT: Folks, if y'all want to be not too far or at
20 least leave us a cell number if we need to reach you or
21 something. We'll just be at ease while the jury is working
22 and if we get a question or a verdict, we'll call you in and
23 deal with whatever we have. Okay?

24 MR. SWILLEY: Yes, sir.

25 MR. WHITE: Sounds good. Thank you, Judge.

1 (WHEREUPON, there was a break in the proceedings from
2 12:19 p.m. until 1:12 p.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: All right. Is the State ready to receive
5 the verdict?

6 MR. WHITE: Yes, sir, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. SWILLEY: Yes, Your Honor.

9 THE COURT: All right. Folks, let me just share with
10 you what I share with everybody whenever I have a case.

11 I don't know what the verdict is. All I'm told is that
12 the jury has a verdict. So I'm kind of -- I sit here just
13 like you do, but I just want to make it clear that whatever
14 verdict the jury has come up with that it be received in a
15 professional manner.

16 I don't ever ask anyone to agree with a jury's verdict.
17 I just ask that it be accepted in a professional manner,
18 whether you agree with it or disagree with it. I'm not going
19 to tolerate any outbursts or any outwardly, you know,
20 excessive show of emotions one way or the other. Just please
21 just receive the verdict in a professional way and -- and
22 then we'll go from there. Okay?

23 So go ahead and ask the jury to join us, please.

24 (WHEREUPON, the jury entered the courtroom at 1:14 p.m.)

25 THE COURT: Ms. Derry, has the jury reached a unanimous

1 verdict, ma'am?

2 THE FORELADY: Yes, sir.

3 THE COURT: All right. If you would, please pass that
4 to Madam Clerk for me. Thank you.

5 All right. Madam Clerk, if you would please publish the
6 verdict for the Court, I'd appreciate that.

7 VERDICT

8 THE CLERK: State of South Carolina, County of Florence,
9 in the Court of General Sessions, State of South -- State of
10 South Carolina versus Rasheem Kevin Thomas, Indictment Number
11 2018-GS-21-1032.

12 We, the jury, find the defendant guilty of armed
13 robbery.

14 Dated June 26th, 2019. Signed Evelyn Derry, Forelady.

15 Members of the jury, if this is your verdict, please
16 raise your right hand.

17 (WHEREUPON, all jurors complied.)

18 THE COURT: All right. Thank you very much, ladies and
19 gentlemen.

20 Folks, I want to thank you for your service this week.
21 This does conclude your service for the week. We have
22 several other matters that we're going to be dealing with,
23 but they are non-jury matters and so this is -- while you
24 were involved in this case, we had another trial going on in
25 the courtroom next door, which resolved, I think, yesterday.

1 So this was the last of our jury trials for this week. So
2 that concludes your service.

3 Now -- and Madam Clerk has indicated that they will mail
4 you your checks, as well as along with your check there will
5 be a work excuse, those of you who may need that. So what I
6 was going to tell you though is that does conclude your
7 service for this week and I want to thank you for your
8 service. Now, I'm going to give you some options. Okay?

9 The way it works in General Sessions Court is we will
10 proceed in just a moment to the sentencing portion of the
11 trial. You worked the case. If you would like to remain for
12 that, you're certainly welcome to do that. I always -- you
13 know, you're the jury. You have the right to be present for
14 that if you would like to be here, but you certainly don't
15 have to be. Your -- your service is concluded and you're
16 free to go.

17 I always give the jury the option of either staying for
18 the sentencing phase or leaving and, usually, it works out
19 some people leave, some people stay. I've never had
20 everybody stay. I've never had everybody leave. It's
21 usually a combination, but it doesn't matter. Whatever you
22 want to do is up to you. Okay?

23 But we're going to be doing that shortly. If you would
24 like to stay for that, you can just remain and we'll do that,
25 but if you would like to leave, you're certainly free to go.

1 Let me -- are there any motions or anything from the
2 defense at this time?

3 MR. SWILLEY: I would move to poll the jury.

4 THE COURT: All right. Madam Clerk?

5 Ladies and gentlemen, Madam Clerk is going to do a
6 polling of the jury. If you'll just answer her questions. I
7 think she has two questions or do you do it as one?

