

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Thomas L. Hughston, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KYRIEF DESHAWN LARNELLE KELLY,

APPELLANT

APPELLATE CASE NO. 2017-002555

RECORD ON APPEAL

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SC Court of Appeals

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INDEX

INDEX	i
TRIAL TRANSCRIPT (DECEMBER 11-12, 2017).....	1
<u>JACKSON V. DENNO HEARING</u>	
TODD MALLEK	28
OPENING STATEMENT BY MR. GINSBURG	54
OPENING STATEMENT BY MR. KELLY	57
TESTIMONY	
JEFFREY THOM	59
TONIA MALLETT	101
BRIAN HINTON	122
L. RANDAL UNTERBRINK	132
TODD MALLEK	147
MOTION FOR DIRECTED VERDICT	176
RULING BY THE COURT	176
KYRIEF KELLY	177
RAYMOND HAUPT	186
RENEWAL OF MOTION FOR DIRECTED VERDICT	189
RULING BY THE COURT	189
CLOSING ARGUMENT BY MR. GINSBURG	189
CLOSING ARGUMENT BY MR. KELLY	195
CHARGE ON THE LAW	201

VERDICT	211
SENTENCING	217
STATE'S EXHIBIT #19 (INCIDENT REPORT).....	220
STATE'S EXHIBIT #20 (INCIDENT REPORT).....	227
INDICTMENTS	233
CERTIFICATE OF COUNSEL	237

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2015-GS-10-06155
2015-GS-10-06155

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
-vs-)
) December 11-12, 2017
KYRIEF KELLY,)
) Charleston, South Carolina
Defendant.)

B E F O R E:

December 11, 2017:
The Honorable R. Markley Dennis, Jr., Judge
December 12, 2017:
The Honorable Thomas Hughston, Jr., Judge

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

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Circuit Court Reporter for the
Ninth Judicial Circuit

E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TODD MALLEK	28	38	--	--
JEFFREY THOM	60	86	99	--
TONIA MALLETT	101	119	--	--
BRIAN HINTON	122	131	132	--
L. RANDAL UNTERBRINK	132	138	142	--
TODD MALLEK	147	161	171	--
KYRIEF KELLY BEY	177	179	--	--
RAYMOND HAUPT	186	--	--	--

E X H I B I T S

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
1	Overview Map	63	63
2	Zoomed-in Map of Run Path	63	63
3	Defendant Booking Photo 1	66	66
4	Defendant Booking Photo 2	66	66
5	Sergeant Thom Radio Transmission Clip 1	74	74
6	Full Picture of Handgun	81	81
7	Grip of Handgun	81	81
8	Trigger of Handgun	81	81
9	Photograph of Trash Can	81	81
10	NCIC Gun Check	84	84
11	Clip of 911 Call	105	105
12	Identification Card	136	136

13	Audio CD of Jail Calls	145	--
14	Excerpt of Audio from Exhibit 13	147	147
15	Close-up of Map	152	152
16	Chain of Custody Report	129	129
17	Mallek Incident Report	36	--
18	Incident Report Regarding Officer Thom	113	113
19	Incident Report of "Robert"	110	110
20	Stolen Gun Incident Report	117	117

1 (December 11, 2018.)

2 THE COURT: All right. Ladies and gentlemen:
3 What we're going to do is pick a jury. Judge Hughston,
4 he had to attend a funeral, as I understand, so when we
5 pick you, the trial will not start until tomorrow at
6 9:30, and you all understand that, and this trial will be
7 finished this week, and, as I understand -- is there any
8 other cases pending on this docket? I don't think there
9 are. This will be the only one, so the majority of you
10 will be finished today. We'll pick -- out of an
11 abundance of caution, I'll pick 14, I think is the best
12 thing to do, 12 and two alternates.

13 The caption of this case, it reads the state
14 of South Carolina, which is the charging party, is
15 accusing of Mr. Kelly, Kyrief Kelly, of committing an
16 offense of unlawful carrying of a pistol and being in
17 possession of a stolen pistol, and Mr. Kelly is seated to
18 my left here.

19 Mr. Kelly, if you would please stand and face
20 the jury panel for me. Thank you.

21 MR. KELLY: For the record my name is Kyrief
22 Kelly Bey.

23 THE COURT: He goes by Mr. Bey, but his legal
24 name is Mr. Kelly at this point. Are there any members
25 of the jury panel related by blood or marriage, have any

1 business dealings, socially, casually acquainted with
2 Mr. Kelly? If so, please stand. Thank you. There
3 appear to be none.

4 Mr. Kelly is being assisted -- Mr. Smit, if
5 you identify yourself and your role.

6 MR. SMITH: My name is Nicholas Smit. I work
7 for the Charleston County public defender's office.

8 THE COURT: Thank you, sir. Are there any
9 members of the jury panel related by blood or marriage,
10 have any business dealings with, socially, casually
11 acquainted with, ever been represented by Mr. Smit? If
12 so, please stand. Thank you. There appear to be none.

13 Mr. Smit works with the public defender. The
14 circuit public defender is Ashley Pennington. Are there
15 any members of the jury panel related by blood or
16 marriage, have any business dealings with, socially,
17 casually acquainted with, ever been represented by
18 Mr. Pennington? If so, please stand.

19 A PROSPECTIVE JUROR: Ashley is a friend of
20 mine, socially. Does that count?

21 THE COURT: The fact that he's your friend,
22 would that influence you in this case?

23 A PROSPECTIVE JUROR: I don't think so.

24 THE COURT: And I appreciate your answer, and
25 that's a very realistic answer. The question is, if you

1 were selected on this jury, you would be tasked with
2 deciding this case based on the evidence and the law.
3 Would your decision on either of those be influenced or
4 affected by your relationship or your knowledge of
5 Mr. Pennington?

6 Your hesitation is -- I appreciate that, and
7 over the years of this, reactions are great in answering
8 questions sometimes, and I appreciate your hesitance.
9 That's not a discredit to you. That's really a credit to
10 the process, and that's why it works because persons,
11 when they hesitate -- we have enough jurors. Your name
12 and number, please?

13 A PROSPECTIVE JUROR: I'm 322 Carol Voigt.

14 THE COURT: 322, you're free to leave. Thank
15 you. Are there any others? Thank you. There appear to
16 be none.

17 The defendant in this case is represented by
18 Ms. Ginsburg. Is anyone going to be assisting you?

19 MS. GINSBURG: Good morning. My name is Alex
20 Ginsburg. I'm an assistant solicitor in this case. I
21 will be prosecuting this case, and with me is David
22 Osborne. He's assisting me, and he's also an assistant
23 solicitor here in the Ninth Circuit. Thank you so much.

24 THE COURT: Thank you, Ms. Ginsburg. Any
25 members of the jury related by blood or marriage, have

1 any business dealings with, socially, casually acquainted
2 with either Ms. Ginsburg or Mr. Osborne, or ever been
3 represented by them? If so, please stand.

4 As Ms. Ginsburg and Mr. Osborne has been
5 indicated are assistant solicitors. Our solicitor is
6 Scarlett Wilson, and she is the chief prosecuting officer
7 for the Ninth Judicial Circuit. She has -- are there any
8 members of the jury panel related by blood or marriage,
9 have any business dealings with, socially, casually
10 acquainted with, or ever been represented by Ms. Wilson?
11 If so, please stand. Yes?

12 A PROSPECTIVE JUROR: Ms. Wilson represented
13 me in prosecuting somebody who stole something from me a
14 number of years ago.

15 THE COURT: Would that affect or influence
16 you in this case?

17 A PROSPECTIVE JUROR: I don't believe so.

18 THE COURT: Would you be able to decide this
19 case based on the evidence and the law? Would it be fair
20 to both sides?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Your name and number.

23 A PROSPECTIVE JUROR: Anthony Cargile, number
24 58.

25 THE COURT: Thank you, sir. Anyone else;

1 Yes.

2 A PROSPECTIVE JUROR: Jeremy Bowers, juror
3 number 42. I know Ms. Wilson just through bar meetings,
4 Your Honor.

5 THE COURT: Would that influence you, sir?

6 A PROSPECTIVE JUROR: No, sir.

7 THE COURT: Will you base your decision on
8 the evidence and the law?

9 A PROSPECTIVE JUROR: Yes, Your Honor.

10 THE COURT: Thank you very much. You may be
11 seated. Are there any others? There appear to be none.

12 Ms. Wilson has offices in Berkeley and in
13 Charleston Counties. Are there any members of the jury
14 panel related by blood or marriage, have any business
15 dealings with, socially, casually acquainted with anyone
16 employed with the solicitor's office? If so, please
17 stand. Thank you. There are none.

18 I'm going to identify a number of persons,
19 ladies and gentlemen. If you are related by blood or
20 marriage to any of these individuals, have any business
21 dealings with them, socially, casually acquainted with
22 them, you need to stand and share that information with
23 the Court.

24 The following persons are employed with the
25 Charleston County police departments: Sergeant

1 Jeffrey Thom, Officer Todd Mallek, Officer Pete Hall,
2 Randy Unterbrink, Mary Phillips, any of those
3 individuals? If so, please stand. Thank you. There are
4 none.

5 Also, the following: Jamal Mcrae, and the
6 following individuals: Tonia Mallette, who is with
7 Charleston Consolidated Dispatch, Angela Casey, also with
8 Charleston Consolidated Dispatch, Lisa Bloodworth with
9 the Charleston County Sheriff's office, Brian Hinton,
10 also employed with the Charleston Police Department, and
11 Investigator Ray Haupt with the Ninth Circuit solicitor's
12 office? Any of those persons? Thank you. There appear
13 to be none.

14 Mr. Kelly has been accused in this document
15 I'm holding, or these documents, I should say, and it
16 charges him with two criminal acts: They are what they
17 appear to be. They're pieces of paper. They merely
18 contain the accusations against him. They're not
19 evidence, but I need to share with you what's been
20 alleged and ask you certain questions.

21 It's alleged that Mr. Kelly did, on or about
22 August 28th, 2015 in Charleston County possess a handgun
23 which had been stolen and on that same date and in
24 Charleston County willfully and unlawfully carried about
25 his person a concealed weapon, a handgun, all allegedly

1 in violation of the statutes pertaining to those two
2 acts.

3 I share that with you to find out if any
4 member of the jury panel has heard anything, read
5 anything, you have any prior knowledge of this dispute?
6 If so, please stand. Thank you. There appear to be
7 none.

8 Is there anything about the nature of this
9 dispute that you, because of some strong philosophy you
10 have, something that may have happened to you in your
11 life or a close personal friend or family member that
12 would affect your ability to fairly and impartially
13 consider the evidence, and that consists of testimony of
14 witnesses and exhibits that might be introduced through
15 that testimony, and nothing else, evaluating that
16 testimony at the appropriate time, deciding what you
17 believe to be the true facts, and then once deciding
18 those true facts taking the law as Judge Hughston would
19 give it to you and applying that law fairly and
20 impartially to those facts?

21 If there is something in your background that
22 would affect you, please stand. Thank you. There appear
23 to be none. Oh, yes, sir. Will you come forward,
24 please.

25 A PROSPECTIVE JUROR: Yes, sir.

1 (At sidebar.)

2 A PROSPECTIVE JUROR: My name is Larry
3 Stoudenmire. My wife's grandfather was murdered. He was
4 a county manager in Marion County. He was murdered.

5 THE COURT: Okay. Because of that, it would
6 affect you, you think?

7 A PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: That's fine. And your number
9 again?

10 A PROSPECTIVE JUROR: 306.

11 THE COURT: 306 will be excused because of
12 his inability to be fair and impartial. Thank you, sir.

13 Is there anyone else? Thank you. There
14 appear to be none. Are there any members of the jury
15 panel that have ever had any disputes with
16 representatives of the Charleston Police Department? If
17 so, please stand. Thank you. There appear to be none.

18 Any member of the jury panel have any
19 disputes in connection with the solicitor's office in
20 Charleston, or the solicitor's office anywhere? If so,
21 please stand. Thank you. There appear to be none.

22 Are any members of the jury panel related by
23 blood or marriage, close business dealings with anyone
24 employed with law enforcement? If so, please stand.
25 Thank you. Yes?

1 A PROSPECTIVE JUROR: My brother is a police
2 officer with Isle of Palms.

3 THE COURT: With whom?

4 A PROSPECTIVE JUROR: Isle of Palms.

5 THE COURT: Would that affect you, ma'am?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Would you base your decision on
8 the evidence and the law and will be fair to both sides?

9 A PROSPECTIVE JUROR: Sure, yes.

10 THE COURT: Your number and name?

11 A PROSPECTIVE JUROR: Number 89, Michelle
12 Deforest.

13 THE COURT: Thank you.

14 A PROSPECTIVE JUROR: My father is a federal
15 agent.

16 THE COURT: Would that affect or influence
17 you, ma'am?

18 A PROSPECTIVE JUROR: No, sir.

19 THE COURT: Will you base your decision on
20 the evidence and the law and will it be fair to both
21 sides?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: You may be seated. What is your
24 number?

25 A PROSPECTIVE JUROR: 219.

1 THE COURT: Thank you. Are there any others?
2 Thank you. There appear to be none.

3 Are there any members of the jury panel that
4 have -- this is a hot button topic, gun ownership, that
5 would affect your ability to take the law as the judge
6 gave it to you and apply that law fairly and impartially,
7 even though it may be inconsistent with what your belief
8 of the law should be relative to gun ownership and
9 possessing firearms? If you have an opinion, strong
10 opinion that you think would basically interfere with
11 your ability to fairly and impartially take the law and
12 apply it fairly, please stand. Thank you. There appear
13 to be none.

14 Any members of the jury panel that have ever
15 had a dispute concerning the possession of a firearm? If
16 so, please stand. Thank you. Yes? I'll ask you to come
17 forward, please.

18 (At sidebar.)

19 A PROSPECTIVE JUROR: Number 274. My son was
20 actually charged with carrying a concealed weapon. He
21 was arrested for it. He was tried and everything, so I,
22 you know --

23 THE COURT: Would that affect you, do you
24 think?

25 A PROSPECTIVE JUROR: It would not.

1 THE COURT: You would be able to set that
2 aside and decide this case based on the evidence and the
3 law?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: What's your number?

6 A PROSPECTIVE JUROR: 274.

7 THE COURT: 274 will remain. Thank you so
8 much. Are there any others? There appear to be none.

9 Are there any members of the jury panel who
10 are members of the National Rifle Association or pro-gun
11 ownership rights groups? If so, please stand.

12 Yes, sir. Start here. Yes, sir?

13 A PROSPECTIVE JUROR: I'm a member of the
14 NRA.

15 THE COURT: And your number, please.

16 A PROSPECTIVE JUROR: 202.

17 THE COURT: Thank you, sir. You may be
18 seated. Yes?

19 A PROSPECTIVE JUROR: Same, 24.

20 THE COURT: Thank you, sir. You may be
21 seated. Yes, sir?

22 A PROSPECTIVE JUROR: I as well, 73.

23 THE COURT: Thank you, sir. You may be
24 seated. Anyone else? Thank you. There appear to be
25 none.

1 Are there any members of the jury panel who
2 are members of or related by blood or marriage to members
3 now or formerly or closely connected with any member of a
4 group known as the Sovereign Citizens, the Moorish
5 National, or any affiliated or similar groups? If so,
6 please stand. Thank you. There appear to be none.

7 Are there any other additional questions
8 specifically from the State?

9 MS. GINSBURG: None from the State.

10 THE COURT: Any other questions additionally,
11 Mr. Kelly?

12 MR. KELLY: No, sir.

13 THE COURT: The last question I have for you
14 is this: One of the last things that will happen, and
15 I'm sure Judge Hughston will explain, our process of
16 dispute resolution in criminal disputes is -- and it's
17 the same in civil, is we empanel a jury. Once a jury is
18 empanelled, that takes and removes from the trial judge
19 any duty or responsibility in determining the facts of
20 the dispute and the facts basically become your job, and
21 in order for you to be able to do that, you have to take
22 an oath similar to the oath that we took because you will
23 become a judge, with Judge Hughston, and you will be
24 tasked with being the judge of the facts. Judge Hughston
25 will be the judge of the law.

1 Once you take that oath, you will then, of
2 course, become that judge, and you will have promised in
3 order to proceed that you will at the appropriate time
4 fairly and impartially apply your common sense, your
5 sense of logic and reason in analyzing the evidence,
6 deciding for yourself what you believe to be the true
7 fact, and then once deciding those facts taking the law
8 as Judge Hughston gives it to you and apply it fairly and
9 impartially to those facts.

10 Is there anything that you've heard about
11 this dispute that would give you any concern about your
12 ability to make that commitment to the Court, to the
13 prosecuting officers, or to Mr. Kelly? If so, please
14 stand. Thank you. There are none.

15 Your names now will be called at random and
16 drawn at random and called. When your name is called, if
17 you'll come and stand and facing your fellow jurors, each
18 side will have an opportunity. The State can excuse five
19 persons. Mr. Kelly will be able to excuse five persons,
20 and we'll continue in the process until we have seated
21 our 12 jurors and our two alternates.

22 So we'll turn it over now. They're printing
23 it. Print the list right now, and once we get the list
24 we'll call your names. We'll just be at ease for just a
25 moment, but stay in your seat.

1 All right. You may proceed.

2 THE CLERK: As His Honor stated, whenever I
3 call your name and number, please come forward, face His
4 Honor, and we'll begin the striking process. Juror
5 number 274, Yolanda Rose.

6 (The prospective juror, a black female,
7 approaches.)

8 THE CLERK: What say you for the State?

9 MS. GINSBURG: Please excuse this juror.

10 THE CLERK: Ma'am, you've been excused from
11 the trial of this case. Please take your seat in the
12 audience.

13 Juror number 117, Corbin Fuller.

14 (The prospective juror, a white male,
15 approaches.)

16 What say you for the State?

17 MS. GINSBURG: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KELLY: You can, yes.

20 THE COURT: He's seated?

21 MR. KELLY: Yes.

22 THE CLERK: Sir, you've been selected for the
23 trial of this case. Please take your seat in the back of
24 the room.

25 Juror number 261, Abigail Rajabi.

1 (The prospective juror, a white female,
2 approaches.)

