

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN NATHAN LINEN II,

APPELLANT

APPELLATE CASE NO 2019-001947

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETWN) 2017-GS-22-00487, 00669, 00670

STATE OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

JOHN NATHAN LINEN, II,)

Defendant.)

Transcript of Record

November 12-14, 2019

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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William F. Edgeworth, III, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

9

1 **NOVEMBER 12, 2019 - 1:19 P.M.**

2 BY THE COURT:

3 THE COURT: All right. We're on the record in the State
4 of South Carolina v. John Nathan Linen, II. The matter is
5 before the Court on indictment 2017-GS-22-487, armed robbery;
6 2017-GS-22-669 for kidnapping; and 2017-GS-22-670 for
7 possession of a weapon during the commission of a violent
8 crime. Now, I understand we're not going forward with 2017-
9 GS-22-671, unlawful possession of a firearm by a person
10 convicted of a violent offense; is that correct?

11 MR. POWELL: That's correct, Your Honor.

12 THE COURT: Okay. We're not going forward on that one
13 then.

14 All right. Anything preliminary before we get the jury
15 up here for jury selections?

16 MR. POWELL: Nothing from the state, Judge.

17 THE COURT: All right.

18 MR. POWELL: Other than if we do have a little short
19 break after we pick the jury, we can get the reporter to pre-
20 mark some of the exhibits, it may make the trial go more
21 efficiently.

22 THE COURT: Well ---

23 MR. POWELL: I don't know if we'll have time for that or
24 not.

25 THE COURT: --- yeah, we're gonna -- we're gonna have,

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BY THE COURT

10

1 you know, today, tomorrow and Thursday this week and all next
2 week anyway. So, however y'all want to do it, that will be
3 fine.

4 Anything from the defense?

5 MR. EDGEWORTH: Well, Your Honor, just so I'm clear, are
6 we -- we're gonna strike this jury and then take care of the
7 pretrial motions after that?

8 THE COURT: However y'all want to do it.

9 MR. EDGEWORTH: That would be what I would prefer.

10 MR. POWELL: It doesn't matter to me, Judge.

11 THE COURT: Okay. All right. Well, I mean, I guess my
12 questions are, are any of the motions dispositive of the case?

13 MR. EDGEWORTH: I don't believe they're dispositive, Your
14 Honor. They're motions to exclude certain pieces of evidence.

15 THE COURT: Okay.

16 MR. EDGEWORTH: But I don't know how long they will
17 necessarily take. It's just primarily argument and exhibits,
18 but ---

19 THE COURT: Okay. That will be fine.

20 MR. EDGEWORTH: Not testimonial.

21 THE COURT: All right. Then let's -- I've got your
22 witness lists, I think -- or I just had the witness list.
23 Yeah, I've got your witness list, so let's -- we're gonna to
24 take a short break. Bring the whole jury panel up and just
25 let me know when the panel is up here and y'all are ready to

State v. Linen - 2017-GS-22-00487, 00669, 00670
VOIR DIRE

11

1 go forward. Okay?

2 MR. POWELL: Thank you, Judge.

3 THE COURT: All right.

4 BAILIFF: Judge Culbertson, they're right outside.

5 THE COURT: Okay. Well, just come get me when they all
6 get in and get seated. Okay?

7 BAILIFF: Okay.

8 THE COURT: All right. Thank you.

9 MR. EDGEWORTH: Thank you, Judge.

10 **RECESS - 1:23 P.M.**

11 *******OFF THE RECORD*******

12 **(On the Record - 1:23 P.M.)**

13 (REPORTER'S NOTE: Jury enters courtroom @ 1:23 P.M.)

14 VOIR DIRE:

15 THE COURT: Thank you very much, ladies and gentlemen.
16 Please be seated.

17 All right. Ladies and gentlemen, welcome back. I hope
18 everybody had a good lunch. We're getting ready to start the
19 trial of this first case. This is the case of the State of
20 South Carolina versus John Nathan Linen, II. Now, all of you
21 have been qualified to serve as jurors for this term of
22 General Sessions Court. The next series of questions I have
23 to go over with you is referred to as voir dire questions.
24 That is to determine whether or not you are qualified to serve
25 as jurors on this particular case and it also gives the

1 attorneys some additional information that assists them in the
2 jury selection process.

3 So, as I told you during jury qualifications, jurors,
4 just like witnesses, are constantly taking oaths. So, if I
5 can get all members of the jury panel to please stand and
6 raise your right hand.

7 (REPORTER'S NOTE: Jury is duly sworn.)

8 THE COURT: Thank you very much. You may be seated.

9 Now, is there any member of the jury panel that did not
10 respond to the oath by saying I do? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Good.

13 All right. Ladies and gentlemen, please listen up as I
14 go over these questions and let me know if any of them apply
15 to you. As I said, this case is the State of South Carolina
16 versus John Nathan Linen, II. The allegations by the state
17 against the defendant in this case are that on or about March
18 the 20th, 2017, the defendant, while armed with a deadly
19 weapon, robbed the Dollar General store here on North Fraser
20 Street in Georgetown, South Carolina, and during that incident
21 kidnapped Tyesha Sparkman, who was the employee of the Dollar
22 General store. Now, is there any member of the jury panel who
23 has heard anything, read anything, discussed anything, or
24 knows anything about this case? If so, please stand.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

13

1 THE COURT: All right. As I said, the alleged victim in
2 this case is Tyesha Sparkman. Is there any member of the jury
3 panel related by blood or marriage, have a close personal
4 relationship, business relationship, social relationship or
5 any other type of relationship with Ms. Sparkman? If so,
6 please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: The defendant in this case is John Nathan
9 Linen, II. Is there any member of the jury panel related by
10 blood or marriage, have a close personal relationship,
11 business relationship, social relationship, or any other type
12 of relationship with Mr. Linen? If so, please stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Is there any member of the jury panel who is
15 either now or previously, personally or have a family member
16 or close personal friend employed with the Dollar General
17 store? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. Please listen carefully as these
20 are potential witnesses who may testify in this case. You
21 have Allen Flagler of the Williamsburg County Sheriff's
22 Office, who was formerly of the Georgetown County Sheriff's
23 Department; John Magann of the Georgetown County Sheriff's
24 Office; Robbie Sarvis of the Georgetown County Sheriff's
25 Office; Hank Carrison of the Georgetown County Sheriff's

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VOIR DIRE

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1 Office; Joseph Williamson of the Georgetown County Sheriff's
2 Office; Jonathan Griffith of the Georgetown County Sheriff's
3 Office; Taylor Bennett Mintz of the Georgetown County
4 Sheriff's Office; Dawud Aswad of the Georgetown County
5 Sheriff's Office; Joe Wilson formerly of the Georgetown County
6 Sheriff's Office; Sara Goodman from the State Law Enforcement
7 Division; Tyesha Sparkman; Mary McGee; Terrez Morris; Shaikira
8 Armstrong; John Robbie Caulder; Dustin Morris, formerly of the
9 Georgetown County Sheriff's Office; Mike Thacker, formerly of
10 the or of the Georgetown County Sheriff's Office; Doris
11 Yarbrough, also of SLED; Jackie Davis, from SLED; Bethany
12 Davidson, from SLED; and Amy Stephens Black, formerly of SLED;
13 as well as John Nathan Linen, II; John Nathan Linen, Sr.;
14 Sandra Obisi, O-B-I-S-I; Romanetha, R-O-M-A-N-E-T-H-A, Linen.

15 Is there any member of the jury panel related by or
16 marriage, have a close personal relationship, business
17 relationship, social relationship or any other type of
18 relationship with any of these potential witnesses? If so,
19 please stand.

20 Yes, ma'am, your name and number?

21 JUROR 31: 31, Jennifer Coradi.

22 THE COURT: All right. Ms. Coradi, who is that you know?

23 JUROR 31: Robbie Sarvis.

24 THE COURT: All right. And how do you know Robbie
25 Sarvis?

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VOIR DIRE

15

1 JUROR 31: Our kids are friends and we do soccer
2 together.

3 THE COURT: Okay. Would -- you talk about your kids play
4 in a soccer league together?

5 JUROR 31: Yeah and we carpool with the Sarvises.

6 THE COURT: Okay. Y'all carpool together?

7 JUROR 31: We have in the past, yeah.

8 THE COURT: Okay.

9 JUROR 31: I mean, we don't now, but we did for quite
10 some time.

11 THE COURT: Okay. How long ago was that?

12 JUROR 31: Well, my son and Will Sarvis are good friends
13 now, and we carpooled probably a year ago. We carpooled
14 several years.

15 THE COURT: All right. Ms. Carodi, I'm gonna excuse you
16 from this particular case, but stay with us for right now.
17 Okay?

18 JUROR 31: Yes, sir.

19 THE COURT: Anyone else have any type of relationship?
20 Yes, ma'am, your name and number?

21 JUROR 79: Juror Number 79, Jessica Jayroe.

22 THE COURT: All right.

23 JUROR 79: I went to school with Joe Wilson.

24 THE COURT: And how long ago was that?

25 JUROR 79: That was high school, so 20 years ago. We

1 were friends. We still keep in touch on Facebook. And,
2 several of the witnesses are patients at the office where I
3 work.

4 THE COURT: All right. Now, would any of those
5 relationships affect your ability to be fair and impartial to
6 both the state and the defendant in this case?

7 JUROR 79: No, sir.

8 THE COURT: Would you be able to disregard those
9 associations and relationships in their entirety and base your
10 decision in this case exclusively on the testimony and
11 evidence in this case?

12 JUROR 79: Yes, sir.

13 THE COURT: All right. Thank you for bringing that to
14 our attention, Ms. Jayroe.

15 Anyone else?

16 Yes, ma'am, your name and number?

17 JUROR 119: 119, Myra Owens.

18 THE COURT: All right. Ms. Owens, who is that you know?

19 JUROR 119: Well, in my 31-year teaching career, I think
20 I've taught several Linens, and John Linen sounds familiar to
21 me. I can't recall for sure, but I just felt I needed to
22 bring this to your attention.

23 THE COURT: Well, let me ask you this. Would that
24 association, if you find out that the defendant was a former
25 student or was at the same school or that there was any type

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VOIR DIRE

17

1 of relationship there at all, would that affect your ability
2 to give both the state and the defendant a fair and impartial
3 trial?

4 JUROR 119: I don't believe so.

5 THE COURT: Would you be able to disregard that
6 association in its entirety and base your decision in this
7 case, exclusively on the testimony and evidence in this case?

8 JUROR 119: Yes.

9 THE COURT: Thank you for bringing that to our attention.
10 Anyone else?

11 (REPORTER'S NOTE: No response.)

12 THE COURT: All right. Prosecuting this case on behalf
13 of the state, is Attorney Keith Powell of the 15th Circuit
14 Solicitor's Office. Representing the defendant is Attorney
15 William F. Edgeworth, III, of the Edgeworth & Company Law Firm
16 in Quinby, South Carolina. Is there any member of the jury
17 panel related by blood or marriage, have a close personal
18 relationship, business relationship, social relationship, or
19 any other type of relationship with Mr. Powell or Mr.
20 Edgeworth? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: Has any member of the jury panel ever been
23 represented by either of these attorneys? If so, please
24 stand.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

18

1 THE COURT: Has any member of the jury panel ever been
2 involved in any legal action in which either of these
3 attorneys represented another party to that action? If so,
4 please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Is there any member of the jury panel who
7 either personally has a family member or close personal member
8 employed with the 15th Circuit Solicitor's Office or the Law
9 Office of Edgeworth & Company Law Firm in Quinby, South
10 Carolina? If so, please stand.

11 Yes, ma'am, your name and number?

12 JUROR 57: My name -- well, my number is 57. My name is
13 Karen Graham. I have a friend who works in the office here.
14 I don't know what -- specifically if this is under the 15th
15 Circuit or not.

16 THE COURT: Yes, ma'am.

17 JUROR 57: Her name is Joy Moren (spelled phonetically).

18 THE COURT: Joy Moren.

19 JUROR 57: She is a secretary for some of the
20 prosecutors.

21 THE COURT: Okay. Is she in the solicitor's office?

22 MR. POWELL: Your Honor, she is the Administrative
23 Assistant for Ricky Todd, who as you know, is one of the
24 solicitor lawyers.

25 THE COURT: All right. Is she involved or have access to

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VOIR DIRE

19

1 anything in this case?

2 MR. POWELL: Nothing to do with this case, Judge.

3 THE COURT: All right.

4 All right. Ms. Graham, she does work with the
5 solicitor's office, even though she's not involved in this
6 case. But would your association or relationship with her --
7 first of all, what is it; she's a friend?

8 JUROR 57: She is, she is a friend.

9 THE COURT: All right. And, I mean, do y'all socialize
10 together, go to the same church or anything of that nature?

11 JUROR 57: Both.

12 THE COURT: Would the relationship affect your ability to
13 be fair and impartial to the defendant and the state in this
14 case?

15 JUROR 57: No.

16 THE COURT: Would you be able to disregard that
17 relationship in its entirety and base your decision in this
18 case exclusively on the testimony and evidence in this case?

19 JUROR 57: Yes.

20 THE COURT: Thank you, Ms. Graham, for bringing that to
21 our attention.

22 Anyone else?

23 Yes, ma'am, your name and number?

24 JUROR 141: Christie Shealy.

25 THE COURT: All right. Ms. Shealy, who is it that you

1 know?

2 JUROR 141: Margaret Kneece.

3 THE COURT: Margaret Kneece, now she's with who?

4 JUROR 141: She's a solicitor.

5 THE COURT: Is she still in the solicitor's office?

6 MR. POWELL: She's in private practice now, Judge.

7 Several years back, she did work for the solicitor's office,
8 eight, nine -- it's been eight, nine, 10 years ago.

9 THE COURT: Okay. She's no longer with the solicitor's
10 office. Thank you.

11 Anyone else?

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Is there any member of the jury panel who
14 either personally has a family member -- who either personally
15 or has a family member employed with the Georgetown County
16 Sheriff's Office, the State Law Enforcement Division or SLED
17 -- SLED or the Georgetown County Sheriff's Office? If so,
18 please stand.

19 (REPORTER'S NOTE: No response.)

20 THE COURT: Is there any member of the jury panel who
21 either personally or has a close -- excuse me -- either
22 personally or has a family member that is employed in law
23 enforcement? If so, please stand.

24 Yes, ma'am, your name and number?

25 JUROR 48: My number is 48, Kathryn Eicher.

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VOIR DIRE

21

1 THE COURT: All right. Ms. Eicher, are you or a family
2 member employed in law enforcement?

3 JUROR 48: I have a -- my son-in-law is a South Carolina
4 Highway Patrol.

5 THE COURT: Okay. Would his employment affect your
6 ability to be fair and impartial in this case to the defendant
7 or the state?

8 JUROR 48: No.

9 THE COURT: Would you be able to disregard your son-in-
10 law's employment in its entirety and base your decision in
11 this case exclusively on the testimony and evidence in this
12 case?

13 JUROR 48: Yes, sir.

14 THE COURT: Thank you for bringing that to our attention.
15 Yes, ma'am, your name and number?

16 JUROR 50: Yes, Judge, I'm Juror 50, Donna Fountain. I'm
17 not sure if this would qualify but I do have family members
18 that are in the district attorney's office in New York.

19 THE COURT: All right. When you family members, what?

20 JUROR 50: I have a sister-in-law, who is a First
21 Assistant District Attorney in Oneida County in New York. And
22 my niece is employed with the Brooklyn ADA's office as an
23 attorney.

24 THE COURT: Would either of those employments affect your
25 ability to be fair and impartial to the defendant and the

1 state in this case?

2 JUROR 50: I don't believe so, no.

3 THE COURT: Would you be able to disregard those
4 employments in their entirety and base your decision in this
5 case exclusively on the testimony and evidence in this case?

6 JUROR 50: Yes, sir.

7 THE COURT: Thank you for bringing that to our attention,
8 Ms. Fountain.

9 Anyone else?

10 (REPORTER'S NOTE: No response.)

11 THE COURT: Has any member of the jury panel ever been
12 the victim of a violent crime? If so, please stand.

13 All right. And I apologize, we've got to create a
14 record. Your name and number?

15 JUROR 48: 48, Kathryn Eicher.

16 THE COURT: All right. Ms. Eicher, if you would come
17 forward please.

18 If you'd come on up, please.

19 (REPORTER'S NOTE: Bench conference is held on the record in
20 the presence of but outside the hearing of the jury venire.)

21 THE COURT: Was this you or a family member?

22 JUROR 48: It was me.

23 THE COURT: Okay. And ---

24 JUROR 48: It was an armed robbery.

25 THE COURT: And how long ago was that?

State v. Linen - 2017-GS-22-00487, 00669, 00670
VOIR DIRE

23

1 JUROR 48: I was 16.

2 THE COURT: Okay. And this involves an armed robbery.
3 So, would this affect your ability to be fair and impartial in
4 this case?

5 JUROR 48: When you asked the question, it just like hit
6 me. I was like I had forgot all about it until you said that.
7 I'm not sure.

8 THE COURT: Okay. I gonna excuse you, Ms. Eicher for
9 this case.

10 (REPORTER'S NOTE: End of bench conference.)

11 Anyone else that has ever been the victim of a violent
12 crime? Yes, ma'am, your name and number?

13 JUROR 12: 12, Alexis Bencivengo.

14 THE COURT: Pronounce that name again?

15 JUROR 12: Bencivengo.

16 THE COURT: All right, ma'am, if you would please come
17 forward, please.

18 (REPORTER'S NOTE: Bench conference is held on the record in
19 the presence of but outside the hearing of the jury venire.)

20 THE COURT: Ms. Bencivengo, was this you or family
21 member?

22 JUROR 12: Me.

23 THE COURT: Okay. And what was the crime?

24 JUROR 12: I was robbed at gunpoint in Florence County
25 about 12 years ago.

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1 THE COURT: Would that incident affect your ability to be
2 fair and impartial in this case?

3 JUROR 12: It might.

4 THE COURT: Okay. Thank you.

5 JUROR 12: You're welcome.

6 THE COURT: I'm gonna excuse you from this particular
7 case but stay with us. Okay?

8 JUROR 12: Okay. Thank you.

9 (REPORTER'S NOTE: End of bench conference.)

10 THE COURT: All right. Ms. Bencivengo is excused from
11 this particular case.

12 Yes, ma'am, your name and number?

13 JUROR 119: 119, Myra Owens.

14 THE COURT: All right. Ms. Owens, if you'd come forward
15 please?

16 (REPORTER'S NOTE: Bench conference is held on the record in
17 the presence of but outside the hearing of the jury venire.)

18 THE COURT: All right. Was this you or a family member?

19 JUROR 119: This was about 10 years ago, our home was
20 broken into and my daughter and granddaughter were in the
21 house and the two, they came in and stole a lot of things, but
22 when they realized they were there, they turned and left, so
23 they weren't hurt. So, I'm not sure if that -- but it was
24 very traumatic and very emotional.

25 THE COURT: Would that event your ability to be fair and

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1 impartial in this case?

2 JUROR 119: I would like to stand here and tell you that
3 it wouldn't.

4 THE COURT: Well, we're all affected by different events
5 in life.

6 JUROR 119: That, you know, I would hope that I could
7 listen to the testimony and determine and not connect it to
8 that, but I just needed to tell you that and share that with
9 you.

10 THE COURT: Well, the fact of the matter is, I need to
11 know to know unless you can block it out completely and say it
12 will have no effect on your decision in this case at all, then
13 I'm gonna need to excuse you because the law says that the
14 defendant and the state is entitled to a fair trial without
15 any influence from any outside source. And like I say, it's
16 not a criticism of you if you can't. I can understand it.

17 JUROR 119: I know. I'm not in fairness to him, I'm not
18 so sure I could block it out.

19 THE COURT: All right. Ms. Owens, I'm gonna excuse you
20 from this particular case but stay with us.

21 JUROR 119: Okay.

22 (REPORTER'S NOTE: End of bench conference.)

23 THE COURT: All right. I'm gonna excuse Ms. Owens from
24 this particular case.

25 Anyone else either personally or had a family member that

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1 was the victim of a violent crime? If so, please stand.

2 Yes, sir, your name and number?

3 JUROR 156: 156, Danny Stone.

4 THE COURT: All right. Mr. Stone, if you can come
5 forward, please.

6 (REPORTER'S NOTE: Bench conference is held on the record in
7 the presence of but outside the hearing of the jury venire.)

8 THE COURT: All right. Mr. Stone, was this you or a
9 family member?

10 JUROR 156: It was my mother.

11 THE COURT: All right. What happened?

12 JUROR 156: She -- she was attacked in her store in Lake
13 City and that's been 30 years ago.

14 THE COURT: Would that incident affect your ability to be
15 fair and impartial in this case to the defendant and to the
16 state?

17 JUROR 156: No, it would not.

18 THE COURT: Could you disregard that crime in its
19 entirety and base your decision in this case exclusively on
20 the testimony and evidence in this case?

21 JUROR 156: Yes, sir.

22 THE COURT: Thank you for bringing that to our attention.

23 JUROR 156: Okay. All right.

24 THE COURT: Thank you.

25 (REPORTER'S NOTE: End of bench conference.)

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1 Anyone else?

2 Yes, ma'am, your name and number?

3 JUROR 168: 168, Danita Vetter.

4 THE COURT: All right. Ms. Vetter, if you would come
5 forward, please?

6 (REPORTER'S NOTE: Bench conference is held on the record in
7 the presence of but outside the hearing of the jury.)

8 THE COURT: Yes, ma'am. Was this you or a family member?

9 JUROR 168: My daughter at four months old was shaken to
10 death by her babysitter.

11 THE COURT: How long ago was this?

12 JUROR 168: 25 years.

13 THE COURT: Would that incident affect your ability to be
14 fair and impartial to all parties in this case?

15 JUROR 168: I don't think so, no.

16 THE COURT: Could you disregard that crime in its
17 entirety ---

18 JUROR 168: Yes.

19 THE COURT: --- and base your decision in this case
20 exclusively on the testimony and evidence?

21 JUROR 168: Yes.

22 THE COURT: Thank you, Ms. Vetter, for bringing that to
23 our attention.

24 (REPORTER'S NOTE: End of bench conference.)

25 THE COURT: Anyone else?

1 Sir, your name and number?

2 JUROR 112: 112, John Moschgat. No violent crime, but I
3 just realized that Mr. Todd has coached my son in soccer for
4 two or three years.

5 THE COURT: Oh, Mr. Todd with the solicitor's office?

6 JUROR 112: Yes, sir.

7 THE COURT: Okay. Would that association or relationship
8 affect your ability to be fair and impartial to the defendant
9 and to the state in this case?

10 JUROR 112: No, sir.

11 THE COURT: Would you be able to disregard that
12 relationship in its entirety and base your decision in this
13 case exclusively on the testimony and evidence in this case?

14 JUROR 112: Yes, sir.

15 THE COURT: Thank you for bringing that to our attention.
16 Anyone else, either personally or a family member that's
17 been the victim of a violent crime? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Has any member of the jury panel either
20 personally, or had a family member prosecuted by the 15th
21 Circuit Solicitor's Office? If so, please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Has any member of the jury panel formed or
24 expressed an opinion about any issue or matter involved in
25 this case? If so, please stand.

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1 (REPORTER'S NOTE: No response.)

2 THE COURT: Is any member of the jury panel aware of any
3 bias or prejudice towards either the state or the defendant in
4 this case? If so, please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Is any member of the jury panel a member of
7 the Grand Jury that issued the indictment in this case or any
8 of the indictments in this case? If so, please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: Is there any member of the jury panel that is
11 a member of or a contributor to any organization which has as
12 its primary concern, the promotion of law enforcement or
13 victim's rights? Some of these organizations are Mothers
14 Against Drunk Drivers, also known as MADD; Students Against
15 Drunk Drivers, also known as SADD; CAVE, Citizens Against
16 Violent Crimes; CASA, Citizens Against Spousal Abuse; or any
17 similar organization. Is anybody a member of or a contributor
18 to any such organization?

19 Yes, sir, your name and number?

20 JUROR 36: James D. Cronin.

21 THE COURT: All right. Mr. Cronin, are you a member of
22 or a contributor to any of those organizations?

23 JUROR 36: Yes.

24 THE COURT: Okay. What do you -- are you a member of or
25 contribute to which?

1 JUROR 36: MADD, Mothers Against Drunk Driving and
2 Coastal Carolina Shields.

3 THE COURT: All right. You donated to those or you're a
4 member of those organizations?

5 JUROR 36: Both.

6 THE COURT: Both. Would your membership or contributions
7 to those organizations affect your ability to be fair and
8 impartial to the defendant in this case?

9 JUROR 36: No.

10 THE COURT: Would you be able to disregard your
11 membership and contributions to those organizations in its
12 entirety and base your decision in this case exclusively on
13 the testimony and evidence in this case?

14 JUROR 36: Yes.

15 THE COURT: Thank you for bringing that to our attention,
16 Mr. Cronin.

17 Anyone else?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Does any member of the jury panel know of any
20 reason whatsoever why he or she should not serve as a juror in
21 this case, with particular emphasis being placed on your
22 ability to be fair and impartial to both the State of South
23 Carolina and the defendant, John Nathan Linen, II? If so,
24 please stand.

25 (REPORTER'S NOTE: No response.)

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1 THE COURT: All right. Any additional question from the
2 state?

3 MR. POWELL: No, Your Honor.

4 THE COURT: Any from the defense?

5 MR. EDGEWORTH: None from the defense, Your Honor.

6 THE COURT: All right. All right. Ladies and gentlemen,
7 those of you who have not been excused, the way the selection
8 process works in General Sessions Court is those who have not
9 been excused, your names are put into the computer and
10 generated on a list in random form. The Clerk of Court will
11 call your names one at a time. When your name is called, if
12 you would come forward, stand here in front of the bench, turn
13 and face the attorneys, bring with you any pocketbooks,
14 umbrellas, coats, whatever you might have with you. Now, what
15 you're gonna do is you're gonna come forward, you're gonna
16 stand in front of the attorneys, turn and face the attorneys,
17 and the state's attorney is gonna look at you, and then look
18 at his notes, and then look back at you, and then kind of
19 decide whether or not he wants you as a juror in this case.
20 And if he wants you as a juror in this case, the defense
21 attorney is gonna look at you a little while and look at his
22 notes, and he might talk to his client and look back at you
23 and decide whether he wants you as a juror in this case. And
24 we'll follow this procedure until we get a jury impaneled in
25 this case.

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JURY SELECTION

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1 Now, each side, by law, gets a certain number of strikes
2 of jurors. So, if you get struck in this case, please do not
3 take it personally. It just means that for whatever reason,
4 you do not fit a particular profile that one side or the other
5 is looking for in this particular case. I've known a number
6 of cases where a potential juror has been struck in one case
7 and then taken in the next case, or taken in the first case
8 and excused in the second case. So, there's really no rhyme
9 or reason as to why anybody is struck other than you just
10 don't fit a particular profile in this particular case.

11 So, please listen carefully, and if your name is called,
12 please come forward, stand in front of the attorneys and turn
13 and face the attorneys.

14 This will be a five and 10 strike. Okay?

15 JURY SELECTION:

16 CLERK: All right. Juror number 134, Alfred Schmalfuhs.

17 THE COURT: I apologize. How do you pronounce that name?

18 JUROR 134: Schmalfuhs.

19 THE COURT: Schmalfuhs, you did pretty good.

20 CLERK: I practiced.

21 THE COURT: I got you. That's good.

22 JUROR 134: Right here?

23 THE COURT: Yes, sir. That's fine right there. Thank
24 you.

25 CLERK: What says the state?

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JURY SELECTION

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1 MR. POWELL: Please present the juror?
2 CLERK: What says the defense?
3 MR. EDGEWORTH: Court's indulgence.
4 Please excuse this juror from the trial in the matter.
5 CLERK: You may return to your seat.
6 Juror number 160, Jenna Thompson.
7 What says the state?
8 MR. POWELL: Please present the juror.
9 CLERK: What says the defense?
10 MR. EDGEWORTH: Court's indulgence.
11 Please swear the juror.
12 CLERK: Please take a seat in the jury box.
13 Juror number 125, Emily Poston.
14 What says the state?
15 MR. POWELL: Please present the juror.
16 CLERK: What says the defense?
17 MR. EDGEWORTH: Court's indulgence.
18 Please excuse the juror from the trial in this matter.
19 CLERK: You may return to your seat.
20 Juror Number 162, Kensli Tindall.
21 What says the state?
22 MR. POWELL: Please present the juror.
23 CLERK: What says the defense?
24 MR. EDGEWORTH: Court's indulgence.
25 Please excuse the juror from the trial in this matter.

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JURY SELECTION

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1 CLERK: You may return to your seat.

2 Juror Number 57, Karen Graham.

3 What says the state?

4 MR. POWELL: Please present the juror.

5 CLERK: What says the defense?

6 MR. EDGEWORTH: Please excuse the juror from the trial in
7 this matter.

8 CLERK: You may return to your seat.

9 Juror Number 5, Jackie Amthauer.

10 What says the state?

11 MR. POWELL: Please present the juror.

12 CLERK: What says the defense?

13 MR. EDGEWORTH: Court's indulgence.

14 Please excuse the juror from the trial in this matter.

15 CLERK: You may return to your seat. Juror Number 84,
16 Kristyn Kertesz.

17 What says the state?

18 MR. POWELL: Please present the juror.

19 CLERK: What says the defendant?

20 MR. EDGEWORTH: Court's indulgence.

21 Please swear the juror.

22 CLERK: Please take a seat in the jury box.

23 Juror Number 74, Elizabeth Huntsinger.

24 What says the state?

25 MR. POWELL: Please present the juror.

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JURY SELECTION

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1 CLERK: What says the defense?

2 MR. EDGEWORTH: Your Honor, may we approach?

3 THE COURT: All right.

4 (REPORTER'S NOTE: Bench conference is held off the record in
5 the presence of but outside the hearing of the jury.)

6 THE COURT: Ms. Huntsinger, the question has come up that
7 you're wearing a badge; what is your employment?

8 JUROR 74: I am a park ranger in Hampton Plantation State
9 Historic Site.

10 THE COURT: Okay. A park ranger. Do you have the powers
11 of arrest or anything of that nature?

12 JUROR 74: No, sir.

13 THE COURT: Okay. All right. We'll go forward then.

14 CLERK: What says the state?

15 MR. POWELL: Please present the juror.

16 CLERK: What says the defense?

17 MR. EDGEWORTH: Court's indulgence.

18 Please swear the juror.

19 CLERK: Please take a seat in the jury box.

20 Juror Number 117, Thomas Olenik. What says the state?

21 MR. POWELL: Please present the juror.

22 CLERK: What says the defense?

23 MR. EDGEWORTH: Court's indulgence.

24 Please swear the juror.

25 CLERK: Please take a seat in the jury box.

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JURY SELECTION

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1 Juror Number 79, Jessica Jayroe.

2 What says the state?

3 MR. POWELL: Please present the juror.

4 CLERK: What says the defense?

5 MR. EDGEWORTH: Please excuse the juror from the trial of
6 this matter.

7 CLERK: You may return to your seat.

8 Juror Number 137, Myron Scott.

9 What says the state?

10 MR. POWELL: Your Honor, I believe the attorneys need to
11 approach.

12 THE COURT: All right.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 THE COURT: What says the state?

16 MR. POWELL: Please excuse the juror.

17 CLERK: You may return to your seat.

18 Juror Number 168, Danita Vetter.

19 What says the state?

20 MR. POWELL: Please present the juror.

21 CLERK: What says the defense?

22 MR. EDGEWORTH: Court's indulgence.

23 Please excuse the juror from the trial in this matter.

24 CLERK: You may return to your seat.

25 Juror Number 73, Barbara Huntington.

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JURY SELECTION

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1 What says the state?

2 MR. POWELL: Please present the juror.

3 CLERK: What says the defense?

4 MR. EDGEWORTH: Please swear the juror.

5 CLERK: You may take a seat in the jury box. Juror

6 Number 99, Montana Matthews.

7 What says the state?

8 MR. POWELL: Please present the juror.

9 CLERK: What says the defense?

10 MR. EDGEWORTH: Please swear the juror.

11 CLERK: Please take a seat in the jury box.

12 Number 144, Sharon Simmons.

13 What says the state?

14 MR. POWELL: Please present the juror.

15 CLERK: What says the defense?

16 MR. EDGEWORTH: Court's indulgence, Your Honor.

17 THE COURT: All right.

18 MR. EDGEWORTH: Please swear the juror.

19 CLERK: Please take a seat in the jury box.

20 Number 94, Rusty Locklair.

21 What says the state?

22 MR. POWELL: Please excuse the juror.

23 CLERK: You may return to your seat.

24 Juror Number 141, Christie Shealy.

25 What says the state?

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JURY SELECTION

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1 MR. POWELL: Please present the juror.

2 CLERK: What says the defense?

3 MR. EDGEWORTH: Court's indulgence, Your Honor.
4 Please swear the juror.

5 CLERK: Please take a seat in the jury box.

6 Juror Number 165, Jennifer Vandament.

7 What says the state?

8 MR. POWELL: Please present the juror.

9 CLERK: What says the defense?

10 MR. EDGEWORTH: Court's indulgence, Your Honor.

11 THE COURT: All right.

12 MR. EDGEWORTH: Please excuse the juror from the trial in
13 this matter.

14 CLERK: You may return to your seat.

15 Juror Number 11, Matthew Bell.

16 What says the state?

17 MR. POWELL: Please present the juror.

18 CLERK: What says the defense?

19 MR. EDGEWORTH: Court's indulgence? Please swear the
20 juror.

21 CLERK: Please take a seat in the jury box.

22 Juror Number 32, Glenda Cox.

23 What says the state?

24 MR. POWELL: Please present the juror.

25 CLERK: What says the defense?

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JURY SELECTION

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1 MR. EDGEWORTH: Court's indulgence, Your Honor.
2 Please swear the juror.
3 CLERK: Please take a seat -- no, no, you're staying
4 Juror Number 97, Alison Martin.
5 What says the state?
6 MR. POWELL: Please present the juror?
7 CLERK: What says the defense?
8 MR. EDGEWORTH: Court's indulgence, Your Honor.
9 THE COURT: All right.
10 MR. EDGEWORTH: Please swear the juror.
11 CLERK: Please take a seat in the jury box.
12 Juror Number 156, Danny Stone.
13 What says the state?
14 MR. POWELL: Please present the juror.
15 CLERK: What says the defense?
16 MR. EDGEWORTH: Court's indulgence, Your Honor.
17 Please excuse the juror from the trial in the case.
18 CLERK: You may return to your seat.
19 Juror Number 58, Brian Green.
20 What says the state?
21 MR. POWELL: Please present the juror.
22 CLERK: What says the defense?
23 MR. EDGEWORTH: Court's indulgence, Your Honor.
24 Please swear the juror.
25 CLERK: Please take a seat in the jury box.

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JURY SELECTION

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1 THE COURT: All right. We'll pick two alternates. For
2 each alternate the state gets one strike, the defense gets
3 two.
4 CLERK: 108, Cynthia Miller.
5 What says the state?
6 MR. POWELL: Please present the juror.
7 CLERK: What says the defense?
8 MR. EDGEWORTH: Court's indulgence.
9 Please excuse the juror from the trial in the matter.
10 CLERK: You may return to your seat.
11 Juror Number 149, Susan Smith.
12 What says the state?
13 MR. POWELL: Please excuse the juror.
14 CLERK: You may return to your seat.
15 Juror Number 106, Deborah ---
16 THE COURT: How do you pronounce that name, ma'am?
17 JUROR 106: Michalczyk.
18 CLERK: Yeah.
19 THE COURT: Michalczyk. Thank you.
20 CLERK: Okay. What says the state?
21 MR. POWELL: Please present the juror.
22 CLERK: What says the defense?
23 MR. EDGEWORTH: Court's indulgence.
24 Please swear the juror.
25 CLERK: Please take a seat in the jury box.

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BY THE COURT

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1 THE COURT: All right. We'll choose another alternate
2 and the state gets one strike and the defense gets two.

3 CLERK: Juror Number 50, Donna Fountain.

4 What says the state?

5 MR. POWELL: Please present the juror.

6 CLERK: What says the defense?

7 MR. EDGEWORTH: Please excuse the juror from the trial of
8 this matter.

9 CLERK: You may return to your seat.

10 Juror Number 132, Ronald Richardson, Jr.

11 What says the state?

12 MR. POWELL: Please present the juror.

13 CLERK: What says the defense?

14 MR. EDGEWORTH: Court's indulgence.

15 Please excuse the juror from the trial of this matter.

16 CLERK: You may return to your seat.

17 Juror Number 36, James Cronin.

18 What says the state?

19 MR. POWELL: Please present the juror.

20 CLERK: Any challenges from the defense?

21 MR. EDGEWORTH: No challenges.

22 CLERK: Please take a seat in the jury box. No, no, no.

23 BY THE COURT:

24 THE COURT: All right. Ladies and gentlemen, you'll be
25 the jury that will preside over this first case. I'm gonna

1 excuse you back to the jury room for a just a few minutes
2 while I release the remainder of the jury panel.

3 Now, while you're in the jury room, if I could get you to
4 do me a favor and that would be to select a foreperson for
5 this jury. You may not know everyone; you may not be able to
6 select a foreperson and if you can't, don't worry about it. I
7 can appoint someone to serve as foreperson. Many judges
8 appoint their own foreperson, for juries. I like to give the
9 jury the opportunity to select one on their own accord, if
10 they're able to do so.

11 Now, the foreperson has no more authority, no more
12 influence, no more importance than any other juror. The
13 function of the foreperson is to act as a liaison between the
14 Court and the jury. If the jury has a question, the
15 foreperson lets the Court know. If the jury has a need, the
16 foreperson lets the Court know. When it's time to deliberate
17 on a verdict, the foreperson will preside over the
18 deliberations and sign the verdict form. But other than that,
19 the foreperson has no more authority, no more influence, no
20 more importance than any other juror. The only restriction is
21 that Ms. Michalczyk; how do you pronounce it?

22 JUROR 106: Michalczyk.

23 THE COURT: Michalczyk, I apologize. Ms. Michalczyk and
24 Mr. Cronin, at this point in time, you are alternates. So,
25 you would not be eligible to serve as foreperson of this jury.

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BY THE COURT

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1 But any of the rest of you can serve as foreperson.

2 Now, when you come back into the jury room, the
3 alternates will always occupy the alternate seats where you
4 now sit, unless you become a part of the 12-panel jury. The
5 foreperson will occupy the first seat on the front row closest
6 to the witness stand. The rest of you are at liberty to sit
7 in whatever seat you like. If you want to sit in the same
8 seat throughout the trial of the case, you can do that; if you
9 want to alternate seats, you can do that as well. The only
10 requirement is that the foreperson occupies the first seat on
11 the front row and the alternates occupy the alternate seats
12 unless you have become a part of the 12-panel jury.

13 I'm gonna excuse back in the jury room for just a few
14 minutes. See if you can select a foreperson. If you can,
15 just write his or her name on a sheet of paper with the juror
16 number, give it to the bailiff and we'll bring you back into
17 the courtroom at that time.

18 Thank you very much.

19 (REPORTER'S NOTE: Jury exits courtroom @ 2:24 P.M. The
20 following takes place outside the presence of the jury.)

21 THE COURT: All right. Any challenges to the selection
22 or composition of the jury by the state?

23 MR. POWELL: No, Your Honor.

24 THE COURT: Any by the defense?

25 MR. EDGEWORTH: None from the defense, Your Honor.

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BY THE COURT

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1 THE COURT: All right. Ladies and gentlemen, those of
2 you who remain in our jury panel, we have our jury for this
3 first case, so I'm gonna excuse you for the remainder of the
4 day. You should have been given a phone number to the Clerk
5 of Court's Office. You'll need to call that number after 6:00
6 P.M. today and that'll give you some further instructions as
7 to when you need to return or what the status of the ongoing
8 court is at that time. So, I'm gonna excuse you from -- for
9 the remainder of the day. You'll need to call that number
10 after 6:00 P.M. today. And as I told you during
11 qualifications, even if you do not get selected on a jury this
12 week, please do not think you have not fulfilled your duty as
13 jurors, because you have. I know it's an inconvenience, I
14 know it's a burden, but we can't operate without your
15 participation, and I want to thank you for being here.

16 But, you're free to go for the remainder of the day and
17 please call that number after 6:00 P.M. today.

18 Thank you very much.

19 (REPORTER'S NOTE: Remaining jury venire exits courtroom @
20 2:26 P.M.)

21 THE COURT: All right. Are we ready to go forward with
22 pretrial motions at this time or what do y'all want to do?

23 MR. POWELL: Yes, Your Honor.

24 MR. EDGEWORTH: I'm ready, Your Honor.

25 THE COURT: All right. Mr. Edgeworth, you've got

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MOTIONS

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1 motions?

2 MR. EDGEWORTH: Yes, Your Honor. Court's indulgence.

3 THE COURT: All right.

4 The jury has selected Juror Number 74, Elizabeth
5 Huntsinger as the foreperson.

6 I'm gonna ask the court reporter to mark this as Court's
7 Exhibit 1.

8 COURT REPORTER: Yes, sir.

9 COURT'S EXHIBIT NUMBER 1

10 MARKED FOR IDENTIFICATION

11 THE COURT: Mr. Edgeworth, let me hear from you.

12 MR. EDGEWORTH: I thank you, Your Honor.

13 May it please the Court?

14 THE COURT: Hold for a second, I'm sorry, let her get
15 this marked first.

16 MR. EDGEWORTH: Oh, sure.

17 THE COURT: All right, sir.

18 MOTIONS:

19 MR. EDGEWORTH: Thank you, Your Honor.

20 May it please the Court? The first motion that the
21 defense has before you today is a motion to exclude, exclude
22 the DNA evidence that the state intends to present before this
23 Court. The basis for the motion is the fact that in this
24 particular case, there was DNA samples that were collected by
25 -- during the investigation, to include a buccal swab that was

1 obtained by my client during a *Schmerber* motion. The evidence
2 was submitted to SLED and underwent the standardized DNA
3 testing. In February, I believe, of last -- of 2018, results
4 were initially transmitted to the defense, at which time, the
5 -- the DNA evidence indicated that there was no ability to
6 identify the DNA amongst the various samples. In that
7 particular case, there were swabs that were taken from the
8 victim, Tyesha Sparkman, and a witness on the scene by the
9 name of Mary Louise McGee, I believe was her name. There were
10 various items that they took these swabs from. One was a -- a
11 zip tie that was used by the assailant to tie up Ms. Sparkman,
12 and then also a -- my apologies, Your Honor. The zip ties
13 were admittedly touched by the witness that came in to cut --
14 cut the zip ties and then, of course, purportedly, you know,
15 by the assailant, who tied the, the -- Ms. Sparkman's hands
16 together. And as part of this, they -- the state went forward
17 with trying to obtain or identify the DNA on these -- on these
18 pieces, to include the zip tie from the chair, the zip tie
19 that was used on the wrists of Ms. Sparkman and then,
20 ultimately, as well as on a handgun that was found during the
21 course of the investigation.

22 Now, as I mentioned, the initial testing from -- from
23 SLED came back and said that we can't identify anything.
24 There was a mixture of DNA and, therefore, we can't tell whose
25 DNA is on it, despite the fact that there were known samples

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1 of the victim, the witness, and -- and the defendant.

2 Then in February of 2019, after SLED purportedly -- or
3 not purportedly -- SLED became authorized to utilize a test
4 called STRmix, which is essentially, for all practical
5 purposes, a computer program, which utilizes an algorithm to
6 attempt to extrapolate whose DNA is amongst the mixtures.

7 Now, if I may, Your Honor, I'd like to pass up for the
8 Court's review a most recent finding from the United States
9 District Court.

10 May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. EDGEWORTH: Dated October of this year, where there
13 was a significant and detailed hearing, essentially a *Daubert*
14 hearing where the persons who created this program, the
15 STRmix, testified, along with multiple, various, additional
16 experts. And the Court ultimately concluded in that case that
17 the STRmix program -- and let's keep that in mind -- computer
18 program, is flawed in a number of ways. It utilizes an
19 algorithm that is proprietary. It's a private company out of
20 New Zealand who created the program to attempt to extrapolate
21 using again a proprietary computer algorithm to extrapolate
22 whose DNA may be in the mix.

23 Now, what complicates this is there are multiple,
24 additional human factors involved to include, one, how many
25 DNA's are possibly in the mix. So, in our case, the DNA was

1 utilized in the algorithm for three possible DNAs. But, at no
2 time did SLED ever say that there was in fact -- we know that
3 there's only three, so, we've got to extrapolate three. In
4 this particular case, they just used three because there were
5 three known samples. It's possible that there was four, five,
6 six, but it all changes and makes a difference as to what you
7 tell the computer program to attempt to extrapolate. So, in
8 other words, it could've been four, so the program works
9 differently. It could've been five, the program runs
10 differently. But in this case, they simply used three because
11 they said that there was multiple and there was three known
12 samples. So, fast forward, you get the results back and, Your
13 Honor, if I may, dated February 13, 2019.

14 May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. EDGEWORTH: If Your Honor were to review the
17 components of this test, what they do is, is they make
18 propositions. They basically say, well, we're gonna assume
19 that this set of facts applies, and then let's take some
20 probabilities to determine whether or not it could possibly
21 happen. So, essentially you have assumption on assumption on
22 assumption. It's not based in fact and the assumptions is
23 what I'm referring to as the kind of human component of it.
24 You have to make an assumption in order for the computer
25 program to run its algorithm. And none of that is based in

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1 fact. It's just based in, well, let's just say what if this
2 happened, i.e., Ms. Sparkman, that her DNA purportedly would
3 be on the zip tie that tied her hands, right? So, they make
4 an assumption that says -- Your Honor, Court's indulgence, so
5 I can grab my copy. There's an assumption involved that says
6 if we assume that her DNA is on there, then there could be,
7 because of we're using three as the possible mixture. They
8 just arbitrarily use the number three. Okay? So, there's
9 possibly three DNA's on this thing.

10 So, if you look at the test results on, on Page 3 of the
11 -- of the report from SLED, we know or we should again assume
12 that Ms. Sparkman's DNA is on -- is, is on the -- the zip tie,
13 because her hands were tied. And if Your Honor looks at the
14 -- at the report, it simply says, Ms. Sparkman -- hypothetical
15 one is Ms. Sparkman ---

16 THE COURT: Where are you reading?

17 MR. EDGEWORTH: My apologies. On Page 3 of the SLED
18 report dated February 13, 2019.

19 THE COURT: All right. Starting where?

20 MR. EDGEWORTH: On Proposition Set 2. Proposition Set 1
21 was related to the witness. And I'll refer to that first so
22 we can go in order.

23 THE COURT: Okay. All right. Proposition Set 2. Okay?

24 MR. EDGEWORTH: But I'll back up so we stay linear on the
25 page or vertical on the page, Your Honor.

1 THE COURT: Okay.

2 MR. EDGEWORTH: Proposition Set 1, it says Ms. McGee, who
3 is the -- the witness who, by all accounts, cut the zip tie
4 off of Ms. Sparkman, says Proposition 1, Mary McGee and two
5 unidentified, unrelated individuals, and then Proposition 2
6 were or her Hypothetical 2, three unidentified, unrelated
7 individuals. And the result was she was excluded as a
8 contributor under both propositions.

9 THE COURT: I mean, what does it mean by Proposition Set
10 1 and Proposition Set 2; what is that?

11 MR. EDGEWORTH: Well, that's what -- and that's kind of
12 the point of why we're moving to exclude this. SLED just
13 simply uses a -- a assumption, a proposition, what if this
14 happened? You know, and it's not really based in fact; it's
15 just what if this happened and that is -- the what-if number
16 one is Mary McGee, witness, and two unrelated individuals,
17 their DNA is in the mix. That's just an assumption that SLED
18 has made for the purposes of running the algorithm, which it
19 literally the ---

20 THE COURT: Where it says HP equals, that's the
21 assumption?

22 MR. EDGEWORTH: That is an assumption, Your Honor.

23 THE COURT: Okay. All right. Go ahead, I'm sorry.

24 MR. EDGEWORTH: And the reason why it's Proposition Set 1
25 is because in the first set of assumptions, we're dealing with

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1 the witness, Ms. McGee.

2 THE COURT: Okay.

3 MR. EDGEWORTH: So, Proposition Set 1 is two different
4 assumptions related to the witness. In neither one of those
5 assumptions did Ms. McGee's DNA show up according to the test.

6 Now, again it's assumption on assumption. One, these two
7 scenarios but, again, they're only using the possibility that
8 there's only three person's DNA when it could've been four,
9 five, or six. There is no -- there's no basis in fact. It's
10 just an assumption made by SLED.

11 THE COURT: All right. And Mary McGee is who?

12 MR. EDGEWORTH: Is a witness. She is the individual who
13 came into the store and -- and cut the zip tie off of Ms. --
14 Ms. Sparkman, the victim in the case.

15 THE COURT: Okay. So she cut the zip tie off, but the
16 DNA examination of the zip tie excludes her?

17 MR. EDGEWORTH: Correct.

18 THE COURT: Got you. Okay. Go ahead.

19 MR. EDGEWORTH: So, Proposition Set 2 relates to Ms.
20 Sparkman. Ms. Sparkman being the victim in this case. And
21 the first assumption is that the mixture has Ms. Sparkman and
22 two unrelated individuals and the second one says that we just
23 assume that there's three unidentified individuals in the mix.
24 So, the profile created by this computer program, the computer
25 program that's based on all of these assumptions, says that it

1 is six to the whatever, essentially a large number, times more
2 likely that three unidentified unrelated individuals
3 contributed to the mix than if Ms. Sparkman and two
4 unidentified individuals were involved in the mix. So, again,
5 they're basically saying that, well, it's more likely that she
6 wasn't even there when her hands were the ones tied. So, it's
7 assumption on assumption, just trying to come up with a basis
8 in fact. And our argument is that in this particular case,
9 the methodology, the algorithm, the statistics, the fact that
10 it's nothing that SLED is doing physically. This is a
11 computer program. There's no way for me to confront a
12 computer program. There's no way for me to contradict or
13 cross examine a computer program. It's a proprietary piece of
14 information or, excuse me, proprietary computer program where
15 a human being inputs assumptions, not based in fact, but
16 assumptions based on what they've been provided. So, in this
17 case, there were three samples provided to SLED by -- by the
18 investigating officers, so SLED just assumes there could only
19 be three persons' DNA on there when there could have been
20 four, five, and six. They didn't run any alternative tests;
21 they didn't run -- they didn't make another chain of
22 algorithms or use the algorithm proposing there could be four
23 persons, individuals, because the very first test that said
24 that we can't figure this out, says that there are multiple
25 peoples' DNA in here, and we don't know what's going on.

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1 So, now -- now the state wants to put up this evidence,
2 which is nothing more than a report and have SLED testify --
3 the SLED personnel testify to it when they didn't even do
4 anything. All they did was run a computer program, and I
5 can't contradict that. How am I supposed to confront that
6 particular witness? And if the Court were to read in detail,
7 if necessary, the opinion from the Federal Court dated October
8 of this year, it goes to this very whole process. There was a
9 whole *Daubert* hearing.

10 THE COURT: Excuse me for interrupting, but have you done
11 exhaustive study of all District Courts? Is there any
12 conflicting cases where they decide to the contrary?

13 MR. EDGEWORTH: Yes, there is, Your Honor, there is
14 contradictory cases that -- that kind of permeate and that's
15 the primary reason because in one instant, this -- these type
16 of testing is so new that it hasn't been peer reviewed and
17 because -- because the test, the algorithm itself is a
18 proprietary piece of information, in other words, the company
19 holds it as a trade secret, it can't be peer reviewed. And so
20 the only persons that have peer reviewed it were people who
21 were involved in the creation of the program. So, and -- and
22 the reason why I presented the Court this most recent case is
23 because it's an exhaustive *Daubert* case or a *Daubert*
24 examination that where the -- the individuals who created the
25 program, actually testified in this case, in the federal case,

1 to -- to give the sufficient amount of information. The other
2 cases that I've found have just been kind of ancillary, you
3 know, should it be in or should it not be in and on those --
4 in the situation, quite honestly, Your Honor, that we're in
5 here today, which is kind of a summary fashion, because it
6 would be not only exceedingly expensive to bring these people
7 from New Zealand to come in and testify about a proprietary
8 algorithm that they've created just for the purposes of this
9 -- of extrapolating DNA.

10 So, what I'm asking the Court is to exclude it, because
11 it's confusing. I mean, we -- we have to know or we assume,
12 if we're making these assumptions, that the DNA on the zip
13 tie, which Ms. Sparkman's hands were tied, it would have to be
14 there, and the test says it's not. So, if the state wants to
15 put up that evidence, I mean, it doesn't make any sense, but
16 it definitely is confusing because when we get to my client,
17 Proposition Set 3, it says they make the assumption, Mr.
18 Linen, unidentified, unrelated individuals or three
19 unidentified, unrelated individuals, then magically,
20 magically, the profile says it's 3.15 quadrillion times more
21 likely if John Linen and two unidentified individuals
22 contributed to the mixture than if three unidentified
23 unrelated individuals contributed to the mixture, and that's
24 why it's confusing because it says we think his is there, but
25 it would be two other unidentified persons when we know Ms.

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1 Sparkman was there. So, they're taking their hands off of
2 this -- of the victim; we know she was there. The state's got
3 to prosecute my client to prove he was there, and there's this
4 random statement that says, oh yeah, he was there, but Ms.
5 Sparkman couldn't have been there. So, that -- that proves
6 that the test is just totally arbitrary. It proves that the
7 algorithm that's being used is just -- depends on a piece of
8 information that's provided to them by the human being. It's
9 not something -- I can't get the algorithm on the witness
10 stand and say, well, how did you come up with this, because
11 this is like the, you know, the CSI version where you kind of
12 look into the, you know, into the microscope and see two DNAs
13 that are the same.

14 THE COURT: Well, I mean, I'm assuming that's what they
15 did in February of 2018.

16 MR. EDGEWORTH: Where they said they couldn't identify
17 anything.

18 THE COURT: They couldn't identify it.

19 MR. EDGEWORTH: That's right, Your Honor. So, so -- so,
20 in that particular example, it's just confusing. And the jury
21 is just gonna say, just like they had a regular human being
22 that watches T.V. or whatever, they're gonna say, you know
23 what, DNA is the -- of evidence, so he must've done it, when
24 the report itself is confusing. I mean, you've got to have --
25 you've got to have -- you got to have an expert to read it to

1 understand what it even means, because it's nothing but
2 assumptions. It just -- it just -- okay, what if this
3 happened, and what if that happened, and oh, what's the
4 probability. And then, you know, 3.5 times quadrillion, you
5 know, possibility that it was Mr. Linen but, oh, by the way,
6 Ms. Sparkman couldn't have been there if that was the case.
7 So, it's just confusing.

8 THE COURT: All right. Are there any appellant decisions
9 in this state or any opinions from this federal circuit for
10 South Carolina that deals with this?

11 MR. EDGEWORTH: None that I'm aware of, Your Honor, and I
12 -- and I -- and I am aware at this time that there are no
13 South Carolina Appellant Court opinions on this particular
14 matter.

15 THE COURT: All right.

16 Mr. Powell?

17 MR. POWELL: Your Honor, I think the facts could be
18 explained a little bit better perhaps with all due respect to
19 counsel. Your Honor, the allegations are basically that the
20 defendant robbed the Dollar General store back in March of
21 2017, used zip ties to bind the hands of the victim, the store
22 clerk at the Dollar General store, and attempted to zip tie
23 her to the legs of a chair. Those zip ties were swabbed for
24 evidence. The zip ties that had been on her personally and
25 the zip ties that were on the chair, those swabs, DNA type

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1 swabs, were sent into SLED. When Mr. Linen was arrested later
2 that same day, there was a revolver found outside the
3 residence. Swabs were applied to the revolver and that DNA
4 type swab was sent in to SLED as well. So, the initial DNA
5 tests that SLED did was on two sets of buccal swabs and the
6 revolver as far as the physical evidence goes. A buccal swab
7 was taken from the mouth of the victim, Tyesha Sparkman. And
8 the other part of the facts I neglected to say was a store
9 customer came in and cut the zip ties off of Ms. Sparkman.
10 That customer's name was Mary McGee. So, that day, buccal
11 swabs were taken from the store clerk victim, Ms. Sparkman,
12 and from the store customer who cut the zip ties off, Ms.
13 McGee. So, those two individuals, known standards were taken
14 from those two ladies. That was the initial DNA type evidence
15 that was sent to SLED.

16 I think the correct way to interpret the initial report,
17 which is the one dated February 2018, when it talks about
18 swabs from the revolver, it says the DNA profiles are a
19 mixture of at least three individuals. Swabs from the zip
20 ties, DNA profiles are a mixture of at least three
21 individuals. Swabs from the zip tie from the counter, the DNA
22 profile is a mixture of all three individuals. So, two sets
23 of zip ties and a .38 revolver, the DNA profile is at least a
24 mixture of three people.

25 What this new test that came out, we expect the DNA SLED

1 witness to come in and qualify as an expert witness in DNA
2 analysis. We expect to be able to lay that foundation and get
3 that ruling from Your Honor. We expect the DNA expert to talk
4 about how this STRmix process was developed and the whole
5 purpose of it was to get past the situation where this report
6 is saying the profile is a mixture of at least three
7 individuals. My explanation to me from SLED was when SLED
8 previously did DNA testing, they got to a position three
9 people touched this pen. We have a profile of these three
10 people, they stopped. That's what their initial report is
11 indicating is that it's a mixture of at least three people.
12 Due to the inability to calculate a statistic, no further
13 interpretation would be offered, but just scientist talk,
14 they're saying they stopped. It's a mixture of three people;
15 we're not gonna do anything further, we can't, so we stopped.