8 THE CLERK: I do it as two.

9 THE COURT: Okay. Just --

10 THE CLERK: I'm going to ask you two. When I call your
11 name, I need you to stand and I'm going to ask you two
12 questions and I need you to answer yes or no to each
13 question.

14 53, Reagan Gray. Was this your verdict then back in the
15 jury room?

16 JUROR NUMBER 53: Yes.

17 THE CLERK: Is this still your verdict now?

18 JUROR NUMBER 53: Yes.

19 THE CLERK: Thank you.

20 THE COURT: Thank you, ma'am.

21 THE CLERK: 20, Rita Cagle. Was this your verdict then?

22 JUROR NUMBER 20: Yes.

23 THE CLERK: Is this still your verdict now?

24 JUROR NUMBER 20: Yes.

25 THE CLERK: Thank you.

1 Number 5, Benjamin Lester. Lester Benjamin. I'm sorry.
2 Was this -- was this your verdict then?
3 JUROR NUMBER 5: Yes.
4 THE CLERK: Is this still your verdict now?
5 JUROR NUMBER 5: Yes.
6 THE CLERK: 112, Jocelyn Murtha. Was this your verdict
7 then?
8 JUROR NUMBER 112: Yes.
9 THE CLERK: Is this still your verdict now?
10 JUROR NUMBER 112: Yes.
11 THE CLERK: 169, Tiffany Woods. Was this your verdict
12 then?
13 JUROR NUMBER 169: Yes.
14 THE CLERK: Is this still your verdict now?
15 JUROR NUMBER 169: Yes.
16 THE CLERK: 127, Jasmyn Quillen. Was this your verdict
17 then?
18 JUROR NUMBER 127: Yes.
19 THE CLERK: Is this still your verdict now?
20 JUROR NUMBER 127: Yes.
21 THE CLERK: 138, Ronald Scott. Was this your verdict
22 then?
23 JUROR NUMBER 138: Yes.
24 THE CLERK: Is this still your verdict now?
25 JUROR NUMBER 138: Yes.

1 THE CLERK: 33, Evelyn Derry. Was this your verdict
2 then?

3 JUROR NUMBER 33: Yes.

4 THE CLERK: Is this still your verdict now?

5 JUROR NUMBER 33: Yes.

6 THE CLERK: 152, Jacob Tucker. Was this your verdict
7 then?

8 JUROR NUMBER 152: Yes.

9 THE CLERK: Is this still your verdict now?

10 JUROR NUMBER 152: Yes.

11 THE CLERK: 21, Jacqueline Ceasar. Was this your
12 verdict then?

13 JUROR NUMBER 21: Yes.

14 THE CLERK: Is this still your verdict now?

15 JUROR NUMBER 21: Yes.

16 THE CLERK: 96, Jakob Marlowe. Was this your verdict
17 then?

18 JUROR NUMBER 96: Yes.

19 THE CLERK: Is this still your verdict now?

20 JUROR NUMBER 96: Yes.

21 THE CLERK: 173, Lindsey Miller. Was this your verdict
22 then?

23 JUROR NUMBER 173: Yes.

24 THE CLERK: Is this still your verdict now?

25 JUROR NUMBER 173: Yes.

1 THE CLERK: That's everyone, Judge.

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

3 Anything else from the defense?

4 MR. SWILLEY: There's not, Your Honor.

5 THE COURT: All right. Solicitor, have you got a
6 sentencing sheet prepared?

7 MR. WHITE: Yes, sir, Judge.

8 THE COURT: Thank you, sir.

9 MR. WHITE: Thank you, Judge.

10 THE COURT: All right. At this time, I'll be happy to
11 hear from the State regarding any positions that you may have
12 regarding sentencing.

13 MR. WHITE: Thank you, Judge. I'd first like to address
14 this case that was before the jury this week. I know we've
15 heard all the facts, but, Judge, in my short career, I think
16 this will probably be the most egregious home invasion that I
17 will encounter throughout the duration of my career because
18 of the small child that's involved here. So I just would
19 like to emphasize that.

20 Your Honor, this defendant, Mr. Rasheem Thomas, does
21 have a criminal history. In 2008, a criminal trespass. In
22 2008, a little bit later on in 2008, an assault with bodily
23 injury to a family member. Judge, then in 2009, possession
24 of a controlled substance. Later on in 2009, a property
25 crime. Judge, it looks like less than 500 but more than \$50.