3 THE CLERK: What say you for the State?

4 MS. GINSBURG: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. KELLY: Yes, please.

7 THE CLERK: Ma'am, you've been selected for
8 the trial of this case. Please take your seat over
9 there.

10 Juror number 215, William McGeorge.

11 (The prospective juror, a white male,
12 approaches.)

13 THE CLERK: What say you for the State?

14 MS. GINSBURG: Beg the Court's indulgence.

15 THE COURT: Certainly.

16 MS. GINSBURG: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. KELLY: Excuse the juror.

19 THE CLERK: Sir, you may take your seat in
20 the audience.

21 Juror number 275, Christine Ruffing.

22 (The prospective juror, a white female,
23 approaches.)

24 THE CLERK: What say you for the State?

25 MS. GINSBURG: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KELLY: We'll accept it.

3 THE CLERK: Please take your seat. You've
4 been selected for the trial.

5 Number 122, Jacquelin Garrett.

6 (The prospective juror, a black female,
7 approaches.)

8 What say you for the State?

9 MS. GINSBURG: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KELLY: Please, yes.

12 THE CLERK: Please select this juror?

13 MR. KELLY: Yes, sir.

14 THE CLERK: Ma'am, you've been selected for
15 the trial of this case. Please take your seat on the
16 left.

17 Juror number 198, Amy Kubie.

18 (The prospective juror, a white female,
19 approaches.)

20 What say you for the State?

21 MS. GINSBURG: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KELLY: No, sir.

24 THE CLERK: Ma'am, you've not been selected
25 for the trial of this case. Please take a seat in the

1 audience. Defendant has exhausted two strikes.)

2 Juror number 104, Branden Fabersrouse.

3 (The prospective juror, a black male,
4 approaches.)

5 THE CLERK: What say you for the State?

6 MS. GINSBURG: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. GINSBURG: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MR. KELLY: Yes, please.

11 THE CLERK: Sir, you've been selected for the
12 trial of this case.

13 Juror number 44, Jessica Brant.

14 (The prospective juror, a white female,
15 approaches.)

16 What say you for the State?

17 MS. GINSBURG: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KELLY: No, sir.

20 THE CLERK: Ma'am, you've not been selected
21 for the trial of this case. Please take your seat in the
22 audience.

23 Juror number 131, David Glanville.

24 (The prospective juror, a white male,
25 approaches.)

1 What say you for the State?

2 MS. GINSBURG: Please present the juror.

3 THE CLERK: What say you for the defendant?

4 MR. KELLY: Yes, please.

5 THE CLERK: Sir, you've been selected for the
6 trial of this case. Please take a seat.

7 Juror number 6, Annie Allison.

8 (The prospective juror, a white female,
9 approaches.)

10 What say you for the State?

11 MS. GINSBURG: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KELLY: No, ma'am.

14 THE CLERK: Ma'am, you've not been selected.
15 Please take a seat in the audience. The defendant has
16 exhausted three of its four strikes.

17 Juror number 89, Michelle DeForest.

18 (The prospective juror, an Asian female,
19 approaches.)

20 What say you for the State?

21 MS. GINSBURG: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KELLY: No, sir.

24 THE CLERK: You've not been selected for the
25 trial of this case. Please take a seat in audience. The

1 defendant has exhausted all of its strikes.

2 Juror number 13, Leonardo Bonilha.

3 (The prospective juror, a Hispanic male,
4 approaches.)

5 What say you for the State?

6 MS. GINSBURG: Please excuse this juror.

7 THE CLERK: You've not been selected for the
8 trial of this case. Please take a seat in the audience.

9 Juror number 203, Darron Little.

10 (The prospective juror, a black male,
11 approaches.)

12 What say you for the State?

13 MS. GINSBURG: Please seat this juror.

14 THE CLERK: Any challenge from the defendant?

15 MR. KELLY: No.

16 THE CLERK: No challenge? You've been
17 selected for the trial of this case.

18 Juror number one -- excuse me 158, Elsie
19 Hill.

20 (The prospective juror, a white female,
21 approaches.)

22 What say you for the State?

23 MS. GINSBURG: Please present this juror.

24 THE CLERK: Any challenge from the defendant?

25 MR. KELLY: No.

1 THE CLERK: Ma'am, you've been selected for
2 the trial of this case. Please take a seat on the right.

3 Juror number 278, Patricia Scaers.

4 (The prospective juror, a Hispanic female,
5 approaches.)

6 What say you for the State?

7 MS. GINSBURG: Please present this juror.

8 THE CLERK: What say you for the -- excuse
9 me. Any challenge from the defendant?

10 MR. KELLY: No challenge.

11 THE CLERK: Ma'am, you've been selected for
12 the trial of this case. Please take your seat on the
13 right.

14 Juror number 79, Gerard Covenno.

15 (The prospective juror, a white male,
16 approaches.)

17 MS. GINSBURG: Please present this juror.

18 THE CLERK: Any challenge from the defendant?

19 MR. KELLY: No challenge.

20 THE CLERK: You've been selected for the
21 trial of this case. Please take a seat on the right.

22 Juror number 73, Douglas Confair.

23 (The prospective juror, a white male,
24 approaches.)

25 What say you for the State?

1 MS. GINSBURG: Please excuse this juror.

2 THE CLERK: Sir, you may take your seat in
3 the audience. The State has exhausted three strikes.

4 Juror number 143, Farrel Grossman.

5 (The prospective juror, a white male,
6 approaches.)

7 What say you for the State?

8 MS. GINSBURG: Please present this juror.

9 THE CLERK: Any challenge from the defendant?

10 MR. KELLY: No challenge.

11 THE CLERK: Thank you. Sir, you've been
12 selected for the trial of this case.

13 Juror 219, Melanie McSheehy.

14 (The prospective juror, a white female,
15 approaches.)

16 What say you for the State?

17 MS. GINSBURG: Please present this juror.

18 THE CLERK: Any challenge from the defendant?

19 MR. KELLY: No challenge.

20 THE COURT: All right. Now we'll select
21 alternates. Strikes will be one and two.

22 THE CLERK: Now selecting for the alternate,
23 juror number 46, David Brice.

24 (The prospective juror, a white male,
25 approaches.)

1 THE CLERK: What say you for the State?

2 MS. GINSBURG: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. KELLY: Yes.

5 THE CLERK: Sir, you've been selected as an
6 alternate in this case. Please take your seat on the
7 right.

8 One or two alternates, Judge?

9 THE COURT: Let's get two. Again, strikes
10 will be one and two.

11 THE CLERK: Striking for the second
12 alternate, number 305, Lenville Stark.

13 (The prospective juror, a white male,
14 approaches.)

15 What say you for the State?

16 MS. GINSBURG: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. KELLY: Yes.

19 THE CLERK: Sir, you've been selected as the
20 second alternate in this case. Please take a seat on the
21 right.

22 THE COURT: Any motions from the State
23 regarding the selection process?

24 MS. GINSBURG: No, Your Honor.

25 THE COURT: Mr. Kelly, any motions regarding

1 the selection process?

2 MR. KELLY: Other than challenging
3 jurisdictional matters, which is all preserved.

4 THE COURT: No other specific challenge,
5 Mr. Kelly?

6 MR. KELLY: No, sir.

7 THE COURT: Okay. Very well.

8 Ladies and gentlemen: Those of you that were
9 not selected, thank you for your participation. I know
10 this is bad and sad news, but this will be the last time
11 you have to come. I hope you all have a wonderful
12 holiday season, and Merry Christmas. Thank you.

13 (Whereupon, the jury panel was excused.)

14 Ladies and gentlemen, you have been selected
15 as jurors for the trial of this case. One thing about
16 this case: You can't even talk among yourselves until
17 you begin your deliberations. That's really the last
18 part of the charge that Judge Hughston will give to you
19 when you start deliberating, so until then, don't discuss
20 the case.

21 Don't let anybody talk with you about the
22 case or talk about it in your presence. Don't read any
23 newspaper accounts, should there be any about it, and the
24 reason for this is not that you would be influenced, but
25 the appearance of it exists, and you make your decision

1 based on what you hear in the courtroom, so it's very
2 important that you observe that.

3 Don't conduct any investigations into this
4 matter. Please remember that, and after you finish, if
5 you want to do some research, that's fine, but until
6 then, your promise will be to decide this case based on
7 the law that the judge gives you and nothing else.

8 Have a great day and thank you for your
9 participation, and once you've seen where you need to
10 report, you're free to leave. Thank you.

11 (Jury recessed.)

12 Anything else from the State?

13 MS. GINSBURG: No, sir.

14 THE COURT: Mr. Kelly, anything else from you
15 at this point?

16 MR. KELLY: Other than putting the lack of
17 territory --

18 THE COURT: Well, you can place that -- the
19 jury will be empanelled tomorrow. You can place that on
20 the record before Judge Hughston.

21 Thank you very much.

22 (Recess taken.)

23 (December 12, 2017.)

24 (In open court, defendant present.)

25 THE COURT: Try to talk as loud as you can so

1 I can hear you.

2 MR. KELLY: I would like to ask permission to
3 board your ship, sir. I would like to reserve all rights
4 before boarding your ship.

5 THE COURT: Come on in.

6 All right. We're ready to go forward on this
7 trial here, Kyrie Kelly, unlawful carrying of a pistol
8 and possession of a stolen handgun. Bring the jury in.

9 MS. GINSBURG: Your Honor, we have a Jackson
10 v. Denno hearing.

11 THE COURT: All right. Go ahead.

12 MS. GINSBURG: Okay, Your Honor. The State
13 calls Officer Todd Mallek.

14 And, Your Honor, just for the record, Mr.
15 Kelly is representing himself; however, Mr. Smit from the
16 public defender's office is standby counsel.

17 THE COURT: All right. Swear the witness.

18 TODD MALLEK,

19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. GINSBURG:

23 Q. Officer Mallek, where do you work?

24 A. I work at the City of Charleston Police
25 Department.

1 Q. And what is your current position in CPD?

2 A. I'm a police officer in patrol.

3 Q. And how long have you worked at CPD?

4 A. I've worked there for six years now.

5 Q. What are some of your duties?

6 A. Crime prevention through patrol, just officer
7 presence; responding to calls for service; any emergency
8 situations that may arise during the course of a shift,
9 but mostly just presence, being in the patrol
10 jurisdiction, city of Charleston.

11 Q. So proactive patrol?

12 A. Correct.

13 Q. Can you explain your beat, or your area that you
14 patrol.

15 A. I currently work in T-3 patrol, which includes
16 James and Johns Island, the city of Charleston Parks.

17 Q. Officer Mallek, let's go back to the afternoon of
18 August 28, 2015. Were you working that afternoon?

19 A. I was.

20 Q. What was your assignment then?

21 A. Then I was in T-1 patrol, which is on the
22 peninsula, north of Calhoun. Same responsibility as
23 patrol in that area.

24 Q. So downtown Charleston?

25 A. Downtown Charleston.

1 Q. On that afternoon were you involved in a traffic
2 stop with the defendant, Kyrief Kelly?

3 A. Yes, I was.

4 Q. Can you describe the stop, how it began.

5 A. I was on patrol. I was on Line Street, traveling
6 east. That was coming up on King Street. It was one-way
7 traffic. I was traveling behind a car that I noticed had
8 expired registration, expired tags.

9 Q. And because of that traffic infraction, did you
10 initiate a traffic stop?

11 A. Correct, I did.

12 Q. Did you successfully stop that vehicle?

13 A. Eventually. Not immediately I did not.

14 Q. Can you explain what happened -- you said
15 eventually, not immediately, so what happened in that
16 time?

17 A. I initiated the blue lights, you know, standard to
18 initiate a traffic stop, pulled the vehicle over. The
19 vehicle did not initially stop. It rolled for a long
20 time, then kind of made some evasive moves into a parking
21 lot. We crossed over King Street towards Meeting Street.
22 It then -- I thought it was going to stop in the Pizza
23 Hut parking lot, which is Meeting Street and Line Street.
24 It actually accelerated through that parking lot,
25 basically across Meeting Street, and behind another

1 business before shooting out on Columbus Street,
2 accelerated away from me at that point.

3 Q. And where did it eventually stop?

4 A. Due to circumstances, there happened to be some
5 other patrol cars in that area as well as other vehicular
6 traffic. Essentially, the vehicle I was trying to stop
7 was boxed in, and it was forced to stop.

8 Q. And was that on Columbus Street?

9 A. That was on Columbus Street.

10 Q. And once you made it on to Columbus Street and the
11 car was boxed in by two patrol officers -- is that what
12 you said?

13 A. That's correct.

14 Q. What did you observe next?

15 A. At that time, I saw the driver of the vehicle stay
16 seated in the vehicle. I saw the passenger side door
17 open and the defendant then flee the vehicle from the
18 passenger side and began running away from the traffic
19 side.

20 Q. And what did you do at that point?

21 A. At that time, I stayed with another officer to
22 clear the vehicle, unsure of how many more people were
23 inside that car, quickly cleared the vehicle.

24 THE COURT: Were there other people in the
25 car?

1 THE WITNESS: Just the driver, Your Honor.

2 BY MS. GINSBURG:

3 Q. So the passenger fled. Was the passenger
4 eventually detained?

5 A. He was a short time later.

6 Q. Where was he eventually found, do you recall?

7 A. I don't recall the exact distance, but it was on
8 Nassau Street, maybe a couple hundred yards.

9 Q. And when he was detained, was he placed in
10 handcuffs?

11 A. Of course, yes.

12 THE COURT: I'm sorry. He was?

13 THE WITNESS: He was.

14 BY MS. GINSBURG:

15 Q. Can you describe the defendant's demeanor at that
16 time.

17 A. Winded from the sprint, physical exertion, but
18 overall, pretty calm, pretty cool and collected.

19 Q. Coherent?

20 A. Coherent, definitely.

21 Q. So it didn't appear he was under the influence of
22 alcohol or any drugs?

23 A. No.

24 Q. That he understood what was happening?

25 A. Yes.

1 Q. So while you're escorting the defendant back to
2 your patrol car, what else happened in regards to that
3 case?

4 A. As we're dealing with a now suspect I have in
5 custody, a call came into dispatch and was relayed to us
6 from a citizen witness who stated that they observed --
7 they had observed the defendant throw what they thought
8 to be a gun into their driveway.

9 MR. KELLY: Objection. Did they say exactly
10 what happened, that there was specifically a gun, or did
11 they say that I threw something?

12 THE WITNESS: I don't have the transcript
13 with me exactly for what they called in, but I know they
14 definitely alerted us to a weapon.

15 THE COURT: I appreciate your position, but
16 I'm going to allow the testimony.

17 MS. GINSBURG: Thank you, Your Honor.

18 BY MS. GINSBURG:

19 Q. Was that handgun recovered?

20 A. It was recovered.

21 Q. So once you placed the defendant back into the
22 patrol car, what did you do next?

23 A. At that time, I already made the determination
24 that the defendant was going to be placed under arrest
25 for an unlawful carry. He is not a concealed weapons

1 holder. I began the standard paperwork, which includes
2 what we call an arrest report or a booking sheet, and
3 that is basic biographic information, very standard
4 questions.

5 Q. So you're asking for someone's their race, their
6 age, their name, that kind of thing?

7 A. Correct.

8 Q. While you were filling out this paperwork, what
9 admissions, if any, did the defendant provide?

10 A. At that time the defendant continued to speak to
11 me seated in the back seat of my police car as I'm trying
12 to figure out the paperwork, and he started almost
13 pleading a case to me, why he did what he did, why he was
14 carrying a gun. He felt he needed it for protection.

15 MR. KELLY: Objection. Did I say all of
16 that, or did I specifically tell you that I had
17 marijuana?

18 THE COURT: You can ask him questions when he
19 finishes testifying, but I'm going to allow him to
20 testify, but you can ask him the questions later on.

21 Go ahead.

22 THE WITNESS: He gave me a quick synopsis of,
23 I guess -- I think he said he had just served jail time
24 for a gun, you know.

25 BY MS. GINSBURG:

1 Q. And what else did he say regarding the gun?

2 A. Just that he needed one for protection now that he
3 was back home; you know, he needed to carry a gun because
4 the streets, the lifestyle is dangerous, so that's why he
5 needs to carry a gun.

6 Q. And was the gun his?

7 A. No, it was not his.

8 Q. So let me get this straight: He admitted this was
9 stolen?

10 A. I don't remember exactly him using the word
11 stolen, but I think he alluded to something that -- he
12 didn't necessarily purchase it legally.

13 THE COURT: I'm sorry. I didn't understand
14 what you just said.

15 THE WITNESS: I don't exactly remember the
16 exact wording the defendant used, but he definitely made
17 it clear to me he did not receive the gun legally.

18 THE COURT: What do you mean by that? I
19 don't understand that.

20 THE WITNESS: Such as I don't think he
21 purchased it, is the gist of what he said to me.

22 THE COURT: I still don't understand what
23 you're saying. What did he say to you about where he got
24 the gun or how he got the gun or whatever?

25 THE WITNESS: I don't recall exactly.

1 BY MS. GINSBURG:

2 Q. What did you take that to mean?

3 THE COURT: Not take it, I want to know what
4 he said.

5 THE WITNESS: I don't have the report in
6 front of me, Your Honor. I don't recall exactly what --

7 THE COURT: You want to look at your record
8 and see what you wrote up?

9 MS. GINSBURG: Your Honor, may I approach?

10 THE COURT: Go ahead.

11 (State's Exhibit 17 was marked for
12 identification.)

13 THE WITNESS: I have a quote in my report
14 which was written the day of the incident.

15 THE COURT: Tell us what you remember him
16 saying now.

17 THE WITNESS: Defendant stated: Whatever you
18 found between the car and where you got me is mine. You
19 know how things are. I need to keep a gun with me. I
20 know that gun was stolen. It is what it is.

21 BY MS. GINSBURG:

22 Q. And at that time, were you questioning him about
23 the gun?

24 A. No.

25 Q. Were you questioning him as to any part of the

1 encounter?