16 Last summer, we tried to get this on the roster and --
17 and didn't -- no, excuse me. This time last year when we
18 tried to get a trial and sometime around October or so of last
19 year, SLED approved this STRmix test. And this STRmix
20 algorithm procedure process analysis is geared up to take a
21 mixture of multiple people, pull out and see if you can
22 identify them. It was at least three people. They're
23 attempting to use this new testing procedure to say who those
24 three people were. Yes, it is a computer program. Yes, it
25 originated, my understanding is, from a company, corporation

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1 outfit in New Zealand. It's my understanding that the -- our
2 DNA expert will be able to testify that there is jurisdictions
3 in our country has approved it. SLED did their vetting
4 process to certify it and made a determination it was
5 reliable. Back last fall, SLED did vet and certify this to be
6 used by our SLED lab, and then she went and followed up and
7 became certified to be able to perform this analysis. So, we
8 think this is more -- something that's more proper perhaps
9 that could be argued about during the course of the trial, but
10 we're expecting the foundation to be laid for this DNA
11 evidence, this DNA first analysis, the second one using the
12 STRmix procedure. We expect to be able to lay the proper
13 foundation that at trial will establish that there is
14 something reliable that can be presented to the jury and to
15 assist the jury in their determination whether Mr. Linen
16 ultimately is guilty or not of these charges.

17 The report basically is saying we cannot determine that
18 on these items of evidence, the two zip ties and the revolver,
19 that it was either the victim or the customer that came in.
20 In regards to Mr. Linen, the gigantic numbers 5.7 sextillion,
21 3.5 quadrillion, I don't even know how many zeroes they have,
22 that it's more likely that he is one of the people that
23 contributed to that three-person, at least, mixture. We think
24 that ---

25 THE COURT: If he's an identified contributor and there's

1 two unidentified contributors ---

2 MR. POWELL: That's ---

3 THE COURT: --- instead if it just goes on three unknown
4 contributors, then he's not identifiable. Am I reading this
5 correctly?

6 MR. POWELL: My understanding, they're talking about it
7 being three unidentified, unrelated, or John Linen. The other
8 proposition is John Linen and two unidentified, unrelated
9 individuals, and the second proposition is three unidentified,
10 unrelated individuals. So, I think there was two propositions
11 that the computer analysis ran against.

12 THE COURT: But notwithstanding that, they still say
13 it's not suitable for -- for registry with CODIS, correct?
14 DNA types from this profile are not suitable for entry into
15 the combined DNA index system, CODIS.

16 MR. POWELL: Yes, Your Honor.

17 THE COURT: I'm gonna need to take this -- I'm gonna need
18 to check, because I mean, I -- how do they explain that the
19 victim, who was tied up with the zip tie, and the witness who
20 came in and cut the zip ties, they are excluded from any DNA
21 on the zip ties.

22 MR. POWELL: Yes, Your Honor. But people touch things
23 and you don't get a profile off of it. It does happen.
24 Sometimes, some ---

25 THE COURT: But if she's sitting there tied up with a zip

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1 tie -- I mean, I understand that, but my first thing is I've
2 got to go by how reliable this is, and is it an acceptable
3 scientific thing. And I'm -- to be honest with you, I've got
4 to do some research. I can't rule on this right now, but I've
5 got to tell you right now, where it says that Tyesha Sparkman
6 is excluded as a contributor to the mixture under the three
7 propositions and she was the one tied up with the zip tie and
8 none of her DNA is on there, or this test does not identify
9 her as any of the contributors, that's kind of alarming.

10 Okay. Because this says, the DNA profile is 5.7
11 sextillion times more likely if John Linen and two
12 unidentified, unrelated individuals contributed to the mixture
13 than if three unidentified, unrelated individuals contributed
14 to the mixture. So, it doesn't even say that it's him. It's
15 basically saying yes, it's more likely him, since we've
16 identified him, but it's excluding the victim and Ms. McGee
17 even though, obviously, we know their DNA had to've been there
18 somewhere.

19 MR. POWELL: We believe a proper foundation will be laid
20 ---

21 THE COURT: Well, I'm gonna deny your motion in limine,
22 because I can't rule -- as a matter of law, it's not excluded.
23 However, Mr. Powell, I'm gonna require that testimony and
24 evidence to be proffered outside the jury before I allow it to
25 come in. I've got to listen to this expert and find out -- I

1 mean, how do they come up with these propositions, because
2 like I say -- all of them it says, I don't know what
3 Proposition Set 2 means; I don't know what proposition set --
4 I mean, what it says is basically you're identifying somebody.
5 You've got three DNAs and we're gonna identify one from them.
6 Can you say whether it's that person and two unidentified or
7 what? So, I'm gonna need to see how the expert testifies
8 before we do it.

9 MR. POWELL: Yes, Your Honor, we'll be prepared to do
10 that.

11 THE COURT: So, I'm denying your motion in limine at this
12 point in time, but I am gonna require the state to proffer
13 that to convince me that it's a reliable testing or an
14 acceptable testing, first. Okay?

15 MR. EDGEWORTH: Yes, Your Honor.

16 THE COURT: All right. Mr. Edgeworth, what's your next
17 motion?

18 MR. EDGEWORTH: Your Honor, there -- I do not have any
19 other motions.

20 THE COURT: That's it?

21 MR. EDGEWORTH: That's gonna all today.

22 THE COURT: All right. All right. Now, before we get
23 into this, let me confirm. As I understand, y'all sent this
24 off -- the DNA evidence off to SLED for testing. In February
25 2018, they said there's three unidentifiable DNAs, but we

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1 can't -- what happened in 2018, because he's gonna be able to
2 bring up the 2018 report?

3 MR. POWELL: My understanding, not that they said who or
4 who it wasn't. They said it's a mixture of three people. At
5 that time, they couldn't pull and identify a mixture of three
6 people.

7 THE COURT: I gotcha.

8 MR. POWELL: So, they're saying it's a mixture of three
9 people; we're not doing anything else.

10 THE COURT: Okay.

11 MR. POWELL: They said that in scientific language, but
12 that's my understanding. So, three people, we don't have a
13 process to say it's A, B, and C, the people. A new test comes
14 out ---

15 THE COURT: Okay. Excuse me, so the 2019 testing, what
16 got it back to SLED? Did SLED contact y'all or did y'all
17 contact SLED again?

18 MR. POWELL: Your Honor, what literally happened was,
19 back -- we tried to do the trial last fall, I literally was
20 calling SLED witnesses saying are you available next week and
21 the lady scientist said, hey, we have this new test that's
22 getting ready to be approved and she explained it to me. At
23 that point in time, we weren't number one that week. The
24 other case went forward, so this case didn't happen, but I
25 wasn't gonna ask for a continuance at the very last minute

1 with this being something new. And when it didn't happen, I
2 requested a buccal swab from Mr. Linen because that had never
3 been obtained. So, we ---

4 THE COURT: Another one? Wait a minute. So, the buccal
5 swab from Mr. Linen was not part of the first ---

6 MR. POWELL: That's correct, Your Honor.

7 THE COURT: Okay.

8 MR. POWELL: We asked for it based upon this new test
9 procedure being available and the Court -- I don't recall
10 which judge -- the Court granted our motion for the buccal
11 swab based upon the availability of this new STRmix test.
12 Because it was explained to me, we've got a mixture of three,
13 Mr. Powell, we've stopped testing. That's what our jargon
14 means in our report. We don't test -- once it says it's three
15 people, we can't tell who it is at that point in time. Mr.
16 Powell, STRmix is available. It's -- the ability for us to
17 take and figure who those three people are. We got permission
18 to get the buccal swab, because there was a reason to get it
19 then, we had something -- whenever the first report came out
20 with a mixture of three, no profile can be done, we didn't
21 have any reason to ask to buccal swab Mr. Linen because we had
22 nothing to compare it to.

23 THE COURT: Okay.

24 MR. POWELL: So, based upon this new test, we asked for
25 it and got the buccal swab. That resulted in the second

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1 report, which has Your Honor's concerns about what it means.
2 Of course, our position is that's what we have the expert for,
3 and we'll be prepared to proffer and try to explain that to
4 the Court.

5 THE COURT: But at this point in time, basically to
6 paraphrase it, the state's position is SLED identified three
7 -- a mixture of three DNAs?

8 MR. POWELL: A minimum of three.

9 THE COURT: They're saying under this new testing, one of
10 the DNAs is the defendant's, but the other two, they can't --
11 it's not the victim and it's not the lady that -- that cut the
12 victim loose?

13 MR. POWELL: That's my understanding on what it says.
14 It's not saying it's the lady that cut her loose, it's not
15 saying it's the victim tied up, but it is Mr. Linen on the zip
16 ties. And do not recall now whether it was on the revolver.
17 It may've just been the two sets of zip ties.

18 THE COURT: As I understand the report I saw, he handed
19 up, I think he said that the revolver did not -- due to the
20 complexity of this mixture, this DNA profile is not suitable
21 for comparison. So that for whatever ---

22 MR. EDGEWORTH: I think that's correct, Your Honor. And
23 if I may make just two small points of clarification. Number
24 one, the first time that SLED did these tests, it didn't say
25 three; it said at least three. So, they didn't -- they didn't

1 bind themselves as to how many people. They just note that it
2 was at least three, a mixture of three individuals, at least.

3 Secondly, my client's DNA, known to law enforcement, is
4 already in CODIS. So, they didn't seek an additional buccal
5 swab because they didn't have to. But when they wanted to do
6 the new test and after, you know, when the case got delayed
7 and they wanted to have some more DNA, then they filed the
8 motion, the *Schmerber* motion to get more DNA. So, I just
9 wanted to make sure the Court was clear. It wasn't like they
10 said, oh well, we don't have access to his DNA; they did.
11 But, you know, I just want to make those points of
12 clarification. So, it's not like, oh, we couldn't figure it
13 out because we didn't have his DNA; they did. You know, so
14 we're gonna come back and try this new test. The results from
15 SLED specifically are we can't tell you who the -- it doesn't
16 matter how many known samples you give me. You can give me 20
17 known samples, it don't matter. But, we know this, there's
18 at least three peoples, could be more. Then when they wanted
19 to do the test again -- and this is again, a whole part of the
20 argument, which is they are basing the test in fact; they're
21 basing the test in assumptions. And so, when they ran the
22 test, if you read those propositions, the assumptions always
23 include three people. So, either there's three unidentified
24 people or one person that we know and two unidentified people,
25 so -- and that's my point. I just want to make sure the

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1 Court's aware there wasn't like -- they didn't have enough
2 information the first go around.

3 THE COURT: All right. Well, I'm gonna stick by my prior
4 ruling. I'm gonna deny your motion in limine, but I'm gonna
5 make them proffer it and I can tell you up front, Mr. Powell,
6 my biggest concern, is I'm gonna need to get an explanation as
7 to why DNA that we know should've been on there was
8 unidentified, and why this testing is not qualified for
9 registration on CODIS. I mean, if they're -- if they're
10 giving these results but saying, but we don't want to put it
11 on CODIS, because they have some concerns about it, then --
12 then I'm gonna have some concerns about it. But we'll wait,
13 and I'm just gonna require you to proffer that before we let
14 it go to a jury. Okay?

15 MR. POWELL: Yes, Your Honor.

16 MR. EDGEWORTH: Thank you, Your Honor.

17 THE COURT: All right. Let's take about a five-minute
18 break, then we'll come back, bring the jury in, I'll give them
19 opening charges. We'll do opening arguments.

20 How long is the state's first witness?

21 MR. POWELL: Very brief, Your Honor.

22 THE COURT: Very brief as in 30 minutes or five minutes?

23 MR. POWELL: Probably 10 -- 10 minutes, probably.

24 THE COURT: Okay.

25 MR. POWELL: Five or 10 minutes.

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BY THE COURT

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1 THE COURT: All right. What about the second one?

2 MR. POWELL: That's the victim, so it will take a while.

3 THE COURT: Okay. So, we'll have to check and see
4 whether we can get into the victim today or not.

5 MR. POWELL: Yes, Your Honor.

6 THE COURT: All right. Let's take about a five-minute
7 break, 10-minute break.

8 **RECESS - 3:02 P.M.**

9 *****OFF THE RECORD*****

10 **(On the Record - 3:22 P.M.)**

11 BY THE COURT:

12 THE COURT: All right. Anything from the state before we
13 bring the jury in?

14 MR. POWELL: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. EDGEWORTH: Nothing from the defense, Your Honor.

17 THE COURT: All right. Let's bring the jury in.

18 (REPORTER'S NOTE: Jury enters courtroom @ 3:24 P.M.)

19 THE COURT: Ladies and gentlemen, welcome back.

20 Ms. Huntsinger, I understand you've been selected as
21 foreperson; is that correct?

22 FOREPERSON: Yes, sir.

23 THE COURT: Thank you very much. If you would always
24 occupy where you now sit. I thank you for serving in that
25 capacity. If our alternates will always occupy the seats

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BY THE COURT

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1 where you now sit. And as I told the rest of you, you're at
2 liberty to sit in whatever seat you like, whether it be the
3 same seat during the trial of the case, alternating seats
4 during the trial of the case, or whatever makes you feel more
5 comfortable.

6 Now, we are getting ready to start the trial of the case
7 of the State of South Carolina versus John Nathan Linen, II.
8 But before we do that, as I told you during qualifications and
9 voir dire, jurors are constantly taking oaths. So, I'll need
10 you to please stand and raise your right hand while the clerk
11 of court administers the oath for you to serve as jurors on
12 this particular case.

13 (REPORTER'S NOTE: Jury is duly sworn.)

14 CLERK: Thank you.

15 THE COURT: Is there any member of the jury that did not
16 respond to the oath by saying I do? If so, please stand.

17 Very well. Thank you, ladies and gentlemen.

18 As I told you, we're about to begin the trial of the case
19 of the State of South Carolina versus John Nathan Linen, II.
20 But before we start the trial, I need you to give you some
21 preliminary instructions. I know from watching movies, T.V.
22 shows, reading books, things of that nature, trials are often
23 full of a lot of suspense, a lot of action, a lot of
24 entertainment and, while that might be the case in this trial,
25 it probably won't be.

1 The primary function in this trial is to determine
2 whether or not the state can prove its case beyond a
3 reasonable doubt against the defendant. Many times, that is a
4 slow, repetitive process; the exact opposite of what you might
5 be accustomed to when you read books or watch movies and
6 things of that nature. But, I hope you find the trial
7 entertaining and I hope you find it educational, and I want
8 you to thank you from the outset for serving as jurors in this
9 case.

10 Now, the attorneys appearing before you are advocates for
11 the parties that they represent but, first and foremost, they
12 are officers of the court. They are sworn to uphold the
13 integrity and the fairness of our judicial system and to help
14 you in a search for what happened in this case. You should
15 expect them to be professional, competent, and ethical in the
16 representation of their clients' interests.

17 Now, what I will now say is intended to serve as an
18 introduction to the trial of this case. These remarks are not
19 a charge on the law of this case. I will instruct you on the
20 law applicable to this case at the end of the trial before you
21 retire to consider your verdict. This is merely an
22 explanation of the procedure that we'll follow in the trial of
23 this case so that you can better understand what has -- what
24 is happening.

25 Now, the defendant is charged in this case by three

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BY THE COURT

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1 indictments. One charges the defendant with armed robbery;
2 one charges the defendant with kidnapping; and one charges the
3 defendant with possession of a weapon during the commission of
4 a violent crime. Now, I'll explain the elements of those
5 crimes to you at a later time when I charge you on the law in
6 this case.

7 These indictments are simply the charge by which this
8 case is brought into this court and they are not in any sense,
9 evidence of any of the allegations contained in them. The
10 defendant has pled not guilty to these indictments. The
11 state, therefore, has the burden of proving each of the
12 elements of the indictments beyond a reasonable doubt. It
13 will be your duty, ladies and gentlemen, to decide whether or
14 not the state has met that burden. Your purpose as jurors is
15 to find and determine the facts of this case. You are the
16 sole judge of the facts of this case. If at any time, I make
17 a comment regarding the facts of this case, you must be
18 disregard my comments. You are to determine the facts from
19 the testimony you hear and the other evidence introduced
20 during the trial of this case. It is up to you to determine
21 the inferences which you feel may properly be drawn from that
22 evidence. It is especially important that you perform your
23 duty of determining the facts diligently and conscientiously
24 because, ordinarily, there is no way to correct an erroneous
25 determination of the facts by a jury.

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BY THE COURT

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1 And on the other hand and with equal emphasis, the same
2 law that makes you the judges of the facts of this case makes
3 me the judge of the law. The law as given by the Court is the
4 only law you may consider. You must accept and follow the law
5 as I give it to you, even though you may disagree with it.
6 Just as I cannot tell you what the facts of this case are, you
7 cannot disagree with me about the law to be applied to this
8 case.

9 Excuse me for a minute, we're gonna need to get that
10 corrected before we proceed.

11 Your job is to take the law as I give it to you and apply
12 it to the facts as you find those facts to be from the
13 testimony of witnesses and any of the evidence that is
14 introduced. After doing that, you will then render your
15 verdict, a true and just verdict under the solemn oath you
16 just took as jurors.

17 Now, until I advise you to begin your deliberations, you
18 must not discuss this case with anyone including your fellow
19 jurors. Don't discuss it with any friends or family members
20 or anyone involved in the case. After the case is submitted
21 to you, you can then discuss the case but only in the jury
22 room with your fellow jurors. The attorneys and parties in
23 this case have been advised that they're not to talk to you at
24 all. So, they're not being rude or anything of that nature,
25 they're just following the instructions of the Court. During

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1 the trial, you are not to read or listen to or watch any news
2 reports about this case, if there are any. This includes
3 anything that may be in the newspaper, or on the internet,
4 radio, or television. You must not consider anything you may
5 have read or heard about the case outside of the courtroom,
6 whether that be before or during the trial of this case. It
7 is important that you keep an open mind and not decide any
8 issue in this case until all of the evidence has been
9 presented, the parties have made their closing arguments and
10 I've instructed you on the law to be applied in this case.

11 It is your solemn responsibility to determine the guilt
12 or innocence of the defendant. And your verdict must be based
13 solely on the evidence as it is presented to you in this trial
14 and on the law as I instruct you during and at the close of
15 the trial.

16 Now, in just a moment, the solicitor will make what's
17 called an opening statement, in which the solicitor will
18 explain to you the issues in this case, or at least what the
19 solicitor thinks the issues in this case are. The attorney
20 for the defendant may also make an opening statement, although
21 he is not required to do so. What the attorneys tell you
22 during their opening statements is not evidence in this case.
23 It is only their contention as to what the issues in this case
24 are. The evidence in this case will be presented to you by
25 testimony of sworn witnesses from the witness stand and by any

1 other exhibits that may be introduced into evidence.

2 Now, in determining what the true facts are in this case,
3 you must decide whether or not the testimony of a witness is
4 believable. It will be my responsibility to rule as a matter
5 of law as to whether certain testimony is admissible at all or
6 not. However, once testimony is admitted into evidence,
7 whether or not you believe it, is solely for you to determine.
8 In deciding whether to believe a witness, you have the right
9 to consider the interest of any witness, the bias of any
10 witness, the prejudice of any witness, the opportunity for the
11 witness to have seen the matters and things about which a
12 witness may testify, and the way the way the witness acts on
13 the witness stand. You have the right to consider anything
14 that is in the record that will help you evaluate the
15 testimony of the witnesses. That means that it is your duty
16 to pay close attention to these witnesses, to observe them, to
17 listen to them, and to pay close attention to the attorneys
18 and to the Court. Don't let your thoughts wander, but give
19 strict attention to the testimony in this case, so that at the
20 end of all of the testimony, after the arguments of counsel
21 and a charge on the law by the Court, you will then be in a
22 position to determine what the true facts are and to apply the
23 law to those facts and thus render a true and just verdict.

24 All right. Are there any additional charges from the
25 state or any challenges to the charge as given?

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OPENING BY POWELL

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1 MR. POWELL: No, Your Honor.

2 THE COURT: Any by the defense?

3 MR. EDGEWORTH: None from the defense, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, we'll begin
5 the trial of this case and as I told you, we'll start with the
6 opening statements by the attorneys. These opening statements
7 are not evidence. It is just their contention as to what the
8 issues in this case are.

9 Mr. Powell?

10 MR. POWELL: Thank you, Judge.

11 OPENING BY POWELL:

12 MR. POWELL: Ladies and gentlemen, the reason we're here
13 today basically starts out on the day of March 20th, 2017,
14 over two years ago now. On that day, a lady, young lady by
15 the name of Tyesha Sparkman, got up that morning and started
16 doing that morning routine. I presume, brush teeth, got her
17 hair done, maybe showered, got her clothes on, those type
18 things. See, she was getting ready to go to work that
19 morning. She was the assistant manager at the Dollar General
20 store. All of you -- some of you may know the store, it's out
21 on Highway 701, Fraser Street, heading towards the direction
22 of Conway. You cross the Black River, there's Choppee Road,
23 there's a Dollar General store out near where Choppee Road
24 turns off of 701. She was the assistant manager there. Her
25 job that day was to go to the store and get it open. The

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OPENING BY POWELL

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1 Dollar General stores open at 8 o'clock, the ones I go to do.
2 That's what the store here had the hours. She got there in
3 the morning to count the money, get the store open, those type
4 things.

5 But the reason we're here today is that somebody else got
6 up that morning as well and did a morning routine, whatever
7 that happened to be. And most importantly, was also planning
8 on gonna that Dollar General store, but he wasn't going there
9 to work. That wasn't what he was there to do.

10 After Ms. Sparkman got to work and got the front doors
11 open, what did she do? If any of you have been to a Dollar
12 General store before, you walk up to the front door, there's
13 always some display items out in front of it. So, after she
14 got the front door open, she starts taking those items from
15 the inside, where they'd been overnight, I presume, setting up
16 outside by the front door. A customer comes in, customer
17 leaves. Then, of course, who shows up? She didn't know him
18 then, she knows the name John Linen now, but Mr. Linen came to
19 the store. He comes inside, he wants to see some T-shirts.
20 She shows some T-shirts to him and he leaves. She goes back
21 to working, another customer comes in the store, checks out,
22 buys some items, leaves the store. At that point in time, Mr.
23 Linen walked back up to her, goes up, back at the T-shirts
24 like he's gonna buy something. Most importantly, what happens
25 at that point in time? A gun is displayed, money is demanded

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OPENING BY POWELL

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1 from the cash register. She's back behind the cash register,
2 he's on the other side -- the other side of that counter where
3 you pay for things. He walks around back behind the cash
4 register where Ms. Sparkman is, gets the money from the cash
5 register. I don't know if you ever paid attention to the
6 Dollar General store, I remembered it when I got this case to
7 deal with, but there always seems to be a little back office,
8 a back room back behind where the cash register is. You see
9 like a little open area you can walk into. I don't really
10 know what's back there, but what we'll hear from the testimony
11 today is, you walk to that little opening, there's like a
12 little break room and over to the side, there's a little what
13 they call an office.

14 So, what did Mr. Linen do? After he gets the money, he
15 takes her back into that little break room. The testimony
16 from Ms. Sparkman will be that he tried to zip tie her legs to
17 a chair, he tried to sit her down in a chair and zip tie her
18 legs where she couldn't get up. That didn't work, so he put
19 the zip ties on her hands to bind her and tells her not to
20 leave. It doesn't take very long; we're not talking about a
21 long period of time. He takes the money and leaves the store.
22 Of course, Ms. Sparkman calls the police and reports it, calls
23 911, and does that.

24 You heard His Honor say he's been charged with three
25 crimes, he briefly talked about those. That's basically the

1 facts of what took place. The crimes are armed robbery,
2 kidnapping, and possession of a gun during the commission of a
3 violent crime. I want to briefly explain what those are, so
4 as you hear the testimony today, it will sort of make sense of
5 what we're dealing with, the charges that we're dealing with
6 and the crimes that we're dealing with.

7 Armed robbery is pretty simple. You rob somebody and
8 some kind of a weapon is used. It's pretty much common sense.

9 Kidnapping. Before I did this job, I've been working
10 here about eight years or so with the solicitor's office. I
11 always pictured kidnapping as being a story you hear. You
12 take somebody, throw them in the back of your car or trunk of
13 the car, take them somewhere secluded, maybe assault them,
14 maybe demand money for ransom, something like that. But as
15 His Honor will explain, our state statutes in all crimes,
16 armed robbery, kidnapping, possession of a weapon during a
17 violent crime, the statutes, the laws that are passed that are
18 for what those crimes are. His Honor will tell you about the
19 elements. You're here in the courtroom today, you may've
20 dealt with lawyers before, you may have been in a trial
21 before, or you may never have. If you get an auto mechanic,
22 for example, you hear them talk about timing, air pressure,
23 different things about vehicles.

24 In the courtroom, you hear lawyer mumbo jumbo, lawyer
25 words, judge's words, courtroom words. So, elements is just a

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OPENING BY POWELL

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1 lawyer type word that breaks down what a crime is. It always
2 has to take place in Georgetown County. If somebody did a
3 crime in Conway, Horry County, you do the trial there.
4 Apart from happening in Georgetown County, it's explained what
5 they are. Armed robbery, you use a weapon to rob personal
6 property from somebody.

7 Kidnapping, it's not just that put somebody in the back
8 of a car and drive them somewhere. It's also -- the words
9 that's used for confining somebody, seizing somebody. When
10 Mr. Linen took Ms. Sparkman back in the little breakroom and
11 tried to zip tie her to a chair, put zip ties on her hands and
12 displayed a gun already and told her not to leave, that was
13 him confining and seizing her. So, that's what we're talking
14 about when we talk about kidnapping today.

15 Possession of a weapon during the commission of a violent
16 crime, once again, briefly, there are elements, like a recipe
17 when you're cooking something in the kitchen, an element of
18 possession of a weapon during a violent crime, goes to the
19 fact that our state classifies some crimes as non-violent and
20 some crimes as violent. Kidnapping and armed robbery is
21 classified as a violent crime in South Carolina.

22 The charge is, he took a gun, robbed money out the cash
23 register, used that gun during an armed robbery, had the gun
24 on them, zip tied her up, told her not to leave, he used the
25 gun in commission of that kidnapping as well. So, kidnapping

1 and armed robbery, once again, as His Honor I'm sure will tell
2 you, they're classified as violent crimes, using a gun during
3 the commission of those two things.

4 Now, what you did today was, you took an oath. You took
5 an oath to really decide, when I put evidence and witnesses
6 and whatever kind of evidence I present to you today in the
7 course of this trial, the real thing you took an oath to do, I
8 think -- the way I think about it, is you're gonna make a
9 decision whether I proved to you beyond a reasonable doubt
10 whether these crimes took place. You're gonna decide about
11 armed robbery, you're gonna decide about kidnapping, and
12 you're gonna decide about possession of a weapon during the
13 commission of a violent crime. You're gonna decide whether we
14 proved beyond a reasonable doubt that he is guilty of those.

15 I feel positive that once we put up all our witnesses,
16 present all the evidence to you, that you will find Mr. Linen
17 guilty on all three charges.

18 Thank you.

19 THE COURT: All right. Mr. Edgeworth, does the defense
20 wish to make an opening statement?

21 MR. EDGEWORTH: We do, Your Honor.

22 THE COURT: All right.

23 MR. EDGEWORTH: Thank you. May it please the Court?

24 OPENING BY EDGEWORTH:

25 MR. EDGEWORTH: Ladies and gentlemen of this jury, we're

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OPENING BY EDGEWORTH

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1 here before you and the state has just presented what they
2 believe to be the case that they think they're gonna prove to
3 you from that witness box. But, the state is also talking to
4 you in a manner in which they want you to fall prey to the
5 assumptions of human nature; get up here and tell you that --
6 the story of what happened but, without putting any evidence
7 in that box or presenting any documentary evidence to the
8 Court, they're already telling you that my client, my client
9 right here, Mr. John Linen, committed the crime. That's an
10 assumption. If you don't have any evidence and you don't have
11 anything to rely on, but they're drawing a conclusion, that's
12 an assumption.

13 And, I, on behalf of Mr. Linen, are asking you not to
14 fall prey to those assumptions. They want you to assume that
15 because law enforcement arrested Mr. Linen, detained him, and
16 charged him for the crime that he must have did it. They want
17 you to assume because he is in that chair, on this desk
18 reserved for the defendants, that he did it. They didn't come
19 in here and say, I want you to listen to the evidence
20 carefully and you will see da-da-da-da-da that once -- that
21 testimony is there and you will know that he did it. They've
22 already said he did it, and that's not how this works. That's
23 not how this works at all. You cannot fall prey to the
24 assumptions that they want you to conclude. He was arrested;
25 he must have did it.

1 Ms. Sparkman is gonna tell you probably from this witness
2 box that she was there that day. She comes in -- she didn't
3 know who it was. But now, he's sitting in a chair, asking you
4 to listen to the evidence. Don't make any assumptions. I'm
5 sure when you saw me for the first time you figured, you know,
6 long-haired lawyer, he must be a fool. I used to have longer
7 hair down the middle of my back. Assumptions. Don't let the
8 state get away with you not following through with listening
9 to the evidence, listening to the questions that I ask the
10 witnesses, the answers they give, so that you do not make an
11 assumption.

12 Thank you.

13 THE COURT: All right. Ladies and gentlemen, we will now
14 begin the evidentiary portion of this case with the
15 plaintiffs, excuse me, with the state's case.

16 Mr. Powell, the state can call your first witness.

17 MR. POWELL: Your Honor -- one second, Judge. I'm sorry,
18 Your Honor.

19 THE COURT: Okay. Let me see the attorneys for one
20 second.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence of but outside the hearing of the jury.)

23 THE COURT: All right. Mr. Powell, the state can call
24 your first witness.

25 MR. POWELL: Thank you, Judge.

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JOSEPH RONALD WILLIAMSON - DIRECT BY POWELL

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1 Your Honor, the state would call its first witness,
2 Joseph Williamson.

3 THE COURT: All right.

4 JOSEPH RONALD WILLIAMSON, HAVING BEEN
5 SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Thank you. Please be seated and state your full
7 name for the record.

8 MR. WILLIAMSON: Joseph Ronald Williamson.

9 DIRECT EXAMINATION OF JOSEPH RONALD WILLIAMSON BY MR. POWELL:

10 Q: Mr. Williamson, good afternoon. Where do you work, sir?

11 A: At the 911 office for Georgetown County.

12 Q: How long have you been working there?

13 A: Nine years total.

14 Q: What's your current position?

15 A: Communications manager.

16 Q: What are your responsibilities as communication manager?

17 A: I'm the -- in charge of the whole office and personnel
18 and equipment.

19 Q: Are you familiar with how the 911 calls come in?

20 A: Yes, sir.

21 Q: Is there any kind of recording abilities with the 911
22 system when someone makes a call?

23 A: Yes, sir.

24 Q: Is there ability to retrieve it and locate it?

25 A: Yes, sir.

1 Q: Is that done -- can you look it up under the time or
2 date, those type things?

3 A: Yes.

4 MR. POWELL: May I approach the witness, Judge?

5 THE COURT: Yes.

6 BY MR. POWELL:

7 Q: Mr. Williamson, I'd like to show you what was
8 previously marked for identification purposes only as State
9 Exhibit 1. One second, please?

10 Mr. Williamson, I'd like to show you what's been
11 previously marked as State Exhibit 1 and see if you identify
12 what it is.

13 A: Yes, sir; that's the 911 recording.

14 Q: Have you had a chance to listen to it before?

15 A: Yes, sir.

16 Q: Is there any way that you can tell when you listened to
17 it?

18 A: November the 5th, 2019.

19 Q: Can you tell the jury what you looked at when you gave
20 that date?

21 A: My initials and the date when I listened to it.

22 Q: You listened to it in my office on that day?

23 A: Yes, sir.

24 Q: What actually is it?

25 A: That's the armed robbery that occurred on Dollar General

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JOSEPH RONALD WILLIAMSON - DIRECT BY POWELL

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1 on ---

2 Q: That what we're here today concerns?

3 A: Yes, sir.

4 Q: Did you listen to it in its entirety?

5 A: Yes, sir.

6 Q: Based upon your training and position there at 911
7 system, did you notice any kind of editing or changes or
8 anybody messing with it?

9 A: No, sir.

10 Q: You think it's a complete and accurate copy and
11 description of that phone call that came in about that Dollar
12 General store robbery?

13 A: Yes, sir.

14 MR. POWELL: Your Honor, at this time, we'd like to put
15 in what was previously marked as State Exhibit 1 into evidence
16 as State Exhibit 1?

17 THE COURT: All right. Any objection?

18 MR. EDGEWORTH: Yes, Your Honor. I don't think there's
19 been any foundation laid as to how the recording was obtained
20 or he just said he listened to it.

21 THE COURT: All right. You're gonna need to lay a better
22 foundation.

23 MR. POWELL: Okay.

24 BY MR. POWELL:

25 Q: Mr. Williamson, where did this recording come from?

1 A: Off of our servers in the 911 office.

2 Q: Is that server basically a computer system?

3 A: Yes, sir.

4 Q: So, what do you mean by come off of it? Was a disc
5 burned off of it?

6 A: It was probably a digital file and that was burned to a
7 disc.

8 Q: What do you mean when you talk about burning? Copying
9 the digital copy from the server to the computer disc?

10 A: Yes, sir.

11 Q: And it's your testimony that this is a copy, complete
12 copy off the 911 system server?

13 A: Yes, sir.

14 MR. POWELL: At this time, I'd move to put into evidence
15 State Exhibit 1?

16 THE COURT: Any objection?

17 MR. EDGEWORTH: Yes, Your Honor, same objection. I mean
18 there's been no testimony of where this came from.

19 THE COURT: Yeah. Where it came from, when it came, who
20 took the call or whatever. You've got to lay a better
21 foundation that identifies it.

22 MR. POWELL: Yes, Your Honor.

23 BY MR. POWELL:

24 Q: Do you recall who the phone call came from, Mr.
25 Williamson?

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1 A: It came from -- I think it was Ms. Sparkman that made the
2 phone call.

3 Q: She would be -- would she work at Dollar General store
4 then?

5 A: Yes, sir.

6 Q: Can you tell by looking at the disc what date the phone
7 call was done?

8 A: March the 20th, 2017 at 8:54 A.M.

9 MR. POWELL: At this time, Judge, we'd ask that we put
10 it in as State's Exhibit 1?

11 THE COURT: All right. Any objection?

12 MR. EDGEWORTH: Same objection, Your Honor. So far, the
13 testimony only is that, you know, regurgitating what's been
14 written on there and he listened to it on November 5th. I
15 don't -- who took the call, how was it recorded, was he the
16 one who got the recording. I don't think there's been a
17 proper foundation laid?

18 THE COURT: All right. Let's lay the foundation; who
19 took the call?

20 BY MR. POWELL:

21 Q: Mr. Williamson, do you know who took the call that day?

22 A: It was Kimberly Susie Tubbs (spelled phonetically) was
23 the dispatcher.

24 Q: And where is she employed?

25 A: At the 911 office. She's the operations manager.

1 Q: Do you know how long she had been working there?

2 A: Thirty-one years.

3 Q: Taking the call would be one of her responsibilities of
4 her employment?

5 A: Yes, sir.

6 MR. POWELL: Your Honor, I believe we've made it to the
7 point of trying to get it in.

8 THE COURT: All right. I'm gonna ---

9 MR. POWELL: Who made the recording, took it that day.
10 It came off the server, the call came from Ms. Sparkman at the
11 Dollar General store.

12 THE COURT: Well, because he's now identified who took
13 the call, the date of the call, the time of the call, and all
14 of that, I am gonna go ahead and admit State's Exhibit 1 over
15 defendant's objection.

16 MR. EDGEWORTH: Thank you, Your Honor.

17 MR. POWELL: Thank you, Judge.

18 STATE'S EXHIBIT NUMBER 1

19 ADMITTED INTO EVIDENCE

20 THE COURT: All right. Go ahead.

21 MR. POWELL: Your Honor, we'd ask to publish at this
22 point in time?

23 THE COURT: All right.

24 MR. POWELL: Will you turn it on, please?

25 (REPORTER'S NOTE: State's 1 published to the jury. Audio not

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1 transcribed herein.)

2 MR. POWELL: I have no further questions for this
3 witness, Judge.

4 THE COURT: All right.

5 Cross examination?

6 MR. EDGEWORTH: Thank you.

7 CROSS EXAMINATION OF JOSEPH RONALD WILLIAMSON BY MR.

8 EDGEWORTH:

9 Q: Mr. Williamson, are you the supervisor?

10 A: Yes, sir.

11 Q: And your testimony is that Ms. Kimberly Tubbs was the --
12 was the 911 operator that took the call; is that correct?

13 A: Yes, sir.

14 Q: Do you and she have to undergo the same type of training?

15 A: Yes, sir.

16 Q: Okay. In the training, are you -- are you shown or
17 demonstrated, you know, what you need to do when you take the
18 phone call?

19 A: There's questions asked, yes, sir.

20 Q: So, you're told what questions to ask when you receive
21 those kind of phone calls?

22 A: Somewhat, yes, sir.

23 Q: Is there like a placard, you know one of those laminated
24 sheets of paper that has a list of questions that -- that the
25 call operator is supposed to ask?

1 A: Not for all the law enforcement type, no, sir.

2 Q: Say it one more time?

3 A: Not for all the law enforcement type.

4 Q: Okay. So, is -- is -- are the question just like kind of
5 done on a whim?

6 A: No, there are some standard questions that they would
7 ask. You need information.

8 Q: So, as the supervisor, you would know that Ms. Tubbs is
9 trained to ask certain questions ---

10 A: Yes.

11 Q: --- when they get the call; is that correct?

12 A: Yes, sir.

13 Q: Okay. Now, you were shown this -- what's now been
14 entered into evidence as Exhibit 1, which is the 911 call we
15 just listened to, correct?

16 A: Yes, sir.

17 Q: Okay. On it, it has a date and time. Can you tell me
18 what the time is?

19 A: 8:54 A.M.

20 Q: Okay. Now, is that the time the call was received?

21 A: Yes, sir.

22 Q: Okay. And do you know how long that -- that phone call
23 took?

24 A: Nine or 10 minutes, I believe.

25 Q: If I told you it was eight minutes and 45 seconds, would

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1 that sound about right?

2 A: I'm not sure.

3 Q: Okay. If we put the disc in and it says the duration of
4 the phone call is eight minutes and 45 seconds, that would be
5 the duration of the phone call; you would agree with me?

6 A: Yes, sir.

7 Q: Okay. So, from the time the phone call was made until it
8 was ended was approximately eight minutes and 45 seconds,
9 right?

10 A: Could be.

11 Q: Okay. All right. So, are the -- are your operators
12 trained to terminate the phone call once law enforcement
13 arrives on the scene?

14 A: For the most part, yes, sir.

15 Q: Okay. It's fair to say, there's really no need for the
16 operator anymore because law enforcement has made it there?

17 A: Correct.

18 Q: So, is it fair to say then that at the time of the call
19 was eight minutes and 45 seconds from the time of the call
20 until the end of the call, that it took law enforcement
21 approximately eight minutes and 45 seconds to get there?

22 A: Probably, yes, sir.

23 Q: And most likely a little bit less, because she would have
24 had to've made the phone call and then dispatched law
25 enforcement?

1 A: Or -- I mean another dispatcher could've dispatched the
2 call out, I'm not sure.

3 Q: Okay. Well, then let's just say that the longest period
4 of time it would take for law enforcement to get there would
5 be no longer than the eight minutes and 45 seconds; is that
6 right?

7 A: Correct.

8 Q: Okay. So, you -- you heard the phone call?

9 A: Yes, sir.

10 Q: Okay. You heard it before today because you testified
11 you listened to it on November 5th of this year, correct?

12 A: Yes, sir.

13 Q: And you heard it just now?

14 A: Yeah.

15 Q: Okay. Do you agree with me that -- that at the time of
16 the call, that Ms. Sparkman, who was the person who made the
17 call, she identified herself as Ms. Sparkman?

18 A: She did later on in the call, but it sounds like the same
19 person the whole time.

20 Q: And you believed it was the same person on the call this
21 whole time?

22 A: Yes, sir.

23 Q: Okay. So, she's the one giving the information to the
24 operator?

25 A: Yes.

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1 Q: Okay. And it sounded like that she was the person whose
2 hands were tied by the assailant?

3 A: Yes.

4 Q: Now, the -- the first question that your operator asked
5 was, where are you? Is that a normal first question?

6 A: Yes.

7 Q: Okay. So, we know that the incident took place on the --
8 at the Dollar General near Choppee Road, because she gave that
9 address?

10 A: Yes.

11 Q: Okay. The second question she asked was, did you know
12 the person who did this? Is that a typical first -- first or
13 second question?

14 A: It just depends on ---

15 Q: It depends?

16 A: Yes, sir.

17 Q: Is it fair to say that that question is normally asked
18 because you want to get -- find out who that may've been right
19 away while the person is remembering?

20 A: Yes.

21 Q: Okay. So, in the very early moments of this phone call,
22 the person who made the phone call, Ms. Sparkman, says what?
23 Do you recall?

24 A: I can't recall.

25 Q: If I told you she says, I don't know him, would you agree

1 with that?

2 A: Yes, sir.

3 Q: Okay. Indicating she don't know who did it?

4 A: At that time, yes, sir.

5 Q: Okay. Now, she also -- your -- the dispatcher or the
6 operator asked next, was there -- essentially, was there a
7 weapon involved?

8 A: Yes, sir.

9 Q: That's a typical question to ask?

10 A: Yes, sir.

11 Q: Okay. She said that -- because Ms. Sparkman indicated
12 that they had been robbed?

13 A: Yes, sir.

14 Q: And do you recall what the caller said to that?

15 A: I think I remember a black handgun is what she had said.

16 Q: Okay. Are you sure about that? Where did you get that
17 information from? Where did you get the terminology black
18 handgun from?

19 A: I don't really recall.

20 Q: Okay. Did you talk to the prosecution about this case
21 before you testified?

22 A: No, sir. Well, I listened to the call, yes, sir.

23 Q: Okay. Did -- you met with them so you could listen to
24 the call?

25 A: Yes, sir.

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1 Q: Did anyone tell you that there was a black handgun
2 involved?

3 A: No, sir.

4 Q: Where did you get a black handgun?

5 A: It was an assumption.

6 Q: Assumption? Because would you agree with me that in the
7 early moments of that phone call, she said I cannot tell you
8 what kind of gun? And we can listen to it again but do you
9 recall -- do you recall her saying that; you've at least
10 listened to the phone call twice?

11 A: No, sir.

12 Q: You don't remember?

13 A: No, sir.

14 Q: So, if I remind you that she said, could not tell what
15 kind of gun, you don't agree with me that she said that?

16 A: She probably did, yes, sir.

17 Q: Okay. So, it was you who just now said black handgun,
18 correct?

19 A: Yes, sir.

20 Q: Not the caller. And you don't know where you got that
21 from. You don't recall whether you were talking to law
22 enforcement and/or the prosecution about whether or not --
23 what type of handgun was involved in this case, do you?

24 A: No, sir.

25 Q: Okay. Do you agree with me that the caller said, they

1 were not hurt?

2 A: She said she didn't need an ambulance is all I can
3 remember her saying.

4 Q: You do not recall in listening -- listening to that
5 phone call at least two times, that she said, he did not hurt
6 me?

7 A: I don't remember, no, sir.

8 Q: You just listened to it again, right?

9 A: Yes, sir.

10 Q: But you don't remember?

11 A: No, sir.

12 Q: And the phone call was eight minutes and 45 seconds and
13 that comment was made early on? Do you recall what kind of
14 clothing that the caller said the assailant had?

15 A: No, sir.

16 Q: Okay. Now, you listened to the call, right?

17 A: Yes.

18 Q: She wanted to get those zip ties off, right?

19 A: Yes.

20 Q: Someone else was in the store or had come into the store
21 during the phone call, correct, and you could hear that person
22 ask if they could cut them off, correct?

23 A: Yes, sir.

24 Q: Okay. To your knowledge, were those things actually cut
25 off, to your knowledge?

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1 A: I'm not sure.

2 Q: Okay. Could you hear the commotion going on in the
3 background?

4 A: There was somebody, yes, sir, in the background.

5 Q: Do you recall the operator asking Ms. Sparkman, are there
6 other people in the store?

7 A: Yes.

8 Q: Are you letting other people into the store?

9 A: Yes, sir.

10 Q: Can you tell that there's other people coming into the
11 store?

12 A: There was other voices in the background, yes, sir.

13 Q: So, not only is Ms. Sparkman in the store, but there's a
14 person who cut off the zip ties in the store and then there's
15 other people coming into the store, correct?

16 A: Yes, that's the way it sounded.

17 Q: In fact, you can hear Ms. Sparkman saying, don't know if
18 you want to be in here because the store just got robbed; she
19 was talking to the other people in the store?

20 A: Yes.

21 Q: Do you know who those people were?

22 A: I do not.

23 Q: Do you recall whether the operator asked who those people
24 were?

25 A: I don't; no, sir.

1 Q: So, it's fair to say then that the caller, Ms. Sparkman,
2 she said that she did not know the person, correct; that's
3 what she says on the phone call?

4 A: That's correct; yes, sir.

5 Q: Okay. She could not tell what type of gun there was,
6 correct?

7 A: Yes, sir.

8 Q: There were more people coming in and out of the store,
9 correct?

10 A: Yes, sir.

11 Q: She did not get hurt, correct?

12 A: She did not. As far as I can remember, I just remember
13 her saying she didn't need an ambulance.

14 Q: Okay. Is it fair to say if she didn't need an ambulance,
15 then she wasn't hurt?

16 A: Not necessarily.

17 Q: Okay. Fair enough. And it's fair to say that law
18 enforcement was on the scene within eight minutes and 45
19 seconds from the time the call started, correct?

20 A: Yes, sir.

21 MR. EDGEWORTH: No further questions.

22 THE COURT: All right.

23 Redirect?

24 REDIRECT EXAMINATION OF JOSEPH RONALD WILLIAMSON BY MR.

25 POWELL:

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BY THE COURT

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1 Q: Mr. Williamson, are you a law enforcement officer?

2 A: No, sir.

3 Q: Did you have any involvement whatsoever in investigating
4 this case?

5 A: No, sir.

6 MR. POWELL: No further questions, Judge.

7 THE COURT: All right. You may step down.

8 Let me see the attorneys for a second.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence of but outside the hearing of the jury.)

11 BY THE COURT:

12 THE COURT: All right. Ladies and gentlemen, I've been
13 informed the next witness is gonna be kind of lengthy. So,
14 we're gonna go ahead and break for the day. It's a little bit
15 -- a little bit after 4:00. So, it's a good time for us to go
16 ahead and break for the day. I'll let you go home for the
17 evening. I'm gonna ask that you please be back at 9:15
18 tomorrow morning. Do not discuss the case even among
19 yourselves. It's too early for deliberations. Don't conduct
20 any independent investigations. Don't go looking through the
21 newspaper, on the internet, or try to find out anything about
22 this case. No investigations; don't talk about the case. I
23 hope everybody has a good evening and we'll see you back at
24 9:15 tomorrow morning. Thank you very much.

25 Everybody else please remain seated while the jury is

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BY THE COURT

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1 excused.

2 (REPORTER'S NOTE: Jury exits courtroom @ 4:14 P.M.)

3 THE COURT: All right. Anything from the state before we
4 recess for the evening?

5 MR. POWELL: No, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. EDGEWORTH: None from the defense, Your Honor.

8 THE COURT: All right. We'll be in recess until 9:15
9 tomorrow morning. Well, I'll probably take the bench at 9:30.
10 If they come back at 9:15, that will give them an opportunity
11 to get a cup of coffee or something like that before we start.
12 So, I'll try to take the bench at 9:30.

13 MR. POWELL: We're okay coming up between 9 and 9:15?

14 THE COURT: Do what -- yeah.

15 MR. POWELL: It's okay for the lawyers to come up?

16 THE COURT: That will be fine.

17 MR. EDGEWORTH: Thank you, Judge.

18 THE COURT: All right. Thank you.

19 MR. POWELL: Thank you, Judge.

20 **RECESS - 4:14 P.M. - END OF DAY ONE**

21 *****OFF THE RECORD*****

22 **NOVEMBER 13, 2019 - DAY TWO**

23 **(On the Record - 9:52 A.M.)**

24 **BY THE COURT:**

25 MR. EDGEWORTH: Your Honor, quick question, if I may.

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BY THE COURT

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1 Does my client need to be out here for -- I'm just asking
2 because of the ---

3 THE COURT: I'll leave it up to you. I mean, he has a
4 right to be here. If you want to bring him in or if you want
5 to waive his presence while I question this juror, I'll leave
6 it up to you.

7 MR. EDGEWORTH: I'll waive him being present.

8 THE COURT: All right. It might be good since she's
9 saying she recognized him; that's true.

10 MR. EDGEWORTH: That's what I was thinking, Your Honor.

11 THE COURT: All right. If I can get -- will you bring in
12 Glenda Cox, Juror 32, please?

13 (REPORTER'S NOTE: Juror 32 enters courtroom.)

14 THE COURT: Ms. Cox?

15 JUROR 32: Yes.

16 THE COURT: I understand you told the bailiff this
17 morning that once you were seated as a juror, you may have
18 recognized the defendant?

19 JUROR 32: No, I don't know the defendant but I know his
20 daddy.

21 THE COURT: Oh, you know his ---

22 JUROR 32: I realized that this morning when I seen him.

23 THE COURT: Oh, so you know his father?

24 JUROR 32: Right.

25 THE COURT: All right. Now, how do you know his father?

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BY THE COURT

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1 JUROR 32: We go to church together.

2 THE COURT: Okay. Would that relationship or association
3 affect your ability to be fair and impartial to both the state
4 and the defendant in this case?

5 JUROR 32: No, it won't affect it.

6 THE COURT: Okay. Do y'all have any type of relationship
7 other than just gonna church together? I mean, do y'all
8 socialize together or work together or do anything other than
9 go -- see each other in church?

10 JUROR 32: No, sir.

11 THE COURT: Okay. All right. Would you be able to
12 disregard that relationship in its entirety and base your
13 decision in this case exclusively on the testimony and
14 evidence in this case without considering the fact that his
15 father goes to church with you at all?

16 JUROR 32: (Indicates affirmatively.)

17 THE COURT: Can you do that?

18 JUROR 32: Yes.

19 THE COURT: All right. Thank you very much. All right.
20 Thank you.

21 All right. Anything from the state with regard to that
22 juror?

23 MR. POWELL: Your Honor, I had known that when we
24 selected the jury, I would've exercised one of the strikes I
25 didn't use and would have struck her. I would therefore ask

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BY THE COURT

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1 that she be replaced by one of the alternates.

2 THE COURT: Okay.

3 All right. Mr. Edgeworth, any ---

4 MR. EDGEWORTH: Your Honor, just as a matter of -- our
5 position would simply be, she just answered the questions
6 under oath. Her relationship is with the -- if there is any
7 relationship at all, it's with the father of -- of my client.
8 She answered the questions appropriately, those questions were
9 the same questions asked of all of the venire and I would ask
10 that the, the juror remain.

11 THE COURT: Okay. All right. I'm gonna grant the
12 state's motion. Even though she is qualified as a juror to
13 sit on this jury, the state had pre-emptive strikes they
14 could've used when her name was called and, according to the
15 state, they would have struck her because, had they struck
16 her, that would've only been their third pre-emptive strike.

17 Now -- all right. They had just -- okay. Let me do
18 this. Let's see, our alternates are -- all right. Our
19 alternates are James D. Cronin, Number 36, and Deborah
20 Michalczyk or however you pronounce that, Juror Number 106. I
21 understand in General Sessions, we just draw it out of the
22 hat. Who wants to draw?

23 MR. POWELL: Make your law clerk do something.

24 THE COURT: All right. Pull one out. Yeah, that's good.

25 All right. James D. Cronin will be seated in place of ---

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BY THE COURT

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1 MR. POWELL: What's his number, Judge, please?

2 THE COURT: Juror Number 36.

3 MR. POWELL: Thank you.

4 THE COURT: All right. I think I'm gonna bring Ms. Cox
5 back in and go ahead and excuse her, so that she doesn't need
6 to sit around and wait. I'll just let Mr. Cronin know when
7 they get back out here that he is now part of the 12-panel
8 jury.

9 All right. Let's go ahead and bring Ms. Cox back out.
10 Okay?

11 Ms. Cox?

12 JUROR 32: Yes.

13 THE COURT: Thank you for coming back out. I don't want
14 you to think that you did anything improper or wrong, but just
15 out of a sense of precaution, I'm gonna excuse you from this
16 jury. Okay?

17 JUROR 32: All right.

18 THE COURT: Like I say, it's just more of a precautionary
19 measure on my behalf than anything else. You should've been
20 given a phone number from the Clerk of Court. You'll need to
21 call that number after 6:00 P.M. today. Okay?

22 JUROR 32: All right. Thank you.

23 THE COURT: All right. Thank you very much for being
24 with us.

25 (REPORTER'S NOTE: Juror 32 excused and exits courtroom.)

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BY THE COURT

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1 THE COURT: All right. Mr. Powell, 10:30 give you time?

2 MR. POWELL: Maybe 10:45, 45 minutes.

3 THE COURT: Okay. 10:45, that'll be good.

4 MR. POWELL: Thank you, Judge.

5 THE COURT: All right. We'll be in recess until 10:45.

6 Okay?

7 MR. EDGEWORTH: Thank you, Judge.

8 THE COURT: Let the jury know that we've got some matters
9 we've got to deal with and so, it's gonna be about 45 minutes,
10 just in case any of them want to go out and stretch their legs
11 or whatever the case may be. Okay?

12 All right. Thank you. All right. We'll be in recess
13 until then.

14 MR. POWELL: Thank you, Judge.

15 THE COURT: Thank you.

16 **RECESS - 10:01 A.M.**

17 *****OFF THE RECORD*****

18 **(On the Record - 11:02 A.M.)**

19 THE COURT: All right. We need to bring Juror Number 74,
20 Ms. Huntsinger out, please.

21 Hey, Ms. Huntsinger. I understand you have some concerns
22 in this case?

23 JUROR 74: Yes, sir. It may not be a concern, but I just
24 -- I mean, it may not be -- but I just wanted to be on the
25 safe side.

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BY THE COURT

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1 THE COURT: All right. What is that?

2 JUROR 74: Well ---

3 THE COURT: I need you to speak up so the court reporter
4 can hear this.

5 JUROR 74: I used to go to the daycare of Ms. Julia Linen
6 in Dunbar.

7 THE COURT: Okay.

8 JUROR 74: I didn't realize with Linens and Dunbar until
9 the other lady in our jury, and I was -- I did story times
10 there for her daycare and sometimes her relatives were in
11 there from their community. And I don't know if the defendant
12 was in one of my story times. I wouldn't remember because
13 they were all little small children, earlier than school.

14 THE COURT: Okay. So, you just went out there and read
15 to them?

16 JUROR 74: Yes.

17 THE COURT: He may've been in there or may not?

18 JUROR 74: This was an interactive story time. I
19 wouldn't them, but they would probably remember me, because I
20 was probably the only person going into a home daycare out
21 there.

22 THE COURT: Okay. So, you don't know if he was in your
23 class or not?

24 JUROR 74: I don't know, but it's possible.

25 THE COURT: Okay. All right. Thank you very much.

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BY THE COURT

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1 That's all we need to know.

2 JUROR 74: Thank you, sir.

3 THE COURT: Thank you.

4 (REPORTER'S NOTE: Juror 74 exits courtroom.)

5 THE COURT: All right. Any concerns from the state with
6 regards to that juror?

7 MR. POWELL: No, Your Honor.

8 THE COURT: Any from the defense?

9 MR. EDGEWORTH: None from the defense, Your Honor.

10 THE COURT: All right. All right. Anything from the
11 state before we bring the jury in?

12 MR. POWELL: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. EDGEWORTH: No, Your Honor.

15 THE COURT: All right. Let's go ahead and bring the jury
16 in.

17 (REPORTER'S NOTE: Jury enters courtroom @ 11:04 A.M.)

18 THE COURT: All right. Ladies and gentlemen, welcome
19 back. I hope everybody had a good evening. I want to
20 apologize -- first, I want to thank you for being some prompt
21 this morning. It's a great assistance to the Court when you
22 are prompt and you do return on time. I also want to
23 apologize for keeping you in the jury room for so long, but we
24 did have some scheduling matters that we needed to address
25 before we could resume the trial of this case. Also, during

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TYESHA KAYAWN SPARKMAN - DIRECT BY POWELL

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1 the break from yesterday, I have excused one of the witnesses,
2 I mean, one of the jurors. And so, Mr. Cronin, you are now
3 part of the 12-panel jury. You can stay in that seat right
4 now for right now but, when we come back in, if you would just
5 be seated with one of the 12-panel jurors. Okay?

6 All right. We're now ready to resume the trial of this
7 case. We were in the state's case. Mr. Powell, the state can
8 call your next witness.

9 MR. POWELL: Thank you, Your Honor.

10 The state would call Ms. Tyesha Sparkman to the stand.

11 THE COURT: All right.

12 TYESHA KAYAWN SPARKMAN, HAVING
13 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Thank you. Please be seated and state your full
15 name for the record.

16 MS. SPARKMAN: Tyesha Kayawn Sparkman.

17 THE COURT: All right. Ms. Sparkman, could you spell
18 your first name, please?

19 MS. SPARKMAN: T-Y-E-S-H-A.

20 COURT REPORTER: Your middle name, too, please?

21 MS. SPARKMAN: K-A-Y-A-W-N.

22 DIRECT EXAMINATION OF TYESHA KAYAWN SPARKMAN BY MR. POWELL:

23 Q: Tyesha, do you live in Georgetown County?

24 A: Yes, sir.

25 Q: How long have you lived in Georgetown County?

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- 1 A: For about 15 years.
- 2 Q: Where were you working back in March of 2017?
- 3 A: At Dollar General.
- 4 Q: What store location was that?
- 5 A: On 701 next to Choppee Road.
- 6 Q: Across the Black River where Choppee Road comes into 701?
- 7 A: Yes, sir.
- 8 Q: Is this store location in Georgetown County?
- 9 A: Yes, sir.
- 10 Q: When did you start working for Dollar General?
- 11 A: In August 2015.
- 12 Q: In March of 2017, what was your -- your position at
- 13 Dollar General store?
- 14 A: Assistant manager.
- 15 Q: For that store you just talked about?
- 16 A: Yes, sir.
- 17 Q: What kind of duties did you have there at the store?
- 18 A: Making a schedule sometimes, running a register, counting
- 19 the money, stocking.
- 20 Q: Did that Dollar General store have any kind of security
- 21 camera system in it whatsoever?
- 22 A: Yes, sir; we did.
- 23 Q: How many cameras do you think were there at the store
- 24 back in March of 2017? A ballpark figure is fine.
- 25 A: Probably about 12.