1 Judge, then his in-state record is from 2012. He was
2 placed on probation. The sentence was as follows: eight
3 years suspended to 144 days' time served and two years of
4 probation for accessory after the fact to a felony.

5 Judge, I would also like to note that there is a pending
6 murder charge, that he is charged with murder in our office.
7 Depending on how the sentence goes today on this particular
8 case will be a deciding factor in how the State moves forward
9 on that murder.

10 Judge, I would like to point out that the victim is here
11 in the courtroom today. Her husband had to go back to work.
12 You know, Carson MacArthur had to go back to work in North
13 Carolina, but I would ask that you hear from her if she does,
14 in fact, wish to address the Court.

15 THE COURT: I'll be more than happy to hear from anyone
16 who would like to address the Court regarding sentencing.

17 MR. WHITE: Judge, she's telling me she does not want to
18 -- wish to address the Court.

19 THE COURT: Okay.

20 MR. WHITE: But in closing, Judge, I would like to also
21 bring up the fact that these guns were never recovered and we
22 know how that goes. We see this day in and day out. Where
23 those guns are and what they're being used for is of great
24 concern to law enforcement, and I wish you would take all of
25 that into consideration in your sentencing.

1 THE COURT: All right. Thank you, Mr. White.

2 Mr. Swilley, I'll be more than happy to hear from the
3 defense. And if Mr. Thomas wishes to address the Court, I'll
4 be happy to hear from him or if anyone else would like to
5 address the Court as well.

6 MR. SWILLEY: Your Honor, I'm going to advise that Mr.
7 Thomas not speak just out of an abundance of caution for
8 appellate purposes.

9 THE COURT: Okay.

10 MR. SWILLEY: I'd ask the Court to not -- not hold that
11 against him. That's --

12 THE COURT: I would not do that.

13 MR. SWILLEY: That's per my advice.

14 THE COURT: Sure.

15 MR. SWILLEY: He is here with two of his sisters, Judge,
16 Leticia Thomas and Nikia Thomas. I'm not sure if they wish
17 to be heard. It would it appear that Ms. Nikia does wish to
18 be heard.

19 THE COURT: Sure.

20 MR. SWILLEY: Your Honor, before that, I want to apprise
21 the Court Mr. Thomas has been -- as far as credit for time
22 served, he had been incarcerated for this since it would
23 appear February the 28th, 2017, until March the 12th of 2019,
24 where he is -- he was bonded. He was on bond. He was able
25 to make bond and was on an ankle monitor with GPS, and I'd

1 ask the Court to give him credit for that as well for time
2 served.

3 THE COURT: And let me -- if I may, because I've got
4 this little app here, could you give me those dates again
5 then from February the what?

6 MR. SWILLEY: 28th of 2017.

7 THE COURT: All right. And then?

8 MR. SWILLEY: March the 12th of 2019 is when the bond was
9 posted.

10 THE COURT: All right. March 12th.

11 MR. SWILLEY: And he posted bond on the other matter at
12 the same time.

13 THE COURT: Okay. So February 28th of 2017 to March 12th
14 of 2019?

15 MR. SWILLEY: That's correct.

16 THE COURT: And he was held in detention for that entire
17 period of time?

18 MR. SWILLEY: That's correct, Your Honor.

19 THE COURT: Released March the 12th of 2019 and then is
20 here today?

21 MR. SWILLEY: Correct.

22 THE COURT: Okay. All right. That's 742 days, 743
23 counting today.

24 All right. Anything else?

25 MR. SWILLEY: I think Ms. Nikia Thomas wishes to be

1 heard, Judge.

2 THE COURT: Yes, ma'am. Ms. Thomas, I'll be more than
3 happy to hear from you.

4 MS. THOMAS: Hello, Judge. I just ask that you be
5 lenient with my brother and to the family, and I apologize
6 for what happened. I just pray that you have leniency on
7 him.

8 In the short time that I did get to spend with my
9 brother, me and my sister recently just had, you know, his
10 niece and nephew. They are two days apart. About five
11 months before then, before we found out that we were having
12 our babies, we lost our mom, and our brother wasn't there
13 with us.