2 A. No, nothing other than biographical information.

3 THE COURT: Nothing other than what?

4 THE WITNESS: Name, place of business,
5 employment, things like that.

6 BY MS. GINSBURG:

7 Q. How was your tone during this?

8 A. Very conversational.

9 Q. Was the defendant subject to interrogation at that
10 time?

11 A. No.

12 Q. Was that defendant advised of his Miranda rights
13 at that time?

14 A. No, because it was not an interrogation. I was
15 not asking questions related to the crime.

16 Q. So after the defendant freely gave those
17 statements, what happened next?

18 A. After that, an assisting officer was doing
19 standard checks. Again, we were just doing routine
20 paperwork, the administrative phase of the arrest. An
21 assisting officer checked the handgun and NCIC, which
22 referred status as stolen.

23 Q. Okay.

24 A. So then we determined that a second charge was
25 necessary, that possession of a stolen handgun was also

1 going to be applied to the defendant.

2 MS. GINSBURG: Beg the Court's indulgence.

3 BY MS. GINSBURG:

4 Q. So, just briefly, Officer Mallek, you said
5 originally the charge would have been unlawful carry.
6 Then you found out that through the defendant's own
7 admission as well as an NCIC check that this gun, in
8 fact, was stolen, and the possession of a stolen handgun
9 charge would be appropriate?

10 A. Yes.

11 Q. Did this end your involvement in this case?

12 A. At that time.

13 MS. GINSBURG: Nothing further.

14 THE COURT: Okay. Any questions you'd like
15 to ask him?

16 MR. KELLY: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. KELLY:

19 Q. Okay. Mr. Mallek, you said that the 911 call said
20 specifically that I threw a gun?

21 A. Like I said, I don't recall exactly the wording
22 that the caller used.

23 Q. But you guys wrote it up. You said someone called
24 you guys, and the law is very specific, am I not right?
25 You got to be specific about this now. Somebody saying

1 that they saw something, you got to be very specific.
2 What did they say they saw?

3 A. They led us exactly to the location where the gun
4 was found.

5 Q. So did she say she saw a gun or something like a
6 gun?

7 A. Like I said, I don't have their exact verbiage.

8 Q. Well, we got to be specific here, man. Did she
9 see a gun, or did she see something like a gun?

10 A. I don't recall what she said. I'm confident they
11 said it was a weapon that was thrown in that exact
12 location where it was found.

13 Q. I don't know what's going on here, man. We got to
14 be specific here. I want to know what exactly did this
15 person say they saw me do? Because if I did something,
16 I'm going to be honest and accept my punishment like a
17 man.

18 MS. GINSBURG: Your Honor, I object.

19 THE COURT: I'm going to allow it. Go ahead.

20 BY MR. KELLY:

21 Q. I need you to be specific. Did she see a gun or
22 did she not see a gun?

23 A. I think 911 has transcripts of all the calls, the
24 calls received, and that would be the only thing I could
25 definitively say what the caller said.

1 Q. We're going to go on the record that he did not
2 answer my question truthfully, saying that she said that
3 she saw me throw a gun. He did not give a clear answer
4 to that.

5 Okay. I have another question for you: Now,
6 you said when I ran from you and you caught me, you said
7 I just started verbally talking my history, my life
8 story, to you?

9 A. It was once you were seated in the rear of my
10 patrol car.

11 Q. Sir, I don't much know you like that, so how could
12 I go out of my way to tell my life story to someone I
13 don't much know? Why would I do that?

14 A. I'm not sure. I feel like things had kind of
15 calmed down at that point. I think the excitement of the
16 day --

17 Q. The excitement of the day?

18 A. Yeah.

19 Q. Wow. So you really believe I'm standing here
20 today and try to fight for my freedom and tell you a lie
21 that I did something wrong and I'm not going to fight for
22 it? I'm just going to sit down and say I didn't do that
23 if I told you that? Why would I be here? Why would I
24 just cause everybody the trouble in this audience or the
25 trouble of this man being up there? You know, why would

1 I do all that? My wife back there, soon to be having a
2 child, you know, we just got our kids off to school to
3 come here? Why would I put everybody through all those
4 trouble if I just told you that, and why not just accept
5 that, what I had told you?

6 A. I'm not sure.

7 Q. So is it not true that you guys are supposed to
8 have some type of recording in your car?

9 A. Most patrol vehicles are equipped with that now.

10 Q. Why wasn't yours on?

11 A. It was just not the vehicle I was assigned that
12 day.

13 Q. You say you follow the law, right? You say you
14 did everything like you're supposed to did under the
15 conduct of the law, so why didn't you do that? If you
16 said that you thought that I was going to be truthful and
17 blurted out outrageous daggone accusations like that, why
18 didn't you secure yourself and make sure you did your job
19 accordingly?

20 A. Like I said, it's just a vehicle that's assigned
21 to us.

22 Q. So therefore you don't have no recording of me
23 saying those things that you're accusing me of saying?

24 A. No. I was not equipped in the vehicle.

25 Q. So therefore, I didn't said that. So why would

1 you come up here and said that I said something like that
2 if you don't have any type of proof of me saying that?

3 A. I swore under oath.

4 Q. Exactly. You are under oath, and if you're
5 swearing under oath saying that I did something wrong and
6 you can't prove that -- I mean, I'm pretty much under
7 oath, and if I say anything wrong, I'm going to the
8 so-called jail, so why is that punishment not afforded to
9 you? Why is it just on me and not on you if you tell a
10 lie?

11 A. I think I fall under the same.

12 MR. KELLY: I have no questions, man.

13 THE COURT: All right. Any other questions?

14 MR. KELLY: No, sir.

15 THE COURT: Let me ask you a question: I
16 want to make sure I understand.

17 So you were driving a patrol car and
18 patrolling by yourself; is that right.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: And you got behind this vehicle,
21 and you could tell that it had an expired -- whatever you
22 call it, one of those little teeny tags on the license?

23 THE WITNESS: Yes, sir.

24 THE COURT: And how close do you have to get
25 before you can tell that that is an expired tag?

1 THE WITNESS: I would say half a car length,
2 Your Honor.

3 THE COURT: You could tell it was expired?

4 THE WITNESS: Yes, sir.

5 THE COURT: So you initiated a stop?

6 THE WITNESS: Yes, sir.

7 THE COURT: And the vehicle didn't stop right
8 away?

9 THE WITNESS: Correct.

10 THE COURT: You told us about the chase, and
11 eventually the vehicle pulled into or pulled off the road
12 or what --

13 THE WITNESS: It went in the back of Star
14 Gospel Ministries, which is a business there on Meeting
15 Street, which has an L-shaped parking lot.

16 THE COURT: But, anyway, it eventually
17 stopped and the defendant was a passenger in the car?

18 THE WITNESS: Correct.

19 THE COURT: And the passenger in the car that
20 did the stop got out and ran?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And you got out and chased him?

23 THE WITNESS: An assisting officer did. I
24 stayed --

25 THE COURT: Not you, somebody else?

1 THE WITNESS: Correct.

2 THE COURT: So somebody else caught up with
3 him?

4 THE WITNESS: Yes.

5 THE COURT: And stopped him somehow or
6 another?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: And put handcuffs on him at that
9 time?

10 THE WITNESS: Yes, sir.

11 THE COURT: What was he being arrested for?

12 THE WITNESS: He was being detained at that
13 time --

14 THE COURT: It is not an arrest when you put
15 handcuffs on somebody?

16 THE WITNESS: That's a detainment at that
17 point in time.

18 THE COURT: You think that's a detainment?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: What was he being detained for?

21 THE WITNESS: To investigate the reason for
22 fleeing the traffic stop.

23 THE COURT: You think someone that runs away
24 from a traffic stop is subject to being detained for any
25 reason, for no reason?

1 THE WITNESS: At that time, Your Honor, yes.

2 THE COURT: Okay. So how did you find out
3 about the supposed pistol?

4 THE WITNESS: About the same time the
5 defendant was being detained, a call came in 911 from a
6 citizen that observed the whole incident.

7 THE COURT: Came into 911 and was relayed to
8 you and someone else?

9 THE WITNESS: Yes.

10 THE COURT: Over your radio?

11 THE WITNESS: Dispatch radio, walkie-talkies.

12 THE COURT: Walkie-talkies.

13 THE WITNESS: As well as call noted.

14 THE COURT: So somebody called into 911 and
15 said, if you recall, something to the effect of, I just
16 saw somebody throw a gun down or something like that on
17 Columbus Street or wherever? What did they say?

18 THE WITNESS: On Nassau Street, yes, Your
19 Honor. I don't recall what the 911 caller said.

20 Obviously, a dispatcher would have taken the
21 call, but it was related to us that the person we had
22 just been chasing, referring to the defendant, had just
23 thrown a weapon in their driveway.

24 THE COURT: And so you put him in the car and
25 you told us about the conversation there, and who was it

1 that actually found the gun?

2 THE WITNESS: I believe it was officer -- I
3 think it was Officer Thom.

4 THE COURT: Somebody else.

5 THE WITNESS: Another officer. I was dealing
6 with the defendant at the time.

7 THE COURT: Okay. All right.

8 Thank you very much. You can step down.

9 All right. Statement or positions anybody --
10 any other witnesses you want to present about this?

11 MS. GINSBURG: None, Your Honor.

12 THE COURT: So what is it you want to get in
13 through him, the statements that the defendant made about
14 the pistol?

15 MS. GINSBURG: Yes, Your Honor, that he
16 admitted to having it and that it was stolen.

17 THE COURT: Okay. So that's what you want to
18 know about. All right.

19 So what do you want to say about that? They
20 want the statements you made once you were in the car
21 about the pistol to come in. Anything you want to say
22 about that?

23 MS. GINSBURG: Your Honor, are you talking to
24 him --

25 THE COURT: I'm talking to him.

1 MR. KELLY: Yes, sir. I have three points,
2 sir.

3 As you know, the officer just said it was an
4 illegal detainment on their behalf, and on the 911
5 caller, she never said that it was me or anything of a
6 weapon, so I don't know what we can do about that. I
7 mean, that don't prove no evidence against me, and at
8 that point in the car, there was no recording of me
9 making this alleged confession, and that 911 call should
10 be suppressed.

11 THE COURT: Well, I appreciate that, but as
12 far as the statement being freely and voluntarily given
13 and all, I find that it was freely and voluntarily given
14 under the circumstances, and I'm going to allow it in.

15 All right. Now, anything else?

16 MR. KELLY: No, not at this time.

17 THE COURT: All right. Anything else at this
18 time?

19 MR. OSBORNE: Your Honor, yes. We've had a
20 little bit of issue giving discovery to the defendant,
21 obviously. We have a jail call that we intend to
22 introduce. We have made a clip of that jail call. I
23 don't know if you would like to hear it, or maybe the
24 defendant would like to hear it to see if he has any
25 objections to the jail call being played.

1 MR. KELLY: No, sir. I mean, all I was doing
2 about that jail call was referring to whatever you guys
3 were telling me I was in trouble for to my fiancée.

4 MR. OSBORNE: We have nothing, Your Honor.

5 MR. KELLY: And at the same time, Your Honor,
6 there is no jurisdiction in this matter. You know, I'm a
7 Moor American, you know. I did nothing wrong. I stand
8 in honor, love, pray peace and justice. I been here to
9 every single meeting you called me to. I answer to
10 every --

11 THE COURT: I appreciate that.

12 MR. KELLY: I mean, jurisdiction has never
13 been met, and I've challenged that from the very
14 beginning, and no one ever give me anything in writing
15 saying they have jurisdiction over this matter.

16 THE COURT: I appreciate that, and your
17 position is maintained in regard to that, but we're going
18 forward with the case, with the trial of the charges
19 against you of you unlawful carrying and possession of a
20 stolen handgun.

21 MR. KELLY: I don't know what all that is. I
22 have the right to bear arms. I don't know whether it's a
23 pistol or a handgun or a firearm. I don't know what
24 those are.

25 THE COURT: All right. I appreciate that.

1 Bring the jury in.

2 (9:50 a.m., in open court, jury present.)

3 THE COURT: All right. Members of the jury:
4 I appreciate y'all being on time this morning. We've
5 been out here working for about the last 30 minutes or
6 so. I apologize for keeping you back there, but we've
7 been working in regards to a procedural matter.

8 I'm going to ask the clerk to distribute
9 notepads and pens to each one of you. Everybody gets a
10 notepad and a pen. All right. Everybody has a notepad
11 and a pen, I believe. If you don't have a notepad and a
12 pen, please raise your hand so I can see. I believe
13 everybody has a pen and a notepad. Again, no hands
14 raised, so I'm going to ask the clerk to swear the jury
15 at this point, please.

16 (Jury duly sworn.)

17 Thank you. The jury has been sworn. Each
18 one of you does have a pad and a pen. I do allow jurors
19 to take notes during the course of a trial. Some people
20 don't think that's a very good idea. They think it may
21 distract you from what is actually being said and done
22 here in the presentation of the testimony and evidence to
23 you.

24 If you do take notes, do not allow your
25 note-taking to distract you. Notes are to be used only

1 as memory aids. Notes are not entitled to any greater
2 weight in the recollection or the impression of each
3 juror as to what the testimony or evidence actually was.
4 Those will be your notes and your notes only. Nobody
5 will be looking at them, checking on them, anything of
6 that sort.

7 At the conclusion of the trial, I will ask
8 you to carry your notes, take them with you, tear them
9 up, whatever you want to do. As I said, those are your
10 notes and your notes only. No one will be looking at
11 them, checking them, anything of that sort, and notes are
12 not entitled to any greater weight or the recollection or
13 impression of each juror as to what the testimony or
14 evidence actually was.

15 These charges against Mr. Kelly are based on
16 the testimony and evidence that will be presented to you
17 from the witness stand and my instructions to you on the
18 law. I really don't know much more about this case at
19 this point in time than you do. All I know is what the
20 State has presented in the form of these two indictments
21 against him. The charges that the State makes against
22 him, one of those is called unlawfully carrying a pistol
23 about his person, and the other one is called possession
24 of a stolen handgun. Both of these things supposedly
25 occurred on August 28, 2015.

1 Mr. Kelly said, I'm not guilty of these
2 charges, and that placed the burden of proving him guilty
3 on the State. Really, the question that you will answer
4 in the courtroom when you're deliberating to give us your
5 verdict is exactly that: Has the State met the burden of
6 proof of proving him guilty of these charges? That's
7 what this case is all about.

8 You all are the sole judges of the facts of
9 this case I don't have anything to do with the facts. My
10 job during the trial is to make sure the parties follow
11 the rules. We have certain rules of evidence and rules
12 of procedure that the parties are supposed to follow
13 during the presentation of the facts to you.

14 My job is to make sure that they follow those
15 rules. Your job is to be the judges of the facts in this
16 case. As I said, I don't have anything to do with the
17 facts. My job is to make sure they follow the rules
18 during the presentation of the facts to you. Your job is
19 to be the judges, the sole judges, of the facts of this
20 case. And, as I said, the question that you'll answer
21 when you go back into the jury room and begin this case
22 is has the State met the burden of proof of proving Mr.
23 Kelly guilty of one or both of these charges beyond a
24 reasonable doubt? That is the burden of proof that
25 remains on the State throughout the trial until you've

1 reached a decision in the privacy of the jury room one
2 way or the other as far as these charges are concerned.

3 Now, are we going to go about learning about
4 the case? First of all, I'm going to allow each side to
5 make a brief opening statement to you. These are not
6 arguments. The arguments will come at the conclusion of
7 the case, but in the beginning, I do allow each side to
8 introduce themselves a little further, tell you a little
9 bit more about what their position is in regard to these
10 charges that have been made.

11 State will go first, and then the defendant
12 after that. After that, we'll have the presentation of
13 testimony and evidence. People will come up and sit in
14 that witness chair and tell you what they know about the
15 facts of this case. After both sides have had an
16 opportunity to present the facts, they will have
17 summations and arguments. After that, I'll discuss with
18 you more fully what your duties and responsibilities are
19 as a jury in this case and the law that you may apply in
20 this case, and then you go in the jury room, deliberate,
21 and you'll answer that question: Has the State met the
22 burden of proof to prove Mr. Kelly guilty of one or both
23 of these charges beyond any reasonable doubt? Keep in
24 mind what your job is going to be at the conclusion of
25 this case.

1 One other thing I want to mention, and I'm
2 not sure how much Judge Dennis said to you about this
3 yesterday when you were being picked as a jury. I had to
4 go take care of something else yesterday, so that's why I
5 wasn't here. But, anyway, of course, Mr. Kelly has
6 chosen to represent himself, and he has a constitutional
7 right to do that. He's not a lawyer. He's a layman, but
8 he's chosen to represent himself and does have a standby
9 attorney there with him, sitting there with him at the
10 table, but he's not his attorney as far as this case is
11 concerned. He's on his own.

12 Now, I'm going to try to make sure he follows
13 the evidence rules and the rules of procedure about how
14 this case is going to be tried, but I just want to tell
15 you, you know, that there may be some times that he and I
16 have to discuss how this case is going to go forward in
17 terms of his sticking to the rules. If those kind of
18 situations come up, I'll have to send you to the jury
19 room while I discuss it and go over it with him and then
20 bring you back in and go over the trial of the case, so
21 there may be occasions when I have to go into the rules,
22 go into how this case is going to be tried, go into
23 what's proper and not proper insofar as this case is
24 concerned with him. I want to try to do that in the best
25 way that I can, but I just want to go ahead and explain

1 to you right now that there may be occasions when I have
2 to send you to the jury room so I can go over these rules
3 and these procedural things, so I can try to keep it on
4 track, so to speak, so that we only deal with what we're
5 supposed to deal with during the course of this trial.

6 Solicitor, would you like to make an opening
7 statement?

8 MS. GINSBURG: Yes, Your Honor. May it
9 please the Court:

10 Good morning. This case is about
11 responsibility. It's about accountability. It's about
12 being held responsible for your actions, and that is why
13 Kyrief Kelly is here. That's why you're all here.