1 Q: Was it hooked up to any kind of computer system or
2 anything like that? Was there a security camera system that
3 recorded things?

4 A: Oh, yes, sir.

5 Q: Where -- was that located in a certain part of the store?

6 A: In the office of the store.

7 Q: Talking about the office, explain to the jury where the
8 office is?

9 A: It's like in -- you have to pass the registers and you
10 got to make a left turn and then make a right turn and it's
11 right there. There's a break room right here and then the
12 office is right there on the left.

13 Q: So, the security system stuff is in the office itself,
14 that little room?

15 A: Yes, sir.

16 Q: Does it have any kind of screen, like a computer screen
17 or T.V. screen?

18 A: Yes, sir.

19 Q: You're able to watch the video?

20 A: Yes, sir.

21 Q: Does the video run automatically by itself?

22 A: Yes, sir.

23 Q: Did you go to work on March 20th, 2017?

24 A: Yes, sir.

25 Q: What -- about what time of day do you work there that

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1 day?

2 A: I have to be there at 7:45.

3 Q: Were you opening the store that day?

4 A: Yes, sir.

5 Q: Was any other employees there that morning?

6 A: No, sir.

7 Q: What did you do when you got to work that day?

8 A: I opened the doors, then locked it back, then went in the
9 office and count the money. And then at 8 o'clock, that's
10 when we open. So, I opened the store, pulled the stuff out.

11 Q: What do you mean pull the stuff out?

12 A: Pulled the items -- the sale items that we have out
13 front.

14 Q: Out front of the store itself?

15 A: Out front of the store.

16 Q: What you see when you walk up to a Dollar General store?

17 A: Yes, sir.

18 Q: Keep on telling the jury about what happened that morning
19 after you started taking items outside; what else happened
20 after that?

21 A: I was taking the stuff outside and customers were coming
22 in and I would ring up a customer, and then they'll leave, and
23 I'll go back to bringing the stuff from inside outside and
24 customers would come in. And one customer had came in and
25 then he came in and asked me about some T-shirts. So, I

1 showed him -- well, I told him which aisle to go down and he
2 came back and he was -- he couldn't see any. So I showed him
3 -- I told him again where they was at, and then I realized
4 that, when I cut the corner, he was still looking. So, I went
5 and I showed him where the T-shirts were at. And then he sat
6 there and he looked at the T-shirts and then he left out the
7 store.

8 Q: When he looked at the T-shirt, did he look at any
9 specific T-shirt?

10 A: It was a red T-shirt.

11 MR. POWELL: May I approach the witness, Judge?

12 THE COURT: Yes.

13 MR. POWELL: I'm sorry, Judge, they've got it wrapped up
14 really good.

15 STATE'S EXHIBIT NUMBER 32

16 MARKED FOR IDENTIFICATION

17 BY MR. POWELL:

18 Q: Tyesha, I'd like to show you what was marked previously
19 marked for identification as State's Exhibit 32 and ask if you
20 recognize this.

21 A: Yes, sir.

22 Q: What is it?

23 A: A red T-shirt that we sold at Dollar General.

24 Q: Is that the T-shirt that he looked at when you just were
25 testifying that he looked at a red T-shirt?

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1 A: Yes, sir.

2 Q: You said he left the store. What happened after he left
3 the store? Continue telling the jury what happened that
4 morning, if you would.

5 A: He left out the store and I got another customer and I
6 was ringing her up, then that's when he came back in the store
7 and then I was still ringing up my other customer. And then I
8 was still ringing up my other customer and then she left and
9 then he walked up with a pack of white T-shirts and put it on
10 the belt. I'm sorry. I apologize.

11 Q: It's okay. Take your time to recompose yourself.

12 What happened after he brought that pack of white T-
13 shirts up to you?

14 A: That's when he showed me that he had a gun in his hoodie
15 and he asked me for the money -- the money out the safe. So,
16 I walked back to the safe and I let him know it takes 10
17 minutes to pop. And that's when he -- just take the money out
18 the register, and so I went back to the register and ---

19 Q: Take your time. Take some deep breaths.

20 A: And that's when he -- and I opened the register and I
21 gave him the money out the register and that's when I asked
22 him if he wanted the change, too, and he said no. And then
23 that's when he took me in the break room and tried to tie me
24 to the chair that's in the break room, and that wouldn't work
25 so he took my hands and he tied me by my hands. And then he

1 told me then don't call the police until he leaves, and when
2 he leave and I called the police, let them know that he was a
3 white man and that's when he left -- left out the store, and I
4 heard the doors open and that's when I got up and got the
5 phone and that's when a lady came -- or I called 911 and I was
6 telling the story of what happened and that's when the lady
7 came in. And so I was asking her could she cut these off of
8 me, and that's when I had asked the dispatcher could she cut
9 it off of me. And, and then I just -- they didn't know at
10 that moment, they wanted me to wait, but then they said yes,
11 go ahead and you can cut them off. And that's it --
12 basically, they told me lock the doors and make sure nobody is
13 in there and that's when the officer came and took my
14 statement. And they came and look at the video and stuff.
15 Q: So, when the police came, you spoke to the police and
16 told them what happened?

17 A: Yes, sir.

18 STATE'S EXHIBIT NUMBER 31

19 MARKED FOR IDENTIFICATION

20 Q: Let's back up a second and talk about the package of T's
21 and go over a few things a little more. Tyesha, I'd like to
22 show what was marked previously for identification purposes as
23 State Exhibit 31 and ask you if you recognize it?

24 A: Yes, sir.

25 Q: What is it?

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1 A: T-shirts.

2 Q: Is that the T-shirts that he gave you that day or what is
3 it?

4 A: Yes, sir; he put on the belt.

5 Q: Let's talk about the gun. You said he showed a gun and
6 you talked about a hoodie. Would you describe the sweatshirt
7 in a little more detail and how you actually saw a gun that
8 day?

9 A: It was a black hoodie. It has the two pockets, not two,
10 but it's one pocket, and it's got one side and another side,
11 and he turned to the side and he went like this (indicating)
12 out of the side of his pocket so I could see the gun.

13 Q: Yes, ma'am. Are you any kind of gun expert?

14 A: No, sir; I'm not.

15 Q: Do you know the difference between a revolver and semi-
16 automatic pistol for example?

17 A: No, sir; I don't.

18 Q: Do you recall anything specific about how this gun
19 looked?

20 A: The spinny thing on it. I know -- I saw that.

21 MR. POWELL: Your Honor, this pistol has been disabled;
22 it can't fire.

23 STATE'S EXHIBIT NUMBER 30

24 MARKED FOR IDENTIFICATION

25 BY MR. POWELL:

1 Q: Ms. Sparkman, I'd like to show you what was marked as
2 State's Exhibit 30. When you were talking about a spinny
3 thing, is that what you're talking about seeing? Say yes or
4 no, please.

5 A: Yes. Yes, sir.

6 Q: When -- be a little more specific, please. When he had
7 you in the breakroom putting zip ties on you, what -- what
8 things did he tell you at that point in time?

9 A: One, he kept saying he wouldn't hurt me, and he was just
10 tying -- trying to tie me up to the chair. Then he couldn't
11 do it, and that's when he tied me on my wrists.

12 Q: Did you feel like you could leave and do what you want to
13 at that point in time?

14 A: No, sir.

15 Q: When the store is open, are the lights inside, are they
16 on inside the store?

17 A: Yes, sir.

18 Q: Is it something lit that's pretty well and you can see
19 pretty well with the lights on?

20 A: Yes, sir.

21 Q: What happened after that? How -- were you able to leave
22 the store eventually after you talked to the police officers
23 -- go pick back up after you told the police officers what
24 happened and what happened after you talked to that officer
25 that day?

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1 A: They let me go -- go on home. Then they called me back
2 and let me -- tell me to come to the, the -- I don't know what
3 it's called.

4 Q: The sheriff's office?

5 A: Yeah, the sheriff's office to, I guess, look at the
6 lineups of pictures. So, I went there to look at it.

7 Q: They showed you some photographs then when you went to
8 the sheriff's office?

9 A: Yes, sir.

10 Q: Did they tell you that the person who did this picture is
11 there? Did they try to suggest anything or did they just ask
12 you to look at the pictures?

13 A: No, sir, they did ---

14 Q: What did they -- what did they ---

15 A: They just asked me ---

16 MR. EDGEWORTH: Objection, leading.

17 A: --- do I ---

18 THE COURT: All right. Wait a minute; we've got an
19 objection.

20 MR. EDGEWORTH: Your Honor, objection; leading. He's
21 leading the witness.

22 THE COURT: All right. Don't lead your witness.

23 All right. Go ahead.

24 BY MR. POWELL:

25 Q: Do you recall what the officer that showed the

1 photographs to you said to you?

2 A: He asked me do I recognize the person who did this in the
3 photos.

4 STATE'S EXHIBIT NUMBER 3

5 MARKED FOR IDENTIFICATION

6 BY MR. POWELL:

7 Q: Tyesha, I'd like to show you what was previously marked
8 for identification as State's Exhibit 3 and see if you
9 recognize what this is?

10 A: The photos the officer showed me.

11 Q: When you looked at that photo, were you able to see the
12 person who did the robbery earlier that morning?

13 A: Yes, sir.

14 Q: How long did it take you to recognize the person?

15 A: Not that long.

16 Q: Do you recall if you did anything to mark on that paper
17 the person you saw?

18 A: No, sir, he did not.

19 Q: Do you recall if you marked the paper to show -- look at
20 the picture again, please. Is there anything on the picture
21 that you wrote?

22 A: Yes, my initials.

23 Q: Is there a circle or anything of that nature?

24 A: There's a circle around ---

25 Q: Which photograph is circled?

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1 A: The third one.

2 Q: From the top?

3 A: The third one from the top.

4 Q: And who was the person -- was the person you circled the
5 one who did the robbery?

6 A: Yes, sir.

7 Q: Tyesha, is the person who robbed you that day in the
8 courtroom today?

9 A: Yes, sir.

10 Q: And who is that person? Can you point him out?

11 (Indicating.) And that's Mr. Linen?

12 A: Yes, sir.

13 Q: Did you know who Mr. Linen was at the time this robbery
14 took place back in March?

15 A: No, sir.

16 Q: Did you know his name or anything about him whatsoever?

17 A: No, sir.

18 MR. POWELL: I have no further questions of this witness
19 at this time, Judge.

20 BY MR. POWELL:

21 Q: Please answer any questions counsel has.

22 THE COURT: Cross examination?

23 MR. EDGEWORTH: Thank you, Your Honor. Your Honor,
24 permission to be a little closer to the witness?

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

1 CROSS EXAMINATION OF TYESHA KAYAWN SPARKMAN BY MR. EDGEWORTH:

2 Q: Good morning, Ms. Sparkman?

3 A: Good morning.

4 Q: The incident that we're here for today was on March 20th,
5 2017, correct?

6 A: Yes, correct.

7 Q: Okay. Do you remember anything other about -- anything
8 else about that day other than the situation you were in at
9 the Dollar General?

10 A: I went to work.

11 Q: Okay. Was it cold that day?

12 A: It was a little chilly.

13 Q: Okay. And you -- you indicated in your testimony that
14 you got to work around 7:45; is that correct?

15 A: Yes, sir.

16 Q: Now, is that normal for you?

17 A: Sometimes when I'm opening the store. If I'm closing, I
18 come in later.

19 Q: Okay. On this day, you were opening though, right?

20 A: Yes, sir.

21 Q: Okay. Now, the Dollar General stores, on -- on this
22 particular day, was there a lot of stock boxes and stuff in
23 the aisles or anything like that?

24 A: Not that I recall.

25 Q: Okay. Oftentimes, are there a lot of boxes in the aisles

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1 and things at Dollar General because you have to do a bunch of
2 stocking?

3 A: Sometimes; yes, sir.

4 Q: Okay. You don't recall whether it was like that on this
5 day?

6 A: No, sir. I just walked in the store; I didn't walk
7 around the store.

8 Q: Okay. So, you -- you got there around 7:45; you had no
9 opportunity to walk around the store before you had to start
10 working?

11 A: When I open the store, I go to -- behind the counter, get
12 the money, go in the office and start counting the money, so I
13 can be ready to open the store.

14 Q: Okay. So, you -- you get the money in the -- in the
15 register in the drawer, so you can get it ready for the day?

16 A: Yes, sir.

17 Q: And you were the only employee there at this time?

18 A: Yes, sir.

19 Q: Okay. And you said that there were customers that were
20 coming in pretty early on, right?

21 A: Uh-huh, (affirmative response).

22 Q: And you were having to ring them up?

23 A: Yes, sir.

24 Q: Okay. Do you remember how many customers came in?

25 A: I believe two.

1 Q: Okay. And you rang them up?

2 A: Yes, sir.

3 Q: Okay. Did you have to help them and go around the store?

4 A: No, sir,

5 Q: Okay. So, let's get a picture real quick of the store.

6 You have the doors that kind of automatically open, right?

7 A: Yes, sir.

8 Q: Okay. And then when you step through the threshold, the

9 -- the register is right here to the left?

10 A: Yes, sir.

11 Q: Was that right or correct rather?

12 A: Yes, sir.

13 Q: It's to the left. All right. Now, were you at the

14 register when these other customers were coming in or were you

15 in the office?

16 A: No, I was pulling the stuff out the door.

17 Q: Okay. So, you were pulling the items that go on the

18 outside display?

19 A: Yes, sir.

20 Q: But you knew that there were customers coming in?

21 A: Yes, sir.

22 Q: Do you know how long you were there working when the

23 individual who you say committed this crime came in the first

24 time? Did you see that person come in?

25 A: Yes, sir, when I was pulling the stuff out.

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1 Q: Okay. Well, when I say -- so, you're pulling the stuff
2 out the doors here, right, but he's coming in this way?

3 A: Yes, sir, from the right.

4 Q: From your right?

5 A: No, it would be my left.

6 Q: Okay. So, he came in on your left-hand side?

7 A: (Indicates affirmatively.)

8 Q: When he came in, did you see his face?

9 A: No, sir; I didn't look behind me.

10 Q: Okay. So, you just know that someone came in the first
11 time, who you believed to be the assailant, you saw him from
12 -- you know, when he came in the door this way, you didn't see
13 his face?

14 A: No, sir.

15 Q: All right. And when he -- when that individual went
16 inside, did you follow him?

17 A: Yes, sir.

18 Q: Okay. When did you communicate with this person?

19 A: When he asked me about the T-shirts.

20 Q: Okay. And when did that happen? How long from when he
21 passed you to go outside before he came back to talk to you?

22 A: It wasn't that long.

23 Q: Okay. Were there other people in the store at the time?

24 A: No, sir.

25 Q: Okay. The first time there was not?

1 A: No, sir.

2 Q: Okay. You had already rang up the other customers and
3 they were gone?

4 A: Yes, sir.

5 Q: Where were you when this particular customer came back to
6 talk to you about the shirts?

7 A: I was at the front about to move the trash can out.

8 Q: And, and he asked you where the T-shirts were?

9 A: Yes, sir.

10 Q: Did you point it out to him?

11 A: Yes, sir.

12 Q: Were you still outside?

13 A: No, sir; I was inside.

14 Q: Okay. Did you follow them at that point?

15 A: No, sir.

16 Q: Okay. That particular person now is wandering the store,
17 right?

18 A: Yes, sir.

19 Q: Looking for the T-shirts?

20 A: Yes, sir.

21 Q: Okay. How long did that take place?

22 A: Like a couple of minutes.

23 Q: Okay. And what were you doing during that time?

24 A: Still pulling the stuff out. Then, after I pulled the
25 stuff out, I was in the office -- the break -- yeah, the

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1 office, and I was -- I was doing the paperwork that we have to
2 do every morning. I was doing that while looking on the
3 camera. Then, I went back out and that's when I saw him again
4 and he asked where the T-shirts was at. Then, I walked around
5 and I went to go show him where the T-shirts were at.

6 Q: Okay. So, you were doing other work while he was
7 wandering the store?

8 A: Yes, sir.

9 Q: So, it wasn't like you were there hand-in-hand with him
10 the whole time trying to walk around and trying to find these
11 shirts, right?

12 A: Yes, sir.

13 Q: In fact, in your statement to the police -- when you
14 wrote a statement -- do you remember doing that?

15 A: Yes, sir.

16 Q: Okay. You told them that you thought that, that you had
17 -- he had said tissue, right?

18 A: Yes, sir.

19 Q: So, you sent him to the wrong part of the store at first?

20 A: Yes, sir.

21 Q: Okay. So he's wandering around thinking that he's gonna
22 find some T-shirts and really you sent him to the -- to the
23 tissue part of the store?

24 A: Yes, sir.

25 Q: Okay. And during that part of the time, you were -- you

1 were in the office doing paperwork?

2 A: Yes, sir.

3 Q: Okay. What kind of paperwork was that?

4 A: Like the daily -- at the end of the day, we print out
5 paper for the end of the day, and in the morning we printed
6 out, look at how many coupons we had and then put it in an
7 envelope and put the date on it.

8 Q: Okay. Important part of your job?

9 A: Yes, sir.

10 Q: Okay. So, you were focused on doing that because it's
11 important, right?

12 A: Yes, sir.

13 Q: Okay. So, then the individual comes back and asks you
14 for the -- where the T-shirts are again, right?

15 A: Yes, sir.

16 Q: Because you had sent him to the wrong part of the store?

17 A: Yes, sir.

18 Q: Now, what happened? You took him to the shirts?

19 A: Yes, sir.

20 Q: Okay. Did you lead him there?

21 A: Did I lead him?

22 Q: Yes. Like in other words, did you say follow me?

23 A: I can't remember, but I know I took -- I took him over
24 there.

25 Q: Right.

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1 A: I don't know if he was in front or I was in front, but I
2 know I took him over there, so I suggest I was in front.

3 Q: Okay. But my -- and that is my point. At no point, were
4 you just standing there looking at him as you're walking to --
5 to the T-shirts, right?

6 A: No, sir.

7 Q: Either he was behind you or you were in front of him; you
8 couldn't see his face at that point, right?

9 A: Yes, sir.

10 Q: Okay. And you stated that this individual had a hoodie
11 on, correct?

12 A: Yes, sir.

13 Q: Hoodie meaning like a sweatshirt that has a hood in the
14 back that you can flip up if you needed to, right?

15 A: Yes, sir.

16 Q: And I think you stated on direct examination that it had
17 those like kind of pockets in here?

18 A: Yes, sir.

19 Q: Where you kind of put your hands to stay warm; is that
20 right?

21 A: Yes, sir.

22 Q: And it was black?

23 A: Yes, sir.

24 Q: Okay. But you know for certain it was a hoodie?

25 A: Yes, sir.

1 Q: Okay. Now, the T-shirt that you took him to, was it on
2 one of those kind of, you know, displays where the shirts are
3 kind of around it in a circle?
4 A: No, sir; it's on a shelf.
5 Q: Okay. Is it folded up?
6 A: Yes, sir.
7 Q: Okay. Did you get it for him?
8 A: No, sir.
9 Q: Did he ask -- did he ask you specifically for a red
10 shirt?
11 A: No, sir.
12 Q: Okay. Did he grab the shirt himself?
13 A: Yes, sir.
14 Q: Okay. And it was a red T-shirt?
15 A: Yes, sir.
16 Q: Okay. Did it have any type of like coat hanger or
17 anything like that?
18 A: No, sir.
19 Q: It was just folded up right there?
20 A: Yes, sir.
21 Q: And he brought it to the front?
22 A: No, he was still on the aisle he was looking at it, but
23 he told me he would be right back.
24 Q: Okay. And when that happened, were you heading back
25 towards the register where you're supposed to be working?

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- 1 A: I was still on the aisle.
- 2 Q: Okay. And then he said he would be back?
- 3 A: Yes.
- 4 Q: Okay. So, that person leaves, right?
- 5 A: Yes, sir.
- 6 Q: Okay. And more customers are coming in at this point?
- 7 A: Yes, sir.
- 8 Q: Okay. Do you recall how many?
- 9 A: No, sir; I don't.
- 10 Q: Okay. Were you ringing these people up?
- 11 A: When he walked in, I know I was ringing somebody up.
- 12 Q: Okay. So, when the person was with the hoodie; you saw
- 13 that person come in?
- 14 A: Yes, sir.
- 15 Q: Okay. And he goes where, to the shirts?
- 16 A: To the shirts.
- 17 Q: Okay. And you're ringing somebody up at this point,
- 18 right?
- 19 A: Yes, sir.
- 20 Q: Okay. So, you didn't follow him back there this time?
- 21 A: No, sir.
- 22 Q: Okay. You didn't talk to him?
- 23 A: No, sir.
- 24 Q: Didn't converse about T-shirts again. This person just
- 25 went right back to the T-shirts?

1 A: Yes, sir.

2 Q: Okay. And as you're ringing this person up, did you
3 finish that and they go on out the store?

4 A: Yes, sir.

5 Q: Okay. Was there anyone left in the store when this
6 individual comes to you with the pack of T-shirts?

7 A: No, sir.

8 Q: Okay. Are you certain?

9 A: Yes, sir.

10 Q: Okay. There was no one else to work with?

11 A: No, sir.

12 Q: All right. So, how far away is the aisle where the T-
13 shirts are from -- from the counter?

14 A: Not that far.

15 Q: Okay. Not that far?

16 A: No, sir, you have the clothes rack and then you have the
17 aisle of T-shirts.

18 Q: Okay. And the person coming up to you and you said that
19 he showed you a gun?

20 A: Yes, sir.

21 Q: Okay. He pulled the gun from the hoodie?

22 A: No, he had it in the hoodie. He leaned over to the side
23 and pulled it like this out of the hoodie so I could be able
24 to see it.

25 Q: Okay. So -- just so I know, was it in the pockets?

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1 A: Yes, sir.

2 Q: Okay. So, he pulled it out of the pocket?

3 A: No, he did not pull it out the pocket; it was in the
4 pocket on the side. I could see it out the side of the
5 pocket.

6 Q: Okay. Well, did he actually pull it out of the hoodie?

7 A: No, sir.

8 Q: Did he ever point it at you?

9 A: Yes, sir, when he showed me it.

10 Q: He pointed the gun at you?

11 A: He showed me it.

12 Q: Okay. Well, I'm trying to figure out because you're
13 saying he didn't show it, but now you're saying he did show
14 it. So, did he pull it out of the pocket or no?

15 A: No, he did not pull it out of the pocket. He had it in
16 his pocket and it was pointing at me.

17 Q: Okay. So, what part of the gun did you see?

18 A: I saw the little spinny thingee.

19 Q: Okay. And how did you see the spinny thing if it was in
20 the pocket? I'll just make it clear. Did, did -- did the
21 person who had the gun, did they pull it out and point it at
22 you like this?

23 A: No, sir.

24 Q: Okay. You're just saying you saw it like sneaking out of
25 the pocket?

1 A: Yes, sir.

2 Q: Okay. Did it have a holster?

3 A: No, sir.

4 Q: When this person takes you to the office ---

5 A: To the breakroom, you mean?

6 Q: Breakroom area.

7 A: Yes, sir.

8 Q: Was that -- were you in front of that person?

9 A: No, I was behind him.

10 Q: So, he led you to the office?

11 A: Uh-huh, (affirmative response). He told me to come with

12 him.

13 Q: Okay. So, he's in front of you?

14 A: Yes, sir.

15 Q: You didn't try to leave, try to run out the door?

16 A: If I -- no, sir; I did not.

17 Q: Okay. So, you -- you followed him into the office?

18 A: Yes, sir.

19 Q: Okay. At which point, he did not -- he was not able to

20 tie you -- tie you up with the zip ties, right?

21 A: With the chair, no, sir.

22 Q: Okay. And then at this point, were you looking at the

23 person?

24 A: Off and on. I tried not to look -- they say don't look

25 at them for a long period of time, because then they know

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1 you're looking at them.

2 Q: Right. So, you try not to make eye contact?

3 A: Right.

4 Q: Okay. This person told you they weren't gonna hurt you,
5 right?

6 A: Right.

7 Q: And you believed him?

8 A: No, sir.

9 Q: Okay. And that's why you were scared?

10 A: Yes, sir.

11 Q: Okay. And I don't mean to make light of it. I
12 understand that you were scared, we could hear it in your
13 voice earlier. But you stayed there, right?

14 A: Yes, sir.

15 Q: You didn't follow him out?

16 A: No, sir,

17 Q: Okay. That person left?

18 A: Yes, sir.

19 Q: And they were able to get the money from the -- from the
20 safe, or excuse me, not the safe, the register?

21 A: Yes. sir.

22 Q: Do you recall how much it was?

23 A: No, I do not.

24 Q: So, you would agree with me then that during this time
25 period, you were scared, right?

1 A: Yes, sir.

2 Q: Okay. Were you getting welled up; were you in fear at
3 that point in time?

4 A: Yes, sir.

5 Q: Okay. Were you -- you were obviously using some of the
6 skills. You were trained, it sounds like, to not look at the
7 person?

8 A: Yes, sir.

9 Q: Okay. Trying to avoid eye contact at all points in time?

10 A: Yes, sir.

11 Q: And your heart pumping?

12 A: Yes, sir.

13 Q: Hands sweating?

14 A: Yes, sir.

15 Q: Worried that you weren't gonna be safe?

16 A: Yes, sir.

17 Q: Okay. And is it fair to say then that you might not have
18 had all your faculties at that time?

19 A: What do you mean?

20 Q: You were scared, you were maybe confused?

21 A: Confused about what?

22 Q: Of what was gonna happen; you're -- I mean you just
23 stated that you followed him -- he was leading you into the
24 thing, and you're like no, I'm not gonna try to run.

25 A: Right.

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- 1 Q: Some people would run, right?
- 2 A: I suggest.
- 3 Q: Okay. So, you -- you knew enough, I better just follow
4 what's going on, right?
- 5 A: Yes, sir.
- 6 Q: To make sure you stay safe?
- 7 A: Yes, sir.
- 8 Q: Okay. So, you're trying to avoid all eye contact?
- 9 A: Yes, sir.
- 10 Q: Not really pay attention to your surroundings, just get
11 me out of here, right? Don't hurt me.
- 12 A: Yes, sir.
- 13 Q: Okay. And so, is it fair to say, that you just weren't
14 paying attention the whole time; it wasn't like you were
15 focused on this particular person, like you were focused on
16 your work?
- 17 A: I was focused because I was scared.
- 18 Q: Okay. You believe that you are more focused when you're
19 scared?
- 20 A: I can't answer that.
- 21 Q: Okay. But it's possible, right?
- 22 A: Yes, sir.
- 23 Q: Were you wearing your glasses that day?
- 24 A: Yes, sir; I was.
- 25 Q: Do you wear contacts?

1 A: No, sir; I don't.

2 Q: So, you wear your glasses at all times?

3 A: Yes, sir.

4 Q: Now, you called -- you called 911, right?

5 A: Yes, sir.

6 Q: Okay. Your hands were available enough to be able to
7 call 911?

8 A: Yes, sir.

9 Q: And after you made the phone call, another individual
10 came into the store; is that correct?

11 A: Yes, sir.

12 Q: And while you're on the phone, people were coming into
13 the store, correct?

14 A: Yes, sir.

15 Q: How many people do you think were coming into the store
16 while you're on the phone with 911?

17 A: I believe just one.

18 Q: Just one. So -- well, there was one that was with you
19 that cut, cut the -- the hand ties off, right, but there was
20 other customers coming in as well, correct?

21 A: One more.

22 Q: Okay. So, at least two?

23 A: Yes, sir.

24 Q: Could it have been more?

25 A: I don't believe so.

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1 Q: Okay. Now, while you were making that phone call, were
2 you scared?

3 A: Yes, sir.

4 Q: Okay. And were you still nervous?

5 A: Yes, sir.

6 Q: Were you still in fear?

7 A: Yes, sir.

8 Q: Okay. And you're basically in the same condition during
9 that phone call as you were while he was there; it wasn't like
10 that fear went away, right?

11 A: No, sir.

12 Q: Okay. Your hands still sweaty?

13 A: Yes, sir.

14 Q: Even though that person is gone, you're still worried
15 about your safety, right?

16 A: Not really, because I know he was gone.

17 Q: Okay. Did you see where he went?

18 A: No, sir.

19 Q: You didn't follow him out?

20 A: No, sir.

21 Q: But you're still scared while you're on the phone?

22 A: More like nervous, shaken up.

23 Q: Right. You were shaken up and you've just been through
24 this incident, correct?

25 A: Yes, sir.

- 1 Q: Okay. And it's understandable that someone in your
2 position would be scared. Now, after you got off the phone
3 with 911, the officers had arrived on the scene, correct?
- 4 A: Yes, sir.
- 5 Q: Okay. And you spent some time talking to them about what
6 had happened?
- 7 A: Yes, sir.
- 8 Q: Okay. Now, that particular time, you were able to give
9 them a statement?
- 10 A: Yes, sir.
- 11 Q: Okay. And subsequently, you wrote down a statement and
12 provided that to law enforcement; is that correct?
- 13 A: Yes, sir.
- 14 Q: Okay. And how long were you there before, as you stated
15 earlier, you were able to go home?
- 16 A: Yes, sir.
- 17 Q: Do you recall how long you were there?
- 18 A: Maybe 30 minutes to a hour.
- 19 Q: Okay. And then you went home?
- 20 A: Yes, sir.
- 21 Q: Okay. Where is home?
- 22 A: In Brown's Ferry.
- 23 Q: Okay. So, how far away from your home was work?
- 24 A: Like 17 minutes.
- 25 Q: Okay. Did you drive home?

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- 1 A: My mother did.
- 2 Q: She came and picked you up?
- 3 A: Yes, sir.
- 4 Q: Okay. And when you got home, what did you do?
- 5 A: Sat down, cried, thought about what was happening or what
6 did happen. Thanking the Lord that I was all right.
- 7 Q: Certainly understandable in that sense. How long was it
8 before you got called to come back to Georgetown or to the --
9 to the sheriff's office?
- 10 A: It wasn't that long, maybe like two to three hours.
- 11 Q: Okay. Were you watching any T.V. while you were at home?
- 12 A: No, sir.
- 13 Q: Okay. Just sitting with your mother?
- 14 A: Yes, sir.
- 15 Q: Okay. And you get called to come down to the -- to the
16 precinct, correct?
- 17 A: Yes, sir.
- 18 Q: Okay. And when you got there, where did they take you?
- 19 A: To a little room.
- 20 Q: Okay. And who was in that room?
- 21 A: An officer.
- 22 Q: How many officers?
- 23 A: Just one.
- 24 Q: Okay. And what did they ask you to do?
- 25 A: To look at the pictures.

1 Q: Okay.

2 A: And see if I saw the person who did it.

3 Q: Okay. Now, this is the document that the state just
4 showed you, okay?

5 A: Yes, sir.

6 Q: And you said that this -- this was your signatures on the
7 end, correct?

8 A: Yes, sir.

9 Q: Okay. Now, when they -- were they holding it up for you?

10 A: No, sir, he put it on a table in front of me.

11 Q: Okay. So, did he put it down like this?

12 A: Yes, sir.

13 Q: Okay. And he pushed it towards you?

14 A: Not really; he just sat it there.

15 Q: Okay. And you -- you selected that particular
16 individual?

17 A: Yes, sir.

18 Q: You notice anything else about the paperwork?

19 A: There's more people in there.

20 Q: Uh-huh, (affirmative response). I understand.

21 A: That's it.

22 Q: Okay. Did you take time to look at all of the folks
23 before you picked someone out?

24 A: Yes, sir; I did.

25 Q: Okay. Did you consider all these individuals?

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- 1 A: No, because I know who it was.
- 2 Q: Did you talk to -- were you talking to law enforcement
3 while you were doing that?
- 4 A: No, sir.
- 5 Q: Okay. At the time you selected this -- this photo ---
- 6 A: Yes, sir.
- 7 Q: --- did you -- did you know Mr. Linen's name?
- 8 A: No, sir.
- 9 Q: Okay. Had you seen him in the community before?
- 10 A: No, sir.
- 11 Q: When you were getting ready for this trial -- and I
12 understand that it's difficult to be here today -- did you
13 meet with the prosecution?
- 14 A: Yes, sir.
- 15 Q: Okay. Did they -- did they talk to you about your
16 testimony?
- 17 A: As in I'm gonna testify?
- 18 Q: Uh-huh, (affirmative response)?
- 19 A: Yes, sir.
- 20 Q: Did you review your testimony with them before the trial?
- 21 A: No, sir.
- 22 Q: Okay. Did they tell you that Mr. Linen would be sitting
23 in that chair?
- 24 A: Yes, sir.
- 25 Q: Okay. Did they tell you that you should point him out

1 when you get up on the witness stand?

2 A: No, sir.

3 Q: Okay. I'm gonna ask you a question. If he weren't
4 sitting over there, would you not know that that's Mr. Linen?

5 A: Yes, sir; I would.

6 Q: Okay. And how would you know that?

7 A: Because you can't forget a face ---

8 Q: Okay.

9 A: --- that did this to you.

10 Q: All right. This is the face?

11 A: Number 3, yes.

12 Q: Do you see any freckles on that face?

13 A: From the picture, no.

14 Q: The hair is not the same?

15 A: No, they're not.

16 Q: After you gave the statement to the police, did you ever
17 speak with them after that day?

18 A: I don't recall. I don't know.

19 Q: Did they ask you who all was in the store?

20 A: When the crime happened?

21 Q: Yes, when the crime happened or who all had been in the
22 store.

23 A: When the crime happened, they asked me who was in the
24 store.

25 Q: Okay. And you told them?

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1 A: Yes.

2 Q: Did you tell them about the individuals that came into
3 the store after the fact?

4 A: She was still there.

5 Q: Okay. Do you recall ---

6 A: They all were still there.

7 Q: --- whether they talked to her or not?

8 A: Sir?

9 Q: I'm sorry, we spoke over each other. Do you recall
10 whether you told them or whether they talked to that
11 individual?

12 A: Yes, they did.

13 Q: Okay. Meaning the person, not the lady that cut your
14 hand -- cut the stuff off your hands, but the other individual
15 that came in?

16 A: I think she left.

17 Q: Okay. She left before -- before they got there or after
18 they got there?

19 A: After.

20 Q: Okay. They just let her go?

21 A: Yes, sir.

22 Q: Didn't talk to her?

23 A: No, sir.

24 MR. EDGEWORTH: I have no further questions, Your Honor.

25 THE COURT: All right.

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1 Redirect?

2 MR. POWELL: No, Your Honor.

3 THE COURT: All right. You may step down.

4 The state can call your next witness.

5 MR. POWELL: The state would call Officer John Magann to
6 the stand.

7 JOHN MAGANN, HAVING BEEN DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Thank you. Please be seated and state your full
10 name for the record.

11 MR. MAGANN: John Magann.

12 DIRECT EXAMINATION OF JOHN MAGANN BY MR. POWELL:

13 Q: Officer Magann, where do you live?

14 A: Where do I live?

15 Q: Where do you live now?

16 A: Murrells Inlet.

17 Q: Where do you work?

18 A: Georgetown County Sheriff's Office.

19 Q: How long have you worked with the sheriff's office?

20 A: Sixteen years.

21 Q: Any law enforcement experience before that?

22 A: No, sir. I was a volunteer with the Murrells Inlet Fire
23 Department when I was in high school.

24 Q: What was your position with the sheriff's office back in
25 March of 2017?

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1 A: I was a senior investigator assigned to the criminal
2 investigation division within a department.

3 Q: About how long had you been an investigator at this point
4 in time?

5 A: Close to five years.

6 Q: Were you working on March 20th, 2017?

7 A: I was.

8 Q: Were you equipped with any kind of body camera that day?

9 A: No, I was not.

10 Q: Is it routine for investigators to wear body cameras ---

11 A: No.

12 Q: --- back at that point in time?

13 A: No.

14 Q: What happened on that day?

15 A: That morning, started out a normal day. We all came in
16 the office as our normal duties. Around 9 o'clock in the
17 morning, a call was dispatched to the road officers for an
18 armed robbery at the Dollar General in Plantersville, which is
19 in Georgetown County. I don't remember if we got the call on
20 the phone or overheard on the radio, but pretty much the CID
21 responded being it was so close to the sheriff's office and we
22 were all together.

23 Q: What happened after your arrival at the location?

24 A: When I got on scene, just kind of did a quick assessment
25 of who was gonna do what, being that we had enough manpower.

1 We all kind of all have our own little niches. Mine at the
2 time, because my primary zone was the Murrells Inlet area and
3 I also worked the beach, I worked Pawley's as well, I dealt
4 with a lot of surveillance videos with, you know, property
5 crimes as well as ATM, credit card fraud, stuff like that.
6 So, I -- obviously there was several Dollar Generals located
7 across the bridges, so I was used to dealing with their
8 surveillance system. So, when I arrived on scene, I went
9 straight to the surveillance system to start downloading video
10 or reviewing video of the incident so we could try to see who
11 did it.

12 Q: Please explain a little bit more about you looking at the
13 surveillance video and what equipment was there you could look
14 at?

15 A: Well, first, I wanted to make sure the DVR, which is a
16 digital video recorder, was still in place. A lot of times we
17 have, especially Dollar Generals, they'll tape DVR, and if
18 they tape DVR, then we have no video. When I went into the
19 office, I saw the DVR was still on the shelf. The victim was
20 able to provide me the passcode to get into the surveillance
21 system where I could start reviewing video. She was in the
22 office with me. She was filling out a statement form, I
23 believe. And while I was reviewing the video, she told me the
24 gentleman had come in prior to the incident, she'd already
25 spoken to him. So, I backed the video up and started

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1 watching. She showed me when he came in the store the first
2 time. Followed him around the store a little bit on the
3 cameras. She pointed out and said this is the individual, and
4 then watched through to the actual incident occurring, watched
5 the defendant walk out, watched the defendant walk back in,
6 and then, obviously, the robbery taking place.

7 Q: At that point in time, you didn't know it was the
8 defendant, Mr. Linen, you were looking at a suspect in your
9 mind; would that be correct?

10 A: Correct.

11 Q: Do you recall approximately how many cameras were in the
12 store, whether any were inside, outside or what your
13 recollection of that?

14 A: I think there's probably around 15 cameras within the
15 store. They're located on the aisles, behind the cash
16 registers, one in the actual office where they would count the
17 money where the surveillance system is. The breakroom area
18 does not have a camera. And if I remember correctly, to save
19 DVR space, the cameras were motion activated. So, unless they
20 sense activate or motion, the cameras don't come on. But I
21 know they had one -- they had one outside the front door, but
22 everything is internal. They have nothing external over the
23 front door camera.

24 Q: Does the camera system record the different cameras
25 separately or how does that work?

1 A: Yes, every camera has its own view. They can --
2 obviously, the player, you can isolate one camera or you can
3 watch it where you can watch every camera, depending on where,
4 you know, what camera is actually activated. The
5 surveillance, this system is constantly running; it's a 24
6 hour system. I don't know what their -- I don't remember
7 exactly what the DVR space is, but all it does is just
8 overwrite. So, it's always -- it's always going.

9 Q: Is their system something you can record a copy off of?

10 A: Yes. You're able to -- on that system, you're able to
11 put it on a thumb drive and download it, and then you can
12 obviously put it on any desktop or any type of computer where
13 you can burn it to a disc or make any kind of media file that
14 you need to.

15 Q: Did you end up making any copies that day?

16 A: I did.

17 Q: What did you copy?

18 A: I copied the -- the suspect walking into the store prior
19 to the robbery and I also copied the actual robbery itself.
20 During the robbery, the suspect had several pretty good camera
21 angles, the suspect looks up at the camera. I was able to
22 still shot those so that we could try to identify him.

23 Q: What's a still shot; what do you mean by still shot?

24 A: Froze the camera or stopped it, paused it. At that
25 point, took a picture of it and, you know, sent it out with an

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1 internal -- within the sheriff's department to our patrol
2 division in case anybody knew it was. Once I left the scene,
3 I went back to my office at the sheriff's office, put it in my
4 computer and actually pulled it off of my thumb drive and made
5 a better picture or a clearer picture, and that was released
6 through the press release through our PIO to the media and
7 public.

8 Q: So, what's the purpose of doing -- let's back up a
9 second. When you were looking at the video before you copied
10 everything, you said Ms. Sparkman was there with you for a
11 while. Were you able to get any identification for the
12 suspect from her, a name?

13 A: No, she didn't know who it was, and she was writing her
14 statement and I wanted her to focus on that. So, I mean there
15 weren't a whole lot of small talk between the two of us. I,
16 you know, but obviously, the standard question that any
17 officer is gonna ask, hey, do you know who did it? We already
18 knew she didn't know who did it. The -- I didn't know who he
19 was. I mean, the only -- if we don't know who it is, that's
20 why we reach out to the public, because somebody knows
21 somebody.

22 Q: Is that the purpose of the press release?

23 A: Yes, sir.

24 MR. POWELL: May I approach the witness, Judge?

25 THE COURT: Yes.

1 BY MR. POWELL:

2 Q: Officer Magann, I'd like to show you what was marked for
3 identification only as State Exhibit 5 and see if you
4 recognize what this is. Yes or no, please?

5 A: I do.

6 Q: And what is it?

7 A: It's a video or CD or DVD of the surveillance video from
8 the Dollar General.

9 Q: Have you had a chance to actually look at this video?

10 A: I have.

11 Q: Can you tell by looking at it when you actually looked at
12 it?

13 A: The last time I actually reviewed it was last night at
14 5:10 P.M. and my initials are there.

15 Q: So, to be specific, what is it actually a copy of?

16 A: It's a copy of the video that I downloaded from Dollar
17 General of the robbery.

18 Q: That was downloaded back in March of 2017

19 A: Yes, sir.

20 Q: When you watched it last night, did you see any signs of
21 editing or tampering?

22 A: No, sir.

23 Q: Was it a complete and accurate copy of what you made that
24 day from the Dollar General store?

25 A: It is.

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1 MR. POWELL: Your Honor, at this time, we'd like to
2 introduce this into evidence as State's Exhibit 5?

3 THE COURT: Any objection?

4 MR. EDGEWORTH: No objection, Your Honor.

5 THE COURT: All right. State's Exhibit 5 admitted into
6 evidence without objection.

7 STATE'S EXHIBIT NUMBER 5

8 ADMITTED INTO EVIDENCE

9 STATE'S EXHIBIT NUMBER 28 AND 29

10 MARKED FOR IDENTIFICATION

11 BY MR. POWELL:

12 Q: Officer Magann, I'd like to show you what's marked for
13 identification only as State Exhibit 28 and State Exhibit 29
14 and see if you recognize what those items are?

15 A: I do. These are the still shots that I took.

16 Q: And what did you end up doing with them?

17 A: Those two pictures were emailed internally, like I said,
18 to the patrol division of the sheriff's department and then
19 later they were placed in a press release by the public
20 information officer and sent out to the media.

21 Q: During the course of that investigation that day, were
22 you able to identify the suspect?

23 A: I was.

24 Q: And who did you identify that possibly as being?

25 A: John Linen.

1 Q: Can you tell the jury what a photo lineup is?

2 A: A photo lineup is -- the kind of slang word for it is a
3 six-pack. It is a document generated and it has six pictures
4 on it. Sometimes what we do is, if we get -- in this case we
5 got his information. I then emailed the S.C. Law Enforcement
6 Division with this information. We requested a photo lineup
7 of the individual. At that time SLED will send us back the
8 document, we have 6 pictures on there. Sometimes the person
9 that we requested is on there; sometimes they're not. We
10 don't know. We have no influence on it whatsoever other than
11 we just send the name off. We don't control the pictures;
12 SLED does, as far as what they put on there. Sometimes we can
13 -- if we have a better picture, we might be able to send to
14 them and they might use it or they might not. But generally,
15 the computer system generates that and then emails it back to
16 us.

17 Q: You were glancing over here. Would you please look at
18 what was marked for identification as State's Exhibit 3 and
19 tell the jury what that is?

20 A: This is the photo lineup that I requested from SLED for
21 John Linen.

22 Q: You received it from SLED?

23 A: I did.

24 Q: After you identified the suspect as Mr. Linen, did you
25 obtain arrest warrants, the ones we're dealing with here

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1 today?

2 A: I did.

3 MR. POWELL: Your Honor, at this time, we'd like to
4 publish the Dollar General store video, which is State Exhibit
5 5, that we previously introduced into evidence and publish it
6 to the jury?

7 THE COURT: All right.

8 MR. POWELL: Thank you.

9 (REPORTER'S NOTE: State's Exhibit 5 published to the jury.
10 Video contains no audio.)

11 BY MR. POWELL:

12 Q: Officer Magann, may I ask you one quick question. Did
13 you recognize the lady walking on the video?

14 A: Yes, sir; that's the victim.

15 Q: Thank you.

16 Officer Magann, one quick question, do you recognize --
17 who do you recognize or did you recognize -- do you recognize
18 the individual walk in?

19 A: That's John Linen.

20 Q: That was the suspect at the point in time you were
21 watching the video?

22 A: Yes, sir.

23 Q: Is there a time clock of this video?

24 A: There is.

25 Q: What's the time right now on it?

1 A: It is 8:16 in the morning, so this is when she was just
2 opening prior to the incident.

3 Q: Is there a date on it?

4 A: March 20th of 2017.

5 Q: Thank you, sir.

6 Who was that there, Officer Magann?

7 A: That was John Linen leaving the store.

8 Q: Officer Magann, do you know what portion of the Dollar
9 General store we're looking at now?

10 A: This is the back office. The DVR is that black box up on
11 the wall in the top left corner for the surveillance system.

12 Q: And do you recognize the person in the video?

13 A: Yes, sir; that's the victim.

14 Q: And where is she walking?

15 A: She is walking into the breakroom, which is not under
16 surveillance cameras.

17 Q: And what's on the other side of the breakroom?

18 A: It walks back into the store. There is a camera -- I
19 don't remember the name of it, I want to say it's the beauty
20 aisle or something of that nature. It shoots down into the
21 doorway, but that is the blind spot. So, you have this door
22 and you'll have the door coming outside the breakroom, which
23 walks into the store also at the point of sale area, the cash
24 registers.

25 Q: Yes, sir.

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1 What part of the store is this, Officer Magann?

2 A: This is the front door. This is the only exterior
3 camera.

4 Q: Those various cameras that we just watched the video
5 from, do those overlap in time at some period?

6 A: Yes.

7 Q: Different cameras running at the same time; basically,
8 not perfectly but proximity?

9 A: Yes, sir. Obviously, that's up to the DVR but, you know,
10 like I said, their cameras, the way they're designed, if they
11 sense movement, they kick on. So, there might be a little
12 glitch or if somebody was walking down and aisle all of a
13 sudden they're at the endcap, you know, but, yes.

14 Q: What's the time on the video now, sir?

15 A: This is at 8:47 A.M.

16 Q: Officer Magann, do you recognize who the lady dressed in
17 the dark clothing is?

18 A: Yes, sir; that's the victim.

19 Q: Does Ms. Sparkman have her glasses on in this segment?

20 A: She does.

21 Q: Officer Magann, what's the view of this camera angle
22 again?

23 A: This is the office.

24 Q: And what's the lit room?

25 A: That is the breakroom.

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1 Q: When you were looking at video cameras, was there a
2 camera in the breakroom?

3 A: There is not.

4 MR. POWELL: Will you turn the thing off, please. One
5 second, Your Honor.

6 THE COURT: All right.

7 MR. POWELL: I have no further questions of this witness
8 at this time.

9 BY MR. POWELL:

10 Q: Please, answer any questions defense counsel has,
11 Officer.

12 THE COURT: All right. Cross examination?

13 MR. EDGEWORTH: Thank you, Your Honor.

14 CROSS EXAMINATION OF JOHN MAGANN BY MR. EDGEWORTH:

15 Q: Mr. Magann, I guess you were a detective back then?

16 A: Yes, sir.

17 Q: Okay. And is that your title still now?

18 A: Sergeant, now.

19 Q: Okay. But at the time you were a detective?

20 A: Yes, sir.

21 Q: Okay. And so, when you got on scene, do you recall when
22 that was?

23 A: I'd have to have a CAD sheet in front of me to actually
24 tell you what time I got there. I mean, shortly thereafter
25 the call went out.

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1 Q: Okay. Well -- well, when you got on scene though, your
2 -- your first duty as I think you testified, is you went
3 basically directly to the -- to the office, right?

4 A: Yes, sir.

5 Q: Okay. And you began reviewing the video?

6 A: I did.

7 Q: Okay. And did you -- did you go through all of these
8 videos that we just watched?

9 A: Yes, I did.

10 Q: Okay. And you did that right there in the office?

11 A: I did.

12 Q: And you said Ms. Sparkman was there with you, right?

13 A: Yes, sir.

14 Q: Okay. So, and I believe it's your testimony that -- that
15 when you went in there, at least at that time, you didn't know
16 who Mr. Linen was, correct?

17 A: No, sir; I did not.

18 Q: Okay. Had no dealings with him in the community?

19 A: No, sir.

20 Q: Okay. You had no idea who he was?

21 A: No, never seen him before in my life.

22 Q: Okay. Yet, when you testified just now, when the
23 solicitor would ask you who that was, you would just
24 arbitrarily say that's Mr. Linen?

25 A: I know who it is now, yes, sir.

1 Q: Well, you assumed at that time that that's who it was,
2 right? You're just -- no one in their right mind could watch
3 that video just now and could tell who that person was, right?

4 A: Unless they personally knew him, probably, yes.

5 Q: But you just testified that you did not know him?

6 A: I did not, right.

7 Q: Okay. So, at that time, you had no idea who it was,
8 correct?

9 A: Correct.

10 Q: And you're just saying that now because my client is
11 sitting right here at the defendant's chair, right?

12 A: No.

13 Q: Okay. But you said at least on two, maybe three
14 occasions that that was him. You saw him walking through the
15 store, but you didn't really know -- you have no personal
16 knowledge that that was him, correct?

17 A: At that time, no, yes, sir. To clarify, correct. At the
18 time that I would have recorded the video, I did not know who
19 Mr. Linen was. I since -- now I do.

20 Q: Okay. So, that testimony that you had a little bit
21 earlier was inaccurate, correct?

22 A: No.

23 Q: No? So, you knew who he was at that time or you did not?

24 A: At the time I was watching the video, no. When he's
25 asking me the question, yes, at that time, while I'm sitting

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1 on the stand, I know who it is.

2 Q: Okay. You're just wanting the jury to believe that
3 that's who it is because that's who you say it is, right?

4 A: That's who it is.

5 Q: Okay. So, you -- in fact, you even stated that you had
6 to take some still shots from that video and circulate it to
7 -- to law enforcement, right?

8 A: Correct.

9 Q: And you also circulated it to the ---

10 A: Media.

11 Q: -- to the media?

12 A: Yes, sir.

13 Q: Okay. Who then -- who was the person that identified Mr.
14 Linen?

15 A: We had numerous tips, a fellow officer.

16 Q: A fellow officer; who was that?

17 A: I'm sorry, I'm having a blank right now. Hang on a
18 minute. I'm sorry, I -- I just talked to him this morning.
19 I'm having a blank. He doesn't work with us anymore. It'll
20 come to me in a minute, I'm sorry. I really ---

21 Q: Okay.

22 A: He's on the witness list, I'll tell you that.

23 Q: The name -- the name of the person that gave -- that
24 possibly ---

25 A: Flagler, Allen Flagler, that was the officer, sorry.

1 Q: He was an officer at the time?

2 A: He was a corporal with the Georgetown County Sheriff's
3 Office, yes, sir.

4 Q: Okay. He was an officer and he gave you the name, Mr.
5 Linen?

6 A: Yes, sir.

7 Q: Okay. And, and, and what you did with that name was, you
8 went to do what?

9 A: I started doing research on who Mr. Linen was, trying to
10 attain his biographical information, picture, stuff like that.

11 Q: Okay. And you stated on direct testimony that -- that
12 you -- you went to SLED and had them create a photo lineup; is
13 that right?

14 A: I didn't go to it, I emailed them, yes, sir.

15 Q: Okay. Well, you emailed SLED?

16 A: Yes, sir.

17 Q: Okay. And when -- when they sent you the -- the lineup,
18 per your testimony and correct me if I'm wrong, were you aware
19 of whether or not a photo of Mr. Linen was actually in the
20 lineup?

21 A: I wasn't until I opened it.

22 Q: Say that one more time?

23 A: I wasn't until I opened it.

24 Q: You was not -- you were not aware?

25 A: I was not aware until I opened it and actually saw the

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1 pictures.

2 Q: Okay. And so -- and how did you come by that -- that
3 knowledge?

4 A: That it was him?

5 Q: Uh-huh, (affirmative response). Yes.

6 A: Because I had pictures of him.

7 Q: Okay. You had pictures of him at that time?

8 A: Yes, sir.

9 Q: You talking about the still shots?

10 A: That and some other ones that I obtained through the
11 investigation.

12 Q: Okay. So, let's talk about those. So, you skipped a
13 step in your testimony, right? What you really did was you
14 emailed probation, correct?

15 A: Yes.

16 Q: Okay. And you got some photos from them, correct?

17 A: I did.

18 Q: Okay. And you got multiple photos from them, did you
19 not?

20 A: I think there was five, yes, sir.

21 Q: Okay. And then you sent them to SLED, correct?

22 A: Correct.

23 Q: And then they put one of those photos in the lineup?

24 A: Yes.

25 Q: Okay. So, you knew when you get it that there was a

1 photo of Mr. Linen in the lineup, correct?

2 A: No, I sent them a photo. I did not know if they were
3 gonna use it or not.

4 Q: Okay. But when you looked -- you looked at the lineup
5 before you showed it to Ms. Sparkman, correct?

6 A: I did not show it to her, but yes, I did look at it.

7 Q: When it was shown to her, you knew it was in there?

8 A: Yes.

9 Q: Okay. So, it's a possibility that -- that -- that --
10 well, it was possible that his picture could be chosen from
11 the lineup because it was in fact in there, correct?

12 A: Yes.

13 Q: Okay. So, it wasn't really a blind lineup, it was -- it
14 was -- it was in there?

15 A: Sometimes they are; sometimes they're not.

16 Q: Okay. When you get -- when you get a photo or excuse me,
17 a lineup, do you always look at it before you show ---

18 A: Yes.

19 Q: --- these -- okay. So, you know before it's shown
20 whether or not there's the person of interest in the lineup,
21 correct?

22 A: Yes.

23 Q: Okay.

24 A: And if it's not, we would still show it.

25 Q: Okay. But that wasn't the case here?

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1 A: No, sir; it was not.

2 Q: Okay. Now, the -- the videos that we saw, those are all
3 the videos that you -- you downloaded from the -- from their
4 data base or whatever?

5 A: Yes, sir.

6 Q: Okay. And you testified -- you testified that they kind
7 of -- they move around because there's some type of motion
8 situation?

9 A: Correct.

10 Q: Okay. And it starts recording at that time?

11 A: Right.

12 Q: Okay. But it's -- the video itself is fairly and
13 accurately displays what it purports to record, correct?

14 A: Yes.

15 Q: In your vision?

16 A: Yes.

17 Q: Okay. So, do you recall Ms. Sparkman's testimony?

18 A: Yes.

19 Q: Okay. And do you recall her saying -- and my apologies.
20 Do you recall her saying that she was looking at the person of
21 interest, the now suspect, when they came into the store the
22 first time?

23 A: I think she said that, yes, sir.

24 Q: Okay. Was that displayed in that video?

25 A: The first or second one?

1 Q: Well, in any of the video. When he came into the store
2 the first time, the suspect, was she looking at the person?

3 A: I -- I don't think so. I mean, I don't remember all of
4 it, but I don't think so. She may have -- she might have had
5 her back turned toward him, I'm not sure. We'd have to replay
6 it.

7 Q: Right, but you would agree with me that if the video
8 shows that her back is to the person who claims ---

9 A: When her back was to him, yes, sir.

10 Q: So, she did not see him on the way in?

11 A: If that's what the video, yes, sir.

12 Q: Okay. Do you also -- do you also recall her testimony
13 that at the time, excuse me, at the time that the
14 quote/unquote, person came back in who was the assailant that
15 there was no one in the store?

16 A: I remember somebody at the checkout counter, I think that
17 person left, but I don't recall seeing another person in the
18 store.

19 Q: Well -- well, according to you, the person that came in
20 the second time was Mr. Linen, who you believe to be the
21 assailant and there was certainly someone sitting at the cash
22 register at the time he came back in?

23 A: Right, there's a white female at the cash register.

24 Q: So, there was in fact someone in the store when the
25 person came back in, correct?

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- 1 A: Yes.
- 2 Q: Okay. And that's the person who you believe to be ---
- 3 A: John Linen.
- 4 Q: --- the assailant?
- 5 A: Yes, sir.
- 6 Q: Okay. All right. So, you would agree with me then that
- 7 her memory of these events aren't really all that accurate?
- 8 A: They're fairly accurate.
- 9 Q: Fairly accurate?
- 10 A: Yes, sir.
- 11 Q: But not a hundred percent accurate?
- 12 A: I can concede to that, yeah.
- 13 Q: Okay. Thank you. Now, there were approximately 15, you
- 14 said, cameras in the store?
- 15 A: Something like that, I don't remember the exact number.
- 16 Q: Only, only -- only that one outside the door?
- 17 A: Yes, sir.
- 18 Q: And you reviewed all those videos?
- 19 A: I did.
- 20 Q: And there's nothing else -- there's nothing else that
- 21 purports to be related to this case?
- 22 A: No, sir.
- 23 Q: Okay. And you watched that video before today, correct?
- 24 A: Yes.
- 25 Q: And you watched it again just now, correct?

1 A: Yes.

2 Q: Okay. At any time, did you see a gun?

3 A: No.

4 Q: All right. At any time the person you believed to be the
5 assailant in this case, that came in on several occasions or
6 on at least two occasions, right?

7 A: Yes, sir.

8 Q: Did they buy anything?

9 A: I don't think he did. He put -- in the second video, he
10 puts that bag of T-shirts up on the counter. The first time,
11 he got that red shirt out and then walked out. I don't ever
12 see him purchase anything.