14 So, you know, we just -- everything has been different
15 and this is another challenge that we have to go through. So
16 I just ask that you be lenient with my brother.

17 THE COURT: Thank you, ma'am.

18 MR. SWILLEY: Judge, a couple of things I'd also like to
19 add.

20 THE COURT: Yes, sir.

21 MR. SWILLEY: Mr. Thomas is 33. He did suffer a wound
22 to his arm via stabbing, which had left him in the process of
23 applying for disability, I think around the time of his
24 arrest. That's -- that is true, as Ms. Thomas said, his
25 mother did suddenly pass away. She was rushed to the

1 emergency room while he was -- while he was incarcerated.

2 He doesn't have any children. He has lived the majority
3 of his life in Florence, a real impecunious nature. He did
4 have -- he did spend some time out in Texas for a while and
5 was originally from New York and, Your Honor, obviously, we
6 ask the Court to consider a more lenient sentence at this
7 time. Thank you.

8 THE COURT: Thank you, sir.

9 Mr. White, you had mentioned earlier that there was a --
10 I don't know. You may not know either. There was an eight-
11 year sentence suspended upon time and probation, but it just
12 said that was -- it was for a felony. Do you know what the
13 --

14 MR. WHITE: Judge --

15 THE COURT: -- nature of that charge was?

16 MR. WHITE: I do not. It just -- it lists it simply as
17 an accessory after the fact to a felony A, B or C.

18 THE COURT: Okay.

19 MR. WHITE: And, Judge, if you wish, it looks like he
20 was monitored by Florence County Probation and Parole. I can
21 have them step in. That would be no problem. I hate to
22 delay the sentencing, but --

23 THE COURT: Well, I just was curious as to what that
24 offense was, but I mean I'm going to confer a little bit with
25 my clerk. If you can get that answer for me, I'd appreciate

1 it, but it's not necessary.

2 (WHEREUPON, there was a pause in the proceedings, after
3 which the proceedings resumed as follows.)

4 THE COURT: What was the date?

5 THE CLERK: June of 2012.

6 THE COURT: June of 2012 you said?

7 THE CLERK: Is that right?

8 MR. WHITE: He was placed on probation June -- June 21st,
9 2012.

10 THE CLERK: The attempted murder was nolle prossed and
11 they --

12 THE COURT: So it was two charges?

13 THE CLERK: The armed robbery was also nolle prossed.
14 So he was --

15 THE COURT: It was an armed robbery, attempted murder,
16 and --

17 THE CLERK: And a conspiracy -- accessory after the
18 fact.

19 THE COURT: So it was the accessory after the fact.

20 THE CLERK: You sentenced him.

21 THE COURT: Okay.

22 THE CLERK: So eight years suspended to time served and
23 two years' probation.

24 THE COURT: Okay.

25 MR. WHITE: So an accessory after the fact to an armed

1 robbery?

2 THE COURT: Accessory after the fact to either the
3 attempted murder or the armed robbery or both.

4 MR. WHITE: Yes, sir.

5 THE COURT: Okay. All right.

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 THE COURT: Obviously, the concern that the Court has is
9 this is the second time that Mr. Thomas has been involved in
10 some fashion with an armed robbery. Although the last time
11 it was an accessory after the fact, this time it's actually
12 the commission of an armed robbery.

13 SENTENCE

14 THE COURT: On Indictment 2018-GS-21-1032, the sentence
15 of the Court is that you be committed to the State Department
16 of Corrections for a period of 25 years. Give you credit for
17 the 743 days that you have served.

18 Good luck to you, sir.

19 (WHEREUPON, the defendant was moved from the courtroom.)

20 THE COURT: Ladies and gentlemen, just so you know, the
21 law of armed robbery carries a mandatory minimum sentence of
22 not less than 10 years nor more than 30 years, and that range
23 is in place by the legislature to deal with those who --
24 obviously, you have some folks that have no prior record.
25 You have some folks that have somewhat of a prior record.

1 You have some folks that have a bad prior record. So the
2 legislature gives us a range from 10 to 30, depending on
3 those factors.