14 The judge yesterday read to you the charges
15 in this case, now, I just want to read to you to refresh
16 your memory that Kyrief Kelly, the defendant in this
17 case, is charged with unlawful carrying of a pistol and
18 possession of a stolen handgun, which simply means this:
19 That the defendant had a handgun and that he carried it
20 unlawfully, which means that he didn't meet any of the
21 statutory exceptions, and some of those are, briefly,
22 this: He wasn't a law enforcement officer. He's not a
23 member of the armed forces of the United States. He
24 wasn't in his home or on his property. That weapon
25 wasn't concealed on or about his person, and he didn't

1 have a concealed weapons permit.

2 And then the second charge is possession of a
3 stolen handgun, and it is just like what it sounds, that
4 that handgun that he had was stolen, and he knew it, and,
5 in a moment, you're going to hear evidence through
6 testimony, through pictures, and it's going to show you
7 just that.

8 You'll hear how on August the 28th, 2015,
9 Officer Mallek from the Charleston Police Department was
10 on patrol in the area of King Street and Line Street, and
11 as he was patrolling, he was following behind a vehicle
12 closely and noticed a small vehicle infraction, an
13 expired registration sticker. I know, but even the
14 smallest vehicle infraction is cause for a stop.
15 Typically, with those things, all it is, is a ticket, a
16 simple ticket, but not in this case.

17 You'll hear how Officer Mallek initiated his
18 blue lights, how he tried to stop the vehicle, how the
19 vehicle went from King Street to Line Street, from Line
20 Street to Meeting Street, not stopping. You'll hear how
21 Officer Mallek had to cancel his stop as the vehicle
22 evaded until it reached the point on Columbus Street,
23 where it pulled up, remarkably, in between two patrol
24 cars.

25 You're going to hear from Sergeant Thom, who

1 is also from the Charleston County police department,
2 that he was in one of those patrol cars. You'll hear
3 that he saw the driver pull away, not stop, not stop for
4 Officer Mallek, and then stop on Columbus Street, and
5 you'll hear the passenger of that car, the defendant in
6 this case, opens the passenger door, runs, flees toward
7 Nassau Street. This could have been a simple ticket, but
8 now the officers are led on a foot chase.

9 You'll hear how the officers eventually
10 apprehended the defendant, and he eventually stops.
11 You'll hear, however, that while they're pursuing the
12 defendant, a concerned citizen sees all of this unfold,
13 and that concerned citizen, while the officer was giving
14 chase, calls 911 and tells the dispatch that they see
15 that man, the man the police are chasing, just throw a
16 gun, throw a gun over the fence into ■ Nassau Street,
17 and you'll hear from officers that they found that gun,
18 that they recovered it at ■ Nassau Street, and you'll
19 hear that the once the defendant was detained, he
20 admitted he had that weapon. He admitted it was stolen.

21 So I think about now you're wondering, why
22 are you even here? This is why I told you this case is
23 about accountability. It's about being held accountable
24 for your actions, but it's also about duty, and it's
25 about your duty and your responsibility as jurors to

1 uphold the oath that you just took, the oath that you're
2 going to take the facts in this case and apply it to the
3 law.

4 This case isn't overly complicated. Sorry
5 it's not something you're going to see on Law and Order,
6 but it doesn't mean it's unimportant. It's going to be
7 short, and I'm firmly convinced that after you have
8 listened to all the testimony and seen all the evidence,
9 you'll fulfill that oath you just took, and by fulfilling
10 that oath, you'll hold the defendant accountable and you
11 will find him guilty on both counts.

12 Thank you.

13 THE COURT: Mr. Kelly, would you like to make
14 an opening statement?

15 MR. KELLY: Yes, sir.

16 Good morning, Your Honor. I apologize for
17 your time here.

18 THE COURT: You need to be sure to keep your
19 voice up as much as you can so that me and the court
20 reporter can hear you.

21 MR. KELLY: My name is Kyrief Kelly. Today
22 we're going to listen to some stories being told about my
23 character and what they thought they saw my character
24 did. Today I ask that we use our common sense. Today
25 the State will be claiming that I had a gun or a weapon

1 of some sort.

2 They never had any proof that they found it
3 on me. They never had any proof that they saw me throw
4 anything, and when we get through all this testimony, you
5 will see there is no proof at all whatsoever that they
6 saw me throw a weapon or any type of sort of weapon, gun,
7 whatever they want to call it.

8 There won't be no pictures of me with it.
9 There will be no fingerprints, no DNA that will link me
10 to that so-called weapon that they said they found, and
11 from my understanding, something that you held and hold,
12 you must have left some type of DNA or some type of
13 fingerprint on if you had that in your possession,
14 walking around, toting around, you know.

15 So today we're going to find out that there
16 was no whatsoever -- lack of proof that's going to link
17 me to anything. Like I said, I apologize for waking you
18 guys up out of your bed. I'm pretty sure you have lots
19 of things you could be doing, but today we'll find out
20 the truth about this matter, and thank you for your time.

21 THE COURT: Thank you. All right.
22 Solicitor, call your first witness.

23 MS. GINSBURG: Thank you, Your Honor. The
24 State calls Sergeant Thom.

25 THE COURT: Go ahead tell, us your name.

1 THE WITNESS: Jeffrey Thom, T-h-o-m.

2 JEFFREY THOM,

3 having been first duly sworn,

4 was examined and testified as follows:

5 MR. KELLY: I would like to sequester the
6 witnesses.

7 THE COURT: Any people in here now that are
8 going to testify later?

9 MS. GINSBURG: Other than my case agent and
10 investigator.

11 THE COURT: He can stay.

12 MS. GINSBURG: As well as my investigator.

13 THE COURT: We got one. You got to pick one
14 you want to stay in here.

15 MR. OSBORNE: Your Honor, our investigator is
16 going to be rallying back and forth our witnesses.

17 THE COURT: Well, one stays in here. Which
18 one do you want to stay?

19 MR. OSBORNE: It's going to be difficult.
20 I've never done that before.

21 THE COURT: Well, you're going to do that
22 now.

23 MR. OSBORNE: I understand that. Thank you,
24 Your Honor.

25 THE COURT: Go ahead.

1 MS. GINSBURG: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MS. GINSBURG:

4 Q. Sergeant Mallek, where do you work?

5 A. Sergeant Thom.

6 Q. Sergeant Thom, where do you work?

7 A. I'm the supervisor of our K-9 unit.

8 Q. Sorry about that. And how long have you been a
9 supervisor for the K-9 unit?

10 A. Approximately two years now.

11 Q. What department do you work in?

12 A. City of Charleston.

13 Q. And what are some of your duties and
14 responsibilities as a supervisor of K-9?

15 A. I am the sergeant over our unit, so that includes
16 supervising our other K-9 officers on the street, other
17 administrative duties that come with that.

18 Q. Sergeant Thom, prior to this position, what other
19 positions did you hold at CPD?

20 A. I started as a patrol officer, and I worked in our
21 field intelligence unit for two years, went back into
22 patrol in the West Ashley area before I got transferred
23 into the K-9 unit.

24 Q. And how long have you worked for CPD?

25 A. Eleven years.

1 Q. Eleven years. So back in August of 2015, what
2 position did you hold at CPD?

3 A. I was a K-9 handler.

4 Q. And what was your area that you patrolled?

5 A. City wide.

6 Q. So Charleston?

7 A. Yeah, all of Charleston city jurisdiction, yes,
8 ma'am.

9 Q. And so let's go back to the afternoon of August
10 28th, 2015. Were you working that afternoon?

11 A. Yes, I was.

12 Q. What were you doing that afternoon?

13 A. That afternoon I was working a search warrant
14 sweep with our SWAT team.

15 Q. And how did you get involved with a traffic stop
16 with this defendant, Kyrief Kelly?

17 A. At that time, we had completed the duties, the
18 SWAT team had completed our duties that we were assigned
19 that day, and we were headed back to -- myself and
20 another officer were headed back to our office on Brigade
21 Street, traveling down Columbus Street area.

22 Q. And what did you see while you were on Columbus
23 Street?

24 A. As I turned off of Meeting Street and was
25 traveling on Columbus Street, I saw a green Grand Marquis

1 exit out of the Star Gospel Mission parking lot, would
2 have been behind my car, and the other officer that was
3 with me was behind me, so he kind of came up and was
4 boxed in right in between our two cars.

5 Q. And once that vehicle was boxed in, what did you
6 notice?

7 A. I knew previously from the radio transmission that
8 Officer Mallek was attempting to stop that vehicle. We
9 knew it was on Meeting Street. I didn't know quite where
10 it was, and, all of a sudden, it popped up behind us, so
11 at that time I put my vehicle in park and turned my
12 lights on.

13 Q. And what happened to that vehicle?

14 A. It stops.

15 Q. And then what did you notice then?

16 A. I observed the defendant exit the passenger side
17 of the vehicle and passed -- moved forward past my
18 vehicle.

19 MS. GINSBURG: May I approach?

20 THE COURT: Go ahead.

21 BY MS. GINSBURG:

22 Q. I'm showing you what has been marked as State's 1
23 and 2 for ID purposes only. Do you recognize these
24 pictures?

25 A. I do.

1 Q. What do you recognize them as?

2 A. The area where the traffic stop was.

3 Q. And do these fairly and accurately represent the
4 roads and whatnot of the incident location of where you
5 were at?

6 A. Yes, ma'am.

7 MS. GINSBURG: Your Honor, at this time I'd
8 like to --

9 THE COURT: You want to look at those?

10 MR. KELLY: Yes, sir.

11 THE COURT: Show them to him. Any objection
12 to letting those two?

13 MR. KELLY: No objection.

14 THE COURT: Admitted without objection.

15 (State's Exhibits 1 and 2 were marked for
16 identification and admitted into evidence.)

17 MS. GINSBURG: Thank you. May I publish to
18 the jury?

19 THE COURT: Yes.

20 Members of the jury panel: Any physical
21 item, paper, pictures, whatever that's introduced into
22 evidence you'll have it with you in the jury room at the
23 end of the case when you consider your verdict, but
24 sometimes they like to show them now, pass them around or
25 whatever, but anything that's introduced into evidence

1 you'll have with you in the jury room.

2 Go ahead.

3 MS. GINSBURG: Thank you, Your Honor.

4 BY MS. GINSBURG:

5 Q. Sergeant Thom, I'm showing you what's marked
6 State's Exhibit 1, if I can get the -- can you tell the
7 jury what we're looking at here?

8 A. Yes. It's the area of the traffic stop of
9 Columbus Street, Columbus-Nassau intersection.

10 Q. I believe the pad in front of you, you can mark
11 on --

12 A. It's not turned on.

13 Q. Oh, I believe it is now. It should be. The
14 screen, can you show us where you originally saw that
15 Grand Marquis?

16 A. Yes. So -- right there.

17 THE COURT: Let's try to pick out -- I
18 can't -- can you pick out a landmark and tell us what it
19 is or something?

20 THE WITNESS: Sure. That intersection with
21 the yellow is Meeting Street. It's Meeting and Columbus
22 Street.

23 BY MS. GINSBURG:

24 Q. So right here is Meeting, is that what you're
25 saying?

1 A. Yes, and that building to the left here is the --
2 right here is the parking lot of the Star Gospel Mission.

3 Q. Maybe to help you out, and Your Honor and the
4 jury, I'll show you State's Exhibit 2. Is that a
5 blown-up picture of what you were just talking about?

6 A. Yes, ma'am.

7 Q. Can you show the jury again where you were at as
8 well as where you saw that Grand Marquis and where it
9 ended up?

10 A. Yes, ma'am. My vehicle was approximately right
11 here, and the Grand Marquis is here and stopped behind my
12 vehicle.

13 Q. Okay. You just mentioned that -- that you
14 stopped, you noticed a vehicle, and then the man jumped
15 out and began running?

16 A. Yes, ma'am.

17 Q. What did you do at that point?

18 A. At that point, I exited my vehicle and gave chase.

19 Q. And what was the description of the suspect at
20 that time?

21 A. It was a black male with long dreads with a blue
22 and white striped shirt, blue and white striped shorts
23 and white shoes.

24 MS. GINSBURG: Your Honor, may I approach?

25 THE COURT: Sure.

1 BY MS. GINSBURG:

2 Q. I'm showing you, for ID purposes only, State's 3
3 and 4. Do you recognize these pictures?

4 A. Yes, ma'am.

5 Q. What do you recognize them as?

6 A. The defendant, Mr. Kelly.

7 Q. Do they fairly and accurately depict the defendant
8 at that time?

9 A. Yes, ma'am.

10 MS. GINSBURG: Your Honor, at this time the
11 State would seek to admit State's 3 and 4 into evidence.

12 THE COURT: Show him.

13 MS. GINSBURG: Oh, I did. I just did.

14 THE COURT: 3 and 4, any objection to those?

15 MR. KELLY: No objections.

16 (State's Exhibits 3 and 4 were marked for
17 identification and admitted into evidence.)

18 BY MS. GINSBURG:

19 Q. Officer Thom, can you point out those identifiers
20 that you're talking about?

21 A. Yes, ma'am. The blue and white shirt and his long
22 dreads.

23 Q. And I'm showing you now what has been marked as
24 State's 4. Again, can you point out those identifiers?

25 A. Uh-huh, blue collar, blue shirt, and white stripes

1 and long dreads.

2 Q. Thank you. Before we go into any type
3 of testimony, could you tell the jury what type of
4 equipment you have on you when you're working?

5 A. Yes, ma'am. Workday, in my patrol uniform, my
6 marked employee uniform that I wear, K-9 uniform, along
7 with my bulletproof vest, it's worn underneath my uniform
8 shirt, and my duty belt, carrying my service weapon, two
9 extra magazines, a Taser, radio, handcuffs, a baton, and
10 C spray.

11 Q. Do you typically also carry a body-worn camera?

12 A. Yes, ma'am.

13 Q. Did you have a body-worn camera on you?

14 A. I did not have it at that time. It was currently
15 attached to the computer and charging. As I was on my
16 way to the office, I was downloading videos from -- that
17 we conducted with the SWAT team. Due to the sudden
18 nature of the foot pursuit, I wasn't able to grab the
19 charger and get it on, the equipment on.

20 Q. So just to parse this out, you were working
21 assisting SWAT at that time?

22 A. Uh-huh.

23 Q. And then you did have a body-worn camera, but you
24 were downloading videos from that prior?

25 A. Yes, ma'am.

1 Q. And it just so happened that this vehicle that
2 Officer Mallek was talking about just comes in between
3 you and another vehicle?

4 A. Yes, ma'am.

5 Q. And you didn't have time to grab it because you
6 had to chase after the other vehicle?

7 A. Correct.

8 Q. Did you also explain you had a radio on you?

9 A. Yes, ma'am.

10 Q. And who do you contact when you use your radio?

11 A. Either officer to officer or to our dispatchers.

12 Q. And are those transmissions recorded?

13 A. Yes, ma'am.

14 Q. And would you have been using your radio at that
15 time to communicate with officers as well as dispatch as
16 you were pursuing them?

17 A. Yes, ma'am.

18 THE COURT: Go ahead.

19 MS. GINSBURG: First, I'll show these to
20 Mr. Kelly. May I approach?

21 THE COURT: Sure.

22 BY MS. GINSBURG:

23 Q. Sergeant Thom, I'm showing you what's been marked
24 as State's Exhibit 5. Do you recognize this disk?

25 A. Yes, ma'am.

1 Q. And how do you recognize it?

2 A. My initials are here on it.

3 Q. And is this the dispatch calls that you were
4 making at this time?

5 A. Yes, ma'am.

6 Q. And you've listened to these?

7 A. I have, yes.

8 Q. Do they fairly and accurately represent what was
9 going on between you and dispatch at that time?

10 A. Yes, ma'am.

11 MS. GINSBURG: Your Honor, I seek to admit
12 State's 5 into evidence.

13 THE COURT: Do you want to listen to them?
14 Have you heard these, Mr. Kelly?

15 MR. KELLY: No, I haven't.

16 THE COURT: Do you want to listen to them
17 before I rule with regard to letting them?

18 MR. KELLY: We can.

19 THE COURT: All right. Members of the jury
20 panel: I need you to go to the jury room for a few
21 minutes, please.

22 (In open court, jury not present.)

23 MS. GINSBURG: And, Your Honor, at this time
24 I could also play State's Exhibit 10.

25 (Whereupon, the audio recording was played.)

1 THE COURT: I don't know what we're listening
2 to.

3 MR. KELLY: I'm trying to figure out what --

4 MS. GINSBURG: It's the radio dispatch
5 from --

6 THE COURT: Do you have a transcript?

7 MS. GINSBURG: I don't, Judge.

8 THE COURT: Why don't you get a transcript so
9 we can follow it or whatever?

10 MR. KELLY: Your Honor, I object to hearsay.

11 THE COURT: We'll see. We'll see, but I
12 don't understand who's saying what. You got to tell me
13 something about what I'm listening to.

14 MS. GINSBURG: I believe Sergeant Thom just
15 testified to the fact that this is his radio
16 transmission --

17 THE COURT: So is the voice that we hear on
18 there you?

19 THE WITNESS: Yes, sir.

20 MS. GINSBURG: So he can testify as to what
21 he said.

22 THE COURT: Okay. Start it over again so I
23 can -- is that you?

24 THE WITNESS: Yes, sir.

25 THE COURT: What are you saying?

1 THE WITNESS: I'm saying -- my call sign at
2 that time, since I was on the SWAT team and working in
3 that capacity, was SWAT Eight, SWAT Eight to dispatch,
4 foot pursuit. Black male, Columbus to Nassau, black
5 male, long dreads, white and blue striped shirt, white
6 and blue striped shorts, white sneakers, or white shoes.

7 THE COURT: Okay. Go ahead.

8 MR. KELLY: So he testified a minute ago --

9 THE COURT: Just a second.

10 Again, you gave a description, and then she
11 said what back to you?

12 THE WITNESS: She said she copied all units
13 standby, and she was placing it into emergency status.

14 THE COURT: Okay. Go ahead.

15 THE WITNESS: I'm radioing to other officers
16 that we're passing by, getting close to the church.
17 Close to the Church, Ebenezer AME Church on Nassau
18 Street.

19 So at that point other officers were coming
20 into the area, and I was trying to direct them to where I
21 was running to and where he was. That's another officer
22 asking where my location is.