13 Q: He didn't buy anything; you would agree that he did not
14 buy anything, whoever that was?

15 A: Yeah.

16 Q: Okay. And what happens when you normally buy something?

17 A: You get a receipt.

18 Q: Okay. And what else does the person do at the -- at the
19 counter?

20 A: Gives them money. I don't really know where you're going
21 with this.

22 Q: Okay. Well, that's okay. I'll just put it out there for
23 you. When you go to the store ---

24 A: Uh-huh, (affirmative response).

25 Q: --- and you go up to the cash register ---

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- 1 A: Yeah.
- 2 Q: --- and you buy it, okay, and then they bag it, right?
- 3 A: Sometimes, yes.
- 4 Q: Okay. They hand you the bag?
- 5 A: Uh-huh, (affirmative response).
- 6 Q: And you walk out the door, right?
- 7 A: Yeah.
- 8 Q: Okay. You have a bag on you?
- 9 A: Yes.
- 10 Q: Just like the person in the video had the bag when they
- 11 left?
- 12 A: Okay.
- 13 Q: Okay. During the course of the investigation, did you
- 14 attempt to identify the individual that was in the video from
- 15 the very beginning with the car?
- 16 A: I did not; no, sir.
- 17 Q: Okay. To your knowledge, did anyone attempt to
- 18 investigate that individual?
- 19 A: I do not believe so.
- 20 Q: Okay. To your knowledge did anyone attempt to identify
- 21 the lady who was making the purchase when the person whom you
- 22 believe to be the assailant, came in the second time?
- 23 A: I'm not sure. I know they spoke to another person; I
- 24 don't know if that was her.
- 25 Q: Okay. If I told you that it was not, would you agree

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1 with me?

2 A: Sure.

3 Q: Okay. So, there's one person that wasn't interviewed.

4 Are you aware of any other people that were not interviewed?

5 A: No.

6 Q: No?

7 A: Like I said, I was not a part of that, so I don't know

8 who was and who wasn't.

9 Q: Okay. So, your participation was limited to the video?

10 A: The video, yes, sir.

11 Q: Okay. And you -- you circulated -- you're the one who
12 circulated the picture?

13 A: Yes, sir.

14 Q: Okay. Do you know whether or not the -- Court's
15 indulgence, Your Honor, my apologies.

16 Actually, I have no further questions, Your Honor. Thank
17 you very much.

18 THE COURT: All right. Redirect?

19 MR. POWELL: No, Your Honor.

20 THE COURT: All right. You may step down.

21 A: Thank you, Your Honor.

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, we're gonna
24 go ahead and break for lunch. We've ordered lunch for you
25 today. So, we'll have it hear. We'll go ahead and take a

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1 break for lunch, give you plenty of opportunity. We'll
2 probably take about 45 minutes to an hour break. I'll give
3 you plenty of opportunity -- I mean, plenty of time to eat
4 your lunch without being rushed or anything of that nature.

5 I caution you again, do not discuss the case even among
6 yourselves. It's too early for deliberations. Don't conduct
7 any independent investigations. We'll take about an hour
8 break and then we'll come back after that. Thank you very
9 much.

10 Everyone else, please remain seated while the jury is
11 excused.

12 (REPORTER'S NOTE: Jury exits courtroom @ 12:53 P.M. The
13 following takes place outside the presence of the jury.)

14 BY THE COURT:

15 THE COURT: All right. Before we recess, was there a
16 *Neil v. Biggers* hearing or a request for one in this case?

17 MR. POWELL: Not that I'm aware of, Judge.

18 THE COURT: Was there a challenge by the defendant as to
19 the lineup?

20 MR. EDGEWORTH: No, Your Honor.

21 THE COURT: Okay. All right. So, that issue was not
22 raised, so there was no need for a *Neil v. Biggers* hearing; is
23 that correct?

24 MR. EDGEWORTH: No, Your Honor.

25 THE COURT: All right. All right. Anything from the

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1 state before we recess for lunch?

2 MR. POWELL: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. EDGEWORTH: No, Your Honor.

5 THE COURT: All right. We'll go ahead and take about an
6 hour break and come back.

7 MR. POWELL: Pardon me, Judge, when do you want us back?

8 THE COURT: In an hour.

9 MR. POWELL: Thank you, sir.

10 **RECESS - 12:53 P.M.**

11 *******OFF THE RECORD*******

12 **(On the Record - 2:04 P.M.)**

13 BY THE COURT:

14 THE COURT: All right. Anything from the state before we
15 bring the jury in?

16 MR. POWELL: No, Your Honor.

17 THE COURT: Anything from the defense?

18 MR. EDGEWORTH: No, Your Honor.

19 THE COURT: All right. Let's go ahead and bring the
20 jury in.

21 (REPORTER'S NOTE: Jury enters courtroom @ 2:06 P.M.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. I hope everybody had a good lunch. We're ready to
24 resume with the trial of the case.

25 Mr. Powell, the state can call your next witness.

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1 MR. POWELL: The state would call Joe Wilson.

2 JOE FREDERICK WILSON, HAVING BEEN

3 DULY SWORN TESTIFIES AS FOLLOWS:

4 CLERK: Thank you. Please be seated and state your full
5 name for the record.

6 MR. WILSON: Joseph Frederick Wilson.

7 DIRECT EXAMINATION OF JOSEPH FREDERICK WILSON BY MR. POWELL:

8 Q: Officer Wilson, where are you employed?

9 A: I'm currently employed with Anderson County Sheriff's
10 Office.

11 Q: Do you live up there?

12 A: I do.

13 Q: How long have you worked for the Anderson County
14 Sheriff's Office?

15 A: Since July, the end of July 2007.

16 Q: Where did you work before that, sir?

17 A: I worked for Georgetown County Sheriff's Office.

18 Q: And how did -- long did you work down here at the
19 sheriff's office?

20 A: For approximately 10 years.

21 Q: Any other law enforcement experience?

22 A: Those are the only two agencies.

23 Q: Were you working on March 20th, 2017 at the Georgetown
24 County Sheriff's Office?

25 A: I was.

1 Q: What was your rank and position on that date?

2 A: That date I was a deputy assigned to the patrol division
3 of the sheriff's office.

4 Q: What kind of day-to-day duties does that have with that
5 job?

6 A: Responding to calls for service, enforcing the local and
7 state traffic laws, as well as other county ordinances.

8 Q: Were you working on March 20th, 2017?

9 A: I was.

10 Q: Were you equipped with any kind of body camera system on
11 that day?

12 A: I did have a body camera on that day, which was active
13 and recording.

14 Q: Explain to the jury how that works; how you're equipped?

15 A: All right. So, our body camera is a single unit mounted
16 on to the uniform. Most deputies where on center mass on
17 their chest. Each call we go to, we activate it per policy.
18 It records any and all audio/video that's -- all video that's
19 in front of it within the line of sight, also captures audio
20 as well. At the end of the shift or if the disc becomes full,
21 we go and download. It was downloaded at the office, placed
22 onto a server, and we are able to retain copies by burning
23 them to CDs or DVDs for prosecutionary purposes.

24 Q: When you put some video onto the sheriff's server
25 computer, are you able to go and retrieve it?

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1 A: You are.

2 Q: Are you able to look it up by a case number, date, how do
3 you look it up?

4 A: Well, when we download it, we assign the case number that
5 would be associated with that call that was recorded. So,
6 with that, we would then retrieve it by that case number. You
7 could also put other tags and incident types and stuff, but
8 the primary way to identify and to be able to retrieve it
9 would be through the case number.

10 Q: Was your, you may've said it earlier, so excuse me, but
11 was your body camera functioning on March 20th, 2017?

12 A: It was properly functioning.

13 Q: What happened that day when you were at work?

14 A: That morning we received a call for a possible armed
15 robbery at the Dollar General located at 8003 North Fraser
16 Street within Georgetown County. I was the first unit on
17 scene. Once I arrived on scene, we were able to make contact
18 with the victim, who had secured the store by locking the
19 front door. She even stayed on the phone with our dispatch
20 the entire time. Once we had made it on scene, the victim was
21 able to open the door, allowed us to come in, we briefly spoke
22 to her. A protective sweep was also done by other deputies
23 who responded on the scene shortly -- if my -- immediately
24 right after I did. I stayed with the victim at that point and
25 we established there was also a witness that was there that

1 cut the restraints that were used on her off. So, she was
2 also asked to stay as well so we could make sure we obtained
3 all of her information as well get -- and if she'd provide us
4 a statement.

5 The security sweep was conducted. There was nobody else
6 located. The suspect was -- there were a few patrons in the
7 store at that time, they were asked to leave after we checked
8 with them to make sure there were no -- that they weren't
9 present during the incident or during any times prior to the
10 individual who cut off of the restraints.

11 Q: You spoke -- you did speak to the victim that day?

12 A: I did.

13 Q: You spoke to the lady who cut the restraints off as well?

14 A: I did.

15 Q: Your body camera was functioning that day, once again?

16 A: It was.

17 MR. POWELL: May I approach the witness, Judge?

18 THE COURT: Yes.

19 BY MR. POWELL:

20 Q: Officer Wilson, I'd like to show you what's marked as
21 State Exhibit 4 for identification. and yes or no, do you
22 recognize what this is, please?

23 A: I do.

24 Q: What is it?

25 A: This appears to be the DVD recording of the body camera I

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1 had, which was equipped that day, and I was able to review it
2 prior to court this morning. And it is an accurate depiction
3 of the sequence of events upon my arrival.

4 Q: But it's a recording from that Dollar General store that
5 you just testified responding to?

6 A: Yes, it starts with me being in my patrol vehicle,
7 responding to the Dollar General and well as throughout my
8 time at the Dollar General.

9 Q: So, when you watched it, did you see any alterations or
10 editing or anything where anybody manipulated it?

11 A: Nothing that I could see was changed in any ---

12 Q: Is that an accurate description of what got recorded that
13 day?

14 A: It is.

15 Q: And what you saw in front of you?

16 A: Yes.

17 MR. POWELL: Your Honor, at this time, the state would
18 move to be allowed to put into evidence the bodycam video with
19 Officer Wilson, which is marked as State Exhibit 4?

20 THE COURT: Any objection?

21 MR. EDGEWORTH: Yes, Your Honor. I object on the grounds
22 that this video is essentially hearsay. It's also compounding
23 -- it violates the best evidence rule. The officer is here to
24 testify to what he perceived when he arrived. We don't need a
25 video of those events for him to testify to.

1 THE COURT: All right. All right. The State's Exhibit 4
2 is admitted into evidence over the defendant's objection.

3 STATE'S EXHIBIT NUMBER 4

4 ADMITTED INTO EVIDENCE

5 MR. POWELL: And we'd ask to be able to publish it to the
6 jury.

7 THE COURT: All right.

8 (REPORTER'S NOTE: State's 4 published to the jury. Audio not
9 transcribed herein.)

10 MR. POWELL: Your Honor, I don't have any further
11 questions for this witness at this time.

12 THE COURT: All right. I think we're gonna go ahead and
13 take a short break before we cross examine.

14 Ladies and gentlemen, we'll go ahead and take our
15 afternoon break, about a 10 or 15-minute break to stretch your
16 legs, get something to drink and use the restroom, whatever
17 the case may be. Do not discuss the case even among
18 yourselves. It's too early for deliberations. We'll take a
19 short break and we'll come back and resume the trial in just a
20 minute. Everyone else please remain seated while the jury is
21 excused.

22 (REPORTER'S NOTE: Jury exits courtroom @ 3:16 P.M. The
23 following takes place outside the presence of the jury.)

24 THE COURT: All right. Mr. Wilson, we're still in the
25 middle of your testimony, so the law requires that you not

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1 discuss your testimony with anyone, whether that be what
2 you've testified to thus far or what you anticipate testifying
3 to in the future. You can't discuss it with the solicitors,
4 prosecuting attorneys, defense attorneys, or anyone. Okay?
5 I'll allow you to step down off the stand, but don't talk
6 about your testimony with anybody.

7 MR. WILSON: Yes, sir.

8 THE COURT: All right. Anything from the state before we
9 recess?

10 MR. POWELL: No, Judge.

11 THE COURT: Anything from the defense?

12 MR. EDGEWORTH: Nothing, Your Honor.

13 THE COURT: All right. Let's take about a 15-minute
14 break and we'll come back and resume.

15 **RECESS - 3:17 P.M.**

16 *****OFF THE RECORD*****

17 **(On the Record - 3:39 P.M.)**

18 THE COURT: All right. Anything from the state before we
19 bring the jury in?

20 MR. POWELL: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. EDGEWORTH: No, Your Honor.

23 THE COURT: All right. Let's bring the jury in.

24 (REPORTER'S NOTE: Jury enters courtroom @ 3:40 P.M.)

25 THE COURT: All right. Ladies and gentlemen, welcome

1 back. We're ready to resume the trial of the case.

2 Mr. Edgeworth, cross examination?

3 MR. EDGEWORTH: Thank you, Your Honor.

4 CROSS EXAMINATION OF JOSEPH FREDERICK WILSON BY MR. EDGEWORTH:

5 Q: All right. Deputy Wilson, correct?

6 A: Yes, sir.

7 Q: Okay. From your testimony, you were the first person on
8 the scene?

9 A: Yes, sir.

10 Q: Okay. And -- and you got the call over -- over dispatch,
11 right?

12 A: Yes, sir.

13 Q: All right. And you're in the cruiser?

14 A: Yes, sir, I was in my ---

15 Q: Do you recall where you were?

16 A: I believe I was somewhere close to the sheriff's office
17 when the call initially came out.

18 Q: Okay. So, sheriff's office, meaning like down here near
19 ---

20 A: 430 North Fraser Street.

21 Q: Not too far from where we sit now in the courthouse?

22 A: Correct, yes, sir.

23 Q: Okay. And that's right off Fraser Street, correct?

24 A: Yes, sir.

25 Q: Okay. And the incident location in this case is the 8003

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1 North Fraser Street, further on up 701, correct?

2 A: Yes, sir.

3 Q: So ---

4 A: Going towards Conway.

5 Q: So, for you to get there, you would have to go towards

6 Conway?

7 A: Yes, sir.

8 Q: Have to go through town?

9 A: Yes, sir.

10 Q: Okay. You would go past the Walmart?

11 A: Yes, sir.

12 Q: And past the Wendy's?

13 A: Yes, sir.

14 Q: Okay. Past 51 or Brown's Ferry Road?

15 A: Yes, sir.

16 Q: Okay. And keep on going out that way until you got

17 there?

18 A: Yes, sir.

19 Q: And then -- and then once you arrived to the Dollar

20 General, it was -- it was on your left?

21 A: It was on my left-hand side, yes, sir.

22 Q: And you pulled in?

23 A: Yes, sir.

24 Q: Okay. So, and, and -- and did you -- did you pay

25 attention to the video as to about how long it took you to get

1 there from the time you -- you got the call?

2 A: I didn't write down the times, but I believe it took
3 approximately six minutes.

4 Q: Okay. Somewhere in that range. I was thinking more of
5 four, but four to six minutes is about how long it took you to
6 get there from the time you got the call, having to go through
7 town and everything?

8 A: Yes, sir; I'd say that would be accurate.

9 Q: Okay. And part of that call was a description of -- of a
10 -- of the suspect that you got from dispatch, right?

11 A: Yes, sir.

12 Q: Okay. So, when you're driving there, are you keeping an
13 eye out whether you see anybody?

14 A: I mean, I'm driving down the roadway, obviously keeping
15 an eye out for traffic, responding to emergency response, so
16 -- with due regard. I did not observe anybody walking the
17 roadway that I recall.

18 Q: Okay. And, and you don't recall seeing any type of
19 vehicle that was driving erratically or anything like that,
20 right?

21 A: Not that I recall.

22 Q: Because if you would have saw them, you might would've
23 thought that something was going on and maybe stopped them?

24 A: It definitely would have been worth noting, yes.

25 Q: Okay. Especially if somebody is walking down the road

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1 ---

2 A: Yes, sir.

3 Q: --- matching that description?

4 A: Yes, sir.

5 Q: Okay. So, once you get there, one of the first things
6 that you identify that there is actually people inside the
7 store, right?

8 A: Yes, sir.

9 Q: And those people include persons other than the -- Ms.
10 Sparkman, the victim in this case, right?

11 A: Yes, sir.

12 Q: Okay. And do you recall how many people were in there?

13 A: I believe it was Ms. Sparkman, the victim in the case, as
14 well as the lady who cut the restraints off of her and there
15 was another woman inside who had a young child and, to my
16 knowledge, those were the only occupants inside the store
17 besides the law enforcement officers that had arrived.

18 Q: Okay. So, essentially, there were four people in there
19 where you got there?

20 A: Yes, sir.

21 Q: Okay. And the -- obviously we watched you, you know,
22 speak to Ms. Sparkman and, and the other witness that cut the
23 -- cut the things off. Did you speak to the other lady who
24 was there with the child?

25 A: Briefly, it was in regards of, you know, since she was

1 not indicated to be involved in this directly, didn't say
2 anything according to anybody. We asked her if she would be
3 willing to leave, she did, and I apologized to her for the
4 inconvenience.

5 Q: Okay. So, you just let her go, right?

6 A: Yes, sir.

7 Q: All right. So, after you -- after you talked to or
8 talked to everybody, we saw that you got the statement or what
9 not. And just so I'm clear, she -- Ms. Sparkman told you that
10 the -- the person who -- the suspect, had a black hoodie,
11 right?

12 A: I believe she said -- yes, a hooded sweatshirt or a
13 hoodie.

14 Q: Okay. A black hoodie. Okay. And you -- you were
15 talking to her about or there was a question that came up
16 about whether or not he was wearing gloves, and she said no;
17 is that correct?

18 A: Yes, sir.

19 Q: Okay. And she, in part of the description, she said that
20 he weighed approximately 150 to 165 pounds?

21 A: I don't recall exactly what she said -- what her response
22 was, but I was trying to get a general descriptions to help
23 BOLO the -- to put out a BOLO + for the responding units in
24 the area.

25 Q: Okay. So, would you agree with me that that's what was

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1 said on the video?

2 A: I'd say somewhere around that, because I remember making
3 the statement -- she said he was skinny and I made the comment
4 as in being crackhead skinny ---

5 Q: Uh-huh, (affirmative response).

6 A: --- which abnormally thin, you know, not much meat to
7 them.

8 Q: But you don't recall the comment thereafter that it was a
9 150 to 165 pounds?

10 A: I remember she's saying some type of a -- I don't
11 remember the exact numbers, but it sounds familiar.

12 Q: Okay. All right.

13 MR. EDGEWORTH: I have no further questions, Your Honor.

14 THE COURT: All right. Redirect?

15 MR. POWELL: No, Your Honor.

16 THE COURT: All right. You may step down.

17 MR. WILSON: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. POWELL: Your Honor, we call Allen Flagler next?

20 THE COURT: All right.

21 MR. POWELL: May Officer Wilson be excused from his
22 subpoena; he needs to go back to Anderson County?

23 THE COURT: Any objection?

24 MR. EDGEWORTH: No objection, Your Honor.

25 THE COURT: All right. He is free to go. Thank you very

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1 much.

2 MR. WILSON: Thank you, Judge.

3 MR. POWELL: We're getting him, Judge; he's right
4 outside.

5 THE COURT: That's fine.

6 ALLEN MICHAEL FLAGLER, HAVING BEEN DULY
7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Thank you. Please be seated and state your name
9 for the record.

10 MR. FLAGLER: My name is Allen Michael Flagler.

11 THE COURT: How do you spell Allen?

12 MR. FLAGLER: A-L-L-E-N.

13 THE COURT: A-L-L-E-N. Thank you.

14 DIRECT EXAMINATION OF ALLEN MICHAEL FLAGLER BY MR. POWELL:

15 Q: Officer Flagler, where do you live, sir?

16 A: Brown's Ferry.

17 Q: Where do you currently work?

18 A: Williamsburg County Sheriff's Office.

19 Q: How long have you been working there?

20 A: One year.

21 Q: And what are your duties there at the present time?

22 A: Just patrol deputy.

23 Q: Where did you work before that agency?

24 A: Before that, I was with highway patrol. I worked there
25 for about a year, and then I was Georgetown County Sheriff's

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1 Office before.

2 Q: How long did you work with the Georgetown County
3 Sheriff's Office?

4 A: Almost five years.

5 Q: Were you working there in March of 2017 then?

6 A: Yes, sir.

7 Q: Any other law enforcement experience?

8 A: No, sir.

9 Q: Officer, during your tenure as a law enforcement officer,
10 are you familiar with a press release?

11 A: Yes, sir.

12 Q: Have you ever received any press releases?

13 A: Yes, sir.

14 Q: Were they sent to try to help assist ID'ing somebody?

15 A: Yes, sir.

16 Q: That would be one reason you would get a press release?

17 A: Yes, sir.

18 Q: Do you recall receiving a press release for March 20th,
19 2017 concerning this Dollar General store matter that is
20 before the Court?

21 A: Yes, sir.

22 Q: Did you recall looking at it that day?

23 A: Yes, sir.

24 MR. POWELL: May I approach the witness, Judge?

25 THE COURT: Yes, sir.

1 BY MR. POWELL:

2 Q: Officer Flagler, I'd like to show you what's marked for
3 identification as State Exhibit 28 and 29, and first, yes or
4 no answer, do you -- please look at them. Yes or no answer.
5 Do you recognize them?

6 A: Yes, sir.

7 Q: And what are they?

8 A: Photos of John Linen, Jr.

9 Q: And why do you know what they are?

10 A: I've known John since about ---

11 Q: Let's get to that in a second. But how do you -- how do
12 you know, not what the pictures are as far as who they are,
13 but as far as have you ever had an opportunity to see them?
14 Do you recall when you first saw those photographs?

15 A: Yeah, just in that press release was the first time I saw
16 them.

17 Q: I'm just trying to make sure.

18 A: Okay.

19 Q: That was the press release we were talking about that you
20 got on March 20th, 2017?

21 A: Yes, sir.

22 Q: And I cut you off, I apologize.

23 A: That's all right.

24 Q: When you received those photographs, did you recognize
25 who they were pictures of?

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1 A: Yes, sir.

2 Q: And who did you think they were?

3 A: John Linen, Jr.

4 Q: And I think you were getting ready to say that when I did
5 cut you off, but how do you know John Linen?

6 A: From around the community since, I've known him since
7 about 2002, 2003.

8 Q: 2017 and you've known him since 2002, 2003?

9 A: Yes, sir.

10 Q: Had you lived in the same community?

11 A: Yeah, we got different ---

12 Q: Cross paths in the same community?

13 A: Yes, sir.

14 Q: Do you recall when you looked -- received that press
15 release, do you recall how long it took you to realize or
16 recognize it to be John Linen?

17 A: I instantly recognized it.

18 Q: Is Mr. Linen in the room today?

19 A: Yes, sir.

20 Q: Will you point him out for the record?

21 A: (Indicating.)

22 Q: Sitting at the defense table?

23 A: Yes, sir.

24 Q: And that's Mr. Linen you're referring to when you
25 identified him in those two pictures?

1 A: Yes, sir.

2 Q: Did you inform Officer Magann or did you inform some
3 other law enforcement officers that you recognized him?

4 A: It was Investigator Magann I contacted.

5 Q: And told him that you believed that to be John Linen?

6 A: Yes, sir.

7 Q: Do you see any changes or alterations or any kind of
8 editing of those two pictures?

9 A: No, sir.

10 Q: You believe they're an accurate description of the
11 photograph?

12 A: That I saw, yes, sir.

13 MR. POWELL: Your Honor, at this time, the state would
14 move to put into evidence what was marked earlier as State's
15 Exhibits 28 and 29.

16 THE COURT: Any objection?

17 MR. EDGEWORTH: No objection, Your Honor.

18 THE COURT: All right. State's Exhibits 28 and 29
19 admitted into evidence without objection.

20 STATE'S EXHIBIT NUMBERS 28 AND 29

21 ADMITTED INTO EVIDENCE

22 BY MR. POWELL:

23 Q: I have no further questions, Officer Flagler. Please
24 answer any defense counsel has. Thank you.

25 MR. EDGEWORTH: Court's indulgence, Your Honor.

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1 THE COURT: All right.

2 MR. EDGEWORTH: No questions for this witness, Your
3 Honor.

4 THE COURT: All right. You may step down.

5 MR. FLAGLER: Thank you.

6 THE COURT: Thank you.

7 MR. POWELL: Your Honor, can I have one second to see who
8 we have in the hall?

9 THE COURT: All right. That'll be fine.

10 MR. POWELL: Your Honor, the state would call Taylor
11 Bennett Mintz to the stand?

12 THE COURT: All right.

13 TAYLOR BENNETT MINTZ, HAVING BEEN DULY
14 SWORN TESTIFIES AS FOLLOWS:

15 CLERK: Thank you. Please be seated and state your full
16 name for the record.

17 MS. MINTZ: Taylor Bennett Mintz.

18 THE COURT: Could you spell your last name, please?

19 MS. MINTZ: Yes, sir. M-I-N-T-Z.

20 THE COURT: Thank you.

21 MS. MINTZ: You're welcome.

22 DIRECT EXAMINATION OF TAYLOR BENNETT MINTZ BY MR. POWELL:

23 Q: Taylor, where do you currently work?

24 A: I work at Stuckey Pharmacy in Hemingway.

25 Q: How long have you been working there?

1 A: Since June.

2 Q: Where were you working before that?

3 A: At the Georgetown County Sheriff's Office.

4 Q: How long did you work for the sheriff's office?

5 A: Approximately, six years altogether.

6 Q: Excuse me. Were you working for the sheriff's office on
7 March 20th, 2017?

8 A: Yes, sir.

9 Q: What were your duties and position that day; do you
10 recall?

11 A: I was an investigator in training. I had just gone to
12 Criminal Investigations Division from patrol.

13 Q: Do you recall what happened that day to any crime scene
14 you responded to?

15 A: Yes, sir, the crime scene at Dollar General on Choppee
16 Road.

17 Q: Were you assigned any duties upon arrival, any
18 responsibilities?

19 A: Yes, sir. I took pictures of the crime scene while
20 everyone was doing their other duties.

21 MR. POWELL: May I approach the witness, Judge?

22 THE COURT: Yes.

23 BY MR. POWELL:

24 Q: Ma'am, I'd like to show you what was marked for
25 identification State's Exhibits 19 through 27. If you would

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1 take one second and look at them and just give a yes or no
2 answer whether you recognize those or not?

3 A: Yes, sir.

4 Q: What are they?

5 A: Those are the pictures of the crime scene that I took
6 that day.

7 Q: Will you please look at them one more time and see
8 whether you see any alterations or editing or any kind of
9 changes anybody that's smarter than me might've been able to
10 do to them?

11 A: They look the same to me.

12 Q: Do you think they're accurate copies of photos you took
13 that day?

14 A: Yes, sir.

15 Q: I'd like to show you what's marked as Exhibit 19; what's
16 that a picture of?

17 A: That's the picture of the Dollar General on 701.

18 Q: From the outside?

19 A: Yes, sir, from the front.

20 Q: And what was marked as Exhibit Number 20; would you look
21 at that and state when that's of, please?

22 A: That's of the front doors going into the Dollar General.

23 Q: And what's marked as 21; do you recognize -- can you say
24 what that's a photograph of?

25 A: Yes, sir. That's the -- that's the -- oh, Lord, what are

1 they called -- that's the straps that they used.

2 Q: Is zip tie the word you're looking for?

3 A: A zip tie -- there we go, yeah -- zip ties that they used
4 to, from my knowledge, strap the victim to the chair.

5 Q: And what's underneath the zip ties? Do you recognize
6 anything else?

7 A: The package of shirts that we used for DNA.

8 Q: I'd like to show you what's -- just one second -- I'll
9 show you what's marked as State's Exhibit 31 and see if you
10 recognize what that might be. Is that what you're seeing in
11 the photograph?

12 A: Yes, sir.

13 Q: And what's marked as State's Exhibit 22, what are we
14 looking at in that picture?

15 A: That's also one of the T-shirts that were on scene at
16 time that were out of place.

17 Q: And if you could say what the photograph marked as 23 is;
18 what are we looking at there?

19 A: That is the latent print that was picked up from dusting
20 fingerprint powder.

21 Q: And if you could tell the jury what the photograph marked
22 as Exhibit 24 is?

23 A: This is the employee's breakroom and where the victim was
24 sitting in a chair.

25 Q: In the Dollar General store?

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1 A: Yes, sir.

2 Q: And if you would tell the jury what picture -- what
3 Exhibit 25 is, please?

4 A: That's the chair that the clerk was tied to in the
5 breakroom in the Dollar General.

6 Q: And tell the jury what Exhibit 26 is?

7 A: That's the zip tie that was tied to the chair that was
8 broken free.

9 Q: At last, Exhibit 27; what that photo is?

10 A: That's the zip ties that were cut from the chair, from
11 the victim.

12 MR. POWELL: Your Honor, at this time, we would like to
13 put into evidence what was marked as State's Exhibit 19
14 through Exhibit 27?

15 THE COURT: All right. Any objections?

16 MR. EDGEWORTH: I would like to review them first, Your
17 Honor.

18 MR. POWELL: I'm sorry.

19 MR. EDGEWORTH: No objection, Your Honor.

20 THE COURT: All right. State's Exhibits 19, 20, 21, 22,
21 23, 24, 25, 26, and 27 are admitted into evidence without
22 objection.

23 STATE'S EXHIBIT NUMBERS 19 THROUGH 27

24 ADMITTED INTO EVIDENCE

25 BY MR. POWELL:

1 Q: Taylor, do you recall whether any fingerprints were
2 lifted of any of the things that were looked at in Dollar
3 General store back on March 20th, 2017?

4 A: Yes, sir. One that I recall was lifted off the bag of T-
5 shirts.

6 Q: And that's something that maybe you and Officer Griffith
7 did, did you do, is he helping you do; what's your
8 recollection of who did that.

9 A: I can't remember exactly who took the fingerprint off of
10 it; it was either him or I.

11 Q: Did you ever end up with possession of them that day?

12 A: Yes, sir.

13 Q: Were they given to you for any certain purpose?

14 A: Yes, sir. I took them to Conway for their AFIS machine
15 to -- instead of sending them off to SLED, so it would be
16 faster.

17 Q: Conway, you're talking Horry County Police Department or
18 anything about Conway?

19 A: Yes, sir. The police department in Conway.

20 Q: They had a fingerprint person there was your
21 understanding?

22 A: Yes, sir.

23 Q: I'd like to show you what's marked as State's Exhibit 41.
24 You can look at the package and what's inside the package and
25 say whether you recognize what that is?

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1 A: Yes, sir. These are the fingerprints that were lifted
2 from the bag, the T-shirt bag.

3 Q: Where did you receive possession of those? Was that at
4 the Dollar General store location?

5 A: I don't remember if I got them at the Dollar General or
6 if we took them back to the office and packaged them.

7 Q: So, one of the two places you received them and drove
8 them to Conway?

9 A: Yes, sir.

10 Q: In Conway, who did you turn them over to; do you recall?

11 A: Caulder, I believe was his last name.

12 Q: What's on this -- front of the packaging? Is it -- do
13 you know what the -- there's a list of information on it. Do
14 you know what it's called or what does it show?

15 A: This was who got the packaging from one person to
16 another. It's a chain of custody.

17 Q: Yes, ma'am. And who does it start out with?

18 A: Griffith.

19 Q: And who's next?

20 A: Then me, then Mr. Caulder, and then back to me, and then
21 back to Jonathon.

22 Q: Caulder is the name you were talking about ---

23 A: Yes, sir.

24 Q: --- with Horry County Police Department?

25 A: Uh-huh, (affirmative response).

1 Q: That's who you took them to that day?

2 A: Yes, sir.

3 Q: The date on the little chain the same as the incident
4 date? Had you took them to Horry County?

5 A: No, sir, they were taken on the 20th. I took them the
6 next day on the 21st.

7 Q: When you got there, did you ask -- did you see Officer
8 Caulder when you got there; do you recall?

9 A: Yes, sir.

10 Q: Did you ask them to check the finger -- look at the
11 fingerprints to analyze them or ---

12 A: I did.

13 Q: I have no further questions at this time. Please answer
14 any defense counsel has. Thank you very much.

15 THE COURT: Cross examination?

16 MR. EDGEWORTH: Briefly, Your Honor.

17 CROSS EXAMINATION OF TAYLOR MINTZ BY MR. EDGEWORTH:

18 Q: I apologize. Investigator Mintz, correct, or previously?

19 A: Yes; uh-huh, (affirmative response).

20 Q: Okay. Now, you, you took -- you guys got the, the prints
21 at the scene, correct ---

22 A: Yes.

23 Q: --- at the Dollar General. And that was done
24 contemporaneously with you walking around taking those photos
25 that you just talked about, correct?

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1 A: Yes, sir.

2 Q: Okay. And that was within a very short period of time
3 after you guys got the call and went out there and began your
4 investigation, right?

5 A: Yes, sir.

6 Q: Okay. And, and, and the -- did you actually speak to Ms.
7 Sparkman?

8 A: I didn't; no, sir.

9 Q: Okay. But you knew her to be the victim in the case?

10 A: Yes, sir.

11 Q: And you knew that the, the -- the package of T-shirts was
12 an item that was picked up by the suspect?

13 A: That's just what I was told.

14 Q: Right. But you knew that to be, which is why you wanted
15 to check it for fingerprints, right?

16 A: Yes, sir.

17 Q: Okay. And -- and so, you took the finger -- the, the
18 prints up to Horry County?

19 A: Yes, sir.

20 Q: Did you wait on the results?

21 A: I don't remember.

22 Q: Are you aware of the results?

23 A: No, sir. I don't remember anything about that part.

24 Q: Was -- were you there for the purpose of waiting around
25 and bringing the results back or did you just go on back to

1 Georgetown?

2 A: I brought them back.

3 Q: But you weren't told by Caulder or whomever it was what I
4 the results were?

5 A: I don't remember what they were.

6 Q: Okay.

7 MR. EDGEWORTH: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MR. EDGEWORTH:

10 Q: Okay. Now, are you familiar with fingerprint results?

11 A: Yes, sir.

12 Q: Okay. And usually they generate a report, correct?

13 A: Uh-huh, (affirmative response).

14 Q: Okay. And I want to show you a document and ask you if
15 you can recognize that as a fingerprint report?

16 A: Yes, sir.

17 Q: Okay. And at the bottom, it says the examiner is
18 Caulder; that's the same Caulder that you're referring to?

19 A: Yes, sir.

20 Q: Okay. And -- well, we'll just go ahead and -- you can
21 see it says here that the incident location is the Dollar
22 General?

23 A: Yes, sir.

24 Q: And, and it's related to Georgetown County?

25 A: Yes, sir.

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1 Q: And do you believe this to be the report related to the
2 incident?

3 A: Yes, sir.

4 MR. EDGEWORTH: Your Honor, I'd like to move this into
5 evidence.

6 THE COURT: All right. And how is that identified?

7 MR. EDGEWORTH: Defendant's Exhibit Number 1.

8 THE COURT: Any objection?

9 MR. POWELL: No, Your Honor.

10 THE COURT: All right. Defendant's Exhibit 1 admitted
11 into evidence without objection.

12 DEFENDANT'S EXHIBIT NUMBER 1

13 ADMITTED INTO EVIDENCE

14 BY MR. EDGEWORTH:

15 Q: Now, just so we can talk about it, on the top part of
16 this, it talks about items and it says 1, 2, 3 and 4; do you
17 see that?

18 A: Yes, sir.

19 Q: And is that -- does that represent four different ---

20 A: Four different fingerprint cards, yes.

21 Q: Four different things that they examined?

22 A: Yes.

23 Q: Okay. And those were all taken from the bag here that
24 the suspect grabbed and put up at the front, correct?

25 A: To my knowledge, yes, sir.

1 Q: In other words, you can see the dusting on this, right?

2 A: Yes, sir.

3 Q: Okay. So, you took four different cards up there to be
4 analyzed?

5 A: Uh-huh, (affirmative response).

6 Q: Okay. Do you see the results on that?

7 A: Yes.

8 Q: And what does it say?

9 A: Visual examination, no ridge detail observed,
10 insufficient for comparison. Latent card, no value for 1
11 through 4.

12 Q: So, it's fair to say then that this report does not show
13 the fingerprints of Mr. Linen, correct?

14 A: No value.

15 Q: Thank you very much.

16 MR. EDGEWORTH: No further questions, Your Honor.

17 THE COURT: Redirect?

18 MR. POWELL: No, Your Honor.

19 THE COURT: All right. You may step down.

20 MS. MINTZ: Thank you, sir.

21 MR. POWELL: The state would call John Robbie Caulder
22 next, Your Honor.

23 THE COURT: All right.

24 JOHN ROBBIE CAULDER, HAVING BEEN DULY

25 SWORN TESTIFIES AS FOLLOWS:

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1 CLERK: Thank you. Please be seated and state your full
2 name for the record.

3 MR. CAULDER: John R. Caulder, C-A-U-L-D-E-R.

4 DIRECT EXAMINATION OF JOHN ROBBIE CAULDER BY MR. POWELL:

5 Q: Do you go by Robbie, Mr. Caulder?

6 A: Yes, sir.

7 Q: Where do you currently work, Mr. Caulder?

8 A: I currently work for Action Fence Company.

9 Q: How long have you been working there?

10 A: Just since I retired in May.

11 Q: And where did -- where did you get lucky enough to retire
12 from?

13 A: The Horry County Police Department.

14 Q: And how long had you worked for the Horry County Police
15 Department?

16 A: I worked for Horry County Police Department for 21 years.

17 Q: What were your duties -- when did you retire from there?

18 A: May of this year.

19 Q: May of this year. And what were your duties there when
20 you retired?

21 A: I was the senior investigator with the Crime Scene Unit,
22 which I was the supervisor for the Crime Scene Unit.

23 Q: What were your duties there back in March of 2017?

24 A: The same. Senior investigator, which I was the
25 supervisor of the Crime Scene Unit and I also handled the --

1 the latent examinations within the department.

2 Q: Would that include doing fingerprint analysis?

3 A: That is correct.

4 Q: Did you have -- what kind of training or education did
5 you receive to do fingerprint analysis?

6 A: I've had over 400 hours of training as well as
7 certifications through the Federal Government, various
8 training classes put on throughout the United States, through
9 sponsored vendors from the International Association of
10 Identifiers.

11 Q: Have you ever identified a person's ID by doing a
12 fingerprint analysis?

13 A: Yes, sir, I have.

14 Q: Ever done an analysis where you couldn't identify
15 somebody?

16 A: Yes, sir.

17 Q: Have you ever testified in General Sessions Court about
18 fingerprint analysis?

19 A: Yes, sir, I have.

20 Q: Have you ever been qualified as an expert witness in that
21 area?

22 A: Yes, sir, I have.

23 Q: Do you recall about how many times you've been an expert
24 witness in General Sessions Court?

25 A: Four times.

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1 MR. POWELL: Your Honor, at this time, we'd like to move
2 for him to be declared as an expert in fingerprint analysis?

3 THE COURT: All right. Any questions or challenges?

4 MR. EDGEWORTH: No challenges, Your Honor.

5 THE COURT: All right. I find this witness to be an
6 expert in the field of fingerprint analysis.

7 Now, ladies and gentlemen, I will instruct you on expert
8 testimony when I charge you on the law in the case, but all
9 that you need to know at this point in time is that typically
10 witnesses can only testify to their personal knowledge, what
11 they heard, what they smelled, what they tasted, what they
12 felt, things of that nature. There is an exception for
13 experts or witnesses who are qualified as an expert, which
14 means that in addition to his personal knowledge or personal
15 observations, this witness can render an opinion in the field
16 in which he's qualified as an expert.

17 All right. Go ahead.

18 MR. POWELL: May I approach the witness, Judge?

19 THE COURT: Yes.

20 BY MR. POWELL:

21 Q: Mr. Caulder, I'd like to hand you what's been put into
22 evidence as Defendant's Exhibit 1. Would you look at it and
23 take a minute and see if you recognize this?

24 A: Yes, sir. This is a report on a latent print that I
25 issued on the Horry County Police Department's letterhead.

1 Q: Is there a date of your report down at the bottom?

2 A: It is. This was March the 21st, 2017.

3 Q: If you would look, as a result, there is an Item 1
4 through 4 -- I think they all say the same thing. Would you
5 read one of those lines?

6 A: The first one on results, it says a visual examination,
7 no ridge detail observed, insufficient for comparison. Latent
8 card. no value.

9 Q: What are ridge details; what do you look for when you
10 look fingerprints?

11 A: When I'm looking at fingerprints, first is to determine
12 if there is actually any ridges or any value or if I can
13 determine -- determine if there is a -- any type of
14 characteristics within that print. There are varying
15 characteristics within all prints. Fingerprints are developed
16 during gestation, during birth, just -- for a brief overview,
17 they don't change unless they are manipulated. So, those
18 ridges that are on your -- actually on the tips of your
19 fingers and also on the soles of your feet will always stay
20 the same throughout your lifetime unless something occurs
21 traumatically or if you alter it or amputate it. When you
22 deposit a fingerprint or ridges onto a surface, in an attempt
23 to lift it, powders, other mechanisms may be used to attempt
24 to lift that print. That print exam, like in this case, was
25 turned over to me and I tried to see if I could see any

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1 ridges, and those ridges are when there is actual pores on the
2 top of those ridges on your finger that deposit oils and
3 waters and they secrete when you touch. The different
4 processes that are used to lift those prints are then turned
5 over, like I said, to me. I looked at them in this case and I
6 couldn't find any of those ridges, which are synonymous with
7 fingerprints.

8 Q: There actually wasn't enough information there to
9 identify anybody?

10 A: That is correct.

11 MR. POWELL: I have no further questions of this
12 witness, Judge.

13 BY MR. POWELL:

14 Q: Thank you, Mr. Caulder.

15 A: All right.

16 Q: Please answer any questions defense counsel might have.

17 THE COURT: Cross examination?

18 MR. EDGEWORTH: Court's indulgence, Your Honor.

19 No questions for this witness, Your Honor.

20 THE COURT: All right. You may step down.

21 MR. CAULDER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. POWELL: Your Honor, the state would call next
24 Jonathan Griffith to the stand.

25 THE COURT: All right.

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1 JONATHAN KYLE GRIFFITH, HAVING BEEN DULY

2 SWORN TESTIFIES AS FOLLOWS:

3 CLERK: Thank you. Please be seated and state your full
4 name for the record.

5 MR. GRIFFITH: Jonathan Kyle Griffith.

6 DIRECT EXAMINATION OF JONATHAN KYLE GRIFFITH BY MR. POWELL:

7 Q: Officer Griffith, where do you work?

8 A: Georgetown County Sheriff's Office.

9 Q: How long have you worked there?

10 A: About eight years now.

11 Q: Any prior law enforcement experience before that?

12 A: No, sir.

13 Q: What's your present duties there at this time?

14 A: Presently, I'm an investigator for the department.

15 Q: How long have you been an investigator?

16 A: About six years now.

17 Q: You were an investigator back in March of 2017 then?

18 A: Correct.

19 Q: Were you working on March the 20th, 2017?

20 A: Yes, sir.

21 Q: Were you equipped with any body camera on that day?

22 A: No.

23 Q: Is it routine for sheriff investigators to have body
24 cameras on?

25 A: No, we don't have body cameras.

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1 Q: Would you tell the jury what happened that day, please?

2 A: As you heard previous, we received a call of an armed
3 robbery at the Dollar General. Along with patrol, the
4 majority of CID responded. Upon arriving on the scene, I
5 assisted Investigator Mintz at the time in processing the
6 scene. Other -- other investigators had other duties they
7 were tending to as far as canvassing the scene, looking at
8 video footage, and so on.

9 Q: Were you the person that basically collected everything
10 and turned stuff in at the end; was that one of your jobs?

11 A: Correct. Usually when we have a big case like that or
12 something major happened and we have multiple investigators
13 working on it, we try to designate one person to receive all
14 items of evidence. That way it stays in order and it's not
15 spread out or somebody forgets to do something.

16 Q: You're the one that collected items at the Dollar General
17 store location?

18 A: Myself and Investigator Mintz, correct.

19 Q: Were you her training officer that day?

20 A: Yes, she had just started. She had just come upstairs to
21 CID and she was put under me to kind of mentor and get her
22 footing and learn the ropes a little bit.

23 Q: You sort of got her to drive the fingerprints to Conway?

24 A: Yeah.

25 Q: I'd like to show you what's been marked for

1 identification as State's Exhibit 31. Do you recognize what
2 that is, sir?

3 A: Yes, sir. Those are the white T-shirts from the store.

4 Q: Was that what the fingerprints were taken off of we just
5 were talking about?

6 A: Yes, sir.

7 MR. POWELL: Your Honor, at this time, I'd like to move
8 for State's Exhibit 31 to be put into evidence.

9 THE COURT: Any objection?

10 MR. EDGEWORTH: Your Honor, I don't believe at this time
11 the complete chain of custody has been established.

12 THE COURT: I think it's sufficient. State's Exhibit 31
13 is admitted into evidence over defendant's objection.

14 MR. EDGEWORTH: Thank you, Your Honor.

15 THE COURT: Thank you.

16 STATE'S EXHIBIT NUMBER 31

17 ADMITTED INTO EVIDENCE

18 BY MR. POWELL:

19 Q: Just for the record, Officer Griffith, did you collect
20 this item that day and take custody of it at the Dollar
21 General store?

22 A: Yes, sir.

23 Q: You turned it into the sheriff department locker room --
24 evidence room?

25 A: Yes, sir.

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1 Q: I'd like to show you what's been marked as State's
2 Exhibit 32 for identification and see if you recognize what
3 that item is?

4 A: It's the red shirt from the store.

5 Q: Did you collect that red shirt from the store?

6 A: Yes, sir.

7 Q: Did you turn it in to the sheriff's evidence room?

8 A: Yes, sir.

9 MR. POWELL: Judge, at this time, the state would move
10 to put what's marked for identification as State's Exhibit 32
11 into evidence.

12 THE COURT: Any objection?

13 MR. EDGEWORTH: Yes, Your Honor, same objection, as that
14 no sufficient chain has been established.

15 THE COURT: All right. State's Exhibit 32 admitted into
16 evidence over defendant's objection.

17 STATE'S EXHIBIT NUMBER 32

18 ADMITTED INTO EVIDENCE

19 BY MR. POWELL:

20 Q: Officer Griffith, I'd like to show you what was marked
21 earlier as State's Exhibit 33 for identification. See if you
22 recognize what that item is.

23 A: That's a zip tie.

24 Q: You look at the packaging and could you provide any
25 further identification for the zip tie?

1 A: It's the zip tie from the counter of the store.

2 Q: What are you actually looking at right now?

3 A: The evidence bag it was put in.

4 Q: Who put that item in that evidence bag?

5 A: It says me.

6 Q: Is that your writing on the bag?

7 A: Yes, sir.

8 Q: Did you collect this zip tie from the Dollar General
9 store then?

10 A: Yes, sir.

11 Q: Did you turn it into the evidence locker?

12 A: Yes, sir.

13 Q: Why was it called zip tie from counter; do you recall?

14 A: Because that's where it was found.

15 MR. POWELL: Your Honor, at this time ---

16 Q: At the Dollar General store?

17 A: Yes, sir.

18 MR. POWELL: Your Honor, at this time, the state would
19 move what was marked for identification, State's Exhibit 33,
20 we'd make a motion to put that into evidence.

21 THE COURT: All right. Any objection?

22 MR. EDGEWORTH: Yes, Your Honor, same objection;
23 insufficient chain of custody.

24 THE COURT: All right. State's Exhibit 33 admitted into
25 evidence over the defendant's objection.

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1 STATE'S EXHIBIT NUMBER 33

2 ADMITTED INTO EVIDENCE

3 MR. EDGEWORTH: My apologies, Your Honor, what is the
4 exhibit number?

5 THE COURT: 33.

6 MR. EDGEWORTH: Thank you, Your Honor.

7 BY MR. POWELL:

8 Q: Officer Griffith, I'd like to show you what was
9 previously marked as State's Exhibit 34 for identification.
10 I'll hand you the entire bag. Take a look at that and see if
11 you recognize it, sir.

12 A: It says zip tie from chair.

13 Q: Would you look inside it, please, and see if you
14 recognize it. You can go ahead and take it out, please.

15 A: Yes.

16 Q: Was that collected at the Dollar General store that day?

17 A: Yes, sir; it was.

18 Q: Why was it called zip tie chair?

19 A: Because that's where it was located at the store.

20 Q: Did you collect it and turn it into Georgetown County
21 Sheriff's Department evidence room?

22 A: Yes.

23 MR. POWELL: Your Honor, at time the state would move to
24 be allowed to put into evidence what was previously marked for
25 identification purposes, State Exhibit 34, the zip tie from

1 chair. We'd move to put that into evidence.

2 THE COURT: All right. Any objection?

3 MR. EDGEWORTH: Yes, Your Honor, objection as to
4 insufficient chain of custody.

5 THE COURT: All right. State's Exhibit 34 admitted into
6 evidence over defendant's objection.

7 STATE'S EXHIBIT NUMBER 34

8 ADMITTED INTO EVIDENCE

9 BY MR. POWELL:

10 Q: Officer Griffith, I'd like to show you what was marked
11 for identification as State's Exhibit 41 and see if you
12 recognize what that item is.

13 A: Four hinge lifters from T-shirt bag containing latent
14 prints.

15 Q: Would you open it up and pull out what's inside, please,
16 sir? Take a minute and look at those and see if you recognize
17 what those were.

18 A: Yes, they're hinge lifters from the T-shirt bag.

19 THE COURT: I'm sorry, they're what?

20 A: Hinge lifters from the T-shirt bag.

21 Q: I'd like to show you what was put into evidence, I
22 believe, as State's Exhibit 31. Are you talking about coming
23 off of that plastic bag, the fingerprints?

24 A: Yes, sir.

25 Q: Did you take those fingerprints off the bag?

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1 A: I was assisted by Investigator Mintz in doing so.

2 Q: How do you take -- how would you physically take
3 fingerprints off a bag; how is that done?

4 A: First, we apply a, a fingerprint dust to the bag. Once
5 prints are located, we use either a tape -- lifting tape or as
6 I just called these, these are called hinge lifters. They
7 come apart, you peel out -- there's a sticky surface on one
8 side and we apply that to the print, and then you lift the
9 print up, close the card, and you have your latent print on
10 the card.

11 Q: Are those the fingerprint lift cards that Taylor -- I
12 call her Taylor Bennett, Taylor Mintz now -- is that what
13 Taylor Mintz took to Horry County, that card?

14 A: Yes, sir.

15 Q: Did you end up putting those into the Georgetown County
16 Sheriff Department evidence locker?

17 A: Yes, sir; I did.

18 Q: I'll take this back.

19 A: All right.

20 MR. POWELL: Your Honor, at this time, the state would
21 move to put into evidence what was previously marked as
22 State's Exhibit 41 for identification purposes.

23 THE COURT: Well, I didn't understand, did he take -- did
24 he lift those prints and put on there?

25 Did you lift those or did someone else do it?

1 A: I did. She assisted -- assisted me in doing it.

2 THE COURT: She assisted you, but you lifted the prints?

3 A: Yes, sir.

4 THE COURT: Okay. Any objections?

5 MR. EDGEWORTH: No objection, Your Honor.

6 THE COURT: All right. State's Exhibit 41 admitted into
7 evidence without objection.

8 MR. POWELL: Thank you, Judge.

9 STATE'S EXHIBIT NUMBER 41

10 ADMITTED INTO EVIDENCE

11 BY MR. POWELL:

12 Q: Officer Griffith, I'd like to show you what was marked as
13 State's Exhibit 3 for identification and see if you recognize
14 what this is.

15 A: It's a SLED produced photo lineup.

16 Q: Is it involving this case, what you're looking at?

17 A: Excuse me?

18 Q: Is it involving this case what you're looking at?

19 A: Yes, sir.

20 Q: Please explain to the jury how you use photo lineups in
21 an investigation?

22 A: Once a suspect is developed in a case and we can obtain a
23 sufficient photo of the suspect, we send that photo or photos
24 to SLED, which they produce a photo lineup for us, which is
25 containing six photos of individuals with the same

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1 characteristics and features. They then send that back to us,
2 which we print out and show to a victim or witness to attempt
3 to identify the suspect.

4 Q: Was that ever done in this case?

5 A: Yes, sir.

6 Q: Do you recall who you showed that item to?

7 A: I showed it to the victim, Ms. Sparkman.

8 Q: Do you recall what day that was done?

9 A: 3/20/2017.

10 Q: Do you have any routine you go through when you show a
11 witness a photo lineup? Is there any certain things you talk
12 to them or say to them? What's your process for showing it to
13 them?

14 A: The process is I usually place the photo lineup on the
15 table in front of them and I ask them, do you recognize the
16 suspect or individual from any of those photographs?

17 Q: Do you in any way indicate who to pick or who to select?

18 A: No.

19 Q: Do you recall what you -- how did you actually do this
20 process with Ms. Sparkman that day?

21 A: I set it on the table in front of her where, I believe
22 she probably took control of the paper, slid it towards her.
23 And I don't know the exact words, but I probably told her, do
24 you recognize the suspect from any of these photos?

25 Q: And what did she do at that time?

1 A: She selected Number 3.

2 Q: How long did it take her? Do you recall how long it took
3 her to pick somebody out?

4 A: I don't recall the exact time, but it wasn't that long.

5 Q: How positive was she?

6 A: She was very positive.

7 Q: Did she do anything to indicate who she selected?

8 A: She -- I had her circle the photo that she selected and
9 initial beside it.

10 Q: I think you looked at the date on it; who wrote the date
11 on it?

12 A: I believe that's my handwriting.

13 Q: Is there a time on it as well?

14 A: 3:25 P.M.

15 Q: And what would that time indicate?

16 A: When the photo lineup was showed to Ms. Sparkman.

17 Q: If you would just repeat that date and time for the jury,
18 please?

19 A: 3/20 -- 3/20/2017 at 3:25 P.M.

20 Q: Do you recall approximately what time the call was given
21 for the robbery early that morning?

22 A: The report indicates the dispatch time was 8:56 in the
23 morning.

24 Q: Did you know the identity of the person she selected on
25 the photo lineup?

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1 A: Yes, sir, at the time she selected, I did.

2 Q: And who was that person?

3 A: John Linen.

4 Q: Is that person in the courtroom today?

5 A: Yes, sir.

6 Q: What did you do -- after she circled and initialed this
7 and you dated it, what did you do with this actual photo
8 lineup itself?

9 A: The original copy that she circled and initialed is put
10 -- placed into evidence.

11 Q: You recognize this as the original?

12 A: Yes, sir.

13 Q: Did you turn that into the evidence locker then?

14 A: Yes, sir.

15 MR. POWELL: Your Honor, at this time, the state would
16 move to be allowed to be put into evidence what was previously
17 marked as State's Exhibit 3.

18 THE COURT: Any objection?

19 MR. EDGEWORTH: No objection, Your Honor.

20 THE COURT: State's Exhibit 3 admitted into evidence
21 without objection.

22 STATE'S EXHIBIT NUMBER 3

23 ADMITTED INTO EVIDENCE

24 MR. POWELL: One second, Judge?

25 THE COURT: All right.

1 BY MR. POWELL:

2 Q: Did your agency end up getting arrest warrants on Mr.
3 Linen that day?

4 A: Yes, sir.

5 Q: What did you do after the arrest warrants were obtained?

6 A: We -- I believe we located where his residence was and
7 attempted to make contact with him at the residence.

8 Q: Did you end up gonna the residence that day?

9 A: Yes, sir.

10 Q: Do you recall what time of day it was?

11 A: It was later on in the afternoon.

12 Q: You physically had arrest warrants when you went there;
13 do you recall?

14 A: I believe we had them at that time, yes.

15 Q: Did you understand at least they had been issued at that
16 point?

17 A: I'm not sure, but I believe so.

18 Q: Do you recall the address that you went to, to look for
19 Mr. Linen?

20 A: ██████████.

21 Q: Do you recall whether you obtained the search warrant
22 before going to his residence?

23 A: Yes, sir; we did.

24 Q: Who obtained that search warrant?

25 A: I did.

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1 Q: And what was the search warrant for?

2 A: A search of the residence.

3 Q: Did it include the yard or just the home or what did it
4 include?

5 A: Yes. The search warrant is to include all rooms, attic,
6 basements, and other parts therein, all surrounding grounds,
7 and any garage, storage room, enclosed trailers, out buildings
8 of any kind located upon said property, as well as all persons
9 at the premise, vehicles owned, operated by person at the
10 premises and surrounding curtilage.

11 Q: Thank you, officer.

12 Tell the jury what happened when you arrived at this
13 location?

14 A: Upon arrival to the location, we, like I said, attempted
15 to make contact with Mr. Linen by calling him out on the
16 intercom on the patrol vehicle with negative results. I
17 believe one family member showed up. We asked them if they
18 knew if Mr. Linen was inside. They said they didn't believe
19 so. And I believe shortly after his father arrived and
20 advised us that Mr. Linen was inside the house when he left
21 shortly before. We asked -- I believe we asked him if Mr.
22 Linen goes by any other names and they said yes. I can't
23 remember what the name was, but we ended up calling that name
24 and made contact with him in the -- I believe it was the
25 window closest to the corner of the front of the house.

1 Q: He eventually came outside?

2 A: He eventually came outside and surrounded to us.

3 Q: Was the arrest warrant served on him then or was he
4 detained?

5 A: He was detained.

6 Q: Verbally arrested?

7 A: Yeah, he was detained.

8 Q: Anybody take photographs at this location that day?

9 A: Yes, sir; I did.

10 MR. POWELL: May I approach the witness, Judge?

11 THE COURT: Yes.

12 BY MR. POWELL:

13 Q: Officer Griffith, I'd like to show you what was marked
14 previously for identification purposes as State's Exhibits 6
15 through 18. Can you look at that and see whether you
16 recognize them, sir?

17 A: Yes, sir; these are the photos that I took.

18 Q: Did you see any alterations or editing or anything
19 anybody has done to them since you took them?

20 A: No, sir.

21 Q: Do you believe they are accurate and a complete
22 representation, copies of those photographs you took?

23 A: Yes, sir.

24 Q: The photographs that you took that day, were they turned
25 into the Georgetown Sheriff evidence locker room by yourself

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1 as well?