4 I -- I try to explain to folks the reasoning behind my
5 sentencing, not that it makes any difference, but just so you
6 have some idea of what the Court considers. The
7 consideration here is his prior record, that he's been
8 involved in an armed robbery as an accessory in the past and
9 an attempted murder.

10 He -- I will tell you because it was -- it was mentioned
11 by the State, he's got a pending charge that involves some
12 other violent crime. I don't consider that. That's a
13 pending charge. He has not been convicted of that and so
14 that would be inappropriate for me to consider. He's
15 presumed innocent of that pending charge; so I did not
16 consider that. I simply considered his prior record and the
17 actions contained in the course of this conduct here.

18 I didn't know it until we just went through the record,
19 but apparently, I was the sentencing judge back in 2012 when
20 he was before the Court on the -- on the armed -- accessory
21 after the fact to armed robbery. And in that case -- and I
22 don't remember the case. That's a lot of years ago and I see
23 a lot of folks, but the concern that I have is that,
24 apparently, the sentence was an eight-year sentence suspended
25 upon the service of about -- it was about seven months, six

1 months, something like that, and placed on probation
2 thereafter.

3 Obviously, the concern that I have is that here we are
4 six or seven years -- well, actually, this occurred three
5 years ago. So here we are three years later and he's back
6 involved in an armed robbery and, in my opinion, a rather
7 egregious armed robbery. You had an infant child that could
8 have been killed, as well as the family that experienced
9 that.

10 So all of those were taken into consideration by the
11 Court in imposing the sentence that the Court imposed. It is
12 a -- if I'm not mistaken, it is an 85 percent crime. He will
13 be eligible for release after serving 85 percent, and I did
14 give him credit for the 742 days that he did serve. So he's
15 got that behind him.

16 But in any case, ladies and gentlemen, the reason that
17 our court system is set the way it is -- in all criminal
18 cases in South Carolina, the jury is the factfinders, as you
19 are aware. The jury decides whether someone is guilty or not
20 guilty. Consideration of sentencing is not for the jury to
21 be concerned about, just simply whether or not the State has
22 met its burden.

23 And the reason for that is -- I hope it's clear. What
24 should occur -- and don't get me wrong. Judges are not
25 robots. We have feelings too. We have emotions and when I

1 heard from Ms. Thomas and I heard about their family and the
2 loss of their mother, that -- that doesn't fall on deaf ears
3 when I hear that, but when it comes to sentencing, to the
4 extent that you can humanly do it, you need to take the
5 emotion out of it and do what is -- what you believe is
6 appropriate under the law and under the scenario that is
7 before you.

8 Part of sentencing is to hopefully create a deterrence
9 so that someone else might think twice before they decide to
10 come into my home or your home and hold us at gunpoint and
11 steal our stuff. That's a -- that's one phase of punishment,
12 but you attempt to do it and you try to do it based solely on
13 facts and factors that are before you and not on emotion and
14 not on sympathy or anything of that nature.

15 And so -- and again, not that judges have some special
16 or innate ability to do that, but hopefully, through training
17 and through experience, you do learn to try and factor those
18 things in and not allow the emotions to be in play. So
19 asking laypeople to do that is asking, I think, too much. So
20 that's why we ask juries to decide whether or not the State
21 has carried their burden of proof and, when it comes to
22 sentencing, that's left to the Court, who is an independent
23 and detached individual.

24 There is only one -- if I'm not mistaken, there's only
25 one time that the jury actually decides the sentence and that

1 is in a death penalty case. In a death penalty case, if a
2 person is convicted, then there are two options for a jury
3 and the jury decides whether or not someone receives life or
4 whether they receive death, but outside of that, all other
5 criminal offenses are -- the guilt or innocence is decided by
6 the jury and the sentencing is done by the Court.

7 So that's just to give you a little insight as to what
8 goes on here, if you didn't already know. But that does
9 conclude your work here this week. I want to thank you for
10 your service.

11 Again, if you have any questions, I'll certainly hang
12 around and answer those for you, but you do not have to call
13 back. You've earned an exemption. Remember, I told you on
14 Monday that state law requires that you serve on jury duty
15 only once every three calendar years.