23 THE COURT: Okay. Parking lot.

24 MS. GINSBURG: That's it. That's his radio
25 transmission.

1 MR. KELLY: Okay, sir. I don't see the use
2 of this. There's no way from his testimony saying that I
3 threw anything.

4 THE COURT: I appreciate that, but I'm going
5 to allow that into evidence.

6 MR. KELLY: He already testified to that.
7 There's no reason for the jury to hear that. He already
8 testified to it.

9 THE COURT: I appreciate that, but I'm going
10 to allow it into evidence. All right. Is that it, as
11 far as that tape is concerned?

12 MS. GINSBURG: Well, it is spliced into
13 another for when he does the check of the gun that's
14 stolen, so I'm going to play that through him as well.

15 THE COURT: I didn't understand. I'm asking
16 you, is there anything else you want to play on the tape?

17 MS. GINSBURG: Yes, Judge, the second clip.

18 THE COURT: Okay. Let's go ahead, whatever
19 you want to do next as far as the tape is concerned.

20 MS. GINSBURG: Thank you, Your Honor.

21 THE COURT: So there's another disk?

22 MR. KELLY: How come I didn't hear them
23 announce over the transmission that they was just cut off
24 short?

25 MS. GINSBURG: We're going forward just with

1 this witness, and so this is, again, just this witness.

2 THE COURT: Just this witness.

3 MR. KELLY: On another disk?

4 THE COURT: Yes, sir. Go ahead.

5 (Whereupon, the audio recording was played.)

6 THE COURT: What is all that about?

7 THE WITNESS: That is the serial number from
8 the --

9 THE COURT: Or did something happen in
10 between? Tell me what happened to get you to that point.

11 THE WITNESS: After the gun was located --

12 MS. GINSBURG: Your Honor, I don't mean to
13 confuse you. I think he wanted me to play everything
14 that had to do with this witness for you right now.
15 Obviously, in between this, I'll be getting out of the
16 testimony of Sergeant Thom that he chased the individual,
17 that at the time of his chase a concerned citizen called
18 dispatch and explained that a weapon was thrown over a
19 fence --

20 THE COURT: Now, let's -- I thought it was
21 what was coming next. That's the reason I wanted you to
22 go ahead with it. It's not what's coming next as far as
23 the story is unfolding is concerned, and you don't need
24 to do it now.

25 MS. GINSBURG: Okay, Judge. I was just

1 trying to help with efficiency.

2 THE COURT: I just wanted to get it all out
3 in the sequence in which it happened. That's why I was
4 saying go ahead and do whatever as to what was next as
5 far as the call was concerned, but do it in the sequence
6 that it happened. So as far as the first one is
7 concerned, I'll overrule your objection. I'm going to
8 allow that dispatch call conversation to be admitted into
9 evidence.

10 Bring the jury back in.

11 MS. GINSBURG: Thank you, Your Honor.

12 (In open court, jury present.)

13 (State's Exhibit 5 was marked for
14 identification and admitted into evidence.)

15 MS. GINSBURG: I believe Your Honor just
16 allowed admission of State's Exhibit 5, so I'm going to
17 play that for the jury.

18 THE COURT: Tell us what we're about to hear.
19 What are we listening to?

20 THE WITNESS: Yes, sir. This is the radio
21 transmission from the booking --

22 THE COURT: This is the radio transmission
23 between you and whoever --

24 THE WITNESS: From me to dispatch but also --

25 THE COURT: Dispatch or whatever while you're

1 giving chase to the person that jumped out and ran; is
2 that right?

3 THE WITNESS: Yes, to give the description
4 and the direction of flight to alert other officers of
5 the situation and where he's going so they can assist as
6 well.

7 MS. GINSBURG: We'll play this clip. We'll
8 let the jury hear it all, and then we'll come back and
9 you can explain what you just heard.

10 (Whereupon, the audio recording was played
11 for the jury.)

12 BY MS. GINSBURG:

13 Q. Thank you, Sergeant Thom. What were you
14 explaining to dispatch at that moment?

15 A. I start my call saying that I'm SWAT Eight, that I
16 was on foot pursuant on Columbus Street toward Nassau
17 Street. I gave a description of the defendant, blue and
18 white striped shirt, blue and white striped shorts, white
19 sneakers, long dreads, and as I was explaining to other
20 officers, he ran towards the church, the Ebenezer AME
21 Church on Nassau Street, and then when another officer
22 asked my location, I advised him that we were in the
23 parking lot of the Ebenezer AME church.

24 Q. And you said the purpose of calling dispatch is to
25 inform other officers and to aid them in finding the

1 individual?

2 A. Uh-huh. So the dispatch knows you're in foot
3 pursuit and exactly what you're doing, and then also
4 every other officer on that radio channel can hear what's
5 happening so that if they're in the area, they can come
6 and assist to set up a perimeter or help detain the
7 person who's fleeing.

8 Q. Did you eventually detain the defendant?

9 A. Yes, ma'am.

10 Q. Where was he eventually detained?

11 A. In the parking lot of the AME church.

12 Q. While you were escorting him back to the patrol
13 car, what happened with regards to that handgun?

14 THE COURT: I'm not sure I understand. Were
15 you the first officer that caught up with him?

16 THE WITNESS: Yes, sir.

17 BY MS. GINSBURG:

18 Q. Let me just ask that question again. I apologize.

19 So while you're escorting the defendant back
20 to the police car, what else happened in regard to this
21 case in regard to dispatch?

22 A. Dispatcher came over the radio that while we were
23 in foot pursuit, a concerned citizen in the area of [REDACTED]
24 Nassau Street --

25 MR. KELLY: Objection, Your Honor. Hearsay.

1 They're trying to use that call to make it as fact of the
2 matter.

3 THE COURT: I appreciate your position, but I
4 overrule your objection.

5 All right. Go ahead.

6 THE WITNESS: Dispatch relayed that they
7 received a call that somebody from Nassau Street, in the
8 area of ■ Nassau, had observed the defendant, while he
9 was running, toss an object over the fence.

10 BY MR. GINSBURG:

11 Q. And this occurred while you were running after?

12 A. Yes.

13 Q. So it's during the incident?

14 A. The call came in during the incident, and then
15 dispatch relayed it after the defendant had been detained
16 and the channel had been alerted.

17 Q. Was that handgun actually recovered?

18 A. Yes, ma'am.

19 Q. And where did you --

20 THE COURT: Did you locate it or somebody
21 else?

22 THE WITNESS: I did, Your Honor.

23 THE COURT: Tell us about that. So you got
24 him and you headed back down the street. You get this
25 information about the concerned citizen calling in, and

1 what did you do after that?

2 THE WITNESS: I walked the defendant back
3 down Nassau Street to Columbus Street where he was passed
4 off to Officer Mallek. At that point we went back,
5 myself and some of the other officers that had come to
6 the area went back to the area of [REDACTED] Nassau Street to
7 where a concerned citizen said they had seen the object
8 thrown, and when we went into the front of [REDACTED] Nassau
9 Street again, underneath -- against the trash can there
10 was a black in color firearm.

11 THE COURT: I didn't quite understand what
12 you just said. So you went into that area, [REDACTED] Nassau
13 Street?

14 THE WITNESS: [REDACTED] Nassau Street, yes, Your
15 Honor.

16 THE COURT: And started looking around.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: And where did you find the gun?

19 THE WITNESS: In plain view, up against --
20 kind of underneath where the wheels of the city trash
21 cans are. You know how the city trash cans have two
22 wheels on either side? In between those wheels, up
23 against the trash can in plain view was a black in color
24 firearm.

25 THE COURT: And how far was that from the

1 street?

2 THE WITNESS: Maybe 20 yards, 15, 20 yards.

3 THE COURT: Okay.

4 MS. GINSBURG: Your Honor, may I proceed?

5 THE COURT: Go ahead.

6 BY MS. GINSBURG:

7 Q. I think you just explained to Your Honor, but what
8 type of handgun was it?

9 A. It was a black in color semi-automatic pistol.

10 Q. Did you see the defendant actually throw this?

11 A. I did not, no.

12 MS. GINSBURG: Your Honor, at this time --
13 may I approach the witness?

14 THE COURT: Go ahead.

15 MS. GINSBURG: Your Honor, may I approach?

16 THE COURT: Go ahead.

17 MS. GINSBURG: Thank you.

18 BY MS. GINSBURG:

19 Q. Sergeant Thom, I'm showing you what's been marked
20 for ID purposes only as State's Exhibits 6 through 9.
21 Can you look through those. Do you recognize these
22 pictures?

23 A. Yes, ma'am.

24 Q. And what do they depict?

25 A. The first three depict pictures of the firearm

1 that I recovered, and the last one is a picture of a city
2 trash can.

3 Q. It's not the city trash can?

4 A. No, ma'am, it's not.

5 Q. But it is a city trash can?

6 A. It's a city trash can that is similar to the one
7 in the yard of [REDACTED] Nassau.

8 MR. KELLY: Objection. So that's hearsay
9 evidence.

10 THE COURT: I appreciate your position, but
11 I'm going to allow it. Go ahead.

12 BY MS. GINSBURG:

13 Q. And do those photographs fairly and accurately
14 depict the weapon as well as a similar trash can where
15 you retrieved the weapon?

16 A. Yes, ma'am.

17 MS. GINSBURG: Your Honor, at this time the
18 State seeks to admit State's 6 through 9 and publish to
19 the jury.

20 THE COURT: Any objection to the admission
21 now? What do you want to say as far as an objection to
22 those?

23 MR. KELLY: I object because that evidence,
24 what he's saying was the trash can was not the actual
25 scene, so why is it being admitted as a crime scene,

1 where the crime was committed if that's not an actual
2 picture of the actual crime?

3 THE COURT: I appreciate your position, but
4 I'm going to allow it. Go ahead.

5 MS. GINSBURG: Thank you, Your Honor. May I
6 publish to the jury?

7 THE COURT: Yes.

8 (State's Exhibit 6 through 9 were marked for
9 identification and admitted into evidence.)

10 BY MS. GINSBURG:

11 Q. I'm showing you State's Exhibit 6. Can you please
12 tell me sort of the descriptive characteristics of this.
13 Is this a handgun?

14 A. Yes, ma'am, it's a handgun.

15 Q. And can you recall the serial numbers from this?

16 A. Yes, T110213G06842.

17 Q. It's a semi-automatic?

18 A. Yes, ma'am.

19 Q. Now, I'm showing you what's been marked as State's
20 7, and it's Star Arms. Is that a brand?

21 A. That's the name of the brand.

22 Q. I'm showing again State's 8 and that's again the
23 serial number?

24 A. Yes, ma'am.

25 Q. And this is where the gun was made?

1 A. Yes, ma'am.

2 Q. Now I'm showing you State's 9. I know you said
3 this isn't the exact trash can, but it's a similar trash
4 can; is it not?

5 A. Correct.

6 Q. And in front of you, you can use the markers and
7 whatnot and show where you saw the gun and found the gun.

8 A. Yes, ma'am. It was right in this area
9 (indicating).

10 Q. Okay. So once you recover a handgun, what do you
11 typically do?

12 A. We make sure there is not a round in the chamber.
13 If there is a round in the chamber, we remove that round
14 from the chamber and make sure the weapon is 100 percent
15 clear and safe before we manipulate it any further.

16 At that point, what we do is we make sure that we
17 can find and read the serial number, and once we do that,
18 then we relay that over to our dispatch or our
19 information channel that we have that we use to run
20 names, date of births of people, any sort of serial
21 numbers to make sure they're not stolen.

22 Q. So once you get this weapon, you make sure it's
23 clear. You make sure it's not loaded?

24 A. Right.

25 Q. Was this weapon, in fact, loaded?

1 A. Yes, ma'am.

2 Q. And then you check the serial numbers that we just
3 looked at, and then you run that through dispatch?

4 A. Yes, ma'am.

5 Q. And just like your radio transmission submits
6 that, this is also recorded?

7 A. Yes, ma'am.

8 MS. GINSBURG: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MS. GINSBURG:

11 Q. Sergeant Thom, I'm showing you what's been marked
12 as State's 10 for ID purposes. Do you recall what this
13 is?

14 A. It's a recording of my contact with our
15 dispatcher.

16 Q. And that's where you --

17 A. Where I write the serial number.

18 Q. Have you listened to that disk?

19 A. I have.

20 Q. And does it fairly and accurately depict the
21 conversation you had between yourself and dispatch?

22 A. Yes, ma'am.

23 MS. GINSBURG: Your Honor, at this time the
24 State seeks to admit State's 10 into evidence and publish
25 to the jury.

1 THE COURT: And what is that?

2 MS. GINSBURG: It's Sergeant Thom's recording
3 to dispatch. He's going over whether or not the weapon
4 is stolen by explaining the serial number to the
5 dispatcher.

6 THE COURT: Okay. We've heard that,
7 actually. Any objection to that?

8 MR. KELLY: No objection. I mean, it's
9 hearsay. I mean, I object. It's hearsay.

10 THE COURT: I appreciate that, but I'm going
11 to allow it. Go ahead.

12 MS. GINSBURG: Thank you, Your Honor. Let me
13 take this from you. I can't publish it if I don't have
14 it.

15 (State's Exhibit 10 was marked for
16 identification and admitted into evidence.)

17 BY MS. GINSBURG:

18 Q. And what we'll do is what we did in the last call.
19 I'll let part of it play, and then I'll ask you what you
20 said.

21 Just briefly, I'm going to publish again
22 State's Exhibit 8. Is that the serial number you just
23 spoke over to dispatch.

24 A. Yes, ma'am.

25 MS. GINSBURG: Will you play the second clip

1 now.

2 MR. KELLY: I object, Your Honor. This is
3 hearsay. I don't know --

4 MS. GINSBURG: This is obviously a business
5 record exception.

6 THE COURT: Tell us what he said.

7 BY MS. GINSBURG:

8 Q. Can you explain what just transpired between you
9 and dispatch?

10 A. Yes, ma'am. The dispatcher got back to me after
11 she ran the serial number through NCIC, and she stated --
12 she read back the serial number and the color and the
13 millimeter of the handgun and that it was stolen with our
14 agency.

15 MR. KELLY: I object. Again, Your Honor, I
16 don't see where this has anything pertaining to me.

17 THE COURT: I appreciate your exception, but
18 I'll overrule the objection and allow it. Go ahead.

19 BY MS. GINSBURG:

20 Q. Just to clarify, so even if you found a lawfully
21 possessed weapon, would you call through dispatch and
22 check?

23 A. Yes, ma'am.

24 Q. And that's to, what, make sure --

25 A. Make sure it's not stolen.

1 Q. So even if it was lawfully in the appropriate
2 place?

3 A. Yes, ma'am.

4 Q. So what did you do next once you found out that
5 this handgun was, in fact, stolen?

6 A. I turned it -- walked back over to Officer Mallek
7 and let dispatch know what was said. I kept control of
8 the weapon since I was the one that found it, and I
9 entered it into our evidence.

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

11 BY MS. GINSBURG:

12 Q. Just to clarify again, Sergeant Thom, when you
13 mean loaded, do you mean a round in the chamber?

14 A. Yes. It could be, whether there were rounds in a
15 magazine that was inserted into the firearm, and also one
16 that was --

17 MR. KELLY: Objection. I don't see where
18 this pertains to me.

19 THE COURT: I appreciate the position. I'm
20 going to allow it.

21 BY MS. GINSBURG:

22 Q. Was the magazine fully loaded?

23 A. Yes, ma'am.

24 Q. Did this end your involvement in this case?

25 A. Yes, ma'am.

1 MS. GINSBURG: Nothing further.

2 THE COURT: All right. Mr. Kelly, any
3 questions you want to ask him?

4 MR. KELLY: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. KELLY:

7 Q. How are you doing?

8 A. Good. How are you?

9 Q. All right. I have a copy of your written
10 statement here. Okay. You said that you gave foot chase
11 to me, right?

12 A. Yes, sir.

13 Q. And you're pretty much saying that you saw me
14 throw a handgun?

15 A. I did not say that in my report.

16 Q. Well, it says here you gave foot chase to me from
17 Columbus to Nassau, and you lost sight of me for a few
18 seconds, and you regained sight of me approximately 50
19 yards away.

20 How do you explain that -- what's on your radio
21 transmission throughout the whole transmission seems like
22 you was dead behind me the whole way.

23 A. I watched you run past my vehicle on Columbus
24 Street, and, in the time it took me to exit my vehicle,
25 ran around the front and then around the corner that you

1 had already turned on to Nassau Street. That's where I
2 lost sight of you.

3 Q. Wow, so -- okay. I got to be a pretty fast guy to
4 do all that in 50 seconds. I mean, that's not -- Usain
5 Bolt don't run that fast, and I just got out of the
6 hospital January 1st that year --

7 THE COURT: Ask another question.

8 BY MR. KELLY:

9 Q. Okay, sir. Actually, on that same day, you said
10 you had body cameras. Is it not your guys' legal
11 procedure to have that stuff on at the time of these
12 situations?

13 A. At certain times -- we have to have them on us at
14 all times, but the battery life on those only lasts so
15 long. They don't last a whole shift. At certain times
16 during a shift, during the day you have to plug them up
17 to the computer to charge. Mine was charging at that
18 time, downloading videos from my previous duties. I was
19 on my way back to the office because my regular work
20 duties had concluded that day when this happened.

21 Q. If I'm not mistaken, you said you were doing some
22 type of training at that time, right?

23 A. We were doing a SWAT operation at that time.

24 Q. So was that not enough time for you to charge your
25 body camera while you were doing your training?

1 A. We weren't training. We were actually operations.

2 Q. So you need your body camera for that?

3 A. Yes.

4 Q. And it was totally dead by the time you finished
5 your operations until you came to this situation?

6 A. I don't know if it was totally dead or not, but at
7 that point my operation was, done and I was going back to
8 the office so I could plug it back into the computer.

9 Q. Is it not standard procedure for you guys to grab
10 that in a situation like this and make sure that you have
11 it?