2 A: Yes, sir.

3 Q: Officer Griffith, I'd like to show what was marked for
4 identification as State's Exhibit 6. Can you identify what
5 that's a photograph of?

6 A: That's a photograph of Mr. Linen's residence.

7 Q: You talking about the home you went to to find Mr. Linen?

8 A: Yes, sir.

9 Q: The location where he was arrested that day?

10 A: Yes, sir.

11 Q: I'd like to show you what was marked for identification,
12 State's Exhibit 18, can you identify what that's a photograph
13 of?

14 A: It's a photograph of a wallet with what seems to be Mr.
15 Linen's South Carolina driver's license.

16 Q: Do you recall where that was obtained at?

17 A: I believe the residence.

18 Q: Inside the home?

19 A: Yes, sir.

20 Q: I'd like to show you what's marked for identification as
21 State's Exhibit 7, can you identify what that's a photograph
22 of?

23 A: The area between the residence that we searched and, I
24 guess, the side -- side view of it along with the -- I don't
25 know how you want to describe that -- the abandoned building

1 or ---

2 Q: A concrete block kind of ---

3 A: Yeah, concrete block building.

4 Q: Outdoor picture of the home and yard; would that be
5 correct?

6 A: Correct.

7 Q: I'd like to show you what was marked for identification
8 as State's Exhibit 17. Could you identify what that's a
9 picture of?

10 A: A pair of blue jeans found in the floor.

11 Q: Floor where

12 A: Of, I believe, Mr. Linen's bedroom.

13 Q: Inside the residence?

14 A: Yes, sir.

15 Q: I'd like to show you what was marked for identification
16 as State's Exhibit 16, could you tell the jury what that's a
17 photograph of?

18 A: It's a pair of black boots found on the floor.

19 Q: Down in the floor where ---

20 A: Of Mr. Linen's bedroom.

21 Q: And what was marked as State's Exhibit 10 for
22 identification, what is that a photograph of?

23 A: That's a photograph of a bag located beside the concrete
24 brick building.

25 Q: Do you recall what type of bag it was?

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1 A: It was a food -- fast food bag.

2 Q: Is that concrete building the same as what was shown in
3 the picture that included the residence?

4 A: Yes, sir.

5 Q: And we're talking about the block building that was in
6 State's Exhibit 7 that we talked about a minute ago?

7 A: Correct.

8 Q: If you would look at what's marked State's Exhibit 9 and
9 State's Exhibit 8, can you identify what those two pictures
10 are of?

11 A: They're a picture of the same bag, but at a different
12 angle.

13 Q: Both of them?

14 A: Yes, sir.

15 Q: By that concrete building?

16 A: Correct.

17 Q: And what photograph Number 11 is showing?

18 A: It's a closer -- closer photo to the bag itself.

19 Q: By the concrete building?

20 A: By the concrete building.

21 Q: And what's marked for identification as State's Exhibit
22 12, what is that a photograph of?

23 A: It is a photograph of the bag along with the pistol and
24 holster found inside the bag.

25 Q: By the concrete building?

1 A: By the concrete building.

2 Q: I'd like to show you what was marked State Exhibit 13 and
3 14, what are those pictures of?

4 A: These are pictures of the pistol. I believe these were
5 taken in the lab after it was brought back to the sheriff's
6 office.

7 Q: Both pictures taken at the sheriff's office?

8 A: Yes, sir.

9 Q: This is the gun found in the bag by the concrete
10 building?

11 A: Correct.

12 Q: I'd like to show you what was marked as Exhibit 15, can
13 you identify what this is a photograph of, sir?

14 A: These are photographs of ammunition.

15 Q: And where did you find -- where were that ammunition
16 found at?

17 A: I believe with the pistol.

18 Q: Was the pistol loaded? Was it loose in the bag; do you
19 recall?

20 A: Yes, sir; it was loaded.

21 Q: All these pictures were turned into the evidence locker?
22 I think we asked that already; is that correct?

23 A: Correct.

24 MR. POWELL: Your Honor, at this time, we'd like to
25 offer to put into evidence -- let me get them in order -- it'd

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1 be items for exhibit -- for identification purposes it would
2 be Item -- I'll just run through them, Judge -- 15, 14, 13,
3 12, 11, 9, 8, 7, 10, 16, 17, 18, and 6. We'd like to move for
4 those numbers exhibits to put into evidence, Judge.

5 THE COURT: All right. Any objection?

6 MR. EDGEWORTH: No objection, Your Honor.

7 THE COURT: All right. State's exhibits 15, 14, 13, 12,
8 11, 9, 8, 7, 10, 16, 17, 18, and 6 are admitted into evidence
9 without objection.

10 MR. POWELL: Thank you, Judge.

11 THE COURT: Thank you.

12 STATE'S EXHIBITS NUMBER 6 THROUGH 18

13 ADMITTED INTO EVIDENCE

14 MR. POWELL: One second, Judge?

15 THE COURT: All right.

16 BY MR. POWELL:

17 Q: Officer Griffith, what county was the Dollar General
18 store you went to that day located in?

19 A: Georgetown County.

20 Q: I have no further questions at this time. Please answer
21 any defense counsel, Officer Griffith.

22 THE COURT: All right. Cross examination?

23 MR. EDGEWORTH: Thank you, Your Honor.

24 CROSS EXAMINATION OF JONATHAN KYLE GRIFFITH BY MR. EDGEWORTH:

25 Q: All right. Investigator Griffith, you were, of course,

1 on the scene at the Dollar General?

2 A: Yes, sir.

3 Q: And did you have the opportunity to speak to Ms.
4 Sparkman?

5 A: I did. I don't know -- I can't recall what I asked her.
6 I didn't ask her much, if any.

7 Q: Okay. So, you were primarily just going around and along
8 with the ---

9 A: Yes.

10 Q: --- photos and collecting the items that you just
11 discussed; is that correct?

12 A: Correct.

13 Q: Okay. Now, the -- the bag here, your understanding was
14 is that the suspect was the person who grabbed this bag and
15 put it at the counter, correct?

16 A: Correct.

17 Q: And -- and that is the reason why y'all attempted to take
18 the -- the fingerprints off of the bag; is that right?

19 A: Correct.

20 Q: Okay. And, and, and you had -- you had your assistant
21 take it to Horry County?

22 A: Correct.

23 Q: So, they could determine whether or not they could find
24 any fingerprints, right?

25 A: Correct.

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1 Q: Okay. And was this -- was this placed in this bag to
2 take it up to Horry County?

3 A: That wasn't taken to Horry County; the fingerprint cards
4 were.

5 Q: Okay. So, when you took -- when you did the lift kit or
6 whatever, then you take those up to Horry County, right?

7 A: Yes, sir.

8 Q: And but the intent of it is to determine whether you can
9 get the prints off of it?

10 A: Correct.

11 Q: And your understanding was is that the prints of -- of
12 the -- of the suspect would be on -- on this particular item,
13 right?

14 A: Correct.

15 Q: Okay. And the results of that were that they couldn't
16 find the fingerprints, correct?

17 A: Correct.

18 Q: Okay. And so, you don't have any fingerprints of Mr.
19 Linen on there?

20 A: No, sir.

21 Q: Okay. And as -- as far as the items that were retrieved
22 from the home -- where is 178 Dalton?

23 A: 178 Dalton is located off of Brown's Ferry Road.

24 Q: Okay. And how far would you say would that be from the
25 Dollar General?

1 A: I couldn't say.

2 Q: Okay. You didn't drive from there to go there or ---

3 A: I didn't drive from Dollar General to there; we -- I
4 believe we responded from the sheriff's office to go there.

5 Q: Okay. And that would have been after you -- you had the
6 -- the interview, so to speak, with Ms. Sparkman?

7 A: Correct.

8 Q: Okay. Now, you were the one who presented the lineup to
9 Ms. Sparkman, correct?

10 A: Correct.

11 Q: All right. And when you -- in this building, is it like
12 an interrogation room, what kind of room is it?

13 A: I can't -- I don't recall where we showed her the photo
14 lineup.

15 Q: Okay. Is there a room?

16 A: It was in the building, though.

17 Q: Okay. So, but you set her aside in order to do that,
18 correct?

19 A: Correct.

20 Q: Was -- was the -- the meeting with you and her recorded?

21 A: I don't recall. I don't believe it was. It doesn't say
22 in my narrative.

23 Q: Yeah, so, it's fair to say then that we don't have a
24 complete picture of what went on in that room at the time,
25 right?

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1 A: Correct.

2 Q: Like we have videos of these other instances where the
3 officers will go to the scene and we have body cam or what
4 not?

5 A: Correct.

6 Q: Okay. And isn't it normal that when you -- when you're
7 speaking with a witness or a suspect, that you would record
8 the meeting?

9 A: Usually, we record if we're interviewing her. We usually
10 don't record if we just show them photo lineups.

11 Q: So, you have a policy just not to record the photo
12 lineups?

13 A: It's not a policy; it's just -- it's not a practice that
14 we do.

15 Q: Okay. So, you didn't do it on this occasion, right?

16 A: Correct.

17 Q: Okay. But your testimony was still that you sat down --
18 you sat at a table, slid this document across to her?

19 A: I placed it on the table, I did not -- I didn't slide it
20 to her.

21 Q: Okay. My apologies. I thought you said that you slid it
22 across the table but, nevertheless, you gave her the document.
23 Now, did you look at it before you gave it to her?

24 A: Yes.

25 Q: Okay. Did you review it?

1 A: Yes.

2 Q: Did you -- did you know when you looked at it that a
3 photo of Mr. Linen was in the document?

4 A: Correct.

5 Q: Okay. And so, you knew where he was on -- on the photo,
6 correct?

7 A: Correct.

8 Q: Were you privy to the photos that were submitted to SLED
9 in order to make the lineup?

10 A: No, I wasn't.

11 Q: Okay. So, when you got it though, you looked at it and
12 you knew that Mr. Linen was in it despite that fact, correct?

13 A: Correct.

14 Q: Okay. How did you know Mr. Linen?

15 A: Where we identified him through the other -- the
16 investigation.

17 Q: Okay. Now, when you get these lineups from SLED, they --
18 they present you with the photos, correct, the photos of
19 individuals to submit to the witness?

20 A: Yes, sir.

21 Q: Okay. Is it typical that they put the suspect that you
22 provided them in the top right-hand corner?

23 A: No, that's not typical. They can put them anywhere on
24 there they want.

25 Q: Have you ever noticed a pattern that they tend to put the

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1 suspect that you provided them in the top right-hand corner?

2 A: No, I've never noticed a pattern.

3 Q: You've never noticed a pattern? Okay. Are you aware
4 that, of course, you're English speaking that you read from
5 left to right?

6 A: Right.

7 Q: So, then the page goes to the right, so your eyes move
8 from left to right, correct?

9 A: Correct.

10 Q: And you always start at the top of the page when you're
11 reading?

12 A: Right.

13 Q: Okay. So, your eyes will stop at the right-hand side in
14 the top corner, correct?

15 A: Uh-huh, (affirmative response).

16 Q: Okay. Now, so, your eyes would go to the top right-hand
17 corner of a photo lineup, right?

18 A: Uh-huh, (affirmative response). Yes, sir.

19 Q: Is that a yes?

20 A: Yes, sir.

21 Q: Okay. And this is where Mr. Linen's photo is in this
22 lineup, isn't it?

23 A: Correct.

24 Q: Okay. Have you -- do you pay close attention to the
25 lineups before you give it to them in order to make sure that,

1 in your opinion, there's nothing suggestive?

2 A: I do. I make sure that -- that, you know, they're
3 quality pictures that they use and there is no -- I just make
4 sure everything looks good before I show it to them.

5 Q: In your opinion, right?

6 A: Yes.

7 Q: Okay. Making sure that there's nothing, you know, in
8 your mind that would be suggestive in the photo?

9 A: Correct.

10 Q: Other than the fact it's in the top right-hand corner?

11 A: Correct.

12 Q: Okay. So, did you look at this one to make sure that
13 there was nothing suggestive in the photo?

14 A: Correct.

15 Q: You did?

16 A: Yes.

17 Q: Okay. I'm gonna show it to you and ask you if you see
18 anything that's not suggestive in that photo.

19 A: It looks good to me.

20 Q: Does it? It looks consistent all the way through?

21 A: Yes, sir.

22 Q: It does? Okay. I'm gonna point your attention now to
23 the caption underneath the photo of Mr. Linen and ask if that
24 is consistent with the rest of the captions underneath the
25 photo?

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1 A: What are you asking?

2 Q: Do you see a caption underneath the photo of the persons
3 in the photo array?

4 A: Yes, sir, that's the number, the photo number.

5 Q: Okay. Do you -- can you recognize a difference between
6 the caption underneath the photo of Mr. Linen and the photo of
7 the others?

8 A: Yes, sir. One, for some odd reason one is used in
9 capital -- capital letters.

10 Q: In fact, it's the only one in that photo array where all
11 letters are capitalized, correct?

12 A: Uh-huh, (affirmative response).

13 Q: Is that a yes?

14 A: Yes.

15 Q: Okay. Do you agree with me that that would be
16 suggestive?

17 A: No.

18 Q: You don't agree with me -- do you agree with me that that
19 would be something to catch someone's eye?

20 A: If you're looking for it.

21 Q: Okay. You agree that it is different, correct?

22 A: Yes, they are different.

23 Q: And you agree that the photo is in the top right-hand
24 corner, correct?

25 A: Correct.

1 Q: Now, you went to the -- to the home of Mr. Linen to
2 execute the search warrant; is that correct?

3 A: Correct.

4 Q: And you've testified that you were the one who went
5 around this time and took the photos and that was not
6 Investigator Mintz; is that right?

7 A: Correct.

8 Q: Okay. I'm gonna show you what has now been marked as
9 State's Exhibit 18. And your testimony is that that's a
10 wallet in which you found the ID of Mr. Linen; is that
11 correct?

12 A: Correct.

13 Q: Did you find any money in it?

14 A: I don't recall.

15 Q: You don't recall? If you would've found money in it,
16 would you have taken a picture of it?

17 A: Yes.

18 Q: So, it's fair to say then, since there's no picture of
19 the money that there probably wasn't any in his wallet,
20 correct?

21 A: Correct.

22 Q: Did you find any money during your search?

23 A: No, sir.

24 Q: To your knowledge, was there money taken from the robbery
25 at the Dollar General?

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1 A: Yes, sir.

2 Q: How much money was taken?

3 A: I believe 134, I believe is what the number was.

4 Q: \$134; is that right?

5 A: Correct.

6 Q: Okay. During your search, did you find anything that was
7 new that he may have purchased?

8 A: No, sir, not that I recall.

9 Q: And you didn't find any loose \$100 bills or ones or 20s
10 or anything around?

11 A: No, sir.

12 Q: You guys were there approximately at, what, 3 o'clock in
13 the afternoon executing the search warrant?

14 A: Yes, that or a little after.

15 Q: Okay. And how long do you believe you to be there?

16 A: I couldn't -- I couldn't say. I don't recall.

17 Q: Okay. I'm gonna show you what has been marked as State's
18 Exhibit 13. Now, that is the gun that you testified that you
19 found in the Wendy's bag on the next-door neighbor's property?

20 A: Correct, it is the gun we found in the bag.

21 Q: Okay. On the next-door neighbor's property, right?

22 A: I don't know if that was the next-door neighbor's
23 property.

24 Q: Okay. Well, do you know that it was Mr. Linen's
25 property?

- 1 A: I don't recall.
- 2 Q: You don't know?
- 3 A: I don't know.
- 4 Q: It could be the next-door neighbor's property, correct?
- 5 A: It could be; I don't know.
- 6 Q: And just for clarification, the condition in which you
7 found it was not like this, right? This is a photo -- the
8 property had been moved and just sitting in the holster?
- 9 A: Correct, that's from the lab.
- 10 Q: What color is the handle?
- 11 A: On the pistol?
- 12 Q: That's correct.
- 13 A: Brown.
- 14 Q: And you found the ammunition inside of that pistol,
15 correct?
- 16 A: Correct.
- 17 Q: It wasn't just laying there on some table?
- 18 A: No.
- 19 Q: Not in Mr. Linen's home?
- 20 A: No, sir.
- 21 Q: You didn't find the gun in Mr. Linen's home, correct?
- 22 A: Correct, it was found outside.
- 23 Q: Did you find any food in the bag when you -- when you
24 opened it up?
- 25 A: I don't recall.

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1 Q: Okay. Did you look?

2 A: I'm sure I did, I just don't recall if there was food in
3 there or not.

4 Q: If there would've been food in the bag, you would've
5 taken a photo of that, right?

6 A: Correct.

7 Q: So, since we don't have a photo of food, we can -- we can
8 ---

9 A: I don't believe those are all the photos from the scene.

10 Q: Okay. Well, do you recall whether or not there was food
11 in the bag?

12 A: I don't recall.

13 Q: Okay. Did you speak to anyone as part of your
14 investigation other than taking the photos?

15 A: Other than speaking to some of the family members that
16 arrived.

17 Q: Do you recall who those family members were?

18 A: I know I spoke to Mr. Linen's father. I don't know who
19 the other people were.

20 Q: Did you have any conversations with him?

21 A: Not of any extent.

22 Q: Okay. But he informed you that -- that Mr. Linen was
23 indeed inside, correct?

24 A: Informed me along with the other officers, correct.

25 Q: Okay. So, were you there when he came out of -- out of

1 the house?

2 A: Correct.

3 Q: And he did come out there voluntarily, correct?

4 A: Correct.

5 MR. EDGEWORTH: I have no further questions for this
6 witness, Your Honor. Thank you.

7 THE COURT: All right. Redirect?

8 REDIRECT EXAMINATION OF JONATHAN KYLE GRIFFITH BY MR. POWELL:

9 Q: Officer Griffith, approximately what time that day did
10 the robbery take place?

11 A: Um ---

12 Q: An easier question, what time did you arrive at the
13 Dollar General store?

14 A: I don't recall. I don't -- I couldn't -- I couldn't give
15 you an approximate time without a CAD sheet.

16 Q: Do you have your investigative report with you?

17 A: I do have the investigative report.

18 Q: If you take a minute and look through it, do you think
19 you might refresh your memory?

20 A: I do not have it documented what time I arrived. I do
21 have the date.

22 Q: Anything on the investigative report about when the call
23 came in?

24 A: Dispatch time was 8:56 in the morning. I believe the
25 initial deputy arrived at 9:02 is what it says.

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BY THE COURT

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1 Q: And what time did you go to the address to do the arrest
2 of Mr. Linen, approximate time?

3 A: Later on that afternoon after we spoke with Ms. Sparkman.

4 Q: Do you know whether it was before 3:00, after 3:00; you
5 got a ballpark time?

6 A: I couldn't tell you. I couldn't give you an approximate
7 time.

8 Q: Was it after the photo lineup was shown to Ms. Sparkman?

9 A: Yes. So, it would have to be after, after that time.

10 Q: I'd like to show you what's in evidence as State's
11 Exhibit 3. Does that refresh your memory as to the time you
12 showed the photo lineup?

13 A: 3:25 P.M.

14 Q: You went to do the arrest after that then? Would that be
15 correct?

16 A: Correct.

17 MR. POWELL: No further questions of this witness,
18 Judge.

19 THE COURT: All right.

20 MR. POWELL: Thank you, Officer Griffith.

21 THE COURT: You may step down.

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, we're gonna
24 go ahead and break for the day. It's 5 o'clock. I'm gonna
25 let you go home for the evening. I'm gonna ask you to please

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1 be back at 9:15 tomorrow morning just like this morning. Do
2 not discuss the case even among yourselves. Don't conduct any
3 independent investigations into the case. Don't discuss it
4 with anyone. I hope everybody has a good evening and we'll
5 see you back at 9:15 tomorrow morning.

6 Thank you very much.

7 Everyone else please remain seated while the jury is
8 excused.

9 (REPORTER'S NOTE: Jury exits courtroom @ 5:02 P.M.)

10 THE COURT: All right. Anything from the state before
11 we recess for the evening?

12 MR. POWELL: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. EDGEWORTH: Nothing from the defense, Your Honor.

15 THE COURT: All right. We'll be in recess.

16 I'll take the bench at 9:30 tomorrow morning.

17 MR. EDGEWORTH: Yes, sir. Thank you.

18 MR. POWELL: Your Honor, I don't know -- it's been a long
19 day. So, I don't know exactly what we talked about when we
20 came back from lunch break. The SLED expert witness is
21 supposed to be here by 10:00 in the morning.

22 THE COURT: Okay.

23 MR. POWELL: Just we talked about doing the proffer
24 hearing.

25 THE COURT: Yeah, we'll need to do that. I mean, is that

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BY THE COURT

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1 gonna be first up?

2 MR. POWELL: I presume we need to get it out of the way,
3 Judge, was my thought process, so we know about any of the
4 other witnesses that were tied into the ---

5 THE COURT: Well, I'll take the bench at 9:30 tomorrow
6 morning. So, if you're ready to do that, we'll go ahead and
7 do that.

8 MR. POWELL: Yes, sir.

9 THE COURT: 9:30 tomorrow morning. All right?

10 **RECESS - 5:04 P.M. - END OF DAY TWO**

11 *******OFF THE RECORD*******

12 **NOVEMBER 14, 2019 - DAY THREE**

13 **(On the Record - 9:38 A.M.)**

14 THE COURT: All right. Anything from the state before we
15 bring the jury in?

16 MR. POWELL: No, Your Honor, just that it's my
17 understanding, the SLED people have gotten here. So, sometime
18 a little bit later this morning, we can do that proffer
19 hearing, but we have three witnesses we're prepared to put up.
20 We could do that before we break to do the hearing?

21 THE COURT: However you want to do it.

22 MR. POWELL: We're ready with three witnesses, so we
23 might as well get started and get that testimony over with,
24 will be fine with us, Judge.

25 THE COURT: Anything from the defense?

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ROBERT SARVIS - DIRECT BY POWELL

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1 MR. EDGEWORTH: Nothing from the defense, Your Honor.

2 THE COURT: All right. Let's go ahead and bring the jury
3 in.

4 (REPORTER'S NOTE: Jury enters courtroom @ 9:40 A.M.)

5 THE COURT: Ladies and gentlemen, welcome back. I hope
6 everyone had a good evening. Again, I want to thank you for
7 being prompt and being on time this morning. That's a great
8 assistance to the Court.

9 We're ready to resume with the trial of this case. I'll
10 remind you, if you have any cell phones or pagers, turn those
11 off at this time. Okay?

12 All right. The state can call your next witness.

13 MR. POWELL: Your Honor, it please the Court, we'd call
14 Officer Robbie Sarvis to the stand.

15 ROBERT SARVIS, HAVING BEEN SWORN TESTIFIES
16 AS FOLLOWS:

17 CLERK: Thank you. Please be seated and state your full
18 name for the record.

19 MR. SARVIS: Robert Sarvis.

20 DIRECT EXAMINATION OF ROBERT SARVIS BY MR. POWELL:

21 Q: Officer Sarvis, where do you work, sir?

22 A: At the Georgetown County Sheriff's Office, Investigations
23 Division.

24 Q: What is your position there?

25 A: I'm the lieutenant over that division.

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ROBERT SARVIS - DIRECT BY POWELL

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1 Q: What are your duties with respect to being lieutenant over
2 that division?

3 A: Just overseeing the unit as a whole, the daily workings,
4 investigative process and keeping everything on track pretty
5 much.

6 Q: Explain a little bit more just about -- you're talking
7 about investigators, what is the CID; what division are you
8 talking about?

9 A: It's a Criminal Investigations Division. It's -- the
10 follow-up investigation of crimes that can't be concluded on
11 the scene or immediately by road patrol, stuff of that nature.

12 Q: You basically supervise the investigators at the
13 sheriff's office?

14 A: Yes.

15 Q: How long have you worked for the sheriff's department?

16 A: Approximately 14 years.

17 Q: Any other prior law enforcement experience?

18 A: Yes, I've worked in Richland County as well as on patrol,
19 and narcotics unit, and investigations there. And prior to
20 that, I was here for several years prior to going there. So,
21 probably a total of 22 years.

22 Q: Were you working with the Georgetown County Sheriff then
23 back on March 20th, 2017?

24 A: Yes, sir; I was.

25 Q: Were you wearing any type of body camera system on that

1 day?

2 A: No, sir; I was not.

3 Q: Is it routine for you and your investigators to wear body
4 cameras?

5 A: No, sir; we're not issued body cameras.

6 Q: You were not back in March of 2017?

7 A: No.

8 Q: What took place that day?

9 A: There was an armed robbery that occurred at the Dollar
10 General on North Fraser Street in the, I want to say roughly
11 8:45, 8:50 in the morning, and we responded to that. Several
12 investigators as well as the patrol units responded to that
13 location.

14 Q: Is that store located in Georgetown County?

15 A: It is.

16 Q: What happened when you got to the store?

17 A: When I got there, a perimeter had been set up, roped off.
18 Some investigators were already on scene as well as some
19 patrol units. I think at that time, Investigator Magann was
20 inside trying to locate video of the incident on the system.
21 I began -- once the investigators on scene were doing what
22 they were doing, I began to canvas a field area to the left of
23 the store, just looking for anything that may've been
24 discarded or dropped. I did that for a period of time while
25 the other investigators were doing their respective duties.

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ROBERT SARVIS - DIRECT BY POWELL

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1 Q: Were you able to find anything of any importance that ---

2 A: I did not.

3 Q: Well, what happened after you did that perimeter search?

4 A: By that time, the investigators inside, Investigator
5 Magann and Investigator Griffith had -- Magann had been able
6 to locate video and disseminate or get it out to people. And
7 Investigator Griffith was actually in the process of
8 overseeing the photographs being collected and processing the
9 crime scene itself.

10 Q: Did -- your understanding that sometime during the course
11 of that day, a suspect was identified as the perpetrator?

12 A: Yeah, I was advised later that one of our deputies at the
13 time, Allen Flagler, actually had seen the picture that was
14 sent out and was able to identify him as someone he has known
15 for some period of time.

16 Q: Is it your understanding on that day that arrest warrants
17 were finally obtained during the course of the day?

18 A: Yes, sir. I think after that identification, I think
19 they did some other follow-up with other departments, state
20 departments and lineups were -- a lineup was obtained also for
21 the victim. And subsequent to that, an arrest warrant was
22 obtained for Mr. Linen, John Linen.

23 Q: What did your agency do after the arrest warrants were
24 obtained?

25 A: Well, in addition to the arrest warrant, a search warrant

1 was obtained for the residence, his residence, and after
2 obtaining the search warrants, these arrest warrants and the
3 search warrant, we briefed and went to the location to serve
4 the arrest warrants and conduct a search of the property.

5 Q: Do you recall approximately what time you went to the
6 location you thought he would be found at?

7 A: I want to say it was around 5:15 or something of that
8 nature; 5:15, 5:30.

9 Q: What took place that you observed when you got to this
10 residence?

11 A: We arrived at the residence, several investigators and
12 marked units. Of the marked units, we also had a canine unit
13 with us. And once we arrived, we tried to make contact
14 knocking on doors, knocking on the door, knocking on windows,
15 had no contact. Shortly after we were there, a female --
16 female family member pulled up at the house in the driveway.
17 I think she explained to me that it was her father's house and
18 he had left. So, I was able to ask her if she could establish
19 contact with him and maybe get him to come back so we could
20 speak with him. So, she did, and he did in fact come back.
21 And, we explained to him why were there as to the arrest
22 warrants and the search warrant. This was all taking time,
23 him getting back, us explaining to him why were there, and so
24 we were continually trying to call out anyone in the house or
25 establish contact with someone in the house. And when he got

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1 back, it was to the point that we were gonna retrieve a key
2 from him and make contact -- make entry into the house. We --
3 based on the nature of what we were dealing with, the intent
4 of the entry at that time was gonna be to -- after speaking
5 with the father and establishing there was no children or
6 animals in the house and shouldn't have been anyone other than
7 the defendant in the house, we were going to clear the house
8 with the canine to begin with, based on the type of crime we
9 were dealing with.

10 Meanwhile, deputies were still trying to make contact by
11 beating on doors, windows, and eventually contact was made. I
12 think we were probably there 30 to 45 minutes of trying to
13 establish contact with someone in the house before we actually
14 were able to.

15 Q: Who ultimately came out of the house?

16 A: The defendant, Mr. Linen.

17 Q: What did you do with him personally, did you detain him;
18 what did you do at that point in time?

19 A: At that time, he was detained. I personally didn't
20 detain him, but he was -- he come out, he was detained and
21 handed off to a marked unit to be secured.

22 Q: What took place -- what took place subsequent to him
23 coming out and being secured then?

24 A: After he was secured, I think Investigator Magann was
25 tasked with trying to speak with him. I don't think that went

1 well. So, probably 10 minutes after him being secured, he was
2 then transported to the detention center as we were beginning
3 our search of the property.

4 Q: What part did you take place -- what portion of the
5 search were you involved in?

6 A: I assisted with the search overall. I initially went in
7 the house and began helping search through the house with the
8 other investigators there. Due to the size of the house and
9 the search, the way it was going inside the house, I then
10 moved my area, I just went outside and started searching the
11 outside of the house and perimeter of the property.

12 Q: Did you ultimately find anything that you thought was
13 relevant to the case?

14 A: Yes, I did. Just off of the house, approximately
15 probably 20 feet off the side of the house, adjacent to the
16 bedroom of Mr. Linen, was a dilapidated structure, building of
17 some sort. Located beside this building was a fairly fresh
18 looking Wendy's bag. Once I observed the bag, it stuck out;
19 it was out of place. I moved it enough to establish that it
20 had significant weight to it, and I looked in it enough to see
21 there was a pistol, revolver inside of it.

22 Q: Did you remove the pistol from the bag?

23 A: I did not.

24 Q: What was the reason for you not doing that?

25 A: Well, at that time, once I determined what it was, we had

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1 already established that Investigator Griffith would be the
2 person collecting the evidence. So, I, rather than put myself
3 in that particular part of it, chain of it, I contacted --
4 Investigator Griffith was inside, and he come out and
5 photographed it as I had found it and he collected it.

6 Q: Is that a routine procedure when you execute a search
7 warrant to assign someone to actually collect items of
8 significance?

9 A: Yes, sir, I found that was normally the best course of
10 just keeping the chain.

11 MR. POWELL: May I approach the witness, Judge?

12 THE COURT: Yes.

13 BY MR. POWELL:

14 Q: Officer Sarvis, I'd like to show you what's been
15 introduced as evidence as State's Exhibit 6 and see if you
16 recognize what that's a photograph of?

17 A: Yes. This is the house on Dalton, Mr. Linen's house that
18 we went to.

19 Q: I'd like to show you what's been introduced as State's
20 Exhibit 7, a photograph, could you explain to the jury what
21 that is a photograph of?

22 A: Yes, this would be the -- I guess, facing the house, this
23 would be the right side in the house, the side of the house
24 that Mr. Linen's bedroom was on and the dilapidated structure
25 where the bag was found beside.

1 Q: The first picture, which is State's Exhibit 6, do you see
2 that a stone, excuse me, a dilapidated building, which are
3 your words, do you see the other structure as well as the
4 home?

5 A: Yes, you can see the side of it in that picture as well.

6 Q: I'd like to show you what's marked or into evidence as
7 State's Exhibit 8. Can you tell the jury what you're seeing
8 in that photograph?

9 A: Yes, this is the location of the bag or it's the bag and
10 its location where it was located.

11 Q: Would that have been basically what you saw that caught
12 your attention that day?

13 A: Yes, sir; it was.

14 Q: Now, I'd like to show you what's in evidence as State
15 Exhibit 9, the same thing, if you would just tell the jury
16 what we're seeing?

17 A: It's the bag beside the structure from a different angle.

18 Q: And the same, if you would say what State Exhibit 10 is.

19 A: Yet another angle that also pictures the building or the
20 structure and the bag itself.

21 Q: I know it's repetitious, but can you say what State's
22 Exhibit 11 is?

23 A: Another angle with a closer view of the bag and beside
24 the structure.

25 MR. POWELL: Your Honor, I'd like to be able to publish

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1 these to the jury if I may?

2 THE COURT: All right.

3 (REPORTER'S NOTE: State's Exhibits 6, 8, 9, and 10 published
4 to the jury.)

5 BY MR. POWELL:

6 Q: Officer, I'd like to show you what's been marked for
7 identification purposes only as State's Exhibit 30 and see if
8 you can recognize it?

9 MR. POWELL: Your Honor, once again, this has been
10 secured and can't be fired.

11 THE COURT: All right.

12 MR. POWELL: It was marked for identification as State's
13 Exhibit 30.

14 BY MR. POWELL:

15 Q: Officer Sarvis, can you look at this and please tell the
16 jury where you recognize what you're looking at?

17 A: Yes, sir, the weapon -- the pistol that was inside of the
18 bag, the Wendy's bag.

19 Q: Your agency recovered it that day from that arrest scene?

20 A: Yes, sir.

21 Q: Do you see any way it's been manipulated or faked or
22 anything of that nature? It appears the gun collected that
23 day?

24 A: Yes, sir.

25 Q: Are you sure about that?

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1 A: Yes, sir.

2 MR. POWELL: Your Honor, at this time, we'd like to
3 introduce what was previously marked for identification as
4 State's Exhibit 30 into evidence as State's Exhibit 30?

5 THE COURT: Any objection?

6 MR. EDGEWORTH: Yes, Your Honor. I don't think there is
7 proper chain of custody here. The witness testified that he
8 wasn't the person who collected the evidence.

9 MR. POWELL: Officer Griffith testified yesterday he
10 collected it and turned it in to the Georgetown County
11 Sheriff's Department.

12 THE COURT: All right. I'm gonna admit State's Exhibit
13 30 over the defendant's objection.

14 STATE'S EXHIBIT NUMBER 30

15 ADMITTED INTO EVIDENCE

16 BY MR. POWELL:

17 Q: Mr. Sarvis, I don't have any further questions. Please
18 answer any questions defense counsel has.

19 A: Yes, sir.

20 THE COURT: All right, Mr. Edgeworth. You can either
21 cross examine now or wait until they've finished reviewing the
22 photos, whichever you prefer.

23 MR. EDGEWORTH: I'll just go ahead and ---

24 THE COURT: Okay. He wanted to go ahead and publish
25 them, so I won't make you cross examine if you want to wait

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1 until they finish. But whatever you want to do.

2 MR. EDGEWORTH: That's fine, Your Honor.

3 THE COURT: All right. We'll let them finish.

4 All right, Mr. Edgeworth.

5 CROSS EXAMINATION OF ROBERT SARVIS BY MR. EDGEWORTH:

6 Q: All right. Investigator Sarvis, in your duties as an
7 investigator and in particularly on this case, you testified
8 that you are primarily looking in the outside at the location,
9 the Dollar General location; is that correct?

10 A: At the location itself, yes, I -- once I got there and
11 everybody else was doing the duties that they were, I began
12 canvassing that field area, primarily.

13 Q: Okay. And even though you're outside, you were familiar
14 with some of the statements by -- by the witness, or excuse
15 me, Ms. Sparkman, to include that the suspect was wearing a
16 black hoodie; is that right?

17 A: Yes, that was being briefed by investigators inside,
18 Magann and Griffith.

19 Q: Right, but you were aware of that, correct?

20 A: Yes.

21 Q: Okay. And you're -- did you become aware or did you know
22 at that time that the suspect did in fact get away with money
23 from, from the register?

24 A: Yeah, at that time, but I didn't know how much.

25 Q: But you knew there was money?

1 A: But I do know that some money got gone.

2 Q: Okay. So, and in general, you would assume in a robbery
3 that someone is getting something, correct?

4 A: Yes.

5 Q: Okay. Now, now you -- we -- we saw during some of the
6 video that was played to the jury of, I believe it was Officer
7 Wilson, who was walking out and saw you in a field, you were
8 looking out in a field behind the Dollar General; do you
9 recall doing that?

10 A: As I -- yes, that's what I was just saying, there is a
11 field adjacent, I think it may even kind of go behind it but,
12 yes.

13 Q: Okay. But you were out there and you stated that you
14 were looking for things, drops and discards, right?

15 A: Yes.

16 Q: Okay. Now, were you also aware about the fact that Ms.
17 Sparkman had been restrained?

18 A: I don't know at that time if I was or not. I obviously
19 learned it at some point but, at that time, I don't know if I
20 was aware of it.

21 Q: Well, originally you went inside the Dollar General,
22 right; you were in there walking around? That's what the
23 video showed anyway.

24 A: Perhaps. If I did, I didn't -- other than going in and
25 checking to scene out, I don't know that I had any other

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1 activities in there.

2 Q: Okay. But you know now that she was restrained, right?

3 A: Yes.

4 Q: And you know that she had had some type of, you know, zip
5 tie on her wrists?

6 A: Correct.

7 Q: And that had been cut off?

8 A: Yes, my -- I think possibly cut off by the -- a witness
9 or something.

10 Q: Okay. Now, when you were out in the field, did you find
11 the black hoodie?

12 A: No, I found nothing of any evidence in the fields.

13 Q: Okay. Did you find any extra zip ties?

14 A: I found nothing in the fields of any evidence.

15 Q: Did you find any money?

16 A: No.

17 Q: Okay. Now, when you were on the scene at Mr. Linen's
18 house, again, you're working primarily outside the property
19 during your searches you just testified, correct?

20 A: I was both in and out.

21 Q: Okay. And you stated on examination that you found what
22 appeared to be a fresh looking Wendy's bag?

23 A: Yes.

24 Q: Okay. When you opened it up or when it was opened up,
25 was there any food in there?

1 A: I don't recall. I didn't take the contents out of the
2 bag, so I don't know what exactly was in the bag other than
3 seeing the gun in the bag.

4 Q: Did you -- did you have the opportunity to actually
5 review or look at the bag during -- even though you weren't
6 the one who originally opened it up?

7 A: Yes, I was there when it was, I think, the gun was pulled
8 out of the bag and photographed.

9 Q: Okay. Okay. So, when you were there, was there any food
10 inside?

11 A: I don't recall looking into the bag.

12 Q: Okay. Did you see any food remnants?

13 A: Again, I saw the gun and I didn't go any further in the
14 bag than seeing the gun.

15 Q: Okay. So -- so as soon as you saw the gun, you just
16 stopped investigating altogether far as the bag was concerned;
17 is that correct?

18 A: No, I actually called the person who was collecting the
19 evidence so he could come and photograph it and collect it.

20 Q: And to your knowledge, was there anything else found in
21 the bag?

22 A: Again, I don't know.

23 Q: Okay.

24 MR. EDGEWORTH: No further questions, Your Honor.

25 THE COURT: All right. Redirect?

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1 MR. POWELL: No, Your Honor.

2 THE COURT: All right. You may step down.

3 MR. SARVIS: Thank you.

4 THE COURT: The state would call Lieutenant Carrison to
5 the stand.

6 EVEREST HENRY CARRISON, II, HAVING BEEN
7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Thank you. Please be seated and state your full
9 name for the record.

10 MR. CARRISON: My name is Everest Henry Carrison, II. I
11 go by Hank, generally.

12 DIRECT EXAMINATION OF EVEREST HENRY CARRISON, II BY MR.
13 POWELL:

14 Q: Officer Carrison, where do you work, sir?

15 A: Georgetown County Sheriff's Office.

16 Q: How long have you been working there?

17 A: A little over five years.

18 Q: Any prior law enforcement experience?

19 A: A year with the town of Pawley's Island Police Department
20 and about three with the City of Myrtle Beach Police
21 Department.

22 Q: What's your current position with the sheriff's office
23 here?

24 A: Investigator.

25 Q: Were you working with the Georgetown Sheriff's Office

1 back in March 20th, 2017 then?

2 A: Yes, sir.

3 Q: What was your position with them on that date?

4 A: I was an investigator then as well.

5 Q: Were you physically working on that day?

6 A: Yes, sir; I was.

7 Q: Were you equipped with any body camera system that day?

8 A: No, sir.

9 Q: Was it routine back in March of 2017 for investigators to
10 wear body cameras?

11 A: No, sir.

12 Q: What took place on that date?

13 A: A kidnapping and armed robbery incident at the Dollar
14 General near Choppee and 701.

15 Q: Did you respond to that location that morning?

16 A: Yes, sir; I did.

17 Q: What did you see or observe when you got there?

18 A: I had assisted with setting up a perimeter. I didn't see
19 much as far as the actual incident location. I was looking at
20 possible avenues of ingress or egress that the suspect or
21 suspects may have taken, scouting the woods looking for
22 evidence along the roadside and things along that nature.

23 Q: Basically you were outside?

24 A: Yes, sir.

25 Q: To your knowledge -- on that day, to your knowledge was

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1 there eventually a suspect identified?

2 A: Yes, sir, there was.

3 Q: And who was -- what was your understanding that day who
4 it was?

5 A: I believe the suspect identified was John Linen, sir.

6 Q: Were you aware that day whether arrest warrants were
7 obtained for him?

8 A: Yes, sir; they were.

9 Q: Was there a search warrant obtained for the location he
10 was believed to be at?

11 A: Yes, sir.

12 Q: Did you participate in gonna that arrest scene?

13 A: Yes, sir; I did.

14 Q: Please tell the jury what took place when you went there
15 that you saw?

16 A: I had first went by the house to kind of just get an idea
17 for the scene, get a description of the house so the search
18 warrant could be prepared and to see if there were any
19 vehicles or anything in the driveway, obtain some photographs
20 or at least a description of the house, took it back. The
21 search warrant was prepared. We went back and with arrest
22 warrants and a search warrant in hand. We believed the
23 suspect to be in the residence. So, CID and, I think, the ICE
24 Team was with us, a couple of specialized patrol deputies. We
25 attempted to talk them out of the house over a PA loud

1 speaker. At one point in time, when we established a
2 perimeter at the house, we heard some thumping in the front
3 right-hand corner of it, which was later determined to be Mr.
4 Linen's bedroom. We believed him to still be in the house,
5 and we just kept trying to talk him out and eventually we were
6 successful.

7 Q: How long did that process take, do you recall?

8 A: It was about -- about a half hour. We were talking, we
9 were calling his name, Mr. Linen, John, things along that
10 nature. I struck up a conversation with some neighbors. I
11 asked them what do you call him, does he have a nickname or
12 something like that, and I believe they said, I believe they
13 called him Boo. I think it was Boo; don't hold me to that.
14 But we called him Boo. So, I go back over there and I tap on
15 the window and I said, hey, Boo and I heard a yeah, coming
16 back from inside. I said this is the police man and you need
17 to come outside and after a couple of minutes he ended up
18 coming out without incident.

19 Q: And were you involved in anything else after he came
20 outside?

21 A: After he was secured and placed into custody and placed
22 in one of the back of the cars, I assisted with the search of
23 the interior of the residence.

24 Q: Thank you, Officer Carrison. I have no further questions
25 of you. Please answer any defense counsel has.

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EVEREST HENRY CARRISON - CROSS BY EDGEWORTH

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1 A: Yes, sir.

2 CROSS EXAMINATION OF EVEREST HENRY CARRISON, II, BY MR.

3 EDGEWORTH:

4 Q: Just quickly. So, as soon as you called his nickname
5 that you gathered from a neighbor, he did in fact come out,
6 correct?

7 A: He didn't come out, but he did respond, yes, sir.

8 Q: He responded?

9 A: Yes, sir.

10 Q: Is it possible he was asleep?

11 A: I suppose anything is possible.

12 Q: And then when he heard his nickname, he woke up and
13 answered you?

14 A: I suppose it's a possibility.

15 Q: And then he came out voluntarily, correct?

16 A: He did come out without incident. It took a little bit
17 of coaxing, but, you know, we have a warrant and things along
18 that nature, a little bit of back and forth, but he was -- he
19 came out without incident and didn't put up a fight.

20 Q: Sure, you properly advised him why you were there and
21 then he came out?

22 A: Yes, sir.

23 Q: And you didn't have to ram the door down?

24 A: Correct.

25 Q: You didn't have to kick it in?

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DAVID ASWAD - DIRECT BY POWELL

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1 A: Correct.

2 Q: There was no gunfire?

3 A: Correct. Thankfully.

4 Q: Okay. No further questions.

5 THE COURT: Redirect?

6 MR. POWELL: No, Your Honor.

7 THE COURT: All right. You may step down.

8 MR. CARRISON: Thank you, sir.

9 THE COURT: Thank you.

10 MR. POWELL: Your Honor, next we would call Officer Dawud
11 Aswad.

12 DAWUD ASWAD, HAVING BEEN SWORN TESTIFIES

13 AS FOLLOWS:

14 CLERK: Thank you. Please be seated and state your full
15 name for the record.

16 MR. ASWAD: My name is Investigator Dawud Aswad.

17 THE COURT: Spell your name, please?

18 MR. ASWAD: D-A-W-U-D.

19 THE COURT: D-A-W what?

20 MR. ASWAD: --- U-D.

21 THE COURT: And your last name?

22 MR. ASWAD: A-S-W-A-D.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION OF DAWUD ASWAD BY MR. POWELL:

25 Q: Officer Aswad, where do you work, sir?

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DAVID ASWAD - DIRECT BY POWELL

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1 A: I currently work at the Georgetown County Sheriff's
2 Office.

3 Q: How long have you worked there?

4 A: I've been employed there for approximately seven and a
5 half years.

6 Q: Any prior law enforcement experience?

7 A: Not before Georgetown; no, sir.

8 Q: What's your current position at the sheriff office?

9 A: I'm assigned to the Criminal Investigations Division as a
10 senior investigator.

11 Q: Now, what do those duties entail?

12 A: It includes investigating cases within the county with
13 whatever cases are assigned.

14 Q: Were you working there back on March 20th, 2017?

15 A: Yes, I was.

16 Q: What was your position there at that point in time?

17 A: Investigator with the Criminal Investigations Division.
18 I'm also assigned to cell phone forensics for the unit.

19 Q: As a law enforcement officer, have you ever done a cell
20 phone dump?

21 A: Yes, sir.

22 Q: Would you please explain to the jury what a cell phone
23 dump is?

24 A: The cell phone dump is also called a cell phone
25 extraction. The extraction is a machine and there's training

1 that go along with the machine where you put the phone on the
2 machine and the machine extracts all of the data off of the
3 phone. At that point, it puts it in a format where you can
4 view the data on a computer. And that data is text messages,
5 phone calls, internet browsing history, and those kinds of
6 things that can be found inside of the phone.

7 Q: Back in March of 2017, had you received any training or
8 anything of that nature, education in doing that cell phone
9 dump or extraction?

10 A: Yes, sir. I am a certified Cellebrite physical analyst
11 and operator. That means I am certified to use and decode the
12 machine and the information.

13 Q: Let's -- and I'd like to be clear about one thing. I
14 didn't ask the question specifically enough. Back in March of
15 2017, what kind of information were you able to obtain
16 possibly with the extraction cell dump process?

17 A: With an extraction, there are multiple types, but in a
18 general extraction, we're gonna get whatever is on the phone.
19 Depending on the brand of the phone, it limits the information
20 we're able to obtain from the phone. Obviously, the phones on
21 the higher end, you're able to get more information because
22 they store more information. The phones on the lower end,
23 you're very limited to the data you can get from those phones.

24 Q: And what you just testified, was that applicable back in
25 March of 2017?

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DAVID ASWAD - CROSS BY EDGEWORTH

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1 A: That's correct.

2 Q: Back in March of 2017, were you aware whether any cell
3 phones were collected at the arrest scene of Mr. Linen?

4 A: Yes, I was notified by my lieutenant, Robert Sarvis, in
5 reference to two cellular phones that was recovered after a
6 lawful search warrant. The cell phones were given to me for
7 cell phone extraction. I then obtained two search warrants
8 for both of the phones. After I obtained the search warrants,
9 I went to conduct the Cellebrite certified extractions on the
10 devices.

11 Q: What kind of results do you have from doing that?

12 A: I was able to get an extraction from both devices and we
13 talked about the scale of phone. The phone was for a lower
14 end and the information was obtained and reviewed following
15 the search warrant.

16 Q: Would there have been any possibility at that time of
17 getting GPS information off of those phones?

18 A: No, sir.

19 Q: Thank you, officer, I have no further questions at this
20 time. Please answer any defense counsel has.

21 THE COURT: Cross examination?

22 MR. EDGEWORTH: Thank you, Your Honor.

23 CROSS EXAMINATION OF DAWUD ASWAD BY MR. EDGEWORTH:

24 Q: Investigator, we missed a real key point in those
25 questions, so we'll make sure we get that in. All right. So,

1 this tool that you use, the Cellebrite is a -- a investigative
2 tool that not only Georgetown County Sheriff's Office
3 utilizes, but law enforcement uses pretty much across the
4 board, correct?

5 A: That's correct.

6 Q: And this -- this technology is used so that you can go
7 back and see if there's any communications between like co-
8 conspirators or whoever may be involved or maybe there's
9 comments or text messages regarding a crime, correct?

10 A: Yes, sir.

11 Q: And in fact, this -- this Cellebrite extraction has been
12 used in many occasions to provide proof of a crime, correct?

13 A: That's correct.

14 Q: Which is the reason why they called you in to get -- to
15 do the Cellebrite; is that right?

16 A: That's correct.

17 Q: Okay. In your Cellebrite extraction of not one but two
18 phones, did you find anything remotely connected to my client
19 as it relates to this crime?

20 A: There was nothing in the phone that incriminated your
21 client.

22 Q: That's just a fancy way of saying you didn't find
23 anything, right?

24 A: That's correct.

25 Q: Okay. No further questions.

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BY THE COURT

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1 THE COURT: Redirect?

2 MR. POWELL: No, Your Honor.

3 THE COURT: All right. You may step down.

4 MS. ASWAD: Thank you.

5 MR. POWELL: Can counsel approach, Judge?

6 THE COURT: Yes.

7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence of but outside the hearing of the jury.)

9 BY THE COURT:

10 THE COURT: Ladies and gentlemen, we've got some
11 scheduling matters that we've got to work with. It's probably
12 gonna take the rest of the morning. So, I'm gonna go ahead
13 and excuse you for a very, very early lunch. Be back at 1:30.
14 And this just happens sometimes in trials and I -- I apologize
15 for doing this, but when you do have trials that involve
16 different agencies and different cities and trying to get
17 witnesses lined up and get them here to testify, it does take
18 some time, it does take coordination, particularly, when you
19 have them and they have to appear in multiple courts
20 throughout the day in different counties and it takes some
21 time, and I apologize for that but that's just the way it is.

22 So, I'm gonna excuse you until 1:30 this afternoon.
23 Please do not discuss the case even among yourselves. Don't
24 conduct any independent investigation. I hope you have a good
25 late breakfast, brunch, early lunch, and we'll see you back at

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1 1:30.

2 Thank you very much.

3 (REPORTER'S NOTE: Jury exits courtroom @ 10:17 A.M. The
4 following takes place outside the presence of the jury.)

5 THE COURT: All right. Are we ready to get into the
6 proffer testimony now?

7 MR. POWELL: I need a brief break, Judge, so I can go
8 down and roust up everybody.

9 THE COURT: All right. Let's go ahead and get everything
10 ready so we can go ahead with that.

11 MR. POWELL: I just need 10 minutes or so, Judge.

12 THE COURT: Yeah. And I don't know that you have to
13 proffer everything. I'm gonna be honest with you. The major
14 thing -- and the reason I'm requiring this proffer evidence,
15 proffer testimony is because I understand this is a new
16 procedure. There's no appellant decisions that shows whether
17 or not it's reliable or admissible. I've got some real
18 concerns with the report where we have three known samples,
19 but it just picks out the defendants and it doesn't pick out
20 the victim or the other person whose DNA we know is on there
21 as well. And the report that says that it cannot be used for
22 CODIS; you can't turn it in to CODIS. So, that raises a
23 question in my mind as to how reliable it is and that's the
24 major things I'm looking for.

25 MR. POWELL: We'll probably all get an education this

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1 morning, Judge.

2 THE COURT: And that's the thing. It's a new procedure
3 and I think we all need educated on, and so, before I let a
4 jury hear it, I want to find out about it. Okay?

5 MR. POWELL: Thank you, Judge.

6 MR. EDGEWORTH: Thank you, Judge.

7 THE COURT: All right. How long do you need?

8 MR. POWELL: Ten minutes, Judge.

9 THE COURT: All right. We'll take a 10-minute break.

10 MR. POWELL: Enough for everybody to have a break.

11 THE COURT: All right. We'll take a 10-minute break and
12 then we'll come right back.

13 MR. POWELL: Thank you, Judge.

14 **RECESS - 10:19 A.M.**

15 *****OFF THE RECORD*****

16 **(On the Record - 10:38 A.M.)**

17 (REPORTER'S NOTE: The following takes place outside the
18 presence of the jury.)

19 THE COURT: All right. Are we ready to go forward with
20 the proffered testimony?

21 MR. POWELL: Yes, Your Honor.

22 THE COURT: All right. The state can call your first
23 witness.

24 MR. EDGEWORTH: Your Honor, if I may?

25 THE COURT: All right.

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1 MR. EDGEWORTH: I would like to object to the fact it
2 appears that a different solicitor is prosecuting this proffer
3 hearing. I believe in the long run, if this solicitor is
4 intending on presenting the evidence if it's found to be
5 admissible, you know, it may appear to give a different weight
6 to the testimony by showing some inconsistency as to who is
7 presenting this evidence.

8 THE COURT: Yeah, but I'm gonna allow them to do it.
9 They're both with the solicitor's office. Many times you have
10 multiple solicitors in the prosecution of a case. So, I'm
11 gonna allow it.

12 MR. TODD: Thank you, your Honor.

13 The state calls Sara Goodman.

14 SARA GOODMAN, HAVING BEEN DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 CLERK: Thank you. Please be seated and state your full
17 name for the record.

18 MS. GOODMAN: My name is Sara Goodman. Last name is
19 spelled G-O-O-D-M-A-N.

20 THE COURT: Sara is S-A-R-A ---

21 MS. GOODMAN: Yes, sir.

22 THE COURT: --- H?

23 MS. GOODMAN: No H.

24 THE COURT: No H. Thank you.

25 DIRECT PROFFER EXAMINATION OF SARA GOODMAN BY MR. TODD:

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1 Q: Ms. Goodman, who do you work for?

2 A: I work for the South Carolina Law Enforcement Division,
3 commonly referred to as SLED.

4 Q: And what department do you work in?

5 A: I work in the DNA Casework Department.

6 Q: And tell us about your path to working in the DNA
7 Department; what did you do educational wise?

8 A: So, I have a Bachelor's of Science degree in biology from
9 Erskine College and a Master's of Science in forensic science
10 from Arcadia University, which is in Pennsylvania.

11 Q: And once you graduated from there, you went into the
12 field of DNA; is that correct?

13 A: I did, yes.

14 Q: And where did you start your career in DNA?

15 A: At SLED.

16 Q: Okay. So that was your first job?

17 A: Yes.

18 Q: Okay. With working with SLED, do you do any additional
19 training while you're there?

20 A: I do. So, upon employment at SLED, I went through a
21 little over a year-long training program with another court
22 qualified analyst, so that included laboratory and report
23 writing and practical instructions. And then, at the end of
24 that training, I successfully completed a series of competency
25 tests to be certified to perform DNA casework.

1 Q: And is that pretty much what you do at SLED is purely the
2 DNA evidence?

3 A: Yes, that is all I do at SLED is DNA casework.

4 Q: Okay. And as far as testimony, have you ever been in
5 court before?

6 A: I have, yes.

7 Q: Have you ever been qualified as an expert?

8 A: Yes.

9 Q: How many times?

10 A: Approximately 10 times.

11 Q: In what field were you qualified as an expert in?

12 A: In DNA analysis.

13 Q: Okay. And when was the most recent time that you've been
14 qualified as an expert?

15 A: Yesterday in Charleston.

16 Q: Okay. And that was in DNA analysis; is that correct?

17 A: Yes, that's correct.

18 MR. TODD: Your Honor, at this time, I'd like to present
19 this witness as an expert in the field of DNA analysis?

20 THE COURT: All right. Any questions or challenges?

21 MR. EDGEWORTH: I have some questions.

22 THE COURT: All right. Go ahead.

23 VOIR DIRE PROFFER EXAMINATION OF SARA GOODMAN BY MR.

24 EDGEWORTH:

25 Q: Does DNA analysis include the procedure of testing known

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1 as STRmix?

2 A: Yes, it does.

3 Q: And what kind of experience do you have in using or -- I
4 don't even know what the right word is for this particular
5 program -- but in that type of analysis?

6 A: In STRmix, I also completed a competency test to be
7 certified to use that statistics program.

8 Q: Okay. And who was the test provided by?

9 A: By SLED.

10 Q: And is the -- is the test something that SLED created or
11 did it come from the manufacturer of the program?

12 A: We were trained initially by the developers of the
13 program, but as far as our competency test to be certified to
14 use it within our laboratory, that was created internally.

15 Q: Is the -- is the test utilized so that you can run the
16 program or do you physically do something as it relates to the
17 DNA?

18 A: Could you -- so, as far as the process used to develop a
19 DNA profile, all of that is still the same. STRmix is just a
20 statistics program that we use as a tool to calculate our
21 statistics now. So, nothing about the DNA profile changes;
22 it's just a different type of statistical calculation.

23 MR. TODD: Your Honor, for right now, we were just trying
24 to qualify her as an expert in DNA. I have a whole litany of
25 questions as far as the tools that she uses, which I ---

1 THE COURT: Okay, but if you get -- he's trying to
2 qualify what she can testify to.

3 MR. TODD: Right.

4 THE COURT: So, just because she's qualified as a DNA
5 expert, doesn't mean that she can get into this other
6 statistical program.

7 MR. TODD: That is correct, Your Honor, and as far as
8 what my first half was is she an expert in DNA analysis,
9 because she would have to be able to do that before she could
10 use the program.

11 THE COURT: Okay. But this is still during the
12 qualification. I'm gonna allow him to go forward with his
13 questioning. Go ahead.

14 MR. EDGEWORTH: Thank you, Your Honor.

15 BY MR. EDGEWORTH:

16 Q: So, in regards to the qualifications as it relates to the
17 STRmix program, you took a class or took a test to be
18 qualified to run the program?