16 So you've served this year. If you get a summons for
17 jury service here in this court, in other words Circuit
18 Court, either in 2020 or 2021 and if you'd like to be excused
19 and you claim that exemption, you can do that, but it's only
20 an exemption. It doesn't mean you're not qualified to serve.
21 So if you do get that summons and you would like to serve
22 again, I would encourage you to do so.

23 But anyway, thank you again and if everyone else will
24 please remain seated, ladies and gentlemen, you're excused
25 and free to go.

1 (WHEREUPON, the jury was excused and exited the
2 courtroom at 1:42 p.m.)

3 (WHEREUPON, the proceedings ended at 1:43 p.m.)

4

5 --- END REQUESTED TRANSCRIPT ---

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Florence Co. Judicial Center
RANDOM STRIKE SHEET

6/24/19

JURY NAME : Russo Thomas A.
 JURY TYPE : Criminal
 JURY ID : 2018GS2101032
 COURTROOM 3A

Sorted by: Random Nbr

DESCRIPTION : STATE VS RASHEEM KEVIN THOMAS Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Mckoy, Emily W	102	W	F	()	(✓)	()	
2 James, Natasha T	73	B	F	(✓)	()	()	
3 Hanna, Loris A	56	B	M	()	(✓)	()	
4 Gray, Reagan L	53	W	F	()	()	()	1
5 Cagle, Rita R	20	W	F	()	()	()	2
6 Spearman, David B Jr.	174	W	M	()	(✓)	()	
7 Wilson, Trebor J	166	B	M	(✓)	()	()	
8 Benjamin, Lester	5	B	M	()	()	()	3
9 Murtha, Jocelyn A	112	<i>mixed?</i> <i>white?</i>	F	()	()	()	4
10 Woods, Tiffany S	169	B	F	()	()	()	5
11 Quillen, Jasmyn C	127	B	F	()	()	()	6
12 Hilton, Katrina M	66	W	F	()	(✓)	()	
13 Scott, Ronald M	138	B	M	()	()	()	7
14 Thomas, Cynthia M	150	B	F	()	(✓)	()	
15 Derry, Evelyn K	33	B	F	()	()	()	8
16 Tucker, Jacob K	152	W	M	()	()	()	9
17 Ceaser, Jacquelyn R	21	B	F	()	()	()	10
18 Dodge, Kimberly E	35	W	F	()	(✓)	()	
19 Marlowe, Jakob M	96	W	M	()	()	()	11
20 Miller, Lindsey K	173	W	F	()	()	()	12
21 Cox, Misti J	26	W	F	()	()	()	alt 1
22 Patrick, Brandon L	118	W	M	()	(✓)	()	
23 Pace, Emily S	117	W	F	()	(✓)	()	
24 Davis, Christian J	28	B	F	()	()	()	alt 2

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 357, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 24th through 26th days of June, 2019.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

December 22, 2019

WITNESSES

Thomas Mcfadden

Florence County Sheriff

John W. Holt, IV

ARREST WARRANT NUMBER

2017A2110200150

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

6-7-18 *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-21-01032

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

June

TERM

2018

THE STATE

vs.

RASHEEM KEVIN THOMAS

Indictment for

ARMED ROBBERY

FILED

2018 JUN -7 PM 2:57

BORIS POULOS Q'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ARMED ROBBERY

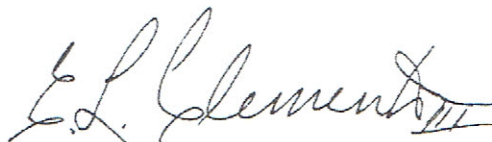
At a Court of General Sessions, convened on June 7 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Rasheem Kevin Thomas did in Florence County on or about May 28, 2016, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Anastacia Kauth from or in the immediate presence of Anastacia Kauth with intent to deprive Anastacia Kauth of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



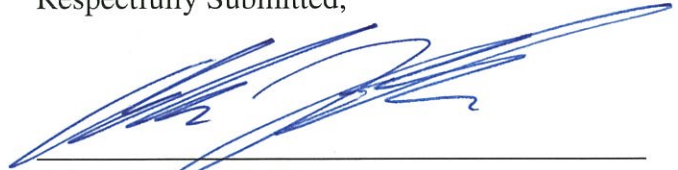
E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Jul 31 2020****SC Court of Appeals**

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of July, 2020.