12 A. We try to, but due to the sudden nature of the
13 incident, I didn't have time to grab it.

14 Q. But you grabbed your gun, you grabbed your radio,
15 you grabbed your --

16 A. That's already on my duty belt at that time.
17 Those don't need to be recharged.

18 Q. Well, again, you said I was running from you and
19 then I ran past the yard and I threw something in the
20 yard. You said it was under the trash can, right?

21 A. Yes, under that little lip where the wheels are.
22 You can still see --

23 Q. Can you be specifically, like, exactly specific?
24 It was under the trash can, like someone placed it there,
25 like, or --

1 A. Like it slid up underneath -- up against where the
2 wheels were.

3 Q. So the actual gun was facing like this, under the
4 trash can?

5 A. It was flat on the ground. This is where the
6 trash can -- has an angled look where we can directly see
7 it.

8 Q. And you're saying that you had plain view of that.
9 I could have thrown it directly under that trash can. I
10 mean, at the fast speed I was going, you said I was
11 going, you know, 50 yards away from you when you lost
12 sight of me and I was running at that speed, if I was to
13 throw a handgun that far at a moving speed, it was under
14 a trash can and it be set at a perfect angle like that,
15 like, how is that possible?

16 A. It was flat on the ground as if it had hit the
17 ground and slid.

18 Q. Wow, and slid perfectly under the trash can?

19 A. Slid up against the trash can.

20 Q. Wow, you got to be very, very good, daggone good
21 to do something like that, and I don't actually think I
22 have those super powers to do anything like that. Again,
23 you said in your statement that I verbally made comments
24 to you guys. Why would you say that?

25 A. I never said that.

1 Q. Yes, you did. All you guys say when I came, I was
2 walking backwards, saying I was talking, giving out a
3 verbal statement, that I gave up my rights to say that
4 anything you guys found --

5 A. I never stated in my report that you spoke any
6 words to me while I was walking you back to the car.

7 Q. On the 911 call, did that person actually say that
8 I threw a gun or did they say that I throw something?

9 A. It was an object that they thought was a gun.

10 Q. So does that mean that I have a gun? I mean, just
11 'cause someone said I threw something -- I mean, we got
12 to be specific here.

13 A. I can't answer that for you. I just went by what
14 they said. An object was thrown into the yard and we
15 went to check it out.

16 Q. We got her call, or whoever that person is, they
17 said I threw a gun or maybe some bags of dope, but I was
18 going so fast they didn't really see. So how could I --

19 A. I believe the tape said that there was an object
20 that resembled a gun or could be dope. They weren't
21 sure.

22 Q. In the 911 statement, it said I throw a gun or
23 something like that?

24 A. Uh-huh.

25 Q. Something like a bag of dope or something. It

1 literally says that in the statement.

2 A. Yeah, I know. I know it does.

3 Q. So why you just told me the lady or the person
4 doesn't say that -- she just said it was a gun?

5 A. I didn't say that. If you recall what I just said
6 to you, I said that the tape stated it was an object. It
7 may have been a gun, resembled a gun, or it could have
8 been bags of dope.

9 Q. So why didn't you state in the other statement
10 what this lady said? Why didn't you?

11 A. I believe I just said both of them to you.

12 Q. You said this person said that I threw a gun, and
13 you said that's only -- you didn't say this person said I
14 threw a gun or an object, like a bag of dope or
15 something.

16 A. I believe that's what I just said.

17 Q. I don't believe you did. If you can recall, how
18 can I do this, like, when I surrender to you guys? Can
19 you recall that, my saying anything to you?

20 A. You didn't say anything to me.

21 Q. I don't have any more questions for you, man. You
22 pretty answered everything. You didn't see any weapons.
23 You say I didn't throw anything, for that matter. You
24 also said that the lady said that -- or a person said I
25 wasn't throwing nothing but something. She don't know

1 exactly, or he didn't know exactly if I was throwing
2 anything. At a rate like that, I don't know who would
3 have a chance to --

4 THE COURT: Ask another question. Ask any
5 other questions you want to ask of him.

6 BY MR. KELLY:

7 Q. Are you my accuser or you are the witness?

8 A. I'm not the arresting officer.

9 Q. But you are my accuser?

10 A. I don't understand your question.

11 Q. Because you're here as a witness, but you also
12 wrote up a statement saying that I did something, so
13 you're accusing me of something?

14 A. I'm just the officer that detained you.

15 Q. But you wrote up a statement saying you're
16 accusing me of something, so are you my accuser or are
17 you the witness here?

18 A. I guess I would be a witness, because I'm not the
19 arresting officer. I'm not the one that made charges.

20 Q. That's a conflict of interest, sir.

21 MS. GINSBURG: Objection.

22 THE COURT: No, no, no. Ask another
23 question.

24 MR. KELLY: That's the only question I really
25 need answered, is he my accuser or is he a witness of

1 this matter?

2 THE COURT: Thank you very much. Anything on
3 redirect?

4 MS. GINSBURG: Nothing from the State, Your
5 Honor.

6 THE COURT: Okay. I'm trying to get as clear
7 a picture as I can about the scene, you know, this [REDACTED]
8 Nassau Street. Is that the address?

9 THE WITNESS: Yes, sir.

10 THE COURT: Is this an open field or is this
11 a house there with an alley or what? I'm trying to get a
12 picture.

13 THE WITNESS: Could you bring up?

14 THE COURT: Bring it up.

15 THE WITNESS: See, this is [REDACTED] Nassau Street
16 right here.

17 THE COURT: Right where?

18 THE WITNESS: Where the red dot is.

19 THE COURT: I don't see. Oh, okay.

20 THE WITNESS: So the foot pursuit went from
21 here, down Nassau Street and into the church. This where
22 the red dot is, [REDACTED] Nassau Street, and there's a building
23 there?

24 MS. GINSBURG: Yes, there are buildings
25 there; three residences, yes, sir, and there is a front

1 driveway that goes up to Nassau Street, a fence that runs
2 along the sidewalk.

3 THE COURT: Okay. And so can you point out
4 where the trash can was from where the gun was?

5 THE WITNESS: Sure. It was right in this
6 area, right there inside the driveway, over the fence and
7 inside the driveway, in front of the house.

8 THE COURT: Okay. And you described where
9 the gun was found in relation to the trash can.

10 THE WITNESS: Yes.

11 THE COURT: I'm trying to get a picture in my
12 mind as to how the trash can was situated there.

13 THE WITNESS: So the wheels were facing the
14 roadway.

15 THE COURT: Wheels were facing the roadway.

16 THE WITNESS: Yes, sir.

17 THE COURT: So it was nearer the roadway than
18 the others?

19 THE WITNESS: Correct.

20 THE COURT: And how far from the sidewalk --
21 is it a sidewalk?

22 THE WITNESS: Yes, sir.

23 THE COURT: How far from the sidewalk to the
24 trash can?

25 THE WITNESS: Approximately 15 to 20 yards.

1 THE COURT: So is that about two-thirds of
2 the courtroom?

3 THE WITNESS: Yeah, I'd say probably from
4 myself to where the tables are.

5 THE COURT: Okay. Now, any other questions
6 you want to ask, Mr. Kelly?

7 MR. KELLY: Yes, sir.

8 BY MR. KELLY:

9 Q. Okay, sir. Again, I mean, what's your duty
10 requires you to do once you locate evidence of this type
11 of magnitude, and what's the procedure that you take to
12 recover any type of evidence?

13 A. That we collect the evidence.

14 Q. And what is the procedure? So I can understand,
15 can you explain to me exactly what you need --

16 A. So when I collect the evidence, being a firearm,
17 like I said earlier, I clear the weapon to make sure it's
18 rendered safe, and at that point we run a serial number
19 and then it gets secured in my vehicle, and I take it
20 back to our headquarters and allow you to see the
21 evidence.

22 Q. And before you did all of that, calling it in and
23 everything -- I mean, you have a little time to gather
24 your thoughts and everything, grab your equipment, grab
25 the body cameras so that you can go video camera

1 everything?

2 A. I did not go back to my car at that point. I
3 transferred you over to Officer Mallek as we heard the
4 radio transmission come in about the object being thrown,
5 and so I turned around to check that.

6 Q. You turned me over to the other officer, and then
7 you never thought to say, Okay. Let me go get my
8 equipment so I can secure the evidence in a proper
9 manner, like body camera?

10 A. Since we were possibly looking for a gun --

11 Q. Let me finish my -- I mean, did you not thought to
12 get your body camera? Did you not thought to get gloves?
13 Did you not thought to get, you know, fingerprinting
14 stuff, you know what I mean? This occurred, and pictures
15 that you took in this area that you saw, you said the gun
16 was just placed under the trash can. Did it not look
17 like it was just randomly put there by someone or --

18 A. So due to the fact that it was a firearm that we
19 were possibly looking for, we try to collect that
20 evidence as quick as possible so that wouldn't fall into
21 somebody else's hands, a child's hands or something like
22 that.

23 Q. I understand it's a so-called firearm. It's
24 dangerous. You know, I understand that. I know you got
25 to take it off the streets, by all means, and I applaud

1 that, but you also have a duty, and you also have a code
2 to follow, and you also have your way of doing things
3 accordingly about this evidence.

4 THE COURT: Ask a question.

5 BY MR. KELLY:

6 Q. Okay. Like I said, why didn't you --

7 MS. GINSBURG: Objection. Asked and
8 answered, Your Honor, several times.

9 THE COURT: Ask the question. Go ahead.

10 BY MR. KELLY:

11 Q. You take pictures. Why didn't you video cam
12 anything before you start touching evidence?

13 A. As I stated, due to the nature of it, I did not go
14 back to my patrol car and get a camera. I handed you off
15 to Officer Mallek, and I went off to look for what was
16 possibly a weapon that was thrown.

17 Q. So, like you say, you observed this weapon while
18 you're just walking up on it. You just observed it right
19 there, like laying there like where it was?

20 A. Uh-huh.

21 Q. Didn't it look like someone already placed it
22 there beforehand?

23 A. It's not a natural place for a weapon to be
24 placed.

25 Q. Okay. Let me see. Did you call the crime scene

1 investigators? Because any scene I know make sure they
2 take pictures of this stuff so that the proper manner of
3 getting that, gathering that evidence can't be tampered
4 with. Everything have a factual --

5 THE COURT: You can argue all that. He
6 already said he didn't get pictures made or anything like
7 that.

8 MR. KELLY: He pretty much answered it. He
9 didn't do his proper duties like he was supposed to, and
10 he just walked up on it.

11 THE COURT: Ask another question.

12 BY MR. KELLY:

13 Q. Sir -- let me see one second. Did anyone claim to
14 say that -- I mean, allow anybody to tamper with it? Did
15 you call any one of your other members --

16 THE COURT: Are you asking him did anybody
17 else see it on the ground by the trash can? Do you know
18 whether or not anybody else saw it or not?

19 THE WITNESS: I'm not sure if they did or
20 not. There were other officers in the area. I'm not
21 sure they saw exactly where it was before I retrieved it.

22 BY MR. KELLY:

23 Q. It never occurred to you that you needed somebody
24 else as a witness to say that you saw this?

25 A. That's not a policy, that we need a witness before

1 gathering evidence.

2 Q. So we're just going off of your words today?

3 A. It's my testimony, yes.

4 Q. Okay.

5 MR. KELLY: That's all I have right now.

6 THE COURT: Thank you very much.

7 REDIRECT EXAMINATION

8 BY MS. GINSBURG:

9 Q. Sergeant Thom, this is a residential area?

10 A. Yes, ma'am.

11 Q. Can you explain again why you didn't do all these
12 things that Mr. Kelly just harped on?

13 A. Yes. It's a residential area. There's a lot of
14 foot traffic in this area. There's a lot of kids that
15 walk around in that area. Due to the nature of the call
16 that came across dispatch, there may have possibly been a
17 weapon that was thrown. That's our primary job --

18 MR. KELLY: Objection. He just said a
19 weapon.

20 THE COURT: I'm going to allow it. Go ahead.

21 THE WITNESS: -- to keep the community safe
22 and retrieve, if it is a weapon, which indeed it was, as
23 quick as possible.

24 BY MS. GINSBURG:

25 Q. So you said it was a weapon, and it turned out to

1 be a loaded weapon?

2 A. Yes, ma'am.

3 Q. In a residential area?

4 A. Yes, ma'am.

5 Q. So that's why you picked it up right then and
6 there?

7 A. Yes, ma'am.

8 Q. To secure it and make sure we're all safe?

9 A. Yes, ma'am.

10 MS. GINSBURG: Nothing further.

11 THE COURT: Thank you very much. You can
12 return to your place and be excused.

13 Call your next witness.

14 MR. OSBORNE: State calls Tonia Mallette.

15 THE COURT: Anybody on the jury need a break
16 at this point? If you need a break, raise your hand.

17 All right. Go ahead.

18 TONIA MALLETT,

19 having been first duly sworn,

20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. OSBORNE:

23 Q. Good morning, Ms. Mallette.

24 A. Good morning.

25 Q. Where do you work?

1 A. Charleston consolidated 911 center.

2 Q. And how long have you been there?

3 A. Twenty-seven years and six months.

4 Q. And what is your position there?

5 A. My title is a consolidated dispatch center
6 analyst, and my duties include -- I am the records
7 custodian. I am responsible for processing subpoenas
8 from the solicitor as well as public defender's office as
9 well as attorneys' offices. I also handle internal
10 requests, 911 calls, work with the media; that's just a
11 sample of my duties.

12 Q. We're not going to belabor this too long. We'll
13 talk about your duties as a custodian and how it relates
14 to this investigation. You say sometimes law enforcement
15 gives you subpoenas and makes requests?

16 A. Yes.

17 Q. What are some of the things that they might
18 request?

19 A. They may request the 911 call, or it could be an
20 admin call depending on -- it could be a domestic
21 situation, suspicious individuals, just to name a few
22 examples. In some instances, they also requested radio
23 and audio transmissions, and it's actually the audio that
24 occurs between the dispatcher and the officer on the
25 incident.

1 Q. Let's start talking about the 911 calls. So when
2 an individual from Charleston County calls 911, it goes
3 to your dispatch center?

4 A. Yes, it does.

5 Q. And those 911 calls are recorded?

6 A. Yes.

7 Q. All of them?

8 A. Yes, they are.

9 Q. Are they recorded at any time the 911 call is
10 placed?

11 A. Yes.

12 Q. And are they kept during the normal course of
13 business?

14 A. Yes, they are.

15 Q. How exactly are they stored?

16 A. They're stored on a server. Our IT team does
17 that, and it's kept for a period of one year.

18 Q. Okay. And did you receive a request from someone
19 in my office for the 911 call in this case?

20 A. Yes, I did.

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

22 THE COURT: Sure.

23 BY MR. OSBORNE:

24 Q. Take a look at that and tell me if you recognize
25 that.

1 A. I do.

2 Q. And what is that?

3 A. This is the clip, the 911 radio clip pertaining
4 to --

5 THE COURT: I'm sorry. I can't understand
6 you.

7 THE WITNESS: It's the 911 and the radio
8 audio clip pertaining to the Kyrie Kelly incident.

9 BY MR. OSBORNE:

10 Q. So it contains the radio dispatch recordings from
11 the police officers in the incident?

12 A. Yes.

13 Q. We've already heard that, but you said it also
14 contains a 911 call?

15 A. Yes.

16 Q. How do you know that CD includes a 911 call?

17 A. I listened to the CD and actually placed it on the
18 disk.

19 Q. So is it fair to say it doesn't contain all of the
20 911 call, but a clip from the call?

21 A. It contains the actual call.

22 Q. The actual call?

23 A. Yes.

24 Q. So you compared it to the original call, and then
25 you compared it to this, and they're the same?

1 A. Yes, they are.

2 Q. They haven't been tampered or altered?

3 A. Have not been redacted in any way.

4 THE COURT: Play it. Any objection to that?

5 Have you heard it?

6 MR. KELLY: Yes, sir, I object. It's
7 hearsay.

8 THE COURT: I'm sorry?

9 MR. KELLY: I object. It's hearsay. They're
10 trying to use it as pertaining of the fact of this
11 matter.

12 THE COURT: I appreciate that, but I'm going
13 to overrule the objection.

14 (State's 11 was marked for identification and
15 admitted into evidence.)

16 BY MR. OSBORNE:

17 Q. Ms. Mallette, when that call is placed, does the
18 operator then generate a report in reference to the call?

19 A. Yes.

20 Q. And what is that report called? What do y'all
21 call it?

22 A. We call it the CAD report, but it's also known as
23 the incident detail report.

24 MR. OSBORNE: Your Honor, may I approach?

25 THE COURT: Go ahead.

1 BY MR. OSBORNE:

2 Q. I'm showing you what has been marked as State's
3 Exhibit 19. Can you take a look at that and tell me if
4 you recognize it?

5 A. Yes. This is the incident detail report from
6 August 28, 2015.

7 Q. And that was for the 911 call that we just heard?

8 A. Yes.

9 MR. OSBORNE: Your Honor, at this time we
10 seek to admit State's 19 into evidence.

11 THE COURT: Any objection to that?

12 MR. KELLY: I mean, it's hearsay.

13 THE COURT: All right. Members of the jury:
14 I need you to go to the jury room for a moment please. I
15 need to discuss this evidence with them just a second.

16 (In open court, jury not present.)

17 THE COURT: Let me see this.

18 So we have this, and the crux of it is that
19 the caller told the dispatcher that he saw a man being
20 chased by the police and that the man threw what looked
21 like a gun over the fence, and, of course, this report
22 certainly starts out as hearsay.

23 Why should I let it in? It certainly is
24 hearsay. Any written document, out-of-court document,
25 that you seek to introduce into evidence starts out as

1 hearsay, so why should I let it in?

2 MR. OSBORNE: I think it fits 8036, the
3 business records exception, verbatim. It's a report, in
4 any form or act, events or condition or diagnosis made at
5 or near the time by or from information transmitted by a
6 person with knowledge if kept in the course of regularly
7 conducted business activity, and we have that in this
8 case.

9 THE COURT: Actually -- but this is not a
10 record of something that the police did, this is a record
11 that somebody else did.

12 MR. OSBORNE: Right.

13 THE COURT: So tell me how that is a record
14 of the police? This is not something that the police
15 observed and made a record of, this is something that
16 somebody reported to the police. Do you think anything
17 that a person reports to the police is a business records
18 exception?