19 A: Both. So, we took a class from the developers of the
20 program initially, and then we did an internal validation for
21 our agency to use the program. And so, once that validation
22 was complete, our agency developed a test to be -- to test
23 whether we could use the program sufficiently and correctly
24 and that we were getting the correct answers as far as using
25 the program, so both of those.

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1 Q: Okay. Well, how long was this class that the developers
2 had you sit for?

3 A: For the training by the developers, that was a four-day
4 long training program.

5 Q: And the test that was presented to you by SLED, what kind
6 of test was that?

7 A: That was a written test.

8 Q: And what was involved in this written test?

9 A: So, the test included the interpretation of DNA profiles
10 and -- and the use of the STRmix program to calculate
11 statistics for those DNA profiles, making comparisons.

12 Q: Okay. So, is your ability to use the STRmix program just
13 them qualifying you to insert your data into their program?
14 What exactly is it, because my understanding is that STRmix is
15 essentially a computer program; is that correct?

16 A: Yes, it's a statistical computer program.

17 Q: So, did they -- did they say that you're eligible to put
18 the information that you generate into this program?

19 A: Yes.

20 Q: So, your qualification in regards to -- well, put it this
21 way, have you been qualified as an expert in presenting STRmix
22 testimony?

23 A: We have not typically -- we're not typically qualified
24 separately in STRmix. Typically, our qualifications as a DNA
25 expert encompasses these statistical calculations that we use,

1 which it was the same prior to using STRmix. We were not
2 typically separately qualified in statistics; it just fell
3 under the training and qualifications that we have as a DNA
4 analyst.

5 Q: When you -- when you get information, essentially spit
6 out by this computer program, do you just put it on paper or
7 do you take that information and turn it into something else?

8 A: We do our own analysis and interpretation before and
9 after we use the program. So, after we get the results from
10 STRmix, we individually review that data ourselves and make
11 sure that we also agree with the analysis before we do any
12 comparisons with that data.

13 Q: Okay. So, agreeing with the analysis from the computer
14 program?

15 A: Yes.

16 Q: And do you have the ability to disagree with that
17 analysis?

18 A: We do. So, in our training for STRmix from the
19 developers, we learned the formulas that the program uses and
20 how the program works. So, we have the ability to do the same
21 calculations by hand if we so choose. So, we are able to --
22 and their program has different tools within it to -- that we
23 use as tools to tell us how well the analysis performed.

24 Q: Does SLED consider the -- you being a DNA analyst to
25 encompass the interpretation of the STRmix, S-T-R-mix program?

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SARA GOODMAN - VOIR DIRE BY EDGEWORTH

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1 A: Yes.

2 Q: Have you ever presented in front of a court and attempted
3 to be qualified as a expert in the interpretation of that data
4 for STRmix?

5 A: Not specifically just for STRmix, no, just as a DNA
6 analyst.

7 Q: Have you ever given any testimony as it relates to
8 STRmix?

9 A: Yes, I have.

10 Q: How recently was that?

11 A: That was yesterday in Charleston.

12 Q: Okay.

13 MR. EDGEWORTH: I have no further questions, Your Honor.

14 THE COURT: All right. Well, for the purposes of this
15 hearing, I find her to be qualified as an expert in DNA
16 analysis. Now, how far -- I'm gonna have to listen to your
17 questions to see how it coincides with this STRmix and whether
18 or not she's qualified to give an opinion. Because as I
19 understand in this case, SLED came back at least three DNAs
20 unidentifiable. Then they came up with this STRmix procedure
21 where they fed it into the program and they identified one of
22 them.

23 MR. TODD: Somewhat, yes. We'll go -- and that was
24 actually the second half of what I'm gonna do and go into
25 those for Your Honor.

1 THE COURT: All right. Go ahead.

2 CONTINUATION OF DIRECT PROFFER EXAMINATION OF SARA GOODMAN BY

3 MR. TODD:

4 Q: Well, let's start off this way. Now, through being an
5 analyst at SLED in DNA, SLED has started using the STRmix,
6 correct?

7 A: Correct.

8 Q: And when did they start that?

9 A: We came online with STRmix in September of 2018.

10 Q: And were we the first agency and first state to use it?

11 A: No, we were not.

12 Q: Okay. Can you tell us a little bit about other agencies
13 in our country that use it?

14 A: Sure. So, there is 47 other laboratories within the U.S.
15 that are online or using STRmix in casework and there's
16 approximately 30 other labs that are currently validating it.
17 So, there's other labs within the country. It's been used in
18 the U.S. since 2014. The U.S. Army laboratory came online --
19 was the first to come online within the United States.

20 Q: And to your knowledge, does the FBI use this mix as well?

21 A: Yes, they do. They came online with it in 2015.

22 Q: And to your knowledge, has there been testimony about the
23 STRmix in the Federal Court system?

24 A: Yes.

25 Q: Okay. Now, we've been using it -- the state has been

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1 using it roughly for about a year; is that correct?

2 A: Yes, that is correct.

3 Q: And how many times has this been accepted into the
4 Circuit Court to your knowledge?

5 A: As of today, it's been in the Circuit Courts in South
6 Carolina 15 times.

7 Q: Okay. And has it ever, to your knowledge, has it ever
8 been rejected as a statistical tool for DNA analysis?

9 A: It has not.

10 Q: Okay. So, in the last year, it's been 15 times, correct?

11 A: Correct.

12 Q: And you've testified yourself you used it yesterday in a
13 court case in Charleston; is that correct?

14 A: Yes, that's correct.

15 Q: And it was accepted as a tool for your -- for your
16 analysis?

17 A: Yes.

18 Q: Well, tell us about what this is really; it's a computer
19 program, correct?

20 A: Correct.

21 Q: And what does it do exactly?

22 A: So, it is a statistical tool that aides in our analysis
23 and interpretation of DNA profiles. It calculates the type of
24 statistics that we use for our analyses now.

25 Q: But you still put in the information that this

1 statistical analysis would use; is that correct?

2 A: Yes.

3 Q: So, it's -- you would use your expertise as a DNA expert
4 to find information to present to this machine, I guess, or
5 input into this calculation?

6 A: Yes, so our analyses, everything about our analyses
7 before the calculation of statistics is still the same. So,
8 as far as determining that we have a DNA profile, how many
9 individuals we believe it is, whether it's usable for
10 comparisons, that is the all the same and that is all
11 something that we determine before inputting the profile into
12 STRmix.

13 Q: So, as far as looking at how many contributors there
14 would be to a sample, you do that prior to entering it into
15 this program?

16 A: Yes, correct.

17 Q: And how do you do that?

18 A: So, we look at -- for the DNA profile, the profiles that
19 we develop, it separates out your DNA into different locations
20 on the DNA and each location has what is called alleles. It's
21 basically the information from a certain individual at that
22 location, so you get one allele from your mother and one from
23 your father. So, we use the amount of alleles or information
24 present to determine the number of individuals that are
25 present in that profile.

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1 Q: So, if you were to say a profile has at least three
2 alleles ---

3 A: Uh-huh, (affirmative response).

4 Q: --- contributors, that would be your expertise that
5 you're using to look at the different alleles in that -- in
6 those locations to determine that number of people?

7 A: Correct.

8 Q: So, it's not the computer program that's spitting out,
9 oh, we think there's three people or four people; that is your
10 -- your job?

11 A: Correct, that is something that we have to input into
12 STRmix is the number of contributors.

13 Q: And would you do that before even using this STRmix
14 technology?

15 A: Yes.

16 Q: Okay. So, that was part of your duties long before this
17 program became available to SLED?

18 A: Yes.

19 STATE'S EXHIBIT NUMBER 43

20 MARKED FOR IDENTIFICATION

21 Q: Okay. If you would, take a look at State's Exhibit
22 Number 43 and this is from February 2018. Can you tell us
23 what that is?

24 A: That is my report that was issued on February 1st of 2018
25 for this case.

1 Q: Okay. Tell us about the results of -- of what that is.

2 I believe -- for Your Honor's knowledge -- this is the swabs
3 taken from a gun as well as some zip ties; is that correct?

4 A: Yes, that's correct, as well as known standards.

5 Q: Okay. Can you tell us a little about -- a little about
6 the interpretation of what your report says?

7 A: Yes, so in this particular report, four of these swabs
8 from a .38 caliber revolver, which was my Item 3, the DNA
9 profile is a mixture of at least three individuals due to the
10 inability to calculate a statistic, no further interpretation
11 will be offered.

12 Q: So, what does that mean exactly?

13 A: So, that means that there are at least three individuals
14 contributing to this DNA profile, but it -- the amount of data
15 that we had did not meet our guidelines to be able to use it
16 for statistics, which means that we were not able to use it
17 for comparisons.

18 Q: Okay. So, that is under the older technology, I guess,
19 that you had at SLED; is that correct?

20 A: Yes, we were not using STRmix at the time.

21 Q: Okay. And those three individuals that you wrote in that
22 section of that report, those are your own personal results
23 that you calculated that there is at least three individuals;
24 is that correct?

25 A: Yes, that was my interpretation of the profile.

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1 Q: And that is by looking at the different alleles in those
2 locations?

3 A: Yes.

4 Q: If you would, please continue with your report.

5 A: For the swabs from the zip tie from the chair, the DNA
6 profile is a mixture of at least three individuals. Due to
7 the inability to calculate a statistic, no further
8 interpretation will be offered.

9 Q: And from that one, your interpretation was there was more
10 than three individuals with that sample as well?

11 A: There were at least three, yes.

12 Q: At least three. When you look at that, do you look at
13 the police reports or anything else or is that just purely
14 your -- the sample sent to you?

15 A: As far as determining the number of contributors, we just
16 look at the DNA profile.

17 Q: So, you don't have to look at any other information other
18 than the DNA itself to come up with those numbers?

19 A: No.

20 Q: Okay. So, it's kind of like you're in a vacuum as far as
21 doing that part of the analysis?

22 A: Yes.

23 Q: And because of there being multiple individuals, you
24 wouldn't do any further tests from that?

25 A: Because it did not meet our guidelines to be able to

1 calculate statistics.

2 Q: Can you tell us a little bit about your guidelines back
3 then; tell us what that means exactly?

4 A: So, we have certain protocols and guidelines to help us
5 determine how much information is needed to be able to use a
6 profile for comparison. So, at this time, it did not meet the
7 guidelines that we had for mixture statistics. There was not
8 enough data for me to be able to use to calculate a mixture
9 statistic for these DNA profiles.

10 Q: And when you say data, that means like enough of
11 someone's DNA to get a -- a strong profile, I guess?

12 A: Correct, essentially.

13 Q: All right. If you would, please continue with your
14 report?

15 A: So, for the swabs from the zip tie from the counter,
16 SLED's Item 5, the DNA profile is a mixture of at least three
17 individuals. Due to the inability to calculate a statistic,
18 no further interpretation will be offered.

19 Q: So, the three samples that were sent in or three items
20 that were -- three samples from the three different items that
21 were sent in, at that point in time, the technology was not
22 there to really pull a -- or to calculate a statistic on what
23 the probability of someone's DNA being on it; is that correct?

24 A: Yes, I was not able to calculate statistics.

25 Q: Okay. And as far as when -- when you're doing these

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1 calculations, those are -- your analysis of the probability of
2 someone's DNA being in that mixture; is that correct?

3 A: Essentially, yes.

4 Q: Okay. So, it's not really the machine just kicking out
5 information, it's helping you with your calculations?

6 A: Right, it's a tool for our analysis.

7 Q: Okay. So, then time passes after that and the STRmix
8 becomes available and you did another analysis on those same
9 swabs?

10 A: I did, upon request, yes.

11 STATE'S EXHIBIT NUMBER 44

12 MARKED FOR IDENTIFICATION

13 Q: If you would, please take a look at State's Number 44.
14 Court's indulgence?

15 THE COURT: All right.

16 MR. TODD: Your Honor, do you want a copy of this so you
17 can follow along?

18 THE COURT: Is this the February 13th, 2019 report?

19 MR. TODD: Yes.

20 THE COURT: all right. I've got a copy of it at
21 pretrial.

22 MR. TODD: Okay.

23 BY MR. TODD:

24 Q: Ms. Goodman, if you would, please take a look at that
25 report; is that your report?

1 A: Yes, it is.

2 Q: Okay. And that's a report, essentially on the same items
3 that were tested before; is that correct?

4 A: Yes.

5 Q: Now, it's my understanding there was additional data that
6 was given to you for that report, such as buccal swabs from
7 the defendant, a potential witness, as well as the victim in
8 this case; is that correct?

9 A: I, for the initial report, I had buccal swabs from Mary
10 McGee and Tyesha Sparkman. For the supplemental, I had
11 received buccal swabs from John Linen.

12 Q: Okay. So, you had three separate individuals to compare
13 DNA to using your computer program as well?

14 A: Yes.

15 Q: Okay. If you would, tell us about -- well, let's start
16 with the first item in there. As I recall, there's like a --
17 how do you do this analysis? Walk us through your report on
18 what it means step by step?

19 A: What the results mean or how we ---

20 Q: How you come up with your different scenarios, how these
21 tests are done and then what the results are and what they
22 mean?

23 A: Okay. So, when we generate a DNA profile, we look at the
24 profile to make sure to see whether it meets our guidelines to
25 be able to use it for a comparison. We have protocols and

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1 guidelines that we follow that tells us whether we have enough
2 information to be able to use it for comparisons and calculate
3 statistics. So, I will look at the profile and determine
4 that. I will determine how many individuals are in that
5 profile. And then, as far as STRmix, once I've done that
6 initial analysis, I will input the DNA profile into the STRmix
7 program. What STRmix does is it deconvolutes the profiles.
8 So, it breaks down the DNA profile and it tells you the
9 different possible combinations or DNA profiles that it thinks
10 could be in that profile based off of the information that's
11 there, the alleles that are called. It tells you what
12 different combination of alleles could belong to someone in
13 that profile. So, STRmix does that, and then once we get that
14 result we review that result, make sure the analysis performed
15 correctly, that we agree with those combinations, that they
16 are intuitive to the DNA profile. And then once we agree with
17 that analysis, we will then input our known -- the DNA
18 profiles of our known standards into STRmix, and it does a
19 comparison between the evidence profile and the known
20 standards, and it will calculate statistics for, basically,
21 the probability of whether or not an individual could or could
22 not be included in the profile.

23 Q: So, it's purely probability or the likelihood of this
24 person's DNA is in that mixture?

25 A: Right, it calculates a statistic called likelihood

1 ratios, which is basically a comparison of two different
2 scenarios that could explain the DNA profile and each scenario
3 is typically aligned with a known standard.

4 Q: And when you say a known standard, that would be the
5 swabs that you receive as part of your analysis or from law
6 enforcement, they'll send you those swabs and that would be
7 your knowns; is that correct?

8 A: Correct.

9 Q: Okay. And then there's always gonna be some unknowns; is
10 that fair to say, that there's gonna be some things that are
11 -- would you calculate for any unknowns or how does that work?

12 A: We cannot make comparisons for unknowns, but that is
13 something that STRmix can take into account. But as far as
14 calculating statistics, we don't calculate statistics for
15 unknowns.

16 Q: Okay. Well, walk us through -- so your comparison
17 standards, you found first that you had DNA profiles that were
18 suitable. So, those would be the buccal swabs, correct?

19 A: Correct.

20 Q: So, those were something that could be used to determine
21 whether or not if those people in the mixture were comparable
22 to the -- the known standards?

23 A: Right, we can use the DNA profiles from the known
24 standards were suitable to be used for comparisons.

25 Q: Okay. So, let's look at your items of -- of evidence.

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1 Number 3, that's swabs from the .38 caliber, correct?

2 A: Yes.

3 Q: Okay. Now, it says here that due to the complexity of
4 the mixture, DNA profile is not suitable; what does that mean
5 exactly?

6 A: So, that basically also means that the data that we have
7 for this profile is not suitable to be able to calculate
8 statistics or make comparisons with our current guidelines.

9 Q: So, as far as the revolver, so the swab that you got off
10 or that you received from the revolver, that either meant
11 there wasn't enough DNA or the mixture was too complicated or
12 both?

13 A: Correct, in this case, it was due to the complexity of
14 that mixture. I was unable to use it for comparisons.

15 Q: Okay. So, then with -- with that being too complex, you
16 would not enter that into the STRmix or you just couldn't get
17 any results from it; is that correct?

18 A: I did not enter this into STRmix, no.

19 Q: Okay. All right. So, let's go down to Number 4. Tell
20 us about what that is.

21 A: Number 4 is swabs from the zip tie from the chair.

22 Q: Okay. Tell us what these -- what it means the
23 proposition set 1, 2 and 3; tell us about what those are?

24 A: So, a proposition set -- for each proposition set, it
25 aligns with each likelihood ratio that we calculate. So,

1 again, a likelihood ratio is basically a comparison of two
2 different scenarios or explanations to explain that this
3 particular DNA profile. So, each proposition set is a
4 likelihood ratio that was calculated for each of the known
5 standards in this case.

6 Q: Okay. And tell us about those -- those -- what those
7 sets are, like what do they mean?

8 A: Okay. So, proposition set 1, the DNA profile was
9 interpreted as a mixture originating from three individuals.
10 So, for this proposition set, it's comparing the explanation
11 that Mary McGee and two unidentified, unrelated individuals
12 could've contributed to the mixture versus the scenario that
13 three unidentified, unrelated individuals contributed to the
14 mixture instead, and the result for that comparison is that
15 Mary McGee is excluded as a contributor to the mixture under
16 this listed proposition.

17 Q: So, what you're doing is you're actually looking at Mary
18 McGee's DNA that you received from her and trying to see if
19 you can extract it from this scenario?

20 A: Yes. So, yes, STRmix looks at the DNA profile from the
21 known standard and compares it to the DNA profile from the
22 evidence to see whether it's a possibility that they may be
23 included.

24 Q: And with this proposition set 1, it says that she is not?

25 A: Correct.

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1 Q: Okay. Is it possible that someone could touch something
2 and not leave enough DNA to get a sample?

3 A: That is possible.

4 Q: Why -- why would that be? We would assume that if
5 somebody touches something, that they would leave something
6 behind; is that ---

7 A: There's some -- there's many different factors that can
8 play into that. Some of them, it can depend on how much DNA a
9 person sheds. People shed different amounts of DNA when they
10 touch certain items. It can depend on how long they touch it,
11 whether it was touching their skin, where -- where the item
12 was swabbed can depend on whether or not that -- a person's
13 DNA was in that area.

14 Q: So, it's possible that someone touched the zip tie and --
15 and didn't leave enough DNA or any DNA behind?

16 A: It could be possible, yes.

17 Q: Okay. Or if they just didn't touch it at all, then that
18 would ---

19 A: Yes.

20 Q: All right. Well, let's go on to proposition set 2; tell
21 us about what that is?

22 A: Sure. For this one, the DNA profile was interpreted as a
23 mixture originating from three individuals. The two scenarios
24 for this one is Tyesha Sparkman and two unidentified,
25 unrelated individuals contributed to the mixture versus three

1 unidentified, unrelated individuals contributed to the
2 mixture, and the result for that comparison is Tyesha Sparkman
3 is excluded as a contributor to the mixture under the listed
4 propositions.

5 Q: Okay. So, again, you took her DNA and compared it to
6 this mixture and could not pull her DNA specifically out of
7 it?

8 A: Correct, she is excluded from this DNA profile.

9 Q: So, in your opinion, is it possible that it just didn't
10 touch her skin?

11 A: It could be possible.

12 Q: Or that she didn't leave enough DNA behind to leave a
13 profile?

14 A: It could be possible, yes.

15 Q: Okay. I guess then also, depending on where they swabbed
16 this zip tie could be -- determine whether or not they swabbed
17 in the area where she would've touched?

18 A: That could be a factor.

19 Q: Okay. Let's go on to proposition set 3?

20 A: So, for proposition set 3, the DNA profile is interpreted
21 as a mixture originating from three individuals, and the
22 comparisons here are the scenario that John Linen and two
23 unidentified, unrelated individuals contributed to the mixture
24 versus that three unidentified, unrelated individuals
25 contributed to the mixture. The result for that comparison is

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1 the DNA profile is approximately 5.7 sextillion times more
2 likely if John Linen and two unidentified, unrelated
3 individuals contributed to the mixture, than if three
4 unidentified, unrelated individuals contributed to the
5 mixture.

6 Q: What does it mean by unidentified, unrelated?

7 A: That means an unidentified -- so, someone that we don't
8 know who it is and unrelated to that person.

9 Q: Okay. Unrelated as in not a brother or cousin?

10 A: Correct.

11 Q: Would that skew results if it was like a brother, father,
12 something along those lines?

13 A: If they're related, it can affect the results, because
14 some family members share information, share alleles. So, it
15 can affect the results somewhat.

16 Q: But the unidentified, that is a calculation y'all use
17 when doing these extractions; is that correct?

18 A: I'm not sure what you mean?

19 Q: Like as far as -- are you gonna -- you're not gonna put
20 in the other two individuals that you have in this equation,
21 are you?

22 A: No, I do not know who the other two individuals are.

23 Q: Okay. So, you just use -- you have one person's profile
24 and you're comparing that basically to an unrelated, unknown
25 individual, I guess, that would be the best way to put it?

1 A: Yes, so we can only make the comparisons for the known
2 standards that we have. Any -- anyone else that is not those
3 known standards, we don't know.

4 Q: Okay. All right. Let's go on to number 5?

5 A: Okay.

6 Q: Actually, hold on for a second. One of the issues that's
7 come up is like with this DNA profile not being suitable for
8 entry into CODIS?

9 A: Okay.

10 Q: Tell us why that would be the case?

11 A: So, CODIS has strict guidelines of how much information
12 you need to put into CODIS and what locations that we -- that
13 CODIS uses for its comparison. So, for this particular
14 profile, it did not meet those guidelines to be able to input
15 it into CODIS.

16 Q: When you say locations, what does that mean? That
17 doesn't mean like a place, that means something along with ---

18 A: The locations on the DNA profile.

19 Q: So, they'll give you a list of standards of what
20 locations you have to look at?

21 A: Essentially, so CODIS looks at certain locations to make
22 its comparisons, so there are limits or guidelines that we
23 have to need to have a minimum number of locations and
24 information to be able to input it in there. So, if we don't
25 meet that requirement, we don't input it into CODIS.

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1 Q: Is it possible for the STRmix to come up with a standard
2 that would be high enough to go into CODIS; I mean, is that a
3 possibility?

4 A: It is possible, yes.

5 Q: Is it probable though?

6 A: Yes, it just depends on the DNA profile.

7 Q: Okay. And in the last, I guess, year that you've been
8 using it, have you come up with a profile that met the
9 requirements to go into the CODIS?

10 A: I have, yes.

11 Q: Okay. So, the CODIS guidelines, you would say that they
12 would be very strict?

13 A: Yes.

14 Q: Okay. And why would that be?

15 A: Because it is a nationally regulated database. It's
16 regulated by the FBI, so they set those guidelines.

17 Q: And if the standard for, I guess, lowered, would that
18 raise a probability of too much information being put in, I
19 guess, or ---

20 A: It could be possible.

21 Q: Okay. But the FBI uses the STRmix as part of their -- in
22 their laboratories; is that correct?

23 A: They do, yes.

24 Q: All right. Well, let's go on to Number 5, swabs from the
25 countertop; can you explain those propositions and results?

1 A: So, a DNA profile suitable for comparison was developed
2 and likelihood ratios for this profile were calculated using
3 STRmix. So, for this profile, the first proposition set, the
4 DNA -- the profile was interpreted as a mixture originating
5 from three individuals. The first comparison set for this one
6 is that the first scenario is Mary McGee, and two
7 unidentified, unrelated individuals contributed to the mixture
8 versus that three unidentified, unrelated individuals
9 contributed to the mixture, and the result for this
10 proposition set is that Mary McGee is excluded as a
11 contributor to the mixture under the listed propositions.

12 Q: So, again, it's possible that she didn't touch this zip
13 tie, or hold it long enough or leave enough DNA to create a
14 profile; is that correct?

15 A: That could be possible.

16 Q: Okay. Let's go on to proposition set 2?

17 A: So, proposition set 2, the profile is interpreted as a
18 mixture originating from three individuals. The first
19 scenario is Tyesha Sparkman and two unidentified, unrelated
20 individuals contributed to the mixture versus that three
21 unidentified, unrelated individuals contributed to the
22 mixture. And the result for this comparison is that the DNA
23 profile is approximately six times more likely if three
24 unidentified, unrelated individuals contributed to the mixture
25 than if Tyesha Sparkman and two unidentified individuals

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1 contributed to the mixture.

2 Q: So, with this proposition set 2, Ms. Sparkman's DNA was
3 -- it's a probability that it's in that mixture as well?

4 A: For this particular one, she is not completely excluded,
5 but it is more likely that it's three unidentified, unrelated
6 individuals than if it were her and two unidentified,
7 unrelated individuals.

8 Q: So, again, it's possible that she didn't leave much DNA
9 behind or not enough to create a strong profile, I guess would
10 be ---

11 A: That's a possibility.

12 Q: So, if she had long sleeves on or it was over her -- over
13 her sleeves or over her jacket or over a pair of pants, she's
14 not likely to leave much DNA behind; is that correct?

15 A: That could be a factor, yes.

16 Q: Okay. And let's go on to proposition set 3.

17 A: So, for proposition set 3, the DNA profile was
18 interpreted as a mixture originating from three individuals.
19 The first scenario is John Linen and two unidentified,
20 unrelated individuals contributed to the mixture versus that
21 three unidentified, unrelated individuals contributed to the
22 mixture, and the result for that comparison is that the DNA
23 profile is approximately 3.5 quadrillion times more likely if
24 John Linen and two unidentified, unrelated individuals
25 contributed to the mixture than if three unidentified,

1 unrelated individuals contributed to the mixture.

2 Q: And again, this is showing the probability of his DNA
3 being in that mixture of -- of what was on that zip tie; is
4 that correct?

5 A: It's giving a likelihood to whether he's a possible --
6 possibly included in that mixture, yes.

7 Q: So, with this, he's 3.5 quadrillion times more likely to
8 have left his DNA on this zip tie than I guess, the unknowns;
9 is that correct?

10 A: It's 3.5 quadrillion times more likely if John Linen and
11 two unidentified, unrelated individuals contributed to the
12 mixture than if three unidentified, unrelated individuals
13 contributed.

14 Q: What does that mean exactly?

15 A: So, when STRmix calculates the likelihood ratios, as I
16 said, it's comparing those two different scenarios and giving
17 a statistical way to which one is more likely. So, for this
18 particular comparison of whether it could be possibly John
19 Linen's DNA and two other individuals versus whether it could
20 be just three unrelated, unidentified individuals, it is more
21 likely that John Linen and two unidentified, unrelated
22 individuals contributed to the mixture.

23 Q: So, what we're saying is, we're not pulling his DNA out
24 of the mixture; we're just saying we've got his DNA, we have a
25 mixture of DNA and we're comparing those pieces and it's

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1 likely his is in there?

2 A: Correct.

3 Q: Okay. And those are your opinions; this is what you use
4 to calculate your -- or to come up with your own opinion,
5 correct?

6 A: Correct, yes.

7 Q: So, you wouldn't be able to say yeah, that's absolutely
8 his DNA; it's just a likelihood that it's his?

9 A: Correct, yes.

10 Q: And when you give testimony in court, it's gonna be --
11 your opinion is gonna be that this could be his DNA in that
12 mixture, not necessarily this is without a doubt it's his;
13 again, it's your opinion on your testimony?

14 A: Yes.

15 Q: As far as the STRmix goes, has the results been peer
16 reviewed?

17 A: Yes, all of our reports are peer reviewed twice before
18 they are issued.

19 Q: And who does those?

20 A: Other analysts with -- other qualified analysts within
21 our department.

22 Q: And so, you have someone else look at your work and they
23 determine whether or not you came up with valid results. They
24 don't tell you you're wrong, but they'll tell you your results
25 are accurate?

1 A: Yes, they tell us whether they agree.

2 Q: Okay. And if they disagree, do you put that in a report

3 ---

4 A: We don't, but it is a possibility for someone to disagree
5 and, in which case, we can re-analyze data or re-look at our
6 results, but there are -- reports are not issued unless both
7 of our peer reviewers agree with the information that is in
8 that report.

9 Q: So, you're not gonna kick this report out and then --
10 objection of your superior person, it's gonna be, look, we've
11 all looked at it and we all come up with this result, and then
12 I make the report.

13 A: Right.

14 Q: Okay. How about audits; how often are the STRmix audited
15 and who does that?

16 A: So, we have external and internal audits. We're required
17 to have an external audit for our laboratory, not just for
18 STRmix specifically, at least every four years, and then we
19 have internal audits, which we do yearly.

20 Q: And what do those audits do? Do they ensure that the
21 equipment and everything is working properly?

22 A: Yes, they -- they ensure that we are meeting the
23 guidelines for the agencies that accredit our laboratory.

24 Q: And what agencies accredit your laboratory?

25 A: So, we are accredited by ANAB and by, which is a national

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1 accrediting agency for forensic laboratories, and then by
2 CALEA which is an accrediting agency for law enforcement
3 agencies.

4 Q: And would they be the same people that would review your
5 STRmix calculations?

6 A: The STRmix would be part of our audits, yes.

7 Q: Okay.

8 MR. TODD: Court's indulgence?

9 THE COURT: All right.

10 BY MR. TODD:

11 Q: Just one more question. When you put in information
12 into these -- well, in any form, when you calculate your
13 results, and you put calculations into the STRmix technology,
14 is there any aim or are you just trying to find the factual
15 interpretation of what -- or the calculations of what you get?
16 You're not trying to convict somebody or anything, are you?

17 A: No, so we are just making comparisons for the known
18 standards that we have to the evidentiary DNA profiles and the
19 statistics just give a weight to that comparison.

20 Q: Okay. Thank you. That's all the questions I have.
21 Please answer any defense counsel has.

22 THE COURT: Do you have any questions?

23 MR. EDGEWORTH: I do, Your Honor.

24 THE COURT: All right. Go ahead.

25 CROSS EXAMINATION OF SARA GOODMAN BY MR. EDGEWORTH:

1 Q: So, all right. Ms. Goodman, a lot of the -- the lingo, I
2 think, gets lost in some of this mix, pardon the pun, but when
3 you say profile, in the first examination, you developed a
4 profile, which is essentially a DNA sequence?

5 A: Essentially, yes.

6 Q: Okay. And the first go-round you were unable to identify
7 individual sequences because it was a mixture?

8 A: I was unable to use it for comparisons at that time.

9 Q: And when you say comparisons, are you talking about
10 looking in this microscope and that microscope?

11 A: No, comparing the DNA profile from the evidence to the
12 DNA profile from the known standards.

13 Q: Okay. And -- and who does that comparison?

14 A: I do that comparison.

15 Q: So, how is that done; is it done via microscope?

16 A: It's done by looking at the DNA profiles.

17 Q: Okay. And so, the -- the profile -- how is the profile
18 created?

19 A: The DNA profile is created by taking the item that we
20 receive through a series of processes in our laboratory to
21 separate the DNA profile off of that item and generate a DNA
22 profile that we can then use for our interpretation.

23 Q: Okay. Is that a physical process? In other words, like
24 I'm using generically, you know, looking in a microscope to
25 see something, but is creating the profile something that's

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1 physically done, you know, you're taking off what you believe
2 to be some DNA off some evidence and then throwing it in the
3 centrifuge, you know, kind of thing. Is that a physical
4 process?

5 A: Essentially. So, I can go a little more into detail for
6 our laboratory processes if you'd like.

7 Q: Please.

8 A: So, when we receive an item for DNA analysis, we take a
9 small portion of that item, a swab or cutting from an item, we
10 take a small portion of it, and we essentially add chemicals
11 to it that help us to separate the DNA off of that item, and
12 then we -- so that's called extracting the DNA. And then we
13 take it through a process called quantification, which tells
14 us about how much DNA is there. Then we amplify the DNA,
15 which means many different copies of the DNA, and then it goes
16 through a machine that separates it out into the different
17 locations for the DNA profile that we look at. So, for our
18 analysis we look at 24 different locations on the DNA. So, it
19 separates the DNA out into those locations and then a software
20 program gives us a physical printout of that profile.

21 Q: Okay. So, in that example, for the purposes of the first
22 go-round of testing in February of 2018, that process revealed
23 that there was nothing out of that that you could use for the
24 purposes of comparison?

25 A: Correct, I could not use it for comparisons at the time.

1 Q: Okay. And -- and at that time, the -- your process
2 revealed that it was a mixture of at least three individuals?

3 A: Yes.

4 Q: Okay. So, and that means it could've been four?

5 A: It is possible.

6 Q: And it could've been five?

7 A: It is possible.

8 Q: Okay. So, it's just telling you at a bare minimum it
9 could be -- it's at least three?

10 A: Correct, my interpretation determined that it was at
11 least three individuals.

12 Q: Okay. So, when you -- when you go back and do the test,
13 the STRmix, you've already done this other set and you've
14 created what you believe to be or you don't have anything for
15 comparison. So, now, in this particular example, you have a
16 program you can use. What is put into that program? What
17 changed from day one to day two?

18 A: So, all of the -- the DNA profile was generated stayed
19 the same. The only thing that changed was the statistical
20 program that we used and the guidelines to be able to use that
21 DNA profile for a comparison. So, the profile is still the
22 same but, as far as our guidelines for STRmix, we're typically
23 able to use more of the data than our guidelines for the
24 statistics that we were calculating before.

25 Q: So, it lessens the standard of things that you need to

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1 use for the computer program purposes?

2 A: It just has a different standard for the amount of
3 information that we can use. STRmix takes into account more
4 information than the previous program that we were using.

5 Q: And that's the -- the, I guess, the proprietary and the
6 software component of the program that it allows that
7 additional information that's normally not used in your
8 regular process; is that right?

9 A: Correct. It allows for -- it takes into account more
10 information than our previous statistical program did.

11 Q: And that information that is allowed to be accounted for
12 is -- is something that the developer of the software put into
13 its algorithm; is that right?

14 A: Somewhat, but we perform an internal validation at SLED
15 of the program for our uses. So, we set the guidelines for
16 our laboratory for how much information is necessary for our
17 purposes to input into the program.

18 Q: Okay. So, when you put in what you believe to be the
19 profile that you generated, correct?

20 A: Yes, I input the DNA profile.

21 Q: Okay. And do you also put in the fact that you're
22 thinking it's three different people?

23 A: I do set the number of contributors.

24 Q: Okay. Is it fair to say if you change the number of
25 contributors that the analysis changes as well?

1 A: It would be somewhat different, yes.

2 Q: And in this particular case, the -- the things you're
3 calling likelihood ratios that gives you two different
4 possibilities or scenarios, for lack of a better description,
5 right?

6 A: Essentially, yes.

7 Q: And then -- then you have something that when it compares
8 it, it gives you this either yay or nay possibility, correct?

9 A: As far as the calculation of the likelihood ratios?

10 Q: Well, the two possibilities are compared against each
11 other, right?

12 A: Right. Right.

13 Q: Okay.

14 A: And then it tells you which of those, as far as that
15 comparison, is more likely.

16 Q: And, and if it says that, you know, neither one of these
17 are likely, then it's just saying that the information you put
18 into it provided you no responses?

19 A: Yeah, if it's -- essentially, if the -- if both were
20 equally unlikely, it would give us a result of zero, which
21 would be an exclusion for that individual.

22 Q: Okay. And so the results that are generated out of this,
23 it's not telling anyone that it is -- this is what happened,
24 right, it's just saying there's a likelihood against the two
25 scenarios?

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1 A: Right, it's not speaking to the circumstances that left
2 the DNA, it's just giving you a likelihood comparing the DNA
3 profiles, which is -- if it's likely or not that that DNA
4 profile could be a possible contributor.

5 Q: As to the scenarios proposed, though, right?

6 A: Right.

7 Q: You have the HP and the HD, the -- the calculation that
8 is kind of generated is as to the two scenarios; it's not to
9 real world, it's to the scenarios proposed?

10 A: Yes, to those propositions, yes.

11 Q: Okay. In essence, it's not -- it's not reliable as it
12 relates to a case specific; it's a number that's given as to
13 the two propositions, right?

14 A: It is reliable. But, yes, it doesn't speak to the
15 circumstances of the case; it speaks to -- it is only looking
16 at the DNA profile itself. And then as far as the proposition
17 set, it's just giving a comparison for those two ideas, which
18 those can be changed if they need to be.

19 Q: Okay. In other words, you can change as many scenarios
20 as you want and compare those two, right?

21 A: Within reason to the case, yes. So, our proposition sets
22 still have to be intuitive to what's possible for the case.

23 So, in our scenarios, it's only -- it's only comparing the
24 known standards that we have. But yes, those proposition sets
25 can be changed.

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1 Q: Okay. So, and a lot of it is just human input into the
2 computer program?

3 A: Yes, it does require our input.

4 Q: Okay. I don't have any further questions at this time.

5 THE COURT: All right. Anything on redirect?

6 MR. TODD: Just briefly.

7 REDIRECT PROFFER EXAMINATION OF SARA GOODMAN BY MR. TODD:

8 Q: The human input that you put into this program, that's
9 your input, correct?

10 A: Yes, it is.

11 Q: So, you would look at like -- what you're doing is try to
12 develop a profile, correct, from -- from what you have?

13 A: Uh-huh, (affirmative response).

14 Q: And your calculations of how many potential contributors
15 there could be are -- could be in this would be your
16 determination, correct?

17 A: Yes.

18 Q: And then looking at your in DNA as what you're trying to
19 use to come up with these calculations; is that correct?

20 A: Yes, essentially.

21 Q: So, what you're doing is trying to -- this program itself
22 is a mathematical equation; is that correct?

23 A: It does use mathematical equations, yes.

24 Q: So, it's gonna be as reliable as math can be, correct?

25 A: Correct, yes.

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1 Q: All right. And you didn't develop this mathematical
2 equation yourself, right?

3 A: I did not.

4 Q: And this same equation has been used for quite a while;
5 is that correct?

6 A: Yes, the algorithms are equations used by the program are
7 used in other processes like weather predictions, stock market
8 predictions. The math itself is not a novel technique.

9 Q: So, it's just introducing this into this realm of, of,
10 of, I guess, DNA analysis is just a newer part of that.

11 A: Yes, it is newer.

12 Q: Okay. And then as far as like the amount of
13 contributors, that had been mentioned. If that number is
14 changed, is it gonna change probability dramatically or
15 slightly?

16 A: There have been studies shown that it does not change
17 dramatically. So, there's been studies where they have taken
18 known profiles in their studies and changed the amount of
19 contributors to be -- for input into STRmix to be less than
20 the true amount and to be more than the true amount and the
21 results showed that there was not a significant difference;
22 that, if anything, the differences were that the statistic was
23 lower or that it excluded someone, and there have been no
24 false inclusions or dramatic changes to the weight of that
25 statistic.

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1 Q: Okay. That's all the questions I have. Thank you.

2 EXAMINATION BY THE COURT:

3 THE COURT: Looking at your report, in the, I guess,
4 Number 4, the swab from the zip tie from the chair.

5 A: Uh-huh, (affirmative response).

6 THE COURT: The result is that it is 5.7 sextillion times
7 more likely if you use the comparison to John Linen and two
8 unidentified versus three unidentified?

9 A: Yes.

10 THE COURT: What standard does CODIS use that would
11 exclude that or say that's not reliable enough to put with
12 CODIS, if you've got a 5.7 sextillion probability?

13 A: So, essentially, CODIS does not -- it's not a statistical
14 program and it cannot take into account all of the things --
15 all of the factors that STRmix takes into account. So, when
16 we input something into CODIS, it's making comparisons to DNA
17 profiles that are in the database. And what we input into
18 CODIS it is thinking that that's all the information we have
19 and that there's no information missing. And so, it only uses
20 what we input for comparisons in that way. STRmix can take
21 factors into account like there might be information missing
22 here, but it will take -- so, like for a lower level profile
23 or for a mixture there might be some information missing. So,
24 it takes that into account with the statistical calculations.
25 But for CODIS, since it doesn't take that into account, the

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1 less information that we have, the less we're able to narrow
2 it down just to one person. And so, it can bring -- it can
3 give us thousands of hits. So, that's why the guidelines for
4 CODIS are more stringent, so that we don't have to ---

5 THE COURT: But, I mean, you said you used this STRmix
6 program and it has qualified to be registered to CODIS. So,
7 what in this case, did not meet the standard of CODIS?

8 A: For this case, these mixtures were low level, so there
9 was DNA there but not a lot of DNA, and so, as far as CODIS
10 purposes, they were not enough locations. It didn't meet
11 their guidelines for the minimum number of locations.

12 THE COURT: Now, explain to me, what do you mean by
13 locations?

14 A: Sure. So, the DNA profiles that we have, it separates
15 all the DNA into different locations, which is just a location
16 on the DNA. So, for our analysis, we look at 24 different
17 locations for our interpretation. And so, CODIS requires a
18 minimum number of those. So, for mixtures, that requires at
19 least eight locations where you believe that every person in
20 that mixture is fully represented. So, eight locations were,
21 I think, all three of these individuals could be -- all of
22 their information is there, and it doesn't meet that
23 requirement. But, there is still enough information for
24 STRmix to do its analyses.

25 THE COURT: Okay. Any more questions in regards to me or

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1 follow-up from mine?

2 MR. TODD: No, Your Honor.

3 THE COURT: Any from the defense?

4 MR. EDGEWORTH: None from the defense, Your Honor.

5 THE COURT: Okay. All right. Thank you very much. You
6 may step down.

7 Any other witnesses?

8 MR. TODD: No, Your Honor.

9 THE COURT: All right.

10 COURT REPORTER: Did you by chance, pick up that other --
11 thank you.

12 BY THE COURT:

13 THE COURT: All right. Let me from you; you've still got
14 a pending motion in limine to exclude?

15 MR. EDGEWORTH: Yes, Your Honor. As Your Honor has heard
16 through this testimony, the -- the reality is, is that this --
17 this, this, this process is essentially trying to purport to
18 the jury, you know, in a manner like a lie detector test, like
19 cloaked in a, you know, a lab coat. It -- it's -- it's --
20 they want to give you this information to hang your hat on,
21 when it's not really information that is even close to being
22 something to hang your hat on. It's completely inconsistent.
23 I mean, the -- the testimony is that they create a profile and
24 then -- then they put it into the computer program and then
25 they -- they analyze it against two separate scenarios.

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1 They're not analyzing it against facts. Whereas, like they
2 say in an old school, you know, situation, you would have --
3 this is -- this is a DNA sample I have and this is a match to
4 it. You know, that is something that -- then you would go and
5 maybe impeach like, you know, was your process wrong or
6 anything like that. In this example, you know, if this
7 testimony was heard, you know, under 403, not only would it
8 create prejudice in that it's DNA or, you know, human nature
9 is like a DNA is something that we -- we have learned to
10 accept, but it's confusing. On one hand, it's saying they can
11 find DNA of my client but they're excluding other people who
12 were clearly there. Testimony throughout this case has been
13 that -- that the zip ties were on my hands, I cut -- or the
14 evidence was the witness was the one who cut it off. In fact,
15 she said in the video, my -- you know, fingerprints are in the
16 system; is it okay that I touch this. Even the witness was
17 aware that she could contaminate that and produce some DNA.
18 So, then you get -- you get some evidence now that for some
19 reason, you know, is -- is saying that they can't even include
20 a person who is absolutely known to be there, which was the
21 victim and then turn around and use that against the
22 defendant, and it's highly prejudicial. Under 702, this
23 particular, you know, the knowledge and skill. Obviously, the
24 DNA has or the program has been approved to be used by SLED,
25 but that doesn't make it reliable. They're running a test.

1 Even she testified, it's like this particular internal audit
2 -- or the external audit is done every four years; it hasn't
3 been four years since the lab has been doing it, she said
4 September 2018. And then -- and then one-year internal audit.
5 They haven't done that either, or maybe they have but she
6 didn't testify as to any particular results from that internal
7 audit to see how conclusory or, you know, whether there are
8 any false negatives or false positives -- my apologies. Also,
9 the -- you know, she's talking about the algorithms and the
10 proprietary information under 705. You know, you have to have
11 an understanding of what the computer is actually doing.
12 Talking about math, yes, it's math, but that information is
13 put in there and what she's referring to is to the genotyping,
14 it is a -- the program itself has information that's crammed
15 into it to take information from the DNA and make
16 probabilities and possibilities based on genotyping, which is
17 basically nothing more than saying that if you have this set
18 of DNA or these couple of points that she's talking about, the
19 lesser amount of points, it doesn't, you know, align with the
20 CODIS example, then we can kind of extrapolate what may be
21 there. And so, it's all just random and I think that in no
22 way should the jury be able to hear information that is so
23 confusing to the point of prejudice where they can just simply
24 go back and say, well, I heard her say that there is 5. -- you
25 know, five sextillion times more likely that Mr. Linen's, you

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1 know, DNA is on there with two unidentified individuals as it
2 would be or more than three unidentified, and they're just
3 gonna hear 5.7 times -- sextillion times more likely. And I
4 believe it should be excluded and that's we're asking the
5 Court to do.

6 THE COURT: All right.

7 Mr. Todd?

8 MR. TODD: Thank you, Your Honor. Your Honor, we've
9 heard this argument before through the course of history with
10 fingerprints and with DNA. So, this is -- this is not new.
11 Additionally, this system isn't that new itself, either. She,
12 you know, was qualified as an expert and can testify about DNA
13 and how she comes up with the profiles and what information is
14 put into this program. This program has been used by the FBI,
15 which they are the ones that set the standards for CODIS and
16 everything else. So, it's not new; it's just new to us this
17 year. It's already been in 15 courts in this state already.
18 As new as yesterday it's been in Horry County. Last month
19 Judge Brown heard a case in Horry County. It was accepted and
20 it was used in -- in the trial. So, yes, it is a tool that is
21 used. It's a tool used by an expert to come up with her
22 opinion. So, the weight of -- the admissibility of it has to
23 do with the weight of her testimony. She can be cross
24 examined, she can be questioned, and at the end, Your Honor,
25 if she testifies as an expert, you'll be able to give the

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1 instruction to the jury that they can accept or reject her
2 testimony, because it is that of an expert. It's her opinion
3 of whose DNA it is.

4 THE COURT: Well, it's not -- she's not really testifying
5 as to whose DNA it is.

6 MR. TODD: Correct.

7 THE COURT: She's saying that the probabilities of it
8 being John Linen and two unknowns are greater than it being
9 three unknowns.

10 MR. TODD: Correct. She's giving a probability based on
11 her analysis and the use of this machine, which she also goes
12 back and double-checks the machine. She says she has a duty
13 to it. They double-check their work with two other
14 individuals in the office before they send out a report. So,
15 it is peer reviewed internally before she even sends the
16 report. So, it is part of her expert testimony, not
17 necessarily the machine kicking out a result. It does give a
18 result but it gives probability.

19 Your Honor, I believe it should be admissible. Based on
20 that alone, it is her opinion and it's a tool that's been used
21 in our country for at least the last five years.

22 THE COURT: All right. Well, I think it passes the Rule
23 702 standard. Now, what about Rule, what is it, 403,
24 probative value versus prejudicial effect. Let me hear you on
25 that.

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1 MR. TODD: You want to hear from Josh first or you want
2 to hear from me?

3 THE COURT: Well, I think the prejudicial is pretty
4 obvious if they're gonna come in and say it's X number of
5 sextillion times more probable that it's John Linen versus --
6 and two unknowns and three unknowns, I can see the prejudicial
7 effect on that. Now, the question is, what is the probative
8 value to the state?

9 MR. TODD: Well, Your Honor, it's helping make a
10 determination of what -- what the end result is. Again, it's
11 expert testimony, so it's not gonna be viewed as -- purely as
12 evidence; it's gonna be their opinion as to what the evidence
13 is if they believe her -- her opinion as to the likelihood and
14 the statistical probability of his DNA being on those --
15 actually on two different zip ties. And she'll be able to
16 explain why the other ones aren't there. So, that's one of
17 the other things is why would someone's DNA be on it and why
18 would it not be -- in her opinion. It's not gonna be as to
19 why, because she wasn't at the scene. She doesn't know what
20 they did as far as how they swabbed it or anything else.

21 THE COURT: Well, I mean, you got one analysis that says
22 it's six times more probable that the zip tie used to tie up
23 the victim, Ms. Sparkman, the probability is it's six times
24 more probable that there's three unidentified than it's Ms.
25 Sparkman and two unidentified, and she was the one that was

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1 tied up with it.

2 MR. TODD: But again, we don't know where they swabbed or
3 also whether those zip ties were over clothing, because that
4 would have an effect and that would be something she could
5 testify to is what would be some scenarios as to why this
6 would be the way it is, what are her results. Again, all
7 evidence is gonna be -- especially all the evidence we would
8 use in trial is gonna be prejudicial, but this is gonna help
9 the jury determine what it means to be a mixture, what is it
10 we're doing to either prove or disapprove that the defendant
11 was there or not. There's other evidence in this case that's
12 gonna likely prove his -- that he was at the scene and his
13 involvement with this case, but this is gonna help them look
14 at what are we doing as a society to prove if someone is
15 innocent or guilty. If his DNA wasn't on it, that would be
16 something that the defendant could use. He could say, hey,
17 look, you say he's there; his DNA isn't on this at all.

18 THE COURT: I mean, how is it not gonna be confusing to a
19 jury when they just hear this, what is it; however many
20 sextillion times ---

21 MR. TODD: Sextillion, 5. ---

22 THE COURT: --- they're gonna -- how are they gonna be
23 able to distinguish that, look, this is just a probability
24 that it's, you know, this does not mean that it's 5.7
25 sextillion times that it's John Linen.

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1 MR. TODD: No, sir.

2 THE COURT: It just means that when you compare John
3 Linen and two unknowns to three unknowns, it's 5.7 sextillion
4 times more likely that it's John Linen and two unknowns versus
5 three unknowns, which is not saying that it's 5.7 sextillion
6 times that it's John Linen.

7 MR. TODD: Right.

8 THE COURT: How are you -- how is that not gonna be
9 confusing to a jury?

10 MR. TODD: Well, it's gonna be her opinion as to what her
11 results are gonna be. And defense is gonna get to cross
12 examine her on, are you saying it's him or are you saying it's
13 a probability. What is the difference in those two? We have
14 a chance to educate them on what this stuff means by defense
15 being here and by us putting her up as a witness, and also by
16 letting them know that this is her opinion, it's not facts,
17 it's not -- you know, it's not something that's guaranteeing
18 it's there; it's just the probability of him being there and
19 our expert is gonna testify as to what that means
20 specifically. And they're educated enough to know when
21 someone teaches them -- and that's basically what she does, is
22 teach them what it means. And again, by cross examination,
23 they can discredit how it's gonna be used or not.

24 THE COURT: All right.

25 Mr. Edgeworth, anything in reply?

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1 MR. EDGEWORTH: Just briefly, Your Honor. I think the
2 Court hit the nail on the head. This opinion that they want
3 to put in front of the jury is not an opinion that it his DNA.
4 That would be a probative fact. That's no different than the
5 old school DNA that's already been admitted. I've reviewed it
6 and this -- this -- this profile is, you know, it's 5.7
7 sextillion times more likely to be him than anyone else in the
8 world, because that's essentially what regular DNA does.
9 That's -- that is -- hadn't been found to be admissible.

10 Here, you have 5.7 times sextillion the number, sorry,
11 more likely it is a scenario, and the scenario is gonna be
12 completely overlooked and it will prejudice my client and --
13 and it will confuse them. It will confuse them -- they're
14 talking about I get a chance to cross examine them. Yes, I
15 do, but that will confuse them even further. They're only
16 gonna hear this number. They're gonna hear that it is 5.7
17 sextillion times more likely John Linen -- stop listening.
18 And -- and because if anything, if you're watching T.V. or
19 whatever, you're hearing, you know, those same type of
20 commentary to where they're saying it's more likely X
21 sextillion, you know, that's the weight of that opinion. And
22 so they're trying to shroud the weight of it his him in a
23 scenario and that's the confusing part and that's the
24 prejudicial part.

25 THE COURT: All right.

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1 All right. Let me take it under advisement and let's
2 take a little break. Well, we've got -- the jury is coming
3 back at 1:30?

4 MR. TODD: Yes, sir.

5 THE COURT: Let me take a little break and take a look.
6 I need to -- I need to take a little bit more look at Rule
7 403. All right?

8 MR. EDGEWORTH: Thank you, Your Honor.

9 THE COURT: Thank you.

10 **RECESS - 11:50 A.M.**

11 *******OFF THE RECORD*******

12 **(On the Record - 12:01 P.M.)**

13 THE COURT: All right. First of all, I think that the
14 testimony of Ms. Goodman and her qualifications and the STRmix
15 program and all that does pass the Rule 702 analysis for
16 expert testimony. So, now I got to go to Rule 403, the
17 probative value. And, I'm gonna exclude the testimony because
18 I think that the confusion and the prejudice to the defendant
19 -- well, the prejudice to the defendant and then the confusion
20 to the jurors far outweighs the probative value to the state
21 of showing that the probabilities of the DNA being this
22 defendant and two unknowns versus it being three unknowns -- I
23 mean, that's basically the probative value to the state is,
24 you want to show that there's a higher probability that this
25 DNA fits the scenario of the defendant and two unknowns versus

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1 three unknowns. And, I just think the prejudicial effect --
2 and I think the jury, once they hear these numbers, 6.1
3 sextillion, that they're gonna say, well, it's 6.1 sextillion
4 times the DNA of the defendant matches the DNA found on the
5 zip tie, and what I understand from Ms. Goodman's testimony
6 that is not the ratio -- that's not what they're saying. What
7 they're saying is the probabilities of fitting this scenario
8 is greater than it is fitting this scenario. And so, I don't
9 think that it passes Rule 403 analysis. So, I'm gonna exclude
10 it.

11 All right?

12 But I do want it clear on the record, so if it comes up
13 that it's not excluded under Rule 702, but it is being
14 excluded under Rule 403. All right.

15 MR. TODD: Yes, sir.

16 THE COURT: All right. Where does that leave us?

17 MR. TODD: Well, I think we need to make some
18 adjustments.

19 THE COURT: Okay.

20 MR. POWELL: We'll advise the Court when we come back,
21 Judge. It may be a situation where the state rests, but I'll
22 need some time. I need the lunch break.

23 THE COURT: I understand. I understand we'll adjust it
24 and everything. You know, and this -- and the hardest part,
25 I'll admit, the hardest part is that she's been qualified as

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1 an expert in 15 courts and I find her to be -- she's qualified
2 and she can go out and say she's been qualified as an expert
3 in 16 courts. Under Rule 702, I find that her testimony would
4 be admissible, but the Rules just say that if it passes Rule
5 702 analysis, then I need to do a Rule 403 analysis and -- my
6 concern is, I think it is going to confuse and mislead a jury
7 when they hear that it's 6.1 sextillion times more likely that
8 it's the defendant and two unknowns versus a scenario of being
9 three unknowns. That would mislead them and be confusing to
10 them and they're just -- it's gonna register in their mind,
11 it's 6.7 however many sextillion times greater that it's the
12 defendant's DNA. And from what I understand from her
13 testimony, that's not her testimony.

14 MR. TODD: That's correct, Your Honor, it's a probability
15 of his DNA being in those -- with those scenarios, so ---

16 THE COURT: Yeah, it's a probability of his DNA coupled
17 with two unknowns versus being three unknowns.

18 MR. TODD: Correct.

19 THE COURT: And her testimony that you would get a
20 different result if you plugged in his and five unknowns or if
21 you plugged in his and 10 unknowns. You're gonna get a
22 different results. Now, she's saying it often excludes or
23 that the likelihood or the ratio comes down, but it does
24 affect the ratio and so, under that analysis, it's hard for me
25 to see what the probative value is to the state or how the

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1 probative value to the state's case outweighs the prejudicial
2 effect to the defendant and the confusion to the jurors.

3 All right?

4 All right. We'll be -- we'll break until 1:30. All
5 right.

6 MR. POWELL: Thank you, Judge.

7 THE COURT: Thank you.

8 **RECESS - 12:07 P.M.**

9 *****OFF THE RECORD*****

10 **(On the Record - 1:37 P.M.)**

11 THE COURT: All right. Where are we? Does the state
12 have other witnesses to call?

13 MR. POWELL: Your Honor, the state intends to call one
14 last witness.

15 THE COURT: Okay. That will be fine. All right.
16 Anything from the state before we bring the jury in?

17 MR. POWELL: Not from the state, Judge.

18 THE COURT: Anything from the defense?

19 MR. EDGEWORTH: Nothing from the defense, Your Honor.

20 THE COURT: All right. Let's bring the jury in.

21 (REPORTER'S NOTE: Jury enters courtroom @ 1:38 P.M.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. We're ready to resume the trial of the case. I hope
24 everybody had a good lunch.

25 Mr. Powell, the state can call your next witness?

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MARY LOUISE MCGEE - DIRECT BY POWELL

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1 MR. POWELL: Thank you, Judge. Your Honor, the state
2 would call next to testify Ms. Mary McGee.

3 THE COURT: All right.

4 CLERK: Raise your right and place your left hand on the
5 Bible.

6 MARY LOUISE MCGEE, HAVING BEEN SWORN
7 TESTIFIES AS FOLLOWS:

8 CLERK: Thank you. Please be seated and state your full
9 name for the record.

10 MS. MCGEE: Right here?

11 CLERK: Yes, ma'am.

12 COURT REPORTER: Can I get you to pull up, please, ma'am,
13 so I can see you?

14 MS. MCGEE: Yes, ma'am.

15 COURT REPORTER: Thank you.

16 MS. MCGEE: Mary L. Louise McGee.

17 DIRECT EXAMINATION OF MARY LOUISE MCGEE BY POWELL:

18 Q: Ms. McGee, where do you live, ma'am?

19 A: In the Plantersville section of Georgetown County.

20 Q: How long have you lived in Georgetown County?

21 A: Since '94.

22 Q: Are you familiar with the Dollar General store located on
23 Fraser Street out there where Choppee Road is?

24 A: Yes, sir.

25 Q: Had you had a chance to go to that store back on March

1 20th, 2017?