19 MR. OSBORNE: No. No, I don't. I think it's
20 pretty well settled that if an individual reports to the
21 police an incident and a police report is documented, the
22 police report itself is not hearsay -- it is hearsay and
23 does not come in, but 911 is an exception, and there is a
24 litany of cases that say 911 is non-testimonial in
25 nature, and the reason why it's non-testimonial is

1 because it's a present sense impression or an excited
2 utterance. 911 calls are generally allowed in for those
3 reasons, and that's what this is. The 911 call has
4 already been played.

5 THE COURT: That's why I'm saying then the
6 911 call is in. I understand that, but the document
7 here, it starts out -- there's no question it starts out
8 as hearsay. There has to be some exception to hearsay.

9 MR. OSBORNE: And it falls directly under
10 report under the business records --

11 THE COURT: But it's not a report that the
12 police made. It's not recording something that the
13 police said happened, it's recording something that
14 somebody else said happened.

15 MR. OSBORNE: That would be testimonial if it
16 were made in anticipation of litigation. 911 calls are
17 not made in anticipation of litigation.

18 THE COURT: I agree that the call comes in.
19 I agree that the call comes in, but this is not a record
20 that the police made in saying that he threw it over the
21 fence. That's somebody else's words.

22 MR. OSBORNE: Well, that comes in through the
23 911 call.

24 THE COURT: I agree with that. Look at what
25 it says the business record exception is. Read that

1 again.

2 MR. OSBORNE: Okay. It says a memorandum,
3 report -- we have a report here -- record -- this is a
4 record -- or data compilation. The data that's important
5 here is the time in which the call was made and the
6 caller's name, Robert, which corresponds to the 911 call.
7 The time is important because there is already
8 transmissions when Jeff Thom, Officer Thom, is chasing
9 the individual. It's going to be at the same time --

10 THE COURT: I got all that, but I'm talking
11 about the report saying that for this report here, this
12 document to say here that the guy threw the gun over the
13 fence --

14 MR. OSBORNE: So I'm continuing: And any
15 form of acts, events, conditions, or diagnosis made at or
16 near the time by or from information transmitted by a
17 person with knowledge, if kept in the course of regularly
18 conducted business activity and it was the regular
19 practice of that business activity to make the
20 memorandum, report, record, or data compilation, all is
21 shown by the testimony of the custodian or other
22 qualified witness unless the source of information or the
23 method or circumstances of preparation indicate the lack
24 of trustworthiness.

25 THE COURT: Okay. I think you're right. I

1 appreciate your position. This is an interesting, close
2 question, but I'll overrule your objection and allow it
3 into evidence. Here you go.

4 Bring the jury back in.

5 (In open court, jury present.)

6 All right. Do you remember where you were,
7 Solicitor?

8 MR. OSBORNE: Yes, I do, Your Honor.

9 THE COURT: All right. You may proceed.

10 BY MR. OSBORNE:

11 Q. State's 19, and you said this is a report that was
12 generated to a 911 call we already heard; is that
13 correct?

14 A. Yes, that's correct.

15 MR. OSBORNE: At this time we seek to
16 admit --

17 THE COURT: Over your objection, I'm going to
18 allow it into evidence.

19 (State's Exhibit 19 was marked for
20 identification and admitted into evidence.)

21 BY MR. OSBORNE:

22 Q. Okay. So it's entitled incident detail report; is
23 that correct?

24 A. Yes, it is.

25 Q. And, again, these are generated or produced at or

1 near the time of the original 911 call?

2 A. That's correct.

3 Q. And I want to direct your attention here. What is
4 the caller's name?

5 A. Robert.

6 Q. And I believe we heard that on the 911 call.

7 A. We did.

8 Q. Probably don't recall, but that's also the phone
9 number that he listed?

10 A. Yes.

11 Q. And the incident location being [REDACTED] Nassau?

12 A. Yes.

13 Q. And that's what was provided on the 911 call?

14 A. That's correct.

15 Q. I'm not too concerned about what he said, but I do
16 want to draw your attention to the time. What is the
17 time listed here?

18 A. 12:28:56.

19 Q. Would that be the time that the call was placed or
20 do I need to go back to the first page or up here?

21 A. There you go. That would be the time that she hit
22 the first key on the keyboard to open the screen.

23 Q. Okay. So generally the time in which she would
24 have received the 911 call?

25 A. Correct, correct.

1 MR. OSBORNE: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MR. OSBORNE:

4 Q. I'm showing you what has been marked as State's
5 Exhibit 18. Can you tell me what that?

6 A. Yes, this is the incident detail report.

7 Q. And that would be from the radio dispatches?

8 A. Correct, radio, audio.

9 Q. From the same call?

10 A. Yes, same incident.

11 Q. Same incident. And much like -- is it true that
12 much like the 911 calls that these reports are generated
13 at or near the time in which the radio dispatch occurs?

14 A. That is correct.

15 MR. OSBORNE: Your Honor, at this time I seek
16 to admit State's 18 into evidence and publish.

17 THE COURT: Any objection to that?

18 MR. KELLY: My objection is this 911 call
19 came in as a CAD report, and under exception, it don't
20 show whether --

21 THE COURT: Let me see what you're talking
22 about.

23 MR. OSBORNE: Just to clarify, this is not
24 the 911 call. This is the radio dispatch amongst the
25 officers and dispatch.

1 MR. KELLY: That report came from the actual
2 witness, so how could that be separate?

3 THE COURT: I appreciate the position, but
4 I'll overrule your objection and allow it into evidence.

5 (State's Exhibit 18 marked for identification
6 and admitted into evidence.)

7 BY MR. OSBORNE:

8 Q. Okay. So on here we have the nature of the call
9 is what?

10 A. Suspicious person.

11 Q. And I want to draw your attention to this entry
12 right here.

13 A. Uh-huh.

14 Q. All right. And what's the time here?

15 A. 12:30:37.

16 Q. What are the comments that are happening at 12:30
17 that the dispatcher noted?

18 A. Foot pursuit called out at 12:25.

19 Q. Okay. And the caller, Robert, called in at 12:28;
20 is that correct?

21 A. That's correct.

22 Q. Just prior to this foot pursuit initiating or
23 being documented?

24 A. Correct, correct, documented.

25 MR. OSBORNE: May I approach?

1 THE COURT: Yes.

2 BY MR. OSBORNE:

3 Q. I'll show you what has been marked as State's
4 Exhibit 20, ask if you recognize that.

5 A. Yes.

6 Q. What is that?

7 A. This is an incident report of a theft from a
8 vehicle.

9 Q. Does it say what was stolen?

10 MR. KELLY: Objection, Your Honor. Hearsay.

11 THE COURT: Jury panel, I need you to go to
12 the jury room. I need to discuss this with them, figure
13 it out, and we're going to take about a ten-minute break
14 at this point.

15 We haven't had a break so we're going to take
16 about a ten-minute break at this time, so relax for about
17 ten minutes. We'll be back with you as soon as we can.

18 (In open court, jury not present.)

19 THE COURT: Let me see what we're looking at.

20 MR. OSBORNE: This is the 911 call from the
21 victim of the stolen gun.

22 THE COURT: You want to bring the victim in?

23 MR. OSBORNE: Well, we'd like to bring the
24 victim in, but we can't locate the victim.

25 THE COURT: Let me look at this. Let me see

1 what it says. I'm trying to figure this all out.

2 MR. OSBORNE: I think we can simplify: The
3 only thing we would seek to get out of this witness would
4 be Jamal Mcrae reported a theft on a certain date, which
5 preceded this incident. All the other information --

6 MR. KELLY: I object.

7 THE COURT: Just hold on, Mr. Kelly. You'll
8 get a chance to say whatever you want to say. They can
9 talk first.

10 MR. OSBORNE: And all the other information
11 that's provided in these documents I don't think we need
12 to publish to the jury.

13 THE COURT: You want to get this in to show
14 that a call came in from Jamal Mcrae or whatever his name
15 is -- is it Mcrae?

16 MR. OSBORNE: Mcrae.

17 THE COURT: On this date, at this time, so
18 forth on and so on, reporting that his pistol was stolen
19 from his car. Right?

20 MR. OSBORNE: That he reported a stolen gun.
21 We can say from the car. It doesn't matter.

22 THE COURT: And it's his pistol we're talking
23 about, and somehow or another I guess -- that's what I'm
24 trying to figure out. What does it say in here?

25 MR. OSBORNE: From our perspective, the date,

1 the name, and the theft, that's all we need.

2 THE COURT: But not that it was this pistol?

3 MR. OSBORNE: No, I don't think we need that.

4 THE COURT: Well, why is that relevant, that
5 this guy reported eight pistols stolen from his car on
6 some date?

7 MR. OSBORNE: It's relevant because Brian
8 Hinton will testify, who is the evidence custodian from
9 CPD that he released the pistol, the same pistol that
10 Officer Thom testified to, the serial number, to Jamal
11 Mcrae, who is the rightful owner. This report, or her
12 testimony, not the report, will show that Jamal Mcrae
13 reported a stolen pistol on a date which preceded our
14 incident. We tied the two together.

15 THE COURT: Okay.

16 MR. KELLY: It has no relevance to this case.
17 It violates the confrontation clause.

18 THE COURT: Okay. All right.

19 Mr. Kelly, anything else you want to say?

20 MR. KELLY: I object. This is hearsay. The
21 report is hearsay, the statement of the gun that was
22 stolen is hearsay, and it violates the confrontation
23 clause.

24 THE COURT: All right. I appreciate the
25 position, but I'll overrule your objection. It's a close

1 question, but I'll overrule your objection. I'm going to
2 allow it into evidence.

3 We're going to take a short break.

4 (Recess taken.)

5 (In open court, jury present.)

6 BY MR. OSBORNE:

7 Q. Where we left off, I was showing you State's
8 Exhibit No. 20, and I asked if you recognized that. You
9 said that was another incident detail report from another
10 911 call; is that correct?

11 A. Yes.

12 THE COURT: Over your objection, I'm going to
13 allow you to put that into evidence. Go ahead.

14 MR. KELLY: I object to hearsay.

15 THE COURT: I understand. Over your
16 objection, I'm going to allow it. Go ahead.

17 (State's Exhibit 20 was marked for
18 identification and admitted into evidence.)

19 BY MR. OSBORNE:

20 Q. All right. And what was the date that the caller
21 called?

22 A. August 23, 2015?

23 Q. Was it August 23?

24 A. I'm sorry, March 23, 2015.

25 Q. And what was the nature of the charge?

1 THE COURT: I'm sorry. What date?

2 THE WITNESS: Is that March 23rd, 2015?

3 BY MR. OSBORNE:

4 Q. Look on the front, if you need it.

5 A. I can't see it. Is it 8:03?

6 MR. KELLY: That's why I object, Your Honor,
7 because that's a report that she didn't make --

8 THE COURT: Well, wait just a second.

9 MR. OSBORNE: May I approach?

10 THE COURT: Go ahead.

11 MR. OSBORNE: 'Okay.

12 MR. KELLY: I believe this is coercion right
13 here, sir. He's leading the witness.

14 THE COURT: I appreciate that, but I'm going
15 to allow him to point out where he wants her to look on
16 the report.

17 MR. KELLY: She made the report. She should
18 be able to say this without help. She's the one that
19 made the report.

20 THE COURT: What is the date of the report?

21 MR. OSBORNE: It's on June the 23rd. I think
22 if we would blow it up for her to see a little better --
23 it's really small print.

24 MR. KELLY: But she made the report, didn't
25 she? Wow. No answer. So how could she --

1 MR. OSBORNE: Your Honor, I'm going to object
2 to this line of questioning.

3 THE COURT: Tell us what the date of the
4 report is, please.

5 THE WITNESS: June the 23rd, 2015.

6 THE COURT: All right.

7 BY MR. OSBORNE:

8 Q. Okay. And what is the nature of the call?

9 A. Nature of the call was gun stolen from a vehicle.

10 Q. And who was the caller?

11 A. Caller was Jamal Mcrae.

12 MR. OSBORNE: Okay. No further questions.

13 THE COURT: Now, any questions you want to
14 ask her?

15 MR. KELLY: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. KELLY:

18 Q. Good morning. How are you doing?

19 A. Good morning.

20 Q. Are you the actual dispatcher of this call?

21 A. I am not.

22 Q. So you have no firsthand knowledge of what was
23 taking place?

24 A. I am the records custodian. I was not the actual
25 call taker.

1 Q. So you're pretty much here to report something
2 that was told to you --

3 A. To authenticate records.

4 Q. And how could we get any information if you don't
5 know what's going on? I mean, how can I ask you a direct
6 question about the situation if you have no knowledge of
7 the situation?

8 A. I am providing you with information based on the
9 incident detail report.

10 Q. We done established you're not the actual caller,
11 so can you tell me the procedures of these calls being
12 like, okay, what the dispatcher asked this person, the
13 exact description of the person that he's claiming to be
14 doing something wrong?

15 A. There's a series of calls. We have protocols that
16 we follow when the dispatcher calls, so once a 911
17 caller, as a call comes in, it's answered by a call
18 taker. A call taker verifies the address, gets the name
19 and the telephone number, and they get the information as
20 related to the actual incident. There's a series of
21 questions that they ask the caller.

22 Q. All right. Well, we heard the 911 call. In your
23 profession, you pretty much, I believe, train people for
24 this type of field. Did you hear where anywhere in that
25 recording that the caller to the dispatcher got a

1 description of me?

2 A. I believe he said it was a black male, description
3 that he gave me.

4 Q. I don't believe he never said none of that, but, I
5 mean, you heard him say that the person threw something,
6 and then later on in that same breath he said that it may
7 could have been something else and they don't know? Can
8 you use that as actual proof of saying that someone did
9 something when they don't actually --

10 THE COURT: You can argue all that later and
11 everything. Ask her a question about --

12 MR. KELLY: I'm asking her, can someone say
13 something about someone and then turn right back around
14 and say that they don't know what they're saying?

15 THE COURT: Go ahead.

16 THE WITNESS: I'm not understanding your
17 question to me.

18 BY MR. KELLY:

19 Q. No problem. I apologize, but this is my first
20 time doing this. I got to defend my life.

21 A. I understand. I just don't understand the
22 question.

23 Q. You pretty much answered everything. I can't ask
24 these questions to you when you're not the actual person
25 that took this call, so I'm really beating a dead horse

1 right now. I appreciate your time and patience, and
2 that's all I have to ask you.

3 THE COURT: Thank you. All right. Nothing
4 else on redirect?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Thank you. You can be excused.
7 Call your next witness.

8 MR. OSBORNE: State calls Brian Hinton.

9 BRIAN HINTON,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Where do you currently work?

15 A. Charleston police department evidence room.

16 Q. In the evidence room?

17 A. Yes, sir.

18 Q. And what is your position there? What's your
19 title?

20 A. Evidence custodian.

21 Q. Are you, in fact, the supervisor?

22 A. Yes, sir.

23 Q. And how long have you been an evidence custodian
24 with CPD?

25 A. Fourteen years.

1 Q. And how long have you been a supervisor in charge
2 of that?

3 A. Five and a half.

4 Q. As an evidence custodian, what are some of your
5 duties and responsibilities?

6 A. To accept the evidence as submitted to our
7 evidence room or property, so to speak, maintain a chain
8 of custody until the court's completed and dispose of
9 evidence accordingly.

10 Q. Let's talk about that just for a second because
11 that's a mouthful. So when an officer retrieves
12 evidence, or has evidence, he presents that evidence to
13 you; is that correct, or someone that works for you?

14 A. Correct.

15 Q. Is it fair to say that you have policies and
16 procedures in place to accept it, that evidence?

17 A. Yes, correct.

18 Q. And isn't it true or is it true that your
19 technicians that work for you do not accept the evidence
20 unless it's properly packaged and sealed?

21 A. That's correct.

22 Q. And if it's not, you call them back in and make
23 them do it, right?

24 A. Yes, sir.

25 Q. And you also store property, not just evidence,

1 but property; is that correct?

2 A. Correct.

3 Q. Because not all property is evidence, right?

4 A. Correct.

5 Q. And part of your duties and responsibilities, is
6 it not, to return property to the rightful owners?

7 A. It is. Yes, sir.

8 Q. Now, let's talk specifically about this case. Did
9 you or someone with your unit have occasion to collect
10 evidence in this case?

11 A. Yes, sir.

12 Q. And what were stored, what evidence did you store?

13 A. It was a nine millimeter handgun.

14 Q. Do you have information that can help you in
15 determining what the make and model and serial number to
16 it was?

17 A. Yes, sir. It was a SAR nine millimeter with a
18 serial number of Tango 110213G06842.

19 Q. And who submitted the handgun into evidence?

20 A. Officer Thom.

21 Q. Officer Jeff Thom?

22 A. Yes, sir.

23 Q. All right. Now, once the gun was submitted by
24 Officer Thom, you and your unit kept it in safekeeping;
25 is that fair to say?

1 A. Yes, sir.

2 Q. And the gun was released to the owner, I believe,
3 on November the 23rd of 2015; is that correct?

4 A. Yes, sir.

5 Q. All right. Now --

6 MR. KELLY: Objection, Your Honor. Calls for
7 hearsay.

8 THE COURT: I appreciate it. I'm going to
9 allow it.

10 MR. KELLY: This person was gained through
11 hearsay.

12 THE COURT: I appreciate that. I'm going to
13 allow it. Go ahead.

14 BY MR. OSBORNE:

15 Q. Does CPD have policies and procedures in place
16 when you're going to release a firearm to an individual?

17 A. Yes, sir.

18 Q. And what are those policies and procedures?

19 A. The owner has to write a letter addressed to the
20 chief of police explaining why the gun was taken and he
21 or she is requesting the gun be released back to them.
22 In this case, the victim in the recovered stolen gun
23 wrote a letter saying that he was the victim of a B and
24 E, I believe it was --

25 MR. KELLY: Objection, Your Honor.

1 THE COURT: I appreciate that, but I'm going
2 to allow it. Go ahead.

3 THE WITNESS: He wrote a letter stating that
4 his gun was stolen, that he requested it be released back
5 to him. We then reached out to Mr. Osborne to see if the
6 gun could be released prior to the court case being
7 disposed of, which he approved after we took photographs
8 of the weapon and we submitted those to him, and then the
9 letter was approved by the chief of police to be
10 returned. With Mr. Osborne's approval, the gun was
11 returned back to its owner.