2 A: Yes, sir.

3 Q: What happened -- what did you see when you got to the
4 store?

5 A: When I walked through the door, the clerk was on the
6 phone. I didn't really pay attention, I seen she was on the
7 phone and I started to walk into the store, and she said,
8 ma'am, can you help me? I turned and looked and, like I said,
9 she was on the phone, and she said, could you please cut these
10 off of me, and I saw she had black zip ties on her hands, and
11 tried to use my knife that I had but it didn't cut them. So,
12 I went back into the store and got a pair of scissors and I
13 come back out and I told her to ask -- she was on the phone
14 with the police, I said, well, ask them if it's okay if I cut
15 them off before I do it, and so she did and they said, yes,
16 that's fine. So, like I said, I went back and got scissors
17 and got the scissors and cut them off of her. And she told me
18 that she had been robbed.

19 Q: What happened after you cut the zip ties off?

20 A: I just stood around there and waited with her and talked
21 to her until the police got there.

22 Q: How long do you think it was before the police showed up?

23 A: Maybe 10 minutes at the most, if that.

24 Q: What happened after the police came, did they talk to
25 you?

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MARY LOUISE MCGEE - CROSS BY POWELL

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1 A: Yes, sir.

2 Q: You tell them what you saw that day?

3 A: Yes, I did.

4 Q: Anything else occur that day or you pretty much leave
5 after you got through talking to the police?

6 A: I mean, I was there for probably close to a hour, but I
7 mean, nothing else happened, and I left after that, but yeah.

8 Q: You never saw a person do anything there, did you, no
9 suspect or anything?

10 A: No, sir. He'd just left, she said, when I got in there.
11 So, I didn't see a car leaving or anything when I pulled up.

12 Q: Did she have a zip tie around each hand or they were zip
13 tied together; do you recall?

14 A: The best I remember, they were -- they were like this
15 (indicating).

16 Q: Sort of zip tied together then, probably?

17 A: Uh-huh, (affirmative response).

18 Q: Thank you, ma'am. Please answer any questions the
19 defense attorney has.

20 A: Okay.

21 MR. EDGEWORTH: Briefly, Your Honor.

22 CROSS EXAMINATION OF MARY LOUISE MCGEE BY MR. EDGEWORTH:

23 Q: Ms. McGee, as I understand it, you -- when you started
24 speaking to Ms. Sparkman, she told you that the assailant had
25 just left?

1 A: Yes, sir.

2 Q: And earlier that day you had been traveling along 701; is
3 that right?

4 A: Yes.

5 Q: In fact, I think you had mentioned to law enforcement
6 that you had passed by and gone to the dump and then come
7 back?

8 A: That is correct.

9 Q: When you -- when you did that, did you see anything or
10 did you witness anything suspicious at the Dollar General?

11 A: No, sir.

12 Q: Okay. And when you got inside, were there other people
13 inside the store?

14 A: No, just her and myself.

15 Q: Okay. And while you were standing there with Ms.
16 Sparkman, but before law enforcement arrived, did some other
17 patrons come into the store to your recollection?

18 A: Not that I remember, no, sir.

19 Q: Okay. Do you not remember another lady and a child?

20 A: I think you're right. I think somebody else came in. I
21 can't remember if it was a woman or -- I don't really recall
22 that, but ---

23 Q: That's okay. And, and just so we're clear, when you --
24 when you got to the store, Ms. Sparkman was, was she out near
25 the register or was she outside?

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BY THE COURT

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1 A: She was behind the counter by the register.

2 Q: By the register?

3 A: Yes, sir.

4 Q: Okay. So ---

5 A: And on the phone with the police.

6 Q: And on the phone at that time. She was able to
7 manipulate her hands to talk on the phone; is that correct?

8 A: Yes, sir; yes, sir.

9 Q: It wasn't like she was back in the office or anything,
10 but she was out -- she was out in the main part of the store?

11 A: Yes, sir, standing behind the counter there where the
12 cash register is.

13 Q: Okay. Thank you. No further questions.

14 THE COURT: All right. Redirect?

15 MR. POWELL: No, Your Honor.

16 THE COURT: All right. You may step down.

17 All right. The state can call your next witness.

18 MR. POWELL: Your Honor, the state rests at this point.

19 BY THE COURT:

20 THE COURT: All right. Ladies and gentlemen, the state
21 has rested their case in chief and now is the time of the
22 trial where I have to take up some matters of law with the
23 attorneys. So, I'm gonna excuse you back to the jury room for
24 a few minutes. And I tell you why we do this. It's not that
25 we're trying to hide anything from you or keep anything from

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BY THE COURT

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1 you. But as I told you in the opening charges, you and you
2 alone decide the facts of this case, and you decide those
3 facts based upon the testimony of witnesses and evidence that
4 is introduced during the trial. Well, now is the time of the
5 trial where I need to discuss with the attorneys the law to be
6 applied to this case. Often when we discuss the law, it
7 requires me as the judge and the attorneys to reference
8 factual issues. Well, what we say is not evidence, so, we
9 don't want you to be influenced by anything that I say or
10 anything that the attorneys say when we reference factual
11 issues. We don't want that to influence your decision on what
12 the facts are. So, that's why we excuse you to the jury room
13 while we take up these matters of law or the law to be applied
14 in the case at this time.

15 I caution you again, it's too early for deliberations.
16 So, don't discuss the case, but I'll give you a little break
17 to stretch your legs, whatever the case may be. All right?

18 Thank you very much.

19 Everyone else please remain seated while the jury is
20 excused.

21 (REPORTER'S NOTE: Jury exits courtroom @ 1:44 P.M. The
22 following takes place outside the presence of the jury.)

23 THE COURT: All right. Any motions at this time?

24 MR. POWELL: No, Your Honor.

25 THE COURT: Any from the defense?

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MOTIONS

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1 MR. EDGEWORTH: Yes, Your Honor. May it please the
2 Court?

3 THE COURT: Yes.

4 MOTIONS:

5 MR. EDGEWORTH: Your Honor, at this time, the defense
6 would raise a motion for directed verdict as to several --
7 several of the counts; in fact, all of the counts.

8 First, starting with the indictment of armed robbery
9 under Section 16-7-330, the defense contends that there is no
10 evidence in this case to support this matter being presented
11 to the jury. And in particular, Your Honor, their -- a point
12 in the reference to, one, the video that was put into evidence
13 and the testimony from the officer that -- in the video, you
14 do not see a gun at any time during any time in which the
15 assailant was in the store.

16 Secondly, as to the particular item of interest in this
17 particular case, there is no testimony as to the fact that the
18 gun that has been entered into evidence is in fact the gun
19 that was purportedly used in the commission of this robbery.
20 The only evidence there is is that we found the gun at a piece
21 of property adjacent to the defendant's home. There is no
22 evidence linking the defendant to the gun. There is no --
23 there has been no testimony one way or the other, and in
24 particular from Ms. Sparkman, who was the victim in the case,
25 that identified the gun that's in evidence as the gun that was

1 in the commission of the crime.

2 And as a corollary to that particular argument, if in
3 fact the armed robbery fails, then it's the defense contention
4 that the possession of a weapon during the commission of a
5 violent crime fails.

6 THE COURT: Okay. I'm gonna deny your motion. We have
7 Ms. Sparkman's testimony that she saw a gun and I think that
8 gets you around a directed verdict on that regard. So, I'm
9 gonna deny your motion.

10 MR. EDGEWORTH: Thank you, Your Honor.

11 And secondly, Your Honor, the defense moves for a
12 directed verdict as to the kidnapping. As Your Honor is
13 aware, Section 16-3-910 provides that that it is kidnapping if
14 the individual is confined, inveigled, decoyed, kidnapped,
15 abducted, or carried away. The evidence of this case reveals
16 that, and by her own acknowledgement, Ms. Sparkman followed
17 the assailant to the breakroom. She acknowledged that she had
18 the ability to leave, although she did not. Once she got to
19 the breakroom, she was not confined. There was no door that
20 was locked, she wasn't hidden away, she wasn't taken away. In
21 fact, once the assailant left, she was able to leave the room.
22 She admittedly called 911. You just heard testimony from the
23 witness, Ms. -- Ms. McGee, who said that when she got into the
24 building, which was shortly after, according to Ms. Sparkman
25 and their conversation after the incident, she was already out

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1 of the room, on the phone with 911. I do not believe that any
2 of those facts amount to -- amount to what would be necessary
3 to support the jury hearing the charge of the kidnapping and
4 ask for that to be a directed verdict.

5 THE COURT: All right. I'm gonna deny your motion. I
6 think there is sufficient testimony for kidnapping. Testimony
7 that he used the zip tie, made her go back into the room, even
8 though she followed him and went back to the room, she was
9 scared to come out until she heard the door shut. So, I think
10 there is sufficient evidence there to at least get it to a
11 jury on that issue.

12 MR. EDGEWORTH: Thank you, Your Honor. No further
13 motions from the defense.

14 THE COURT: All right. Do we want to go ahead and
15 question your client on his right to testify?

16 MR. EDGEWORTH: Yes, Your Honor; that's fine.

17 THE COURT: All right. Let's place him under oath.

18 CLERK: Mr. Linen, please raise your right hand.

19 JOHN NATHAN LINEN, II, HAVING BEEN SWORN
20 TESTIFIES AS FOLLOWS:

21 MR. LINEN: Yes, ma'am.

22 CLERK: Thank you.

23 THE COURT: All right. Sir, your name is John Nathan
24 Linen, II?

25 MR. LINEN: Yes, sir.

1 THE COURT: All right. Mr. Linen, at this time, I'm
2 going to explain to you certain rights that you have. If you
3 do not understand any part of my explanation, please let me
4 know. And if you want me to explain anything in more detail,
5 please let me know. Do you understand that?

6 MR. LINEN: Yes, sir.

7 THE COURT: All right. We've now reached the stage of
8 the trial where you may present your defense. You have the
9 right to claim the protections given to you by the Fifth
10 Amendment to the Constitution of the United States, which
11 states in part that no person shall be compelled in any
12 criminal case to be a witness against himself. This means
13 that you cannot be required to testify in this case. You have
14 the right to testify on your own behalf; however, no one can
15 make you testify. This is a personal right, and no one can
16 waive this right except for you. If you decide to testify,
17 you will be subject to the same rules that govern other
18 witnesses and you may be examined and cross examined on any
19 relevant issue in this case. In addition, if you have any
20 convictions involving dishonesty, or false statement, or for
21 crimes punishable by imprisonment for more than one year and
22 this Court determines that the probative value of admitting
23 this evidence outweighs its prejudicial effect to you, the
24 solicitor will be able to introduce your record to attack your
25 credibility.

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1 Now, are there any prior convictions that would be used
2 to impeach his credibility?

3 MR. POWELL: Yes, Your Honor. There is a 2003 armed
4 robbery. He was sentenced and was released within 10 years.

5 THE COURT: All right. And what would be the probative
6 value of that?

7 MR. POWELL: Your Honor, it is our belief that the
8 probative value -- Your Honor, let me get the mint out of my
9 mouth.

10 THE COURT: That's fine.

11 MR. POWELL: You caught me.

12 THE COURT: That's all right.

13 MR. POWELL: Your Honor, the state believes that the
14 probative value of an armed robbery conviction, it's in three
15 years -- excuse me -- within 10 years of him being released.
16 We believe that the prior record is definitely a reason for
17 him to be dishonest and misleading on the stand, that his
18 desire to not be found guilty and incarcerated again presents
19 his motive for being perhaps presenting false testimony or
20 something misleading to the jury. That's our belief the
21 probative value is.

22 THE COURT: All right. Any other crimes?

23 MR. POWELL: There's a false info from 2002. It is false
24 info, but it was a misdemeanor, and the state is not going
25 push that misdemeanor since it's -- due to the age.

1 THE COURT: Okay.

2 MR. POWELL: The other charge is ---

3 THE COURT: The only thing is the 2003 armed robbery?

4 MR. POWELL: Yes, Your Honor.

5 THE COURT: And when was he released from jail on that?

6 MR. POWELL: He had a 15-year sentence and he would've
7 done 85 percent for being convicted in 2003.

8 THE COURT: And when did he -- do you know when he got
9 released?

10 MR. POWELL: I didn't think to look.

11 THE COURT: He got how much time?

12 MR. POWELL: He got 15 years in 2003.

13 THE COURT: All right. So, 15 years.

14 MR. POWELL: That would be 2018. He would've gotten out
15 in '16 or '17. He would've gotten out within a year of when
16 this took place, probably.

17 THE COURT: So, he would have done almost 13 years or at
18 least 12 years, which would've put it 2015. Okay.

19 Any argument in that regard, Mr. Edgeworth, on the armed
20 robbery?

21 MR. EDGEWORTH: Well, certainly, Your Honor, given the --
22 the charge -- the charge that my client is being presented
23 with, which is essentially the exact same charge, I think,
24 that the probative value is certainly outweighed by the
25 prejudicial effect, since we're talking about the same type of

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1 crime. I'm not too familiar with the facts and circumstances
2 of the previous conviction. Although, I believe it arose out
3 of Williamsburg County. You know, so our position in that
4 particular matter would be that there -- that any probative
5 value would be outweighed by the prejudicial effect and ask
6 that it be excluded.

7 MR. POWELL: Your Honor, the state would -- if he did
8 testify what the state would request would be to ask the
9 question, is it not true you were convicted of a felony in
10 2003. If he denies it, then we would believe we have the
11 right to present more information about it, but we would not
12 trying to impeach by asking him were you convicted of an armed
13 robbery in 2003. We would ask that generic question, isn't it
14 true you were convicted of a felony in 2003.

15 THE COURT: Okay. All right. And I'm gonna allow that.
16 I will allow it and then if he denies it, then they can get
17 into the information.

18 MR. POWELL: Talking about armed robbery.

19 THE COURT: So, I'll allow that.

20 So, Mr. Linen, if you decide to testify, then they will
21 be able to attack your credibility by your prior conviction of
22 armed robbery in 2003. Whether or not they'll be able to
23 mention the fact that it was armed robbery, is yet to be
24 determined, but they'll definitely be able to ask you whether
25 or not you were convicted of a felony in 2003. Do you

1 understand that?

2 MR. LINEN: Yes, sir.

3 THE COURT: All right. Now, if you decide to testify,
4 this decision on your part, must be freely, voluntarily, and
5 intelligently made with knowledge of the protections given to
6 you by the Fifth Amendment and the consequences of your
7 decision to testify.

8 If you decide not to testify, I will instruct the jurors
9 that they cannot give the fact that you did not testify any
10 consideration whatsoever and that there is to be absolutely no
11 prejudice to you because you did not testify. It is left
12 entirely up to you whether or not you testify. You may talk
13 with your attorney, your family and friends, or anyone else,
14 but the final decision will be left entirely up to you. Now,
15 do you understand what I've explained to you?

16 MR. LINEN: Yes, sir.

17 THE COURT: All right. Do you have any questions about
18 what I've explained to you?

19 MR. LINEN: No, sir.

20 THE COURT: All right. Have you discussed this with your
21 lawyer, whether or not you wish to testify in this case?

22 MR. LINEN: Yes, sir.

23 THE COURT: All right. And have you come to a decision
24 at this time?

25 MR. LINEN: Yes, sir.

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1 THE COURT: All right. Do you need to talk to your
2 lawyer anymore?

3 MR. LINEN: No, sir.

4 THE COURT: All right. Do you wish to testify in this
5 case?

6 MR. LINEN: No, sir.

7 THE COURT: All right. Is that your decision?

8 MR. LINEN: Yes, sir.

9 THE COURT: All right. Anything further the state wants
10 to put on the record in that regard?

11 MR. POWELL: No, Your Honor.

12 THE COURT: Anything further the defense wants to put on
13 the record in that regard?

14 MR. EDGEWORTH: No, Your Honor. You asked him the
15 question, we sufficiently discussed this in both -- whether or
16 not Your Honor would allow the prior convictions and his
17 decision before you today is the same decision we had -- he
18 had beforehand.

19 THE COURT: All right. Do you have any defense that
20 you're gonna present?

21 MR. EDGEWORTH: Your Honor, we are not gonna proceed with
22 any further defense.

23 THE COURT: Okay. So, the only thing we have left now is
24 the closing arguments, charges, and deliberations; is that
25 correct?

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1 MR. EDGEWORTH: Yes, Your Honor.

2 THE COURT: Is that your understanding?

3 MR. POWELL: Yes, Your Honor.

4 THE COURT: All right. Let me -- it'll take me about
5 another 10 or 15 minutes to finish up with my charges. I've
6 been working on them. Then I'll get you a copy and let y'all
7 take a look at it and then we might be able to wrap this up
8 today; is that correct?

9 MR. EDGEWORTH: Yes, Your Honor.

10 THE COURT: Is that correct?

11 MR. POWELL: Yes, Your Honor.

12 CHARGE CONFERENCE:

13 THE COURT: All right. All right. Let's take about a
14 10-minutes recess. What I'm gonna do is I'm gonna printout
15 and -- oh, for my charges, what I am charging is certainly,
16 you've got the armed robbery, the kidnapping, possession of a
17 weapon during the commission of a violent crime. And then
18 because of the video, I'm gonna also charge robbery as a
19 lesser included of armed robbery. In other words, if they
20 find that there was a robbery with the use of a deadly weapon,
21 then it's armed robbery. If they find that there was no
22 weapon used, then they can find him guilty of the lesser
23 included offense of robbery.

24 Is there anything else that y'all need -- think I need to
25 charge? I'm not aware of any lesser of kidnapping or any --

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1 and then, of course, possession of a weapon says that they
2 can't find him guilty of possession of a weapon during the
3 commission of a crime unless they also find him guilty of
4 either the armed robbery -- armed robbery or the kidnapping.

5 MR. POWELL: The state can't think of anything, Your
6 Honor.

7 THE COURT: Yeah. All right.

8 MR. EDGEWORTH: Your Honor, for the record, I would
9 object to the lesser included, as it wasn't requested by the
10 state, for the record.

11 THE COURT: Well, I mean does the defense want it?

12 MR. EDGEWORTH: Well, I haven't had the opportunity to --
13 I didn't know how quickly we were gonna proceed. I need to
14 speak with my client about whether or not we want to object.
15 So, if the Court will give me a few minutes.

16 THE COURT: All right. And I'll get it out here and you
17 can take a look at it and we'll discuss it then. Because I'll
18 give you two opportunities to object. Number one, after
19 you've reviewed my written charges and then after I charge the
20 jury, I'll let you raise another objection, because sometimes
21 it sounds different when you hear it read versus when you read
22 it on paper. So, we'll address that at that time. Okay?

23 MR. EDGEWORTH: Thank you, Your Honor.

24 THE COURT: All right. We stand in recess for about
25 another 10 or 15 minutes.

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1 RECESS - 1:58 P.M.

2 *****OFF THE RECORD*****

3 (On the Record - 2:24 P.M.)

4 BY THE COURT:

5 THE COURT: All right, gentlemen. I know it's been kind
6 of rushed, but at this time, have you had an opportunity to
7 look over the proposed charges and, as I said, I'll give you
8 two opportunities to raise any objections now and then after I
9 charge the jury. Have you had enough time to look over it?

10 MR. POWELL: I've still got about three pages to go,
11 Judge.

12 THE COURT: Okay. Well, it's 2:30. And like I say, I
13 don't want to go too late and push this thing to Tuesday -- I
14 mean, till Monday. So ---

15 MR. POWELL: I believe I'm okay, Judge, overall with what
16 I've been reading.

17 THE COURT: Okay. All right.

18 Any objections at this time from the defense?

19 MR. EDGEWORTH: No objections from the ones I've
20 reviewed, Your Honor.

21 THE COURT: Okay. All right. Are we ready to bring the
22 jury in and do closing arguments?

23 MR. POWELL: The state is, Judge.

24 MR. EDGEWORTH: The defendant is ready, Your Honor.

25 THE COURT: All right. Let's bring the jury in.

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1 Since there's no defense presented, the state close in
2 full and then defense close in full and that's it.

3 MR. POWELL: Yes, Your Honor.

4 THE COURT: All right.

5 Is that right? Wait a minute. Let me see.

6 COURT REPORTER: Defense has one exhibit.

7 THE COURT: What was that defense exhibit?

8 COURT REPORTER: The CID fingerprint report.

9 THE COURT: Okay. Yeah, so the defense, since you did
10 put in an exhibit, I think ---

11 MR. POWELL: The state believes we get a reply based on
12 that.

13 THE COURT: A reply only as to matters that they address
14 in their closing that you have not already addressed in your
15 closing.

16 MR. POWELL: Yes, sir. I'm not supposed to repeat the
17 same old thing.

18 THE COURT: Exactly. All right.

19 MR. EDGEWORTH: I agree with that, Your Honor, under the
20 rule.

21 THE COURT: All right. So, the state will close in full.
22 Defense will close in full. Then the state will be afforded a
23 brief reply, if there is any matters addressed in the defense
24 closing that you didn't address in your closing.

25 MR. POWELL: Yes, Your Honor.

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1 THE COURT: Okay.

2 MR. EDGEWORTH: Thank you, Your Honor.

3 THE COURT: All right. Let's bring the jury in.

4 (REPORTER'S NOTE: Jury enters courtroom @ 2:27 P.M.)

5 THE COURT: All right. Ladies and gentlemen, welcome
6 back.

7 We're now ready to resume with the trial of the case.
8 The state has rested their case. Now is the time where the
9 defense to present a defense if they choose to; they're not
10 required to.

11 Mr. Edgeworth, any witnesses the defense wishes to call?

12 MR. EDGEWORTH: No, Your Honor, the defense rests.

13 THE COURT: All right. All right. Ladies and gentlemen,
14 the defense has rested their case, which means the only thing
15 remaining at this point in time is for the attorneys to make
16 their closing arguments, and then I will charge you on the law
17 to be applied in this case before you retire for your
18 deliberations.

19 Now, just like their opening statements, these closing
20 arguments by the attorneys are not evidence in this case. It
21 is just simply the attorneys' contention as to what they think
22 the evidence has shown and the law to be applied in this case.
23 If at any time an attorney makes reference to a factual issue
24 that is different from the facts as you find them to be, or
25 references the law that is different from the law as I will

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CLOSING BY POWELL

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1 charge you with at the close of their arguments, then you're
2 to disregard that portion of their arguments, because this is
3 not a charge on the law, and it is not evidence of factual
4 issues. It's just their contention as to what they think the
5 evidence has shown and the law to be applied.

6 All right. Mr. Powell?

7 MR. POWELL: Yes, sir, thank you, Judge.

8 CLOSING BY POWELL:

9 MR. POWELL: Ladies and gentlemen, when I spoke to you
10 the first time this week and made my opening statement, I
11 basically talked about the fact that my job is to put up
12 evidence, testimony, to prove to you beyond a reasonable doubt
13 that the defendant did the crime of armed robbery, did the
14 crime of kidnapping, and did the crime of possession of a
15 weapon during the commission of a violent crime.

16 Let's go over a few things first. We're gonna talk about
17 all of that again. Let's go over a few things first to maybe
18 help you do your job when you go back to your deliberation
19 room. How are you gonna make that decision today? It's not
20 complicated, you don't need some special skills. If you're a
21 brain surgeon, you got to be trained to be a brain surgeon.
22 But everybody who is on a jury has their training. You have
23 training because you've lived your lives. You have your
24 common sense that living your life has taught you. You didn't
25 leave your common sense at home when you came to court the

1 times this week. You didn't leave it in your car or your
2 truck, your vehicle outside. The sheriff deputies checked
3 you, I'm sure, with the medical detector and they didn't take
4 your common sense away from you. You have the common sense
5 that you develop in your lives.

6 We all have friends who talk about catching a humongous
7 fish. We may know that person not to believe him at all. We
8 may think he might've caught a little fish and was
9 exaggerating. So, we have the skills to believe somebody, not
10 to believe them, believe them a little bit, and make sense of
11 it. Once again, we're talking about common sense. Basically,
12 you've set here this week, paid attention, heard the
13 testimony, saw evidence, things of that nature, video, there's
14 things on that table that got admitted. So, you paid
15 attention and you've heard the lawyers do their questions and
16 you've heard opening statements, closing statements, they're
17 not evidence, but you've taken all this in this week is the
18 point I'm making.

19 When you get through here this afternoon in this
20 courtroom, you'll go back into that little room you've learned
21 to probably dislike, but you will have the opportunity to talk
22 about everything. As His Honor said, the way this is supposed
23 to happen is, you don't make up your minds at all until the
24 very end. You listen to everything with an open mind and you
25 go back in that room and he finally tells you to start, he'll

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CLOSING BY POWELL

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1 probably send you to that room and I imagine he'll say don't
2 start talking about it until I send somebody in there to tell
3 you to start. So, the Judge really has tried to emphasize
4 following the rules, because the Judge is like the referee or
5 an umpire at some sporting event. This is a lot more serious
6 than that, but one of his jobs is to make sure there is a fair
7 trial. So, once again, the Judge, I'm sure, wants you not to
8 ever talk about anything to do with this until you get back in
9 there and he tells you to start. But, that's what you'll do,
10 you're gonna use that common sense you all have with you.
11 Every one of you have that.

12 And that leads to the next question. What is your job?
13 We talked about your job is to make a decision whether the
14 State of South Carolina proved to you with that evidence and
15 testimony, whether the defendant is guilty beyond a reasonable
16 doubt of each one of these charges.

17 I think I mentioned it before, you're in the courtroom
18 today. This is like going to a doctor or going to a mechanic.
19 You've heard a bunch of lawyer talk, courtroom talk, things of
20 that nature. So, when you're talking about each crime, the
21 law explains what makes up each crime, and a lawyer word is
22 used to do that. Basically, in lawyer talk, when you define
23 what a crime is, the lawyer talk is the word element. So,
24 every crime has the elements that make up that crime itself.
25 And in addition to that, the crime has to take place in the

1 county where the trial is taking place. So, we talk about
2 armed robbery, we talk about kidnapping, we talk about
3 possession of a weapon during a violent crime. Then, we're
4 talking about what are the elements of each one of those and
5 did each one of those take place in Horry County.

6 It's not really that confusing. I tend to use this
7 following example over and over again. It's like a recipe for
8 something, and I use a peanut butter and jelly sandwich. The
9 elements -- if there was a crime of peanut butter and jelly
10 sandwich, the elements would be two pieces of bread, there's
11 some peanut butter and there's some jelly; it's not
12 complicated, but those would be the elements. That sandwich
13 would have to be in Georgetown County, took place there. So,
14 the elements are confusing, but that's the words that are
15 used.

16 So, when we talk about what my job is, I'm supposed to
17 put up evidence to prove beyond a reasonable doubt every one
18 of those elements exist and were proved to you beyond a
19 reasonable doubt. So, that's what we need to go through today
20 is the evidence that was presented to you and whether that
21 evidence does in fact cover every element of these three -- of
22 these three crimes.

23 So, basically, I think we'll just talk about each crime
24 in and of itself, first, and then go into the evidence. So,
25 we talked about this at the very beginning, but I will repeat

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CLOSING BY POWELL

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1 myself. Armed robbery is pretty simple. The Judge is gonna
2 give you the legal definition, the Judge definition, and you
3 use that when you go back into the deliberation room, but I'm
4 gonna talk about each of the three crimes sort of in my own
5 words.

6 But armed robbery, it's simple. You use some kind of
7 weapon to rob some kind of property from somebody. It doesn't
8 matter if you go rob a store, rob Keith Powell, a person, but
9 you use a weapon to commit a robbery by using that armed
10 weapon and it happened in Georgetown County.

11 Kidnapping. I pointed out to you at the very beginning
12 that kidnapping isn't that traditional thing we almost always
13 think about where I take somebody, put them in my car, drive
14 them somewhere, maybe assault them, maybe ask for a ransom,
15 want money to get them back, something like that. That is
16 kidnapping, but our statute, once again, says what the
17 elements are. The Judge will read all the elements of
18 kidnapping to you, but some of the elements of kidnapping that
19 makes up the kidnapping is seizing somebody, confining
20 somebody, seizing somebody in Georgetown County, and confining
21 them in Georgetown County. So, those are elements that
22 constitute the crime of kidnapping.

23 Using a weapon during the commission of a violent crime.
24 It's relatively simple, too, in the way it's described. What
25 it's called. You use some type of weapon when you go commit a

1 crime. The state legislature, our politicians, that's
2 classified as a violent crime. As we discussed earlier, some
3 crimes are classified as non-violent; some are classified as
4 violent crimes. In this case, there's three charges; the
5 first one is armed robbery, the second one is kidnapping. You
6 know, we talked about before, both those crimes are classified
7 as violent crimes.

8 So, in order to convict a person of using a weapon during
9 the commission of a violent crime, you're gonna have to find
10 them guilty of one of the two charges, armed robbery or
11 kidnapping. If you don't go for either one of those, then
12 obviously, he wasn't committing a violent crime. So, they're
13 tied in together in that aspect. He used armed -- he used a
14 weapon in this case, an alleged revolver, to commit armed
15 robbery and kidnapping. So, those are the three things we're
16 talking about.

17 Let's go through a few other various things. First of
18 all, the defense attorney, when he made his opening statement
19 to you, he made some comment along the lines of -- and I'm
20 paraphrasing him but you'll recall it -- he made some comment
21 along the lines of everybody is assuming the defendant is
22 guilty, assuming he did it. He got arrested, so, you're
23 assuming he must've done it or he wouldn't have been arrested.
24 I don't think the police every assumed he did it. So, I want
25 to go over some things that will show, I believe, that they

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1 never assumed that John Linen committed that crime.

2 Basically, they did an investigation that resulted in
3 believing he did the crime, but let's go through what they
4 did. First of all, right before 9 o'clock on March 20th,
5 2017, a 911 call came in. The dispatcher sent various
6 officers to report to that Dollar General store out on Fraser
7 Street and Highway 701 in Georgetown out near where Choppee
8 Road runs into it. Numerous officers show up. You saw the
9 one, Officer Wilson's body camera video, there were a bunch of
10 cops walking around, some officers with uniforms. Some were
11 investigators, they tend to dress in -- in business kind of
12 light attire and they don't wear uniforms. You heard them say
13 that don't carry body cameras, they're not equipped with that,
14 but a lot of officers were there. With the testimony and
15 watched the video, you saw them -- some go in the stores.
16 Officer Magann went back to look at the Dollar General store
17 video. There were a lot of officers walked around taking
18 photographs. Robbie Sarvis talked about walking around the
19 perimeter, seeing if somebody might've dropped some evidence.
20 So, a bunch of people were there doing different jobs. They
21 are trying to collect the evidence of the alleged crime. At
22 that point in time, they just were told an armed robbery took
23 place. So, they were looking for things that the evidence
24 that could be saved, gathered, collected. And what they're
25 doing is, they're trying to find proof that a crime took place

1 and, of course, figure out who did it. So, that's sort of
2 what they're working on doing.

3 So, they get the security camera video. Officer Magann
4 testified he was familiar with Dollar General store, went in
5 and got the video, testified that the victim, Ms. Sparkman,
6 was there, helped him figure out the parts, the different
7 cameras. There's a camera running this -- one in this
8 direction, all different directions of the store. As you walk
9 around, there's cameras facing in different directions. So,
10 what did he do, he tried to collect evidence. Did that crime
11 actually take place? So, he made copies of those different
12 camera angles that showed what took place that day. They took
13 time to do that. They weren't merely assuming the crime even
14 took place.

15 They were trying to figure out who did it. The video
16 supported what they were hearing told that day, the story of
17 the armed robbery, the story of the kidnapping, the story of
18 the possession of a weapon. So, in looking at that video,
19 hey, did this happened? It looks like it. We're seeing
20 something that backs up this victim's story that took place
21 not very long before that. And, we're talking about a very
22 brief period of time. This is minutes, 10, 15, 20, 30
23 minutes, all this stuff is being looked at and checked into
24 after this incident took place.

25 So, what does Officer Magann do? Ms. Sparkman, do you

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1 recognize the person you saw when you're seeing this video?
2 No, I don't know who he is. So, what does he do? He
3 testified that one investigative technique they use to look
4 for the ID for somebody is to do that press release. So, he
5 has video looking at the screen, just like he has that in
6 front of him. We've all looked at the screens. He takes
7 still shots. He captures a photo off of -- off the things,
8 the camera video. I think one was in the T-shirt aisle and
9 one was by the cash register. We have both these photos.
10 You'll get to look at them back there in the back. But, he
11 captures these two photos and they're not -- there wouldn't be
12 a photo you'd want from your wedding or from graduation or
13 your grandkids or something, your girlfriend, boyfriend,
14 husband or wife, but they're photos, they're good photos. And
15 he says, they send press releases out. Sometimes social
16 media, sent out officers, but it's just to broadcast a
17 picture. Anybody know this person? He testified he got
18 numerous anonymous tips indicating that it was Mr. Linen. But
19 the important thing is Allen Blackburn, back in March of 2017,
20 was a sheriff officer. He contacted Mr. Magann and said it's
21 Mr. John Linen in those two pictures, the ones I just showed
22 you and the ones you'll get to look at. And he testified on
23 the stand that he lived in the same community as Mr. Linen.
24 Known him for, I think he said, about 10 years. And I think
25 he testified, when he saw those pictures, he knew who it was

1 as soon as he saw it.

2 So, when you're thinking about that, think about somebody
3 you know well. Think about the times you've seen somebody you
4 know well across the whole other side of the parking lot, you
5 know who that is. So, think about when you look at a picture,
6 a picture of that quality, nevertheless, but a picture of that
7 quality, and it's somebody you know, it would make common
8 sense that Office Flagler was able to identify the person in
9 those two pictures.

10 So, once again, the police aren't assuming anything. The
11 sheriff deputies are investigating the case. With Flagler's
12 information that is Mr. John Linen, what do they do then? He
13 gets a photograph of Mr. Linen, Officer Magann does, there's a
14 process by contacting our State Law Enforcement Division,
15 SLED, to get what they call a six-pack. It's a federal lineup
16 that's comprised of six photographs. They send it to SLED,
17 SLED is supposed to come up with six pictures that look
18 similar. It wouldn't be fair to have one black person and
19 five white people, it wouldn't be fair to have five redheads
20 and one blonde to try of point your direction; you're supposed
21 to have six pictures that basically look the same, so nobody's
22 attention is drawn to one thing. If one person was in color
23 and the rest were black-and-white photos, it would draw your
24 eyes to the color picture. So, he got this six-pack, this
25 photo lineup, prepared by SLED and received it.

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1 Officer Jonathan Griffith was the officer that basically
2 was collecting evidence, doing most those type things. He
3 took things back to the sheriff's office, because what you
4 heard was, they collect evidence, it's put into the Georgetown
5 Sheriff Department's evidence locker and stored. So, the
6 police gather evidence and it's stored securely and saved so
7 it can be used at trial. It can be put up and offered into
8 evidence. You saw there was a process. I think I stumbled
9 through, I looked like a moron myself trying to get that 911
10 tape in. The Judge sort of had to ask me questions over and
11 over again, Defense complained over again. Finally, I got it
12 into evidence because, once again, the Judge is gonna make me
13 follow the rules of the courtroom. I had to ask certain
14 questions to be able to get the evidence in. That's what the
15 cops do, police do. They're supposed to gather evidence,
16 secure it, lock it up, bag and tag it is what I call it, to
17 get it in the secure locked room, and then they can bring it
18 to trial, if there ends up being a trial, so it can be shown
19 to the group of jurors to make a decision. So, that's what he
20 did. He got that photo lineup, Officer Griffith asked Ms.
21 Sparkman to come back to the Georgetown Sheriff Department, to
22 show the photo lineup. And what he testified was, from my
23 recollection was, he placed it on the table in front of her.
24 He didn't remember what room he was in in the sheriff's
25 department from memory, but he said he placed it there for

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1 her. He didn't say is that the person. He testified that he
2 laid it down. Do you see the person there that did this
3 crime? Ms. Sparkman testified that he didn't do anything
4 along the lines of, it's this guy; right? I think the
5 testimony was clear, nobody was suggesting you look at this
6 one person. But Ms. Sparkman testified she picked him out.
7 It didn't take a long amount of time. Officer Griffith says
8 she picked Mr. Linen's picture out, circled it, and initialed
9 it. So, once again, the police aren't assuming anything.
10 They tried to investigate and prove a crime occurred, tried to
11 figure out who the person was, got that identification from
12 Officer Flagler, and then backed that up and corroborated that
13 by showing that lineup picture to the victim, Ms. Sparkman.
14 And remember, this crime -- and it's an important thing --
15 remember this crime took place in a well-lit room, like this
16 right here. It wasn't midnight out on a dark street where
17 somebody walked up and slapped me, and that's one second it
18 happened and do I remember it. Ms. Sparkman testified he came
19 in and out of the store, testified that the lights were on.
20 So, when she looked at his photograph, she talked about the
21 robbery took place right before 9:00. Officer Griffith, I
22 think the time was on this. He said he wrote the time down
23 and the date that he showed it. We talked about the robbery
24 being -- kidnapping and everything being March the 20th.
25 You'll see it written down at the bottom, 3/20/17, 3:25 P.M.

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1 So, the robbery takes place right before 9 o'clock in the
2 morning. A few hours later, 3:30, basically, in the
3 afternoon, six and a half hours -- six and a half hours later,
4 she's being shown a picture. So, a lawyer looking at --
5 talking about things legally, it's not a long period time;
6 it's basically fresh. It's not having something happen and
7 six months or a year later, you're being shown a picture.
8 Hey, is this the person who did this to you a year ago? There
9 would be a difference or at least potentially a difference in
10 whether a person could identify somebody that far down the
11 road. So, when we think about Ms. Sparkman looked at that and
12 was able to identify Mr. Linen, consider the amount,
13 extraordinary amount of time that went by. So, think about
14 that as well.

15 So, they go and arrest Mr. Linen. They get arrest
16 warrants after they identified him. And what do they find?
17 There, that little brick building, just 20 feet -- I don't
18 think anybody ever figured out if it was his residence or a
19 next-door neighbor's property, and once again, this gun can't
20 fire. My father and friends are looking at me now saying
21 don't point guns at anybody, but it can't be fired. But what
22 they find in that little, I think they said it was Wendy's
23 bag. There's pictures and I'll show them to you in just a
24 minute. They find this gun. Officer Robbie Sarvis said he
25 noticed the bag, looked up, checked and it was heavy, he

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1 looked inside and saw a gun, he sat it back down. Officer
2 Griffith was, once again, was the one bagging and tagging
3 things, collecting things. Officer Griffith came and
4 collected this. But amazingly, once again, they're not
5 assuming things, but 23, 20 feet or so, outside the building,
6 the residence of where Mr. Linen was, there's this gun. What
7 do we hear all day long, spinny thing, a revolver, and it just
8 happens to be there. Now, if they had just found this gun
9 there and nothing else, this wouldn't prove anything. But
10 remember, a trial, this evidence come in -- and I talk real
11 fast, I never have been able to slow down when I talk to
12 juries, so, excuse me. I go slow at first and now I'm
13 speeding up. But, I'm human like everybody else; I'm not
14 perfect. But, for sure, it's easy if this was the only thing
15 we had as evidence, it wouldn't prove anything. But, it's
16 common sense; it's a piece of the puzzle. All this evidence
17 is presented to you, it's a lot more serious, but it's no
18 different than when you were a kid and put a puzzle together
19 or you helped a child put a puzzle together or helped a
20 grandchild put a puzzle together, you don't have to have every
21 single piece of the puzzle before you clearly see the picture.
22 So, common sense, that gun is one other thing that they
23 collected that's telling the story; they were not assuming
24 anything. And they got him arrested the afternoon of the same
25 day that this took place.

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1 And once again, they did a couple of other things
2 afterwards. The fingerprint was taken off that bag; we all
3 looked at -- there's a plastic bag up there of white T-shirts.
4 The officers testified they were gonna take some fingerprints
5 off of. The very next day is when Officer Bennett, who is now
6 not working there, but Taylor Bennett Mintz, she's married;
7 her last name has changed. I think of Bennett, not Mintz. We
8 all get confused when friends we have change their names. But
9 Ms. Taylor took the fingerprints to Horry County, Robbie
10 Caulder, who used to work in Horry County for years checking
11 fingerprints. When did she take it? She took it there the
12 day after he got arrested. They didn't assume he was guilty
13 and arrest him and stop; they were still working the case.
14 They sent the fingerprint evidence over to be done. Wasn't
15 nothing there. They didn't know that when they sent it, but
16 Mr. Caulder said there was no ridge detail. He said there had
17 to be a certain number of ridges for him to say so many -- and
18 I even got that fingerprint stuff off my fingers; it's over
19 there. But, they have to get enough ridge detail -- that's
20 what those little lines are in your fingers. I mean, he
21 testified there's oils and things, if you touch something,
22 those little ridge lines are leaving an oil type impression.
23 There weren't enough there, so you couldn't show who was or
24 who wasn't; it just wasn't any good. But they still did that;
25 they were not assuming.

1 Also, I call him Lou, Mr. Aswud, that officer, he took
2 the two phones, cell phones that were found at the residence
3 where Mr. Linen was arrested. It was after the day he was
4 arrested, but he did that phone dump, that extraction.
5 Nothing was there. There's not always something there; that's
6 common sense. But, still they weren't assuming it was him.
7 If they assumed it was him, they wouldn't have done these
8 follow-up things. So, I don't think there was any assumption
9 about his guilt. Guilt today will be what you decide if you
10 believe the evidence, proof beyond a reasonable doubt that he
11 did these three things.

12 Let's talk about the actual evidence of these three
13 crimes. What I think is the big important thing is, when you
14 think about everything, I think you'll find that all of this
15 evidence is very consistent overall with what's going on.
16 First of all, we've heard Ms. Sparkman, Tyesha, testify she
17 was assistant manager. She went to work that day and she had
18 opened up the store. Mr. Linen came in the first time -- she
19 was able to identify him later. But the person came in the
20 first time, wanted to look at shirts, left, came back a little
21 while later, and then robbed her. So, there was numerous
22 times -- we all watched that video from the store. And, you
23 can watch that again if you want to; all you got to do is tell
24 the Judge. It's into evidence, so it's something you can see
25 later. But we saw that person, dark top, dark pants on, come

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1 in the store, walk down the different aisles, leave the store,
2 then came back. The lady and I think a child was paying for
3 some goods, she left and Mr. Linen walked up, had an item in
4 his hands and then the robbery and stuff started happening.
5 So -- so that's consistent, the video is consistent with what
6 she told you.
7 In the video, you see him walk around that counter; she walks
8 up to the cash register. There's a video that comes down and
9 you're seeing the cash register counter; you're looking at it
10 from that angle. This is the camera, that' the cash register.
11 You see him walk back in there and she goes up to the cash
12 register. You see her take stuff out of the cash register and
13 hand it to him. I'm sure that's her giving him the money out
14 of the cash register. She said he got the cash register
15 money. So, you're seeing the robbery take place. The video
16 supports her saying that that happened. And so we have a
17 video that's consistent with her testimony as well.

18 Being armed robbery, you first heard the 911 tape, when I
19 finally got it in, you heard her being upset. Being upset can
20 be proof that something actually happened. She talked about
21 he had a gun; not an expert in guns, something along those
22 lines, but it had the spinny thing. You already saw the
23 revolver where that cylinder turns. When Officer Wilson had
24 his body camera on and her, she once again was talking about a
25 gun, a spinny thing. So, there's being -- being consistency

1 in her statement saying that he had a hoodie on, that there
2 was pockets, that she was able to see the gun; he made sure
3 she saw it to know that I'm threatening you with a gun, I want
4 money out of the safe. Perhaps that's what was going on is
5 that common sense. So, once again, the story that's being
6 told of what happened is being consistently told and backed up
7 by video.

8 She said she had zip ties put on her. Mary McGee
9 testified that she came to the store that day. She was on the
10 phone, but I think she said like that, had her hands zip tied
11 together. So, you've got support for that, that kidnapping
12 stuff. You saw the video where she followed the person in the
13 video back into that breakroom. He had just showed her a gun.
14 Is that a threat? You come back here with me to the -- he
15 didn't stick the gun in her back and prod her back into there,
16 but if somebody had a gun displayed to them and somebody
17 saying I'm robbing you, I want the money, follow me back in
18 here, if you're using a gun -- perhaps common sense, using a
19 gun to force somebody to go back there.

20 What's some physical evidence that supports this stuff
21 took place? Up here -- we'll just use the photographs. We've
22 put into evidence pictures that were taken at the scene. We
23 have photographs of zip ties. You'll be able to see them back
24 there. We've got photographs of zip ties on a chair. The
25 testimony was he tried to zip tie her to a chair. He wanted

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1 her to stay in that room so he could get away. Does that make
2 common sense? He didn't get that done. And as you see, that
3 zip tie doesn't look cut. Those zip ties are in the bag and
4 you can see those, too. This one here you can see where some
5 got cut. You'll see a picture of zip ties better on the chair
6 when you look at these. So, there's pictures that were taken
7 by the police. They took pictures of where they took
8 fingerprints off that shirt. You'll be able to see a bag of
9 white T-shirts. But, if you look at this picture, you see
10 there's that fingerprint dust smudged and stuff. She said he
11 came and looked at a T-shirt that first time he came in. You
12 saw that in the video. He looked at a red T-shirt, and there
13 was a red T-shirt, you've got a picture; it's over there.
14 You'll see pictures of the store. So, you've probably been to
15 a Dollar General store; they pretty much are the same. So,
16 you'll be able to picture that in your mind. But, you'll be
17 able to see these pictures, and these photographs, once again,
18 they are all consistent with what she said took place. Ms.
19 McGee's testimony was consistent with her being zip tied. She
20 told -- her utterances right after it happened, I was robbed.
21 So, everything we're seeing is being consistent.

22 The kidnapping, once again, that's seizing or confining
23 somebody. She's testified he tried to zip tie me to the
24 chair, he showed me a gun, he had me go back to the breakroom,
25 he put zip ties on my hands. She said she didn't feel free to

1 leave when he was doing that. So, common sense if somebody is
2 using a gun and robbing you that you feel seized and confined.
3 Ms. McGee had to cut the zip ties off her hands. The 911
4 call, she told that story. Once again, the evidence is all
5 being consistent about the kidnapping happening as well.

6 Possession of a weapon during a violent crime, that sort
7 of speaks for itself. The evidence proved beyond a reasonable
8 doubt that the armed robbery took place. Then you're
9 believing that there was a gun. His Honor, I'm sure will
10 instruct you with his charges that armed robbery and
11 kidnapping are violent crimes. So, certainly if you prove
12 beyond a reasonable doubt that armed robbery and kidnapping
13 took place, then you're gonna believe there was possession of
14 a weapon during a violent crime at the same time.

15 So, maybe perhaps, what is the big question? Defense
16 counsel brought up one question. It's not the big question,
17 but he brought up the fact that, I think, Robbie Sarvis said
18 they didn't find any cash. It might've been Detective
19 Griffith, but I think there was testimony and questions by
20 defense counsel, was there any cash found when he was arrested
21 at his house? I believe a wallet, a picture of a wallet was
22 there. There wasn't a whole lot of money taken. It was money
23 taken out of a cash register. I'm not positive of the exact
24 dollar amount was ever testified about, but remember this
25 armed robbery took place at 9 o'clock one morning. I think

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1 the two different testimonies were, sometime after 3:30,
2 Officer Griffith said they went there to arrest him. I think
3 Robbie Sarvis said it was sometime after 5:00. So, we're
4 talking about 9 o'clock in the morning until 4:00 or 5:00ish
5 or so in the afternoon. Certainly, a small amount of money
6 could be spent. It doesn't mean somebody who robs money in
7 the morning is the kind of person who is gonna have the money
8 in their pocket at the end of the day. So, so is that common
9 sense that money had to be found?

10 Let's talk about the big question. I'll get back to
11 that. The real big question seems to be not that armed
12 robbery occurred, not that this incident occurred, but who did
13 it? Is it the defendant who did it? Remember, once again, we
14 talked about it briefly, so some of this will be repetitive.
15 But this took place 9 o'clock in the morning, the press
16 release was sent out, Officer Flagler, who knew the defendant,
17 identified him in those two pictures you'll be seeing. They
18 get that SLED photo lineup within -- about 3:30 in the
19 afternoon; I think it was 3:27. Ms. Tyesha Sparkman I saying
20 this gentlemen here -- I think it was Number 3 -- was the
21 person who did this crime. Very quickly it was identified.
22 Both Ms. Sparkman and Officer Griffith said it was easily
23 done. She didn't have to stare at it, ponder it, try to
24 figure it out. Officer Flagler said the same thing. I saw
25 the pictures, I've known who he was for 10 years; I knew it

1 was him. So, we had that -- that part done.

2 The gun was found. In and of itself, it doesn't prove
3 anything. But just magically that day, the gun with the
4 spinny thing was sitting outside in a fast food bag right
5 outside by that little concrete building. I think Robbie
6 Sarvis said 20 feet away from the building that, ultimately,
7 Mr. Linen came out of. So, we have those kind of things that
8 back up what it is.

9 You can look at those press release photos. You saw the
10 person in the security camera video. You have your own right
11 to look at those and decide for yourself whether it looks like
12 him. So, you have that ability to do as well. And I think
13 the important thing is also is that, once again, this took
14 place in a well-lit store. Mr. Linen came in and out to case
15 the place perhaps. That makes common sense. He acted like he
16 was interested in a T-shirt. She saw him a couple of times
17 walking around. He comes back to the cash register, walk up
18 again, apologize. She's close to him as that cash register --
19 he's close to her at the cash register. A hoodie is up on
20 somebody's head but you see a face, the hood doesn't cover up
21 the face. It wasn't like he had a ski toboggan on, a mask on;
22 he just had the hood up. The face was there. You see it in
23 the pictures; you see it in the video. We have that there.

24 But I think the most important thing, the thing that
25 struck me the most with the testimony today, on cross

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1 examination, Ms. Sparkman said, I know it -- and I'm
2 paraphrasing -- she said something along the lines, I know
3 it's him. You don't forget the face of somebody who does this
4 to you. So, I think you certainly have the right to judge her
5 believability by that statement as well.

6 So, when it comes all down to it, folks, you have to use
7 your common sense today. Please review all of the evidence.
8 I believe that once you do, you'll be firmly convinced that
9 Mr. Linen is guilty of all three charges.

10 Thank you.

11 THE COURT: Mr. Edgeworth?

12 MR. EDGEWORTH: Thank you, Your Honor.

13 CLOSING BY EDGEWORTH:

14 MR. EDGEWORTH: Ladies and gentlemen of the jury, now the
15 state has come before you now and, you know, tried to use my
16 comment during the opening remarks and kind of flip it on its
17 head and mischaracterize, you know, what I wanted to relay to
18 you at the outset of this case, and that was about
19 assumptions. And they are now wanting to, like I told you
20 they would do, want you to assume that those assumptions would
21 somehow create themselves into a consistency or some proof or
22 we -- because we just simply investigated this case, then this
23 must be the person. Again, they want you to assume that
24 everything that they did leads to a conviction. That's why
25 they are here. They are presenting the evidence to you in

1 hopes that you will convict. Let's don't be fools about that
2 and I know you're not, because I've paid attention; I've seen
3 that you have paid attention.

4 The question that you have to ask yourselves is, you
5 know, where is the proof? The state is asking you to believe
6 in these like, you know, consistencies and things that have --
7 they have continued to tell you along the way, right? But
8 they are forgetting to acknowledge the lack of the evidence.
9 They're telling you, well, we investigated the case and we
10 didn't assume it was him, we -- you know, we took pictures.
11 Well, whoop-de-do, the pictures don't show anything. They
12 took a picture of a house. And, I'll get into more detail in
13 a moment.

14 Just because you investigate the case, doesn't mean that
15 you have, you know, convicted someone. But they assume that
16 because they investigated the case and presented what they
17 believe to be the evidence to you, that you will convict.
18 But, we have a great standard in this nation and it's called
19 beyond a reasonable doubt. Beyond a reasonable doubt. They
20 are talking to you about, you know, use your common sense.
21 Well, they're asking you to use your common sense in the favor
22 that they are pushing you towards. You know, see what I
23 found. We found a gun, we found some zip ties, we found a bag
24 of T-shirts. Well, so what? None of that stuff points in any
25 direction to Mr. Linen.

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1 So, let's talk about it. Did they -- did they show you
2 any black hoodie? Where is this black hoodie? Did they bring
3 that to court? No. They didn't find a black hoodie. Did
4 they find the \$134, you know, that he -- he stole or the
5 assailant stole from the Dollar General? No. And now they
6 want you to say, well, you know, it's been seven, eight hours,
7 you must've spent it. Well, you heard -- you heard the
8 testimony. They didn't find anything that appeared to be new
9 in the home. They didn't find anything that appeared to be
10 freshly purchased. In fact, we asked them, you know, when you
11 found this gun, did you find food in it? You know, did the
12 assailant go and by some Wendy's, you know, over there off
13 North Fraser Street and then just happen to put the gun in it?
14 No. But, they think you're believe that, but they don't want
15 to tell you that. They're ignoring all of the parts of the
16 case that don't point to Mr. Linen.

17 They talk about physical evidence and they point to the
18 pictures, a picture of a Dollar General. I don't think
19 anybody in this -- in this jury does not agree that the Dollar
20 General got robbed, right? Do we need a picture of that? No.
21 A picture of the entranceway. I'm pretty sure that the Dollar
22 General has an entrance way. There's a picture of the zip tie
23 and the bag of T-shirts, right? They took a picture of it.
24 But does that make it proof? That doesn't make it proof.
25 What is proof about this? Well, this was the zip tie that was

1 apparently -- and you can see in here that was cut off by Ms.
2 McGee. I don't think anyone disputes that, you know, she went
3 in there and cut this off. You could hear it on the -- on the
4 911 call, you could hear it in the video. You know, but they
5 attempted to lift fingerprints off of the, the bag, right?
6 You can still see the dusting materials. Things might have
7 been put away here. And you'll get to review this in the --
8 in the room. You can see where, yes, law enforcement did do
9 this investigation, at least attempted to. You can see the
10 dusting on there. They went through the process of lifting
11 the fingerprints, right? But that doesn't mean that there is
12 somehow magically some guilt. They sent the fingerprints to
13 an expert, an expert in Horry County. You heard Mr. Caulder
14 sitting up there and talking about how -- and the Judge
15 qualified him as an expert in fingerprint analysis. And he
16 told you, he didn't find anything on it. He didn't find
17 anything on it. Most importantly, they didn't find Mr.
18 Linen's fingerprints, right? They didn't find his
19 fingerprints. Well, why is that important? Why is that
20 important? Because that would be proof, potentially proof of
21 guilt, right? It's something you can use your common sense
22 and say, well, maybe that's beyond a reasonable doubt. That's
23 proof. Did they attempt to get fingerprints or anything off
24 of -- I don't need to look for it, you can look for it if you
25 want because it's the absence of evidence. Is there a red T-

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1 shirt? Well, the assailant came in and went and touched a red
2 T-shirt at first, and I think you probably saw that on the
3 video. Yes? But does that red T-shirt connect to Mr. Linen?
4 No. They don't have any evidence that connects the red T-
5 shirt to Mr. Linen, but they want you to ignore that fact,
6 right, and assume that it is Mr. Linen. Those are the
7 assumptions that we're talking about. They want you just to
8 ignore the absence of the evidence.

9 And then what the state did was they put up some evidence
10 to make it appear as if they were doing their job. You know,
11 oh, yes, we found two cell phones, and we did the Cellebrite
12 test, extracted information off that phone. The investigator
13 specifically said that that is a tool that they use to get and
14 convict criminals. And what did they find? Nothing. There
15 was nothing that he has even used the criminal and legal type
16 word. There was nothing to implicate Mr. Linen, implicate him
17 in the crime.

18 So, again, they may've performed an investigation, but
19 the investigation doesn't lead to guilt beyond a reasonable
20 doubt. And why are these things important? We're talking
21 about the evidence that they presented here to you. These are
22 things they found. There are things that may be consistent
23 with the story of a crime, but is not evidence that is
24 consistent with the conviction or proof beyond a reasonable
25 doubt of Mr. Linen. And that is your job. That is the -- the

1 oath that you took. That is the standard that we, as citizens
2 of this country, hold ourselves to. And that's the standard
3 that you should hold yourself to when you're analyzing this
4 evidence.

5 You know, they brought in the video, right? And you had
6 to watch like what, an hour and change of video of just
7 walking around, talking to this person, taking a statement,
8 typical stuff, right? It didn't prove anything. It just
9 proves that they were at the store, but they want you to think
10 that this is we're doing our job. We're doing everything we
11 need to do to get a conviction. That's what they want you
12 think.

13 The state has asked you to, you know, remain with the
14 open mind, but that's now what they really want you to do,
15 right? This goes along with the assumptions. The open mind
16 would be taking in the evidence and seeing not only the, the,
17 the positive, but also the negative. So, they put in this
18 thing that they purport to be evidence, but it doesn't really
19 prove anything. It's just something that we've got to put a
20 little sticker on and lay on this table and go through the
21 motions of getting it into evidence, so that then you can go
22 back there and look at it when you're deliberating. But when
23 you do go back there, what does -- what does any of this stuff
24 tell you? They have no connected any of this to Mr. Linen,
25 none of it, not one thing.

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CLOSING BY EDGEWORTH

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1 There's no fingerprints on the gun, there's no
2 fingerprints on the zip tie, there's no fingerprints on the T-
3 shirts, the T-shirt bag, there's no fingerprints on the red T-
4 shirt. What exactly have they proven? So, then they, you
5 know, they come to the end -- oh, yeah, and they got the
6 pictures, too -- I forgot about those -- just pictures that
7 any person could take. It doesn't show anything. It doesn't
8 purport to do anything other than they -- they go and take a
9 picture before they pick it up to show that they didn't mess
10 with it, you know, this is where it was. But it doesn't prove
11 anything. So, then they come to the end and they say, well,
12 the story is consistent; therefore, he must be guilty. That
13 ain't how it works. There's plenty of people that can try a
14 consistent story and say that when they're doing illegal stuff
15 all the time, mafia, organized crime.

16 So, consistency has nothing to do with anything. It
17 comes down to the proof from the evidence and that is the
18 evidence you review. And after all that, they'll tell you,
19 Ms. Sparkman identified this person and they got there through
20 a law enforcement officer, who I don't care how long you've
21 known someone, you've seen these photos, they just showed them
22 to you. These photos that they send out, these grainy photos,
23 and they take this information and by their own admission, own
24 admission, they send them to SLED to be put in a lineup. They
25 knew that a picture of Mr. Linen was in the lineup; they knew

1 that, they acknowledged it. Both Investigator Magann and
2 Griffith, they knew that that was in there. And then they
3 say, which one is your guy? I mean, they're basically telling
4 them he's in there, just pick him out. And why is it
5 important? You'll see this when you get back there, but I'll
6 tell you, they almost always put the person of interest in the
7 right top-hand corner, because that's where your eye goes.

8 And when you look at it, you'll see that that little jpeg ---

9 MR. POWELL: Your Honor, I have to object.

10 THE COURT: All right. Sustained. Go ahead.

11 MR. EDGEWORTH: Thank you, Your Honor. The jpeg, all
12 caps. None of the rest of those are in all caps. You'll see
13 it when you go back there. They want you to fall on that
14 sword.

15 So, where are we gonna come out? We have multitudes of
16 officers who came up there and said that we went to the scene,
17 we did our investigation, we did what we're supposed to do,
18 we've arrested Mr. Linen. Investigator says, as soon as he
19 heard his name, when I used his nickname, he came on out. He
20 didn't have anything to hide.

21 We're here before you today asking you to, yes, use your
22 common sense, of course, that's what we do as humans, but hold
23 yourself to the standard beyond a reasonable doubt. I'm
24 talking about way up there. I can't even reach up that high;
25 jacket going, I'm pulling my shirt out of my pants, and I

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REPLY CLOSING BY POWELL

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1 already nicked the side of my pant leg today so, I've got a
2 little hole in there, but it's way up there. It's the
3 standard that we go by; it's the standard that you will go by.
4 And when you see this mountain of stuff that we call evidence,
5 it's not proof.

6 Thank you.

7 THE COURT: Anything in reply?

8 MR. POWELL: Very brief, Judge.

9 THE COURT: Okay.

10 REPLY CLOSING BY POWELL:

11 MR. POWELL: An argument has been made that there's no
12 evidence to implicate him. Please, when you review all of the
13 evidence, remember, yes, the victim did point the defendant
14 out in this courtroom as the person who did these crimes.
15 Testified, both herself and Officer Griffith that she picked
16 him out in a photo lineup. Officer Flagler stated he knew him
17 for a long period of time, easily recognized him. So,
18 remember and consider that evidence that this defendant did
19 commit these crimes.

20 In regards to the argument that the photo lineup is
21 suggestive, I recall the officer testifying when asked the
22 question whether, in his experience, SLED always put the
23 suspect's picture in the top right-hand corner, my
24 recollection is that it's not in his own experience. So, I'm
25 not sure. You think about it and you can make up your own

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CHARGE TO JURY

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1 minds whether there is any evidence at all presented before
2 you, whether that in fact does take place. This officer said
3 it did not.

4 Once again, thank you very much for being here. I look
5 forward to getting your verdict.

6 CHARGE TO JURY:

7 THE COURT: All right. Ladies and gentlemen, all the
8 evidence has been presented to you and now is the time of the
9 trial when I charge you with the law to be applied in this
10 case. The indictments in this case charge the defendant with
11 armed robbery, kidnapping, and possession of a weapon during
12 the commission of a violent crime.

13 I remind you that the fact that the defendant was
14 arrested, charged, and indicted in this case, is not evidence
15 in this case and cannot be considered by you as evidence of
16 guilt in this case. Nor does the defendant's arrest, charge
17 and indictment create any presumption or inference of guilt.
18 These documents are simply the formal, written instruments,
19 which contain the charges made against the defendant. They
20 are the formal documents by which this case is brought into
21 this court. Also, each indictment charges a separate and
22 distinct offense. You must decide each indictment separately
23 on the evidence and the law applicable to it uninfluenced by
24 your decision as to any other indictment. The defendant may
25 be convicted or acquitted on any or all of the offenses

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1 charged. You'll be asked to write a separate verdict of
2 guilty or not guilty for each indictment.

3 The defendant pleads not guilty to these indictments.
4 That plea puts the burden on the state to prove the defendant
5 guilty. A person charged with committing a criminal offense
6 in South Carolina is never required to prove his innocence. I
7 charge you that an important rule of the law is that the
8 defendant in a criminal trial, no matter what the seriousness
9 of the charge may be will always be presumed to be innocent of
10 the crime for which the indictment was issued unless guilt has
11 been proven by evidence satisfying you of that guilt beyond a
12 reasonable doubt. This presumption of innocence does not end
13 when you begin your deliberations but it accompanies the
14 defendant throughout the trial until you reach a verdict of
15 guilt based on the evidence satisfying you of that guilt
16 beyond a reasonable doubt. The presumption of innocence is
17 like a robe of righteousness placed about the shoulders of the
18 defendant, which remains with the defendant until it has been
19 stripped from the defendant by evidence satisfying you of the
20 defendant's guilt beyond a reasonable doubt. The presumption
21 of innocence is not a mere legal theory, it is not just a
22 legal phrase. It is a substantial right to which every
23 defendant is entitled unless you, the jury, are satisfied from
24 the evidence of the defendant's guilt beyond a reasonable
25 doubt.

1 Now, what is a reasonable doubt in the law? A reasonable
2 doubt is the kind of doubt that would cause a reasonable
3 person to hesitate to act. Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of the defendant's
5 guilt. We know very few things in this world with absolute
6 certainty and, in criminal cases, the law does not require
7 proof that overcomes every possible doubt. If based on your
8 consideration of the evidence, you are firmly convinced that
9 the defendant is guilty of the crime charged, you must find
10 the defendant guilty. If, on the other hand, you think a real
11 possibility exists that the defendant is not guilty, you must
12 give the defendant the benefit of that doubt and find him not
13 guilty.

14 I remind you that during this trial, you and I have
15 certain duties to perform. As the Trial Judge, my
16 responsibility is to preside over the trial of this case. I
17 also have the duty to rule on the admissibility of the
18 evidence offered during this trial. You are to consider only
19 the competent evidence before you. If any testimony was
20 ordered stricken from the record in this case during this
21 trial, you must disregard that testimony. You are to consider
22 only the testimony which has been presented from the witness
23 stand, any exhibits which have been made a part of the record
24 in this case, and any stipulations of counsel.

25 I have the additional duty to charge you the law

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CHARGE TO JURY

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1 applicable to this case. As the Presiding Judge, I am the
2 sole judge of the law of this case. Your duty as jurors is to
3 accept and apply the law as I now state it to you. If you
4 have any idea as to what the law is or what the law ought to
5 be, and your idea is different from what I now tell you the
6 law is, you must disregard your idea of what the law is or
7 ought to be, because you are sworn to accept the law and apply
8 the law exactly as I state it to you.

9 In every case tried in this Court before a jury, the jury
10 is the sole and exclusive judge of the facts in a case. A
11 Trial Judge cannot intimate, state, comment on, or make any
12 statement to a trial jury about the facts in a case. Since,
13 you, the jury, are the sole judge of the facts in this case,
14 you are not to infer from what I have said during the progress
15 of this trial in ruling on the admissibility of evidence or
16 otherwise, or anything that I say now during the course of
17 this instruction to you that I have any opinion about the
18 facts in this case. The law does not allow me to have an
19 opinion about the facts in this case. This is a matter solely
20 for, you, the jury, to determine. As jurors, your duty is to
21 determine the effect, value, weight, and truth of the evidence
22 presented during this trial.

23 Necessarily, you must determine the credibility of
24 witnesses who have testified in this case. Credibility simply
25 means believability. Your duty as jurors is to analyze and

1 evaluate the evidence and determine which evidence convinces
2 you of its truth. In determining the believability of
3 witnesses who have testified in this case, you may believe one
4 witness over several witnesses or several witnesses over one
5 witness. You may believe a part of the testimony of a witness
6 and reject the remaining part of the testimony of that same
7 witness. You may believe the testimony of a witness in its
8 entirety or reject the testimony of a witness in its entirety.
9 You may consider whether any witness has exhibited to you any
10 interest, bias, prejudice, or other motive in this case. You
11 may also consider the appearance and manner of a witness while
12 on the witness stand.

13 The rules of evidence, ordinarily, do not permit
14 witnesses to testify to opinions or conclusions. An exception
15 to this rule exists for witnesses we call expert witnesses. A
16 witness, who by education and experience, has become expert in
17 some art, science, or profession, may give an opinion as to
18 the subject in which the witness claims to be an expert and
19 may also give the reasons for the opinion. You should
20 consider any expert opinion given by a witness and like any
21 other evidence, give it the weight you think it deserves.
22 If you decide that an expert witness' opinion is not based on
23 sufficient education and experience, or if you decide that the
24 reasons given in support of the opinion are not sound, or that
25 the opinion is outweighed by other evidence, you may disregard

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CHARGE TO JURY

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1 the opinion entirely. An expert witnesses' testimony is to be
2 given no greater weight than that of other witnesses simply
3 because the witness is an expert, and you do not have to
4 accept an expert's opinion even though it is uncontradicted.

5 Now, I instruct and emphasize that the fact the defendant
6 did not testify in this case, is not a factor to be considered
7 by you in any way in your deliberation and in your
8 consideration on the question of the guilt or innocence of the
9 defendant. The defendant's failure to testify must not be
10 considered by you in any manner whatsoever. A defendant has
11 the constitutional right to remain silent and the assertion of
12 this right, must not be considered by your in your
13 deliberations. I repeat, under your oath, you are to draw no
14 conclusion whatsoever from the fact that the defendant in this
15 case did not testify. The fact that this defendant did not
16 testify should not even be discussed in the jury room. The
17 burden of proof as I stated to you, is on the state. The
18 defendant is not required to prove his innocence. The burden
19 of proof remains on the state to prove guilt beyond a
20 reasonable doubt.

21 Now, an issue in this case is the identification of the
22 defendant as the person who committed the crimes charged. The
23 state has the burden of proving identity beyond a reasonable
24 doubt. You must be satisfied beyond a reasonable doubt of the
25 accuracy of the identification of the defendant before you may

1 convict the defendant. Identification testimony is an
2 expression of belief or impression by a witness. You must
3 determine the accuracy of the identification of the defendant.
4 You must consider the believability of each identification
5 witness in the same way as any other witness. You may
6 consider whether the witness had an adequate opportunity to
7 observe the offender at the time of the offense. This will be
8 affected by things you -- things like how long or short a time
9 was available, how far or close the witness was, the lighting
10 conditions, and whether the witness had the chance to see or
11 know the person in the past. Once again, I instruct you, the
12 burden of proof on the state extends to every element of the
13 crime charged and this specifically includes the burden of
14 proving beyond a reasonable doubt the identity of the
15 defendant as the person who committed the crime. If after
16 examining the testimony and evidence, you have a reasonable
17 doubt as to the accuracy of the identification, you must find
18 the defendant not guilty. On the other hand, if you do not
19 have a reasonable doubt as to the accuracy of the
20 identification after examining the testimony and evidence then
21 the state has satisfied its burden of proof as to
22 identification.

23 In order to establish criminal liability, criminal intent
24 is required. For example, the mental state required to be
25 proven by the state for a particular crime might be purpose,

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1 intent, knowledge, recklessness, or criminal negligence.
2 Criminal intent must be proven by the state beyond a
3 reasonable doubt. Criminal intent is always a matter that
4 must be determined by the jury from the circumstances
5 surrounding the situation. Criminal intent cannot be proved
6 to a mathematical certainty. Medical science cannot dissect a
7 person's brain and determine what the person had in mind. So,
8 the law says that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make a
10 determination of whether or not the element requiring intent
11 was present. Intent does not have to be established by direct
12 and positive evidence. But intent may be established by
13 inference in the same way as any other fact, by taking into
14 consideration the acts of the parties and all the facts and
15 circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. You must determine what the defendant intended to
18 do based on the circumstances shown to have existed. Criminal
19 intent can arise from action or a failure to act. It may
20 arise from negligence, recklessness, or in an indifference to
21 duty or the consequences that is considered by law to be the
22 equivalent of criminal intent.

23 Now, the defendant is charged with armed robbery. To
24 convict the defendant of this crime, the state must prove
25 beyond a reasonable doubt that the defendant took personal

1 property from the person or presence of another person.

2 Property is in the presence of a person if it is within the
3 person's reach, inspection, observation or control, so that
4 the person could, if not overcome with violence or prevented
5 by fear, keep possession of the property.

6 The state must also prove beyond a reasonable doubt that
7 the defendant carried the property away, intending to
8 permanently deprive the owner of the property and to keep the
9 property for the defendant's own use. The slightest removal
10 of the property or the complete possession of the property,
11 even for an instant, by the defendant, is sufficient to show a
12 taking and carrying away of the property. The taking and
13 carrying away of the property must have been done with
14 violence by putting the owner of the property in fear of
15 violence.

16 Finally, the state must prove beyond a reasonable doubt
17 that the defendant was armed with a deadly weapon during the
18 robbery. A deadly weapon is any article, instrument, or
19 substance, which is likely to cause death or great bodily
20 harm. Whether an instrument has been used as a deadly weapon
21 depends on the facts and circumstances of each case. The
22 following are examples of instruments, which may be deadly
23 weapons, a pistol, a shotgun, a rifle, a dirk, a dagger, a
24 knife, a slingshot, metal knuckles, a razor, gasoline, a fire
25 bomb or Molotov cocktail, and lighter fluid. A gun may be a

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1 deadly weapon, even it is not operating.

2 If you find that the state has failed to prove that the
3 defendant was armed with a deadly weapon, you may then
4 consider whether the state has proved beyond a reasonable
5 doubt that the defendant committed robbery. In order to prove
6 robbery, the state must prove beyond a reasonable doubt all of
7 the elements that I have just explained to you for armed
8 robbery, except the element that requires the defendant to be
9 armed with a deadly weapon. In other words, to prove robbery,
10 the state must prove beyond a reasonable doubt that the
11 defendant took the personal property from the person or
12 presence of another person without that person's consent and
13 carried it away with the intent to permanently deprive the
14 owner of the property and to convert the property to the
15 defendant's own use. The taking and carrying away of the
16 property must have been done with violence or by putting the
17 owner of the property in fear of violence.

18 The defendant is also charged with kidnapping. To
19 convict the defendant of kidnapping, the state must prove
20 beyond a reasonable doubt that the defendant knowingly and
21 unlawfully seized, confined, inveigled, decoyed, kidnapped,
22 abducted, or carried away another person without authority of
23 law. To do a thing unlawfully is to do it willfully against
24 the law. Knowingly means with knowledge, consciously, not
25 accidentally. Seize means to take hold of suddenly or

1 forcibly. Confine means to limit, restrict or enclose within
2 bounds, imprison, or shut or keep in. Inveigled means to
3 lure, entice or lead astray by false representations, promises
4 or other deceitful means. Decoy means to lure by or as if by
5 decoy. A decoy is something that entices a person into a
6 trap. Kidnap is to remove a person against his will by
7 unlawful force or by fraud. Abduct means to carry off
8 secretly or by force for an illegal purpose. Carry away means
9 to remove. The state does not have to prove that the
10 defendant did all of these things. Instead, if you find
11 beyond a reasonable doubt that the defendant did any of these
12 things, you may find the defendant guilty of kidnapping.
13 Something done without authority of law is something which the
14 law does not sanction, permit, allow, condone, or provide
15 justification for. The kidnapping does not have to be for any
16 personal or monetary gain for any illegal purpose, but may be
17 for any reason whatsoever.

18 The defendant is also charged with possession of a weapon
19 during the commission of or attempt to commit a violent crime.
20 To convict the defendant of this crime, the state must prove
21 beyond a reasonable doubt that the defendant was in possession
22 of a firearm or reasonably displayed what appeared to be a
23 firearm during the commission of a violent crime. A firearm
24 means any machine gun, automatic rifle, revolver, pistol, or
25 any weapon which will, is design to, or may readily convert --

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1 be converted to expel a projectile.

2 In order to find the defendant guilty of possession of a
3 weapon during the commission of a violent crime, you must
4 first find the defendant guilty of either committing a violent
5 crime or attempting to commit a violent crime. Armed robbery
6 and kidnapping are violent crimes. Robbery is not a violent
7 crime. Also, the state must prove beyond a reasonable doubt
8 that the weapon furthered, advanced, or helped in the
9 commission of the crime.

10 Now, there are three possible verdicts which you may find
11 in this case regarding the charge of armed robbery and two
12 possible verdicts which you may find in this case regarding
13 the charges of kidnapping and possession of a weapon during
14 the commission of a violent crime. Now, no significance
15 whatsoever is to be given to the order in which I state these
16 possible verdicts to you; I simply have to state one first,
17 one second and so forth.

18 The possible verdicts in this case regarding the charge
19 of armed robbery are we, the jury, find the defendant guilty
20 of armed robbery; or we, the jury, find the defendant guilty
21 of robbery; or we, the jury, find the defendant not guilty.

22 The possible verdicts regarding the charges of kidnapping
23 and possession of a weapon during the commission of a violent
24 crime, are either guilty or not guilty.

25 Ladies and gentlemen, your verdict must be a unanimous

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1 verdict on each charge. As I previously advised you, you must
2 decide each indictment separately on the evidence and the law
3 applicable to it, uninfluenced by your decision as to any
4 other indictment. The defendant may be convicted or acquitted
5 on any or all the offenses charged.

6 Ms. Huntsinger, as foreperson of the jury, when the jury
7 agrees on a verdict for a particular charge, the armed
8 robbery, kidnapping, and possession of a weapon during the
9 commission of a violent crime, you will check the appropriate
10 verdict on the verdict form. When the jury has reached a
11 verdict on all three charges, sign your name as foreperson,
12 knock on the door, and inform the bailiff that the jury has
13 reached its verdict.

14 Now, I'm going to excuse you back to the jury room, but
15 please do not begin your deliberations. I need to check with
16 the attorneys to see if they have any additional charges or
17 challenges to the charges as I've given them to you. If they
18 do and I deem them appropriate, I'll bring you back into the
19 courtroom and make whatever corrections or additional charges
20 need to be made. If not, the exhibits will be brought back to
21 the jury room with the verdict form and the bailiff will
22 instruct you to begin your deliberations. But please, do not
23 begin your deliberations until you are instructed to do so by
24 the bailiff. Okay?

25 All right. You're now excused to the jury room

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom @ 3:36 P.M. The
2 following takes place outside the presence of the jury.)

3 THE COURT: All right. Any exceptions to the charges by
4 the state?

5 MR. POWELL: None from the state, Your Honor.

6 THE COURT: Any by the defense?

7 MR. EDGEWORTH: Nothing from the defense, Your Honor.

8 BY THE COURT:

9 THE COURT: All right. Let's check and make sure we've
10 got all the exhibits here that go back.

11 Let me give you this verdict form to put with that.

12 THE COURT: All right. Could you bring Juror 106, Ms.
13 Michalczyk, in, please?

14 MR. POWELL: Is that the alternate, Judge?

15 THE COURT: Yeah.

16 MR. POWELL: Thank you, sir.

17 (REPORTER'S NOTE: Juror 106 enters courtroom.)

18 THE COURT: If you'll stand right there for just a
19 minute, please.

20 (REPORTER'S NOTE: Counsel review and consent to exhibits to
21 be submitted to jury.)

22 THE COURT: You can go ahead and take these exhibits with
23 the verdict form into the jury room and tell them they can
24 begin their deliberations. You can tell them they can begin
25 their deliberations.

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BY THE COURT

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1 THE COURT: Ma'am, I apologize, you're gonna have to
2 pronounce your name for me again.

3 JUROR 106: Michalczyk.

4 THE COURT: Michalczyk. I apologize.

5 Ms. Michalczyk, this is the part of the trial I hate. As
6 the alternate, since we've got the 12 jurors, the law says
7 that you do not get to participate in the deliberation because
8 you were an alternate. I hate it because we make you sit
9 through the whole trial, do everything, but then we don't let
10 you participate in the decision making. You're at liberty to
11 do whatever you want to do. If you want to stay and see the
12 outcome, you can do that; if you want to leave you can do that
13 as well. Do you have anything in the jury room?

14 JUROR 106: No, sir.

15 THE COURT: All right. Well, this will conclude your
16 duties as a juror, not only in this case, but for this week,
17 and I want to thank you for your service. And as I said,
18 you're at liberty to do whatever you want to do. If you want
19 to wait here you can, or if you want to go, you can do that as
20 well, too.

21 Thank you. Good to see you.

22 All right. Anything from the state while we recess until
23 the jury reaches a verdict?

24 MR. POWELL: No, Your Honor.

25 THE COURT: Anything from the defense?

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BY THE COURT

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1 MR. EDGEWORTH: Nothing from the defense, Your Honor.

2 THE COURT: All right. We'll be in recess until we get a
3 verdict.

4 **RECESS - 3:43 P.M.**

5 *****OFF THE RECORD*****

6 **(On the Record - 4:13 P.M.)**

7 THE COURT: Okay. I've got a request from the jury. It
8 says, we need the surveillance video of the gun being shown to
9 Ms. Sparkman and the verbiage for all three statutes in South
10 Carolina that he is being charged for. So, the only thing I
11 know is to bring them back in and show them the videos from
12 Dollar General. I mean, I'm assuming that that's what they're
13 talking about.

14 MR. EDGEWORTH: Well, Your Honor, I don't believe that
15 the video showed any gun.

16 THE COURT: Well, I think that's what they want to see.

17 MR. EDGEWORTH: Okay. And that video is like an hour so

18 ---

19 THE COURT: I know. And but, I mean, they were told they
20 could review the videos, so if they want to see the video.

21 MR. EDGEWORTH: Is that -- is that something that they
22 could ---

23 MR. POWELL: Show them the portion when he's at the cash
24 register.

25 THE COURT: But I mean, who is gonna pick the portion.

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BY THE COURT

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1 MR. POWELL: I understand, Judge.

2 MR. EDGEWORTH: Well -- well, no, what I was alluding to,
3 Your Honor, is whether that, you know, they could have the
4 ability to view it on their own in the back.

5 THE COURT: Oh, no, I don't know that -- I don't know
6 that they have the ability to do that.

7 MR. POWELL: We have a laptop, Judge, but this one
8 surveillance camera, it's sort of difficult poking your way
9 through it to get to the place.

10 THE COURT: Yeah.

11 MR. POWELL: I don't know whether they could do it on
12 their own or not.

13 THE COURT: The only thing I know is to just go through
14 it. So, this is gonna put substantially at 5 o'clock, but I
15 don't know what else to do, if they can't review it back there
16 and pick and choose what they want to. I don't want to show
17 them one portion and say, there it is, because they might be
18 saying, look, I don't recall ever seeing a gun through any of
19 the videos.

20 MR. EDGEWORTH: Right.

21 THE COURT: And so, they're entitled to see the whole
22 thing.

23 Now on the statute laws, my suggestion would be just to
24 give them my entire charge with the instruction, here's the
25 charge as it explains armed robbery, it explains robbery, it

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1 explains kidnapping, it explains possession of a weapon during
2 the commission of a violent crime, and then there is some
3 requirements that say, you know, you've got to consider all of
4 the charges and not some and ignore others. That would be my
5 suggestion on that. What's y'all's position on that?

6 MR. POWELL: That would be my thoughts about it, Judge.

7 MR. EDGEWORTH: Yes, Your Honor, I would prefer that the
8 jury be recharged on the law from Your Honor.

9 THE COURT: Okay. Say that again?

10 MR. EDGEWORTH: I'm in agreement with you that they just
11 simply be recharged on the law as opposed to providing them
12 with documentation.

13 THE COURT: Oh, wait, wait, no. I'm not talking about
14 charging, I'm talking about just giving them the written
15 charge.

16 MR. EDGEWORTH: Oh, you mean your charge?

17 THE COURT: Yeah.

18 MR. EDGEWORTH: Oh, okay. I have no problem with that.

19 MR. POWELL: I have no problem with it.

20 THE COURT: All right. We'll do that that way. How long
21 will it take you to get those surveillance cameras set up?

22 MR. POWELL: They just have the CD back with there with
23 the evidence, Judge. It would take me about two or three
24 minutes to hook the thing up.

25 THE COURT: All right. Well, let's -- let me go ahead

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BY THE COURT

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1 and bring them in and just ask them are they wanting to see
2 the entire video, and if they say no, we just want to see the
3 part where he shows the gun, then I'll say, look, that is for
4 y'all to determine from the evidence and we can't pick and
5 choose which evidence, because, you know, you're gonna have to
6 decide what part you want to see. And if you don't know, then
7 we're gonna have to show you the whole -- the whole thing.

8 MR. EDGEWORTH: Yes, Your Honor.

9 THE COURT: Okay. Anything from the state before we
10 bring the jury in?

11 MR. POWELL: The only thing I would bring up, Judge, is
12 there's two separate segments. One was the first time the
13 person went in the store, various cameras, there's about 11
14 different cameras. Then there's the second segment that's
15 coming in the store when the alleged robbery took place,
16 there's six or seven camera shots. And I don't know whether
17 Your Honor feels like everything has to be shown or just the
18 second.

19 THE COURT: Yeah, I -- no, I think everything has to be
20 shown.

21 MR. POWELL: That's fine. I just wanted to make sure.

22 THE COURT: Because I think -- technically, I think
23 they're saying, and I don't know and I'm guessing and this
24 doesn't mean, but I think they're probably back there saying
25 well where did he show a gun to her, and they're wanting us to

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BY THE COURT

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1 show them a video where the state is saying that's where he
2 shows the gun to her.

3 MR. EDGEWORTH: Right.

4 THE COURT: Well, I don't think you can pick and choose
5 the evidence like that. I think they have to review the
6 evidence and make a determination out of all of this evidence,
7 is there anywhere where the defendant presents or shows a gun.

8 MR. EDGEWORTH: Yes, Your Honor.

9 THE COURT: But if they come back in and they say no, we
10 want to see the video when he comes back in the second time
11 when he's leaning over the counter, then that will narrow it
12 down.

13 MR. EDGEWORTH: Yes, Your Honor.

14 THE COURT: But I'm gonna have to leave it up to them to
15 tell us what they're gonna see. Okay?

16 MR. POWELL: The state has no issue with that, Judge.

17 THE COURT: All right.

18 MR. EDGEWORTH: I'm fine with that, Your Honor.

19 THE COURT: All right. Let's bring the jury in.

20 (REPORTER'S NOTE: Jury enters courtroom @ 4:19 P.M.)

21 THE COURT: All right. Ladies and gentlemen, welcome
22 back. I've got your requests. The first request is the
23 surveillance video of the gun being shown to Ms. Sparkman.
24 Now, is it you want to see the videos -- the video again?

25 JUROR 74: We would like to see every point where the

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BY THE COURT

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1 actual robbery was taking place where the gun was being shown
2 to Ms. Sparkman, where she was ---

3 THE COURT: Okay. Well, what you're -- what I can do is
4 if you tell me what video you want to see, then we can show it
5 to you, or we can show you all of the videos. But, when the
6 gun, if ever was presented or shown to Ms. Sparkman, that's a
7 factual determination that you have to make. And so, I can't
8 -- the Court can't, the state can't, the defense can't, say
9 this is where it happened or this is where it happened or it
10 never happened in any of these. You've got to view the
11 videos. You've got to view all of the evidence and you have
12 to determine factually whether or not it happened. So, if
13 there is a specific video or portion of a video that you want
14 to see, tell me what it is and we'll show it to you or if you
15 want to see all the surveillance videos, we can do that as
16 well.

17 JUROR 74: We would like to see right preceding her being
18 tied, right when the money was being taken.

19 THE COURT: But see that -- I don't know when the money
20 was taken and when she was tied.

21 JUROR 74: Yes, sir.

22 THE COURT: That's -- you're having me inject and say
23 this is when that occurred, and that's something for you to
24 have to do. I can tell you, it's pretty obvious and we can
25 pick and choose when a person walks into a store, when a

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1 customer checks out, but what you're asking for is for the
2 Court to identify elements of a crime -- evidence of a crime
3 and that's not for me to determine; that's for you.

4 JUROR 74: We'd like to see right before the person left
5 that took the money. Number 2.

6 THE COURT: Do what now?

7 JUROR 74: CD 2.

8 THE COURT: The second CD?

9 JUROR 74: Yes.

10 THE COURT: All right. Let's plug in the -- oh, we've
11 got to get it out of the jury room. All right. Go get it and
12 bring it out.

13 Yeah, give it to them so they can play it over the ---

14 All right. The second disc -- let's just play the second
15 disc for them.

16 MR. POWELL: May we approach, Judge?

17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence of but outside the hearing of the jury.)

19 THE COURT: Yeah. Now, what we're gonna do is we're
20 gonna play that second -- well, it's one disc, but it's the
21 second folder within that disc for you. Certainly, when
22 you've seen what you need to see, just raise your hand and
23 stop me or if you want to continue through to the end, you can
24 do that as well. Okay?

25 JUROR 74: Can we pause it on that part that we're

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BY THE COURT

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1 interested in?

2 THE COURT: Yeah, I mean, do we have the ability to
3 pause?

4 MR. POWELL: Yes, Your Honor.

5 THE COURT: Yeah, he can do that.

6 MR. POWELL: If they'll just point out when.

7 (REPORTER'S NOTE: Portion of State's 5 published to the
8 jury.)

9 JUROR 74: Can you pause it there?

10 THE COURT: Pause.

11 JUROR 74: Just back it up a little bit.

12 MR. POWELL: All right. I'll play that segment over.

13 THE COURT: Come back to that portion where she said
14 pause and pause it.

15 All right. So, you've got to keep it on that scale to
16 pause it?

17 MR. POWELL: Yes, sir.

18 THE COURT: All right. The forelady is gonna tell you
19 when to pause it and hit pause then, and then we'll put it
20 back on the larger screen.

21 JUROR 74: Pause, please. Pause.

22 THE COURT: All right. Now enlarge it up.

23 MR. POWELL: Let me try it again, Judge.

24 THE COURT: That's past. Go back and start all over.

25 All right. Keep the cursor on the pause and when you hear her

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1 say pause, press it.

2 MR. POWELL: Yes, sir.

3 JUROR 74: Pause, please at 8:50:04.

4 THE COURT: All right. Now, can you enlarge that to the
5 way it was presented in the state's case?

6 All right. Do you want to review anymore?

7 JUROR 74: I believe we've seen enough, sir.

8 THE COURT: That's what you wanted to see. Okay.

9 MR. POWELL: Is that it, Judge?

10 THE COURT: That's it. That's what they wanted to see.

11 Now, with regard to your second request, the verbiage for
12 all three statutes in South Carolina that he is being charged
13 for. What I'm gonna do is give you a copy of the charges as I
14 charged you with the law. You can review these charges and
15 hopefully that will answer your questions. I remind you,
16 though, you must consider these charges as a whole. In other
17 words, you can't pick and choose part, what you want to apply
18 and what you don't want to apply. This is the complete charge
19 on the law including the crimes that he's -- that the
20 defendant is charged with on the law to be applied in this
21 case. Okay?

22 JUROR 74: Yes, sir.

23 THE COURT: All right. So, I'm gonna -- if you can --
24 well, let's get that disc so they can take it back with them,
25 and let me give you this and give it to them as well. Leave

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1 this with the exhibits when you complete your deliberations.

2 Okay?

3 All right. Thank you.

4 (REPORTER'S NOTE: Jury exits courtroom @ 4:37 P.M.)

5 THE COURT: All right. Anything further from the state
6 at this time?

7 MR. POWELL: No, Your Honor.

8 THE COURT: Anything further from the defense?

9 MR. EDGEWORTH: Nothing from the defense, Your Honor.

10 THE COURT: All right. We'll stay in recess until we
11 hear back from the jury.

12 Here's that Court's exhibit.

13 Thank you.

14 **RECESS - 4:38 P.M.**

15 *****OFF THE RECORD*****

16 **(On the Record - 5:06 P.M.)**

17 THE COURT: All right. Gentlemen, I understand the jury
18 has reached a verdict.

19 Anything from the state before we bring the jury in?

20 MR. POWELL: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. EDGEWORTH: Nothing from the defense, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, those of
24 you who are sitting in the audience, we're about to receive
25 the verdict on these charges. I want to let you know, we're

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VERDICT OF THE JURY

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1 not gonna have any type of display of emotions one way or the
2 other regardless of what the verdict might be. So, if you
3 don't think you can control your emotions, whatever that
4 verdict is, I'll need you to excuse yourself from the
5 courtroom at this time. Okay?

6 All right. Let's go ahead and bring the jury in.

7 (REPORTER'S NOTE: Jury enters courtroom @ 5:08 P.M.)

8 THE COURT: All right. Ladies and gentlemen, welcome
9 back.

10 Ms. Huntsinger, I understand the jury has reached a
11 verdict on all charges; is that correct?

12 JUROR 74: Yes, sir.

13 THE COURT: Have you completed the verdict form and
14 signed the verdict form?

15 JUROR 74: Yes, sir.

16 THE COURT: All right. If you'd please hand it to the
17 bailiff. Thank you.

18 All right. I'll ask the clerk of court to please publish
19 the verdicts.

20 CLERK: Will the defendant please stand?

21 VERDICT OF JURY:

22 CLERK: The State of South Carolina versus John Nathan
23 Linen, II, as to the charge of armed robbery, indictment 2017-
24 GS-22-487, we, the jury, find the defendant guilty of robbery.

25 As to kidnapping, indictment 2017-GS-22-669, we, the

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BY THE COURT

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1 jury, find the defendant guilty of kidnapping.

2 As to the indictment, possession of a weapon during the
3 commission of a violent crime, indictment 2017-GS-22-670, we,
4 the jury, find the defendant guilty of possession of a weapon
5 during the commission of a violent crime.

6 BY THE COURT:

7 THE COURT: All right. Ladies and gentlemen, the problem
8 I have with your verdict is that you found the defendant
9 guilty of robbery rather than armed robbery, which indicates
10 there was no use of a deadly weapon, but then you found the
11 defendant guilty of possession of a weapon during the
12 commission of a violent crime. So, either the defendant had a
13 weapon and committed the crimes or did not have a weapon and
14 it would be robbery. There's not inconsistent verdicts with
15 the robbery and the kidnapping; you can have both of those. I
16 don't know how you can have possession of a weapon during the
17 commission of violent crime, but not possessing a weapon in
18 the armed robbery. Okay?

19 JUROR 74: Yes, sir.

20 THE COURT: So, I'm gonna send you back out to deliberate
21 on those and to make a decision as to whether or not the
22 defendant had a weapon or did not have a weapon. All right?

23 JUROR 74: Yes, sir.

24 THE COURT: Thank you. I'm gonna give you this verdict
25 form back and when you make your verdict -- make your

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BY THE COURT

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1 decision, just check it on there and then initial what your
2 verdict is. Okay?

3 JUROR 74: Yes, sir.

4 (REPORTER'S NOTE: Jury exits courtroom @ 5:10 P.M. The
5 following takes place outside the presence of the jury.)

6 THE COURT: All right. Any exceptions to the
7 instructions by the Court -- from the Court by the state?

8 MR. POWELL: No, Your Honor.

9 THE COURT: Any by the defense?

10 MR. EDGEWORTH: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. EDGEWORTH: The defense moves for a mistrial.

13 Clearly, with the inconsistent verdict, if they -- even if
14 they go back, I mean, now we're just in prejudice. They go
15 back, they've been advised by the Court that, you know, it's
16 not inconsistent to have, you know, robbery and kidnapping,
17 but it is inconsistent to have robbery and possession of a
18 weapon during the commission of a violent crime. So, now,
19 their only -- only option is to go back there and either, you
20 know, essentially compromise and say, okay, well, it's no --
21 no possession of a weapon just to maintain the consistency or
22 to revert to armed robbery, then that prejudices my client. I
23 think that's -- that's a perfect case for a mistrial.

24 THE COURT: Well, how was it -- I mean, are you objecting
25 to the instructions by the Court? I mean -- let me ask you

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BY THE COURT

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1 this.

2 MR. EDGEWORTH: Yes, sir.

3 THE COURT: Do you view guilty as guilty of robbery and
4 guilty of possession of a weapon during the commission of a
5 violent crime as being inconsistent verdicts?

6 MR. EDGEWORTH: Yes, Your Honor.

7 THE COURT: Okay. So, we couldn't let the verdict of the
8 jury stand as it was.

9 MR. EDGEWORTH: Well, I think it demonstrates the fact
10 that the jury either, one, reached a compromise, because they
11 -- in a sense they're saying okay, well, we don't want to hold
12 him accountable to a higher crime of armed robbery since this
13 is a lesser included, but maybe he did have a gun, so we'll
14 just go ahead and convict him of that. I mean, he either did
15 or he didn't. So, it, it -- on its face it's got to be a
16 compromise or a misunderstanding. And so, now, if it is a
17 misunderstanding, they're just gonna go back and compromise
18 now.

19 THE COURT: All right. Well, I note your motion. I'm
20 gonna deny it. I'm gonna let them go ahead and see if they
21 can reach a verdict that is consistent on all charges.

22 MR. EDGEWORTH: Thank you, Your Honor.

23 THE COURT: All right.

24 Anything further from the defense before we ---

25 MR. EDGEWORTH: Not at this time, Your Honor.

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1 THE COURT: All right. We'll stand in recess until we
2 hear back from the jury.

3 **RECESS - 5:13 P.M.**

4 *****OFF THE RECORD*****

5 **(On the Record - 5:26 P.M.)**

6 THE COURT: All right. I've got a note from the jury and
7 I think they may be right and I may have been wrong
8 previously. They say, we believe that the violent crime of
9 kidnapping is linked to the possession of a weapon charge in
10 that the defendant, quotations, visibly displayed what
11 appeared to be a firearm during the commission of a violent
12 crime, end of quotations. This is a lesser standard than
13 displayed in the armed robbery statutes. And they are right.
14 On the charge -- on the armed robbery, they have to show that
15 he was armed with a deadly weapon. Possession of a weapon
16 during the commission of a violent crime, it does say that, to
17 convict a defendant of this crime, the state must prove beyond
18 a reasonable doubt that the defendant was in possession of a
19 firearm or visibly displayed what appeared to be a firearm
20 during the commission of a violent crime.

21 So, now, based upon their analysis, I don't know that
22 that is an inconsistent verdict. They've found him guilty of
23 kidnapping, which is the violent crime, and then possession of
24 a weapon doesn't require, under the charge -- from the charge
25 book, the law says, it doesn't have to be -- he either

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BY THE COURT

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1 possessed a firearm or visibly displayed what appeared to be a
2 firearm. So, I think based upon that, it's not an
3 inconsistent verdict.

4 MR. EDGEWORTH: I -- I'm confused, Your Honor. I mean,
5 we're talking about the statute, the armed robbery statute or
6 ---

7 THE COURT: No, the possession of a weapon during the
8 commission of a violent crime statute.

9 MR. EDGEWORTH: Okay. Well ---

10 THE COURT: It says that the person either has to possess
11 a weapon during the commission of a violent crime or visibly
12 displayed what appeared to be a violent weapon -- I mean, a
13 weapon during the commission of a violent crime.

14 MR. EDGEWORTH: And how is that consistent with finding
15 him not guilty or not finding him guilty of armed robbery?

16 THE COURT: Because armed robbery, you've got to show
17 that he possessed -- possessed a -- well, in this case, we're
18 talking about a pistol.

19 MR. EDGEWORTH: Right. Well, there's no evidence --
20 there's no evidence in the record to support that. I mean,
21 there's no evidence to say that there was a fake gun.

22 THE COURT: Well, no, but there's ---

23 MR. EDGEWORTH: Either there was a gun or there wasn't.

24 THE COURT: Well, evidently, they're saying that he did
25 something that led her to believe that he had a gun, and their

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BY THE COURT

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1 review of the video, obviously, leads them to believe that no,
2 he didn't have a gun but he scared her by leading her to
3 believe that he did have a gun.

4 MR. EDGEWORTH: Under the possession of unlawful weapons
5 during the commission of a crime statute ---

6 THE COURT: Right.

7 MR. EDGEWORTH: --- correct?

8 THE COURT: Right.

9 MR. EDGEWORTH: I don't know that I agree. I mean,
10 obviously I can't agree for the record. I mean ---

11 THE COURT: And I understand that. But in hindsight,
12 based upon this note, I'm gonna go ahead and accept their
13 verdicts. So, it would be guilty of robbery, guilty of
14 kidnapping, and guilty of possession of a weapon during the
15 commission of a violent crime.

16 MR. EDGEWORTH: Can we at least have them come out to
17 poll?

18 THE COURT: Yeah, we'll -- I'll definitely, I'll poll the
19 jury on that if you want me to poll the jury.

20 MR. EDGEWORTH: Absolutely.

21 THE COURT: Okay. We can do that. All right. Anything
22 from the state?

23 MR. POWELL: No, Your Honor, other than I don't have the
24 sentencing sheet ready on that. If it does go forward, I'll
25 need a minute to go downstairs.

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BY THE COURT

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1 THE COURT: Go ahead and be getting the sentencing sheet
2 while we poll the jury. Okay?

3 MR. POWELL: Yes, sir.

4 THE COURT: All right. You got somebody that can be
5 doing that?

6 MR. POWELL: Yes, sir.

7 THE COURT: All right. Let's bring the jury in.

8 (REPORTER'S NOTE: Jury enters courtroom @ 5:30 P.M.)

9 THE COURT: All right. Ladies and gentlemen, welcome
10 back. I received your note and I do agree with you, after
11 further explanation. You are correct in that possession of a
12 weapon during the commission of a violent crime only requires
13 a visible -- that the defendant visibly displayed what
14 appeared to be a firearm during the commission of a violent
15 crime and, since you have the kidnapping, I don't find that
16 there are inconsistent verdicts. So, I will accept your
17 verdict of guilty of robbery, guilty of kidnapping, and guilty
18 of possession of a weapon during the commission of a violent
19 crime.

20 Now, the only thing that we have remaining to do is a --
21 is to poll the jury. Now, when I poll the jury, what I am
22 going to do is I'm gonna call your jury number. When I call
23 your number, I'm gonna ask you to stand and I'm gonna ask you
24 two questions, are these your -- number one is -- is this your
25 verdict; and number two, is it still your verdict on all three

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POLLING OF JURY

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1 charges. Okay?

2 POLLING OF JURY:

3 THE COURT: Juror 160. Is this your verdict?

4 JUROR 160: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR 160: Yes.

7 THE COURT: Thank you very much.

8 Juror 84. Is this your verdict?

9 JUROR 84: Yes.

10 THE COURT: Is it still your verdict?

11 JUROR 84: Yes.

12 THE COURT: Thank you.

13 Juror 74. Is this your verdict?

14 JUROR 74: Yes, sir.

15 THE COURT: Is it still your verdict?

16 JUROR 74: Yes, sir.

17 THE COURT: Thank you very much.

18 Juror 117. Is this your verdict?

19 JUROR 117: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR 117: Yes, Your Honor.

22 THE COURT: Thank you.

23 Juror 73. Is this your verdict?

24 JUROR 73: Yes.

25 THE COURT: Is it still your verdict?

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POLLING OF JURY

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1 JUROR 73: Yes.
2 THE COURT: Thank you.
3 Juror 99. Is this your verdict?
4 JUROR 99: Yes, sir.
5 THE COURT: Is it still your verdict?
6 JUROR 99: Yes, sir.
7 THE COURT: Thank you.
8 Juror 144. Is this your verdict?
9 JUROR 144: Yes, sir.
10 THE COURT: Is it still your verdict?
11 JUROR 144: Yes, sir.
12 THE COURT: Thank you very much.
13 Juror 141. Is this your verdict?
14 JUROR 141: Yes, sir.
15 THE COURT: Is it still your verdict?
16 JUROR 141: Yes, sir.
17 THE COURT: Thank you.
18 Juror 11. Is this your verdict?
19 JUROR 11: Yes, sir.
20 THE COURT: Is it still your verdict?
21 JUROR 11: Yes, sir.
22 THE COURT: Thank you.
23 Juror 97. Is this your verdict?
24 JUROR 97: Yes, sir.
25 THE COURT: Is it still your verdict?

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BY THE COURT

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1 JUROR 97: Yes, sir.

2 THE COURT: Thank you.

3 Juror 58. Is this your verdict?

4 JUROR 58: Yes, sir.

5 THE COURT: Is it still your verdict?

6 JUROR 58: Yes, sir.

7 THE COURT: Thank you.

8 And Juror 36. Is this your verdict?

9 JUROR 36: Yes, Your Honor.

10 THE COURT: Is it still your verdict?

11 JUROR 36: Yes, Your Honor.

12 THE COURT: Thank you very much.

13 BY THE COURT:

14 THE COURT: All right. Ladies and gentlemen, that will
15 conclude your duty as jurors on this case as well as your jury
16 duty for this week and I want to thank you very much for your
17 service. You've got a one-year disqualification from serving
18 jury duty in state circuit court. You've got a three year
19 exemption, but I hope you don't exercise your exemption
20 because we need good jurors and I want to thank you for your
21 service in this case and for this week. As I said, that will
22 conclude your duties as jurors. I want to thank you sincerely
23 for this week. I know it's been a long week and I know you've
24 heard a lot of testimony and I know it's not a fun thing to
25 do, but it is vital thing to do and it is mandated by both our

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MOTIONS

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1 state and federal constitutions. This is how our judicial
2 system works and it has worked well this week with you serving
3 as jurors and I want to thank you for that. You're free to go
4 for the remainder of the day and for the remainder of the
5 week. Thank you very much.

6 Everyone else please remain seated while the jury is
7 excused.

8 (REPORTER'S NOTE: Jury exits courtroom @ 5:35 P.M.)

9 THE COURT: All right. Any post-trial motions at this
10 time.

11 MR. POWELL: None from the state, Judge.

12 THE COURT: Any from the defense?

13 MOTIONS:

14 MR. EDGEWORTH: Yes, Your Honor, briefly. Your Honor,
15 I'm renewing my motion for a mistrial. I think that the -- by
16 the nature of the -- the jury's verdict, although now the
17 Court has ruled that it was inconsistent, or excuse me, that
18 it was found to be consistent, I think on the front end, Your
19 Honor, the thought process of the jury was clearly that they
20 believed that, that -- that the defendant brandished something
21 that was possibly a weapon, but there was no evidence in the
22 record that there was anything other than a gun. The
23 testimony was that, you know, Ms. Sparkman says that she saw a
24 gun, she saw a spinny thing. The state presents a gun into
25 evidence, which they purport to be the gun in the crime.

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MOTIONS

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1 There was never any alternative mechanism in which the crime
2 was committed, so the only thing -- and in fact, the jury came
3 back out and said that they could see whether or not they saw
4 a gun. I mean, they had us pause it, you know, so they could
5 determine. And my belief would be that when they couldn't see
6 a gun, because you can't see anything, they just assumed that
7 there was something there and either by words or actions or
8 otherwise, they just decided to compromise the verdict. It is
9 a compromise in a sense to say, you know, he's charged with
10 armed robbery and you have a lesser included offense that
11 doesn't require the gun and then they say, well, he's
12 committed the robbery and then we believe there would be
13 something that maybe by words said was a gun, but that -- that
14 wasn't in evidence. So, I believe, just based on that, it has
15 to be a mistrial because what they're relying on to reach
16 their verdict is not in evidence.

17 THE COURT: Okay. All right. What's the state's
18 position?

19 MR. POWELL: We don't believe that the verdict as it
20 stands is inconsistent. We go along with Your Honor's logic
21 with there not being inconsistency. We think therefore, the
22 grounds for mistrial do not exist.

23 THE COURT: All right. I'm gonna deny your motion and
24 let the verdicts stand.

25 Anything else?

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1 MR. EDGEWORTH: Nothing from the defense, Your Honor.

2 THE COURT: All right. Have we got the sentencing
3 sheets?

4 MR. POWELL: Not yet, Your Honor.

5 We'd just point out to the Court, Your Honor, I believe
6 I'm correct, the kidnapping statute requires a finding whether
7 it was sexual in nature by the Court. I believe that's in the
8 kidnapping statute.

9 THE COURT: Okay. Yeah, and I'm finding that it was not
10 sexual in nature. There was no evidence of any sexual
11 activity in this case.

12 MR. POWELL: And just to move forward with the record,
13 Your Honor, in this case notice of intention ---

14 THE COURT: Wait a minute. Hold for a second.

15 MR. POWELL: Yes, sir.

16 THE COURT: Let's wait until we get the sentencing
17 sheets.

18 MR. POWELL: Sure.

19 THE COURT: Because I'm gonna let the defense present any
20 mitigating factors first and hear from them first. Okay?

21 MR. POWELL: Yes, Your Honor.

22 I think we have everything ready now, Your Honor.

23 SENTENCING:

24 THE COURT: All right. We got the sentencing sheets?

25 MR. POWELL: Yes, Your Honor.

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1 THE COURT: All right. Let me see them. Thank you.

2 All right. Mr. Edgeworth, anything in mitigation from
3 you or your client or anyone that wants to speak on his
4 behalf?

5 MR. EDGEWORTH: I will begin, Your Honor. I do not
6 believe that any of the family members wish to speak and that
7 they're simply relying on my part. First and foremost, Your
8 Honor, as you may know, the state had served a life without
9 possibility of parole notice prior to this trial and it was a
10 part of this trial, admittedly. However, we certainly do not
11 believe that in this particular case that, you know, this is
12 the type of case that was intended to produce that type of
13 sentence and respectfully ask the Court to consider a sentence
14 in, in, in the -- in accordance with what the statute provide
15 as the time allowable under the statute and ignore or do not
16 find he's sentenced to life without the possibility of parole.

17 And in, in regards to that argument, first and foremost,
18 the primary crime here, he was not found guilty of and that is
19 the armed robbery. And, and as Your Honor has -- has seen
20 through the course of this verdict is that the jury clearly
21 believed that there was no dangerous weapon, there wasn't a
22 gun that was involved in -- in the robbery; it was something
23 either the -- what the defendant did to make them believe
24 there was a weapon and, therefore, there wasn't actually the
25 possibility of violence. And in this particular case, the

1 facts bear that out. One, no one was injured. The victim
2 admitted -- Ms. Sparkman admitted on the witness stand that
3 she was not injured during the robbery. Number two, in
4 regards to the reliance on the kidnapping for the purposes of
5 a violent crime, this isn't the type of kidnapping where
6 someone is taken away, abused, injured, tortured, anything
7 like that, that would amount to something that the Court
8 should rely on for a life sentence. There was a very, very
9 short period of confinement. In fact, there wasn't really any
10 true confinement in the sense that she was able to move
11 around, just did not do so out of what she stated was, you
12 know, fear. She had the ability to use her hands; she used
13 those hands to call 911. There's only a brief moment during
14 that time period in which she was essentially being told what
15 to do that amounted to the kidnapping -- the finding of guilt
16 in the kidnapping. This kidnapping charge is essentially the
17 piggy-back charge to the armed robbery. The defendant was not
18 found guilty of that. In fact, since he was found guilty of
19 the robbery, and I -- I just simply believe that it would be
20 an unintended result of the -- of the subsequent violent crime
21 statute to impose a life sentence when the facts just don't
22 bear out the, the type of consequences that would normally
23 arise out of a violent crime, which was, you know, obviously
24 and thankfully no one was killed, no one was shot, no one was
25 injured and -- and therefore, I'm asking the Court to consider

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1 that form of leniency and just sentence him under the statute.

2 THE COURT: All right.

3 All right. Mr. Linen, anything you want to say?

4 MR. LINEN: No, Your Honor.

5 THE COURT: All right.

6 Does the victim wish to speak?

7 MS. SPARKMAN: No, sir.

8 MR. POWELL: No, Your Honor.

9 THE COURT: All right. Let me hear from the state.

10 MR. POWELL: Your Honor, we believe the South Carolina
11 Code Annotated 17-25-45 that was in effect in 2017 uses the
12 word must in that statute. Upon conviction a person must be
13 sentenced to a term of imprisonment for life without the
14 possibility of parole. We think the word must was the
15 legislative intent and does not allow for any discretion at
16 this time.

17 THE COURT: Let me -- have you got that statute?

18 MR. POWELL: Yes, Your Honor.

19 THE COURT: Let me see it.

20 MR. POWELL: This is what I found off the state judicial
21 site that says it's effective back in 2017. May I approach?

22 THE COURT: But I mean is that the statute?

23 MR. POWELL: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. POWELL: I was gonna show it to him.

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1 THE COURT: Yeah. All right. Prior record?

2 MR. POWELL: Your Honor, he has an armed robbery, which
3 was from Williamsburg County. It was dated March 20th, 2003.
4 It's under indictment in 2003-GS-4565, the charge was armed
5 robbery, a certified copy from the Clerk of Court for
6 Williamsburg County was presented to Your Honor with the
7 sentencing sheets.

8 THE COURT: All right.

9 MR. POWELL: We would ask that a copy -- that certified
10 copy be made a part of the record.

11 THE COURT: All right.

12 Mr. Edgeworth, if you want to come take a look at these;
13 have you seen the ---

14 MR. EDGEWORTH: I believe I know what he's talking about,
15 but may I approach, Your Honor?

16 THE COURT: Yeah. Let's -- I'm gonna make the notice of
17 intention to seek sentence of life without parole as Court's
18 exhibit -- what would that be?

19 COURT REPORTER: 5.

20 THE COURT: 5?

21 COURT REPORTER: Yes, sir, 5.

22 THE COURT: All right.

23 THE COURT: And then the certified copy of the sentencing
24 sheets, indictments, arrest warrants, General Sessions docket
25 sheet for 2003-GS-4565, we'll put that as -- what's the next

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1 Court's exhibit?

2 COURT REPORTER: 6.

3 THE COURT: 6; Court's exhibit 6.

4 COURT'S EXHIBITS NUMBERS 5 AND 6

5 MARKED FOR IDENTIFICATION

6 THE COURT: All right. Mr. Linen, you have been
7 convicted by a jury trial on the charges of kidnapping,
8 robbery and possession of a weapon during the commission of a
9 violent crime. The sentence of the Court on the charge of
10 kidnapping, because the statute does say -- and this is the
11 reason I want it clear on the record -- 17-25-45, says not
12 withstanding any other provision of law except in cases in
13 which the death penalty is imposed, which that doesn't apply
14 here. Upon conviction for a most serious offense is defined
15 in this section, of which kidnapping is a most serious
16 offense, a person must be sentenced for a term of imprisonment
17 for life without the possibility of parole if the person has
18 one or more prior convictions for a most serious offense.

19 So, because the statute says must, on the charge of
20 kidnapping, the sentence is that you be confined to the State
21 Department of Corrections for life without parole. There is a
22 Court finding that this crime did not involve a sex offense or
23 an attempted sex offense.

24 On the charge of robbery, the sentence of the Court is
25 that you be confined to the State Department of Corrections

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1 for 15 years.

2 On the charge of possession of a weapon during the
3 commission of a violent crime, the sentence of the Court is
4 that you be confined to the State Department of Corrections
5 for five years.

6 All sentences will run concurrently. You will be given
7 credit for any time served thus far. All right.

8 Thank you.

9 **ADJOURNED - 5:36 P.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus John Nathan Linen, II, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on November 12-14, 2019.

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

Kay H. Richardson
Official Court Reporter

February 21, 2020.

DOCKET NO. 2017-GS-22-00487

The State of South Carolina
County of Georgetown

W. Keith Powell 17G00257

COURT OF GENERAL SESSIONS
MAY, 2017 TERM

THE STATE

vs.

JOHN NATHAN LINEN II
[REDACTED]
GEORGETOWN, SC 29440-5970

B / M

ATTORNEY: Wyn Bessent

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2017A2210500167

CDR: 0139 §16-11-0330(A)

DOI: 3/20/2017

ACTION OF GRAND JURY

TRUE BILL

Wyn Bessent

Foreperson of Grand Jury

Date:

5-31-17

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

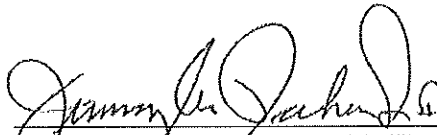
At a Court of General Sessions, convened on May 31, 2017, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 §16-11-0330(A)

That John Nathan Linen II did in Georgetown County on or about March 20, 2017, while armed with a deadly weapon and/or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of Dollar General Store, 8003 North Fraser Street from or in the immediate presence of Tyesha Sparkman (employee) with intent to deprive Dollar General Store of possession thereof 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.



JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2017-GS-22-00669

The State of South Carolina
County of Georgetown

W. Keith Powell 17G00257

COURT OF GENERAL SESSIONS
MAY, 2017 TERM

THE STATE

vs.

JOHN NATHAN LINEN II
[REDACTED]
GEORGETOWN, SC 29440-5970

B / M

ATTORNEY: Wynn Bessent

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2017A2210500168

CDR: 0095 §16-03-0910

DOI: 3/20/2017

ACTION OF GRAND JURY

TRUE BILL

Richardson
Foreperson of Grand Jury
Date: 5-31-17

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT


At a Court of General Sessions, convened on May 31, 2017, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 §16-03-0910

That John Nathan Linen II did in Georgetown County on or about March 20, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Tyesha Sparkman, without authority of law, in violation of Section 16-03-0910, 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.



JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

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DOCKET NO. 2017-GS-22-00670

The State of South Carolina
County of Georgetown

W. Keith Powell 17G00257

COURT OF GENERAL SESSIONS

MAY, 2017 TERM

THE STATE

vs.

JOHN NATHAN LINEN II
[REDACTED]
GEORGETOWN, SC 29440-5970

B7M

ATTORNEY: Wyn Bessent

Indictment for

POSSESSION OF A WEAPON
DURING THE COMMISSION
OF A VIOLENT CRIME

Jimmy A. Richardson, II, Solicitor

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2017A2210500169

CDR: 0549 §16-23-0490

DOI: 3/20/2017

ACTION OF GRAND JURY

TRUE BILL

Wyn Bessent

Foreperson of Grand Jury

Date:

5-31-17

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT


At a Court of General Sessions, convened on May 31, 2017, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 §16-23-0490

That John Nathan Linen II did in Georgetown County, on or about March 20, 2017, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, 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.



JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED

Aug 26 2020

SC Court of Appeals

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of August, 2020.