12 BY MR. OSBORNE:

13 Q. You say Mr. Osborne. Do you mean me?

14 A. Yes, sir.

15 Q. Okay.

16 THE COURT: Who was it released to?

17 THE WITNESS: A Jamal Mcrae, M-c-r-a-e.

18 BY MR. OSBORNE:

19 Q. Okay. Now, when you sign over property to an
20 individual, is a report generated to document that
21 transaction?

22 A. Yes, sir. It's a disposition report through our
23 records management system where he signs a form.

24 Q. And is that report generated at or near the time
25 of the transaction?

1 A. Once he arrives at the station, he or she arrives,
2 the report is created at that point. It's time dated and
3 stamped, and then we take the gun down to the property
4 downstairs to be released.

5 Q. And you as a supervisor of the evidence unit at
6 CPD, do you have access to retrieving those reports?

7 A. I do.

8 Q. And were you requested to access and retrieve that
9 report for this case from someone at my office?

10 A. Yes.

11 Q. And did you, in fact, retrieve that report?

12 A. I did.

13 MR. OSBORNE: Your Honor, may I approach?

14 THE COURT: Sure.

15 BY MR. OSBORNE:

16 Q. I'm showing you what's been marked as State's
17 Exhibit 16. Can you look at that and tell me if you
18 recognize it?

19 A. Yes, sir.

20 Q. What is that?

21 A. It's a chain of custody report where it was --

22 MR. KELLY: Objection, Your Honor. I don't
23 see how it's relevant to this matter.

24 THE COURT: Let's go ahead and hear what he
25 has to say about it. Go ahead.

1 THE WITNESS: This is the property report
2 from the time it was collected and submitted by Officer
3 Thom. Every time it left the evidence room to be
4 processed for latent recoveries, when it was taken to the
5 sheriff's office to be testified through the
6 International Ballistics Identification System. It was
7 brought back to us. It was turned over to the crime
8 scene technician, Unterbrink, who took the photos of it
9 and gave it back to our office, and they, in turn,
10 released it back to the owner.

11 BY MR. OSBORNE:

12 Q. So you said -- that's IBIS, is what it's generally
13 called?

14 A. Yes, sir.

15 Q. And so every time a gun is retrieved or collected
16 by CPD, it's sent to IBIS?

17 A. Correct.

18 Q. And IBIS, just explain to the jury, and tell me if
19 I'm wrong, is there is an IBIS firearms examiner who
20 fires the gun, takes the shell casing, puts the shell
21 casing into a computer system called IBIS, and if there's
22 any shell casings that were used in any crimes that come
23 back matching that gun, a notification is given to
24 that --

25 MR. KELLY: Objection. I don't see how this

1 is relevant.

2 THE COURT: I'm going to allow it. Go ahead.

3 THE WITNESS: That is correct.

4 BY MR. OSBORNE:

5 Q. Is it fair to say if you had gotten an alert to
6 say this gun was used in any sort of crime it would have
7 been flagged?

8 A. That's correct.

9 Q. Did you get any alert in this case?

10 A. No, sir.

11 MR. OSBORNE: At this time, Your Honor, we
12 seek to admit State's 16 into evidence and publish to the
13 jury.

14 THE COURT: Any objection?

15 MR. KELLY: Yes, sir, objection.

16 THE COURT: It's admitted for the purpose of
17 chain of custody, is what it's admitted for. Go ahead.

18 (State's Exhibit 16 was marked for
19 identification and admitted into evidence.)

20 BY MR. OSBORNE:

21 Q. I know it's a little messed up here, but can you
22 tell how many rounds were in the magazine?

23 A. Twelve rounds, sir.

24 Q. Okay. And this is Officer Thom here; is that
25 correct?

1 A. Correct.

2 Q. And this is the location where they recovered the
3 gun?

4 A. Yes.

5 Q. [REDACTED] Nassau, is that in the city and county of
6 Charleston?

7 A. Yes, it is.

8 Q. And the date?

9 A. 8/28/2015.

10 Q. And I want to look down here to this chain of
11 custody that you are referring to here, this is where the
12 gun never left, this is detailing that?

13 A. That's correct.

14 Q. Okay. And Mary Phillips, she works at crime
15 scene?

16 A. She does.

17 Q. And does she generally take the gun to IBIS?

18 A. Yes, sir.

19 Q. And then it came back?

20 A. Yes, sir.

21 Q. Now I want to direct your attention to the bottom.
22 This is what you're referring to on November 23rd, 2015?

23 A. That's correct.

24 Q. And this is the gun being released to --

25 A. Mr. Jamal Mcrae.

1 Q. And it's got his full name up there, I believe; is
2 that correct?

3 A. Yes, sir.

4 Q. And you were a witness to that transaction?

5 A. Yes, sir.

6 MR. OSBORNE: No further questions, Your
7 Honor.

8 THE COURT: Mr. Kelly?

9 CROSS-EXAMINATION

10 BY MR. KELLY:

11 Q. How are you doing?

12 A. Good.

13 Q. All right. You say you're the supervisor, right?

14 A. Yes, sir.

15 Q. So it's pretty clear that you make your team
16 follow the rules about handling any type of evidence?

17 A. Correct.

18 Q. So why didn't they take fingerprints from this
19 evidence before turning it back to the rightful owner?

20 A. It was fingerprinted.

21 Q. And did you find or recover any fingerprints that
22 matched mines?

23 A. I did not process the fingerprints, sir.

24 Q. You did not?

25 A. No, sir.

1 MR. KELLY: Thank you.

2 MR. OSBORNE: Just one.

3 REDIRECT EXAMINATION

4 BY MR. OSBORNE:

5 Q. Fingerprinted and photographed prior to it being
6 released?

7 A. Correct, sir.

8 MR. OSBORNE: No further questions.

9 THE COURT: Thank you very much. You can
10 return to your place and be excused. Call your next
11 witness.

12 MS. GINSBURG: Thank you, Your Honor. The
13 State calls Randy Unterbrink.

14 L. RANDAL UNTERBRINK,
15 having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. GINSBURG:

19 Q. Crime Scene Investigator Unterbrink, where are you
20 currently employed?

21 A. Charleston County police department.

22 Q. How long have you been employed with the CPD?

23 A. Twenty-seven years.

24 Q. And what do you do for CPD?

25 A. Currently I'm working in the crime scene unit.

1 Q. Have you been working there for the whole 27
2 years?

3 A. No, ma'am.

4 Q. How long have you been working at the crime scene?

5 A. Almost 15.

6 Q. Can you explain to the jury some of the duties and
7 responsibilities as a crime scene tech.

8 A. We are dispatched to a variety of different type
9 of calls. It depends on what the call is. If it's a
10 burglary, we're going to be looking for fingerprints in
11 different locations, whether it's the entry point; we may
12 also be looking for pieces of paper that may have been
13 dropped or pulled out of a drawer because it could have
14 value there. Fingerprints could be on that as well.

15 If there is a breaking and entering, there could
16 be a cut, for blood, so we may also look for blood as
17 well. If it's a homicide, we may be looking for a weapon
18 of some type, a knife, a bullet or a gun, those types of
19 things, so it's really a long list of items.

20 Q. And you just explained that if it's a weapon,
21 sometimes you look for fingerprints. Can you explain to
22 the jury some of difficulties in finding fingerprints on
23 weapons?

24 A. Yes. To find a fingerprint is often an easy
25 thing. It depends on the type of surface you're dealing

1 with. If it's nice, smooth surface, the odds increase,
2 such as glass. If the surface becomes more textured, it
3 becomes much more difficult to the point where you're not
4 going to find it at all.

5 The other difficulty, too, is that even on a piece
6 of glass, which would increase the odds of finding it, it
7 could be a smudge. Just because it's been touched
8 doesn't mean that a print was left behind. A little bit
9 of movement in the finger or the hand will smear it, and
10 when you have that, as you can tell, it was touched, but
11 it doesn't produce anything useful as far as the
12 identification goes.

13 And the gun is a very textured item in many, many
14 cases. It's designed that way so that you can hang on to
15 it better, and so when you have that texture, your odds
16 of finding any really decreases quickly.

17 Q. We're going to get back to the fingerprint aspect.

18 In regards to this case, were you working as
19 a crime scene tech on November 20th, 2015?

20 A. Yes, ma'am.

21 Q. And did you have the occasion to photograph a
22 handgun associated with this case?

23 A. Yes, ma'am. That's my only involvement.

24 Q. I'm going to be showing you or publishing, putting
25 on the ELMO, pictures of the gun that has previously

1 entered as State's 7, 6, and 8, as well as State's 12.
2 Let me approach with State's 12 first.

3 MS. GINSBURG: Your Honor, may I approach?

4 THE COURT: Go ahead.

5 BY MS. GINSBURG:

6 Q. I'm showing as what's been marked as State's
7 Exhibit 12 as well as 6, 7, and 8. Do you recognize
8 those?

9 A. I do.

10 Q. What do you recognize those as?

11 A. These are photographs I took on November 20th. It
12 began with a photo card, identifies the number as well as
13 my name, and the following photographs are different
14 sections of the gun.

15 Q. Thank you.

16 MS. GINSBURG: Your Honor, may I approach?

17 THE COURT: Go ahead.

18 MS. GINSBURG: May I publish State's 12, as
19 6, 7 and 8 have already been admitted?

20 THE COURT: 12 has not been admitted.

21 MS. GINSBURG: That's correct.

22 THE COURT: What is it?

23 MS. GINSBURG: It's the ID card that
24 Mr. Unterbrink prepared.

25 THE COURT: It's State's Exhibit -- let's

1 take a look at this.

2 MR. KELLY: I object, Your Honor.

3 THE COURT: I appreciate your position. I'll
4 overrule your objection. I'll allow it into evidence.

5 (State's Exhibit 12 was marked for
6 identification and admitted into evidence.)

7 Give it to him, let him tell us what it is.
8 You can put it up, whatever you want to do.

9 BY MS. GINSBURG:

10 Q. You just saw these; is that correct?

11 A. Yes, ma'am.

12 Q. I'm showing you State's Exhibit 12.

13 A. I call it a photo card. That has a case number as
14 you see in the upper top left corner, the date, the
15 incident, also the address, and then my name is there as
16 well as the approximate time.

17 Q. And just to not confuse the jury, this is the
18 location of where the gun was stored?

19 A. That's where I went for the gun at that point.

20 Q. So that's not where the incident location was?

21 A. No, it is not.

22 Q. And I'm showing now what has been marked State's
23 Exhibit 6. Is that the weapon you marked?

24 A. Yes, it is.

25 Q. And I'm going to show you State's 8. Is that a

1 photograph of the weapon?

2 A. It is.

3 Q. And let's go to State's 7. Is this what you're
4 talking about?

5 A. Yes, ma'am. It's a rougher surface, and it's
6 difficult to work with.

7 Q. So rough surfaces are difficult to find
8 fingerprints, right?

9 A. Yes, ma'am.

10 Q. What if something was wiped off?

11 A. If something was wiped off, the print would also
12 be gone.

13 Q. The print would be gone?

14 A. Yes.

15 MS. GINSBURG: Beg the Court's indulgence.

16 BY MS. GINSBURG:

17 Q. Crime Scene Unterbrink, I'm going to show you what
18 has been previously admitted as State's Exhibit 16 over
19 here.

20 MS. GINSBURG: Your Honor, may I approach?

21 THE COURT: Sure.

22 BY MS. GINSBURG:

23 Q. Are you familiar with these types of reports?

24 A. I do not work with them myself.

25 Q. Okay. But do you see -- I just want to point out

1 here, Mary Phillips, and L.R. Do you recall what that
2 means?

3 A. Yeah. Mary Phillips, I work with her. We work in
4 the same office, and she is our lab technician, and she
5 is the one that actually processes these items that we
6 submit for related fingerprints, and the L.R. simply
7 stands for latent recovery.

8 Q. Okay. And you just testified that difficult
9 surfaces, like a gun, of the handle of a gun, as well as
10 when someone wipes it off, the fingerprint is gone?

11 A. Yes, ma'am.

12 Q. And then here, that's your name, is it not?

13 A. That's correct.

14 Q. And this weapon was given to you on that date,
15 11/20/2015?

16 A. Yes, ma'am.

17 Q. And that was the same day that you took all of
18 these pictures; is that right?

19 A. That's correct.

20 MS. GINSBURG: Nothing further from this
21 witness, Your Honor.

22 THE COURT: Any questions you want to ask
23 him?

24 MR. KELLY: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. KELLY:

2 Q. Good evening.

3 A. Good evening.

4 Q. So was you or was you not at the scene of the
5 alleged incident that we are we here for now?

6 A. I was not.

7 Q. So those pictures you're referring to was from
8 another incident?

9 A. It was the same incident but different day.

10 Q. How could it be the same incident but a different
11 day? The incident we're here for happened on the 28th.

12 A. It is very common that when you respond to a scene
13 and you collect items, you then deposit it into the
14 evidence room on a different date, so that creates a
15 different time.

16 Q. That makes no sense, but -- so on the
17 fingerprints, I mean, if someone had that in their
18 possession, and they're toting it around, grabbing it,
19 however they are storing it on their person, why not
20 there be a fingerprint on it?

21 A. It's very common for a print not to be. Again,
22 the surface has a big influence on it, and then also, if
23 there's any kind of rubbing against that, it could be the
24 hand itself, just wiping across it, could wipe that print
25 away.

1 What is important in a fingerprint is ridge
2 detail, and that is what we use to help identify one
3 person from another. It could be the pores even, when
4 you get right down into the center of that print, and
5 it's very fragile. And all you got to do is wipe it, and
6 you're going to be destroying that print, and it will be
7 gone.

8 Q. Did you test for fingerprint when you got this?

9 A. I did not.

10 Q. Why didn't you?

11 A. Because that was not my job.

12 Q. So if you didn't test the gun, who did?

13 A. It was tested by Mary Phillips. She's our lab
14 technician.

15 Q. And did their report come back with any type of
16 fingerprints from me?

17 A. That, I do not know.

18 Q. Did anybody test for touch DNA?

19 A. That, I do not know.

20 Q. Doesn't that required on your standard testing,
21 right?

22 A. I don't know if it's required. I just know that I
23 did not do that. That was not the purpose of my job in
24 this particular case.

25 Q. So touch DNA is not part of a procedure of any

1 weapons that you guys get them fingerprints off, to find
2 the chance of that relating to a person that you are
3 saying it belongs to?

4 A. Different cases require different things, and what
5 happened in this case that, I do not know. I was not
6 involved in any of that.

7 Q. Okay. So you left it behind with someone else and
8 they touched it?

9 A. We didn't touch it with our bare hands.

10 Q. Their fingerprint did not come up on that?

11 A. That, I do not know.

12 Q. So your testimony here is for --

13 A. Is for the photographs that I took.

14 Q. And you took that eight days before the incident?

15 A. It was the 20th, I believe it was? That's when I
16 took the photograph.

17 Q. That's when you had it on that report right there.

18 A. Yes.

19 Q. When this so-called incident happened on the 28th,
20 why would it take so long to photograph it?

21 A. When an event takes place, certain things
22 are done then, and then as the case progresses, days and
23 weeks, and sometimes months and even years pass when
24 other activities take place in relation to that case.

25 Q. So during those times then from the 28th to the

1 28th and the 20th to the 29th, anybody could have touched
2 that weapon?

3 A. No, sir.

4 Q. Any type of DNA on it?

5 A. No, sir. It's well controlled. All evidence is
6 well controlled, so it's not that anybody could just
7 touch it. It would not be possible.

8 Q. So you're saying it occurred, and when you secured
9 it, no way possible that you got recovered DNA from me or
10 any type of fingerprint?

11 A. I'm not aware of any of that. My only task was to
12 take photographs. That's my whole involvement in this
13 particular case.

14 MR. KELLY: Okay. Thank you.

15 THE WITNESS: Certainly.

16 THE COURT: Thank you very much. You can
17 return to your place in the courtroom. Call your next
18 witness.

19 MR. OSBORNE: State calls Lisa Bloodworth.

20 LISA BLOODWORTH,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. OSBORNE:

25 Q. Ms. Bloodworth, we're going to go through this

1 kind of quick. Where do you work?

2 A. I work at the Sheriff Al Cannon detention center.

3 Q. And what do you do there?

4 A. Currently I work with the security fraud analysis
5 division.

6 Q. And what are some of your duties and
7 responsibilities with that division?

8 A. We deal with inmates a lot, with the subpoenas
9 that come into the jail, different tips that come into
10 the jail. If they need something that they're not able
11 to do, they usually come to us.

12 Q. Okay. Do you receive subpoenas from law
13 enforcement agencies?

14 A. Yes.

15 Q. Including prosecutors?

16 A. Yes.

17 Q. Did you receive a subpoena in this case?

18 A. Yes, I did.

19 Q. From someone in my office?

20 A. Yes, I did.

21 Q. And what were you requested to get?

22 A. I was requested booking photos and jail phone
23 calls.

24 Q. Okay. We've already seen the booking photos, so
25 we'll go right straight to the jail phone calls. So

1 let's explain to the jury, how do jail phone calls work?

2 A. Once they come in to be booked, they have to be
3 booked in fully, and once they're fully booked, then we
4 go over to our processing center.

5 Once they're in our processing center, they will
6 get their prints and photos taken, and once those are
7 done, they actually get a PIN number, and each inmate
8 gets their own PIN number that is just indigenous to just
9 them, and then they can use that to make phone calls, to
10 use the kiosk, so they do use it for a lot of different
11 things.

12 Q. So every inmate is given a PIN number?

13 A. Correct.

14 Q. So when we make a request, law enforcement makes a
15 request for calls made by a particular inmate, you are
16 actually pulling from the PIN number; is that correct, or
17 the inmate number?

18 A. The inmate number.

19 Q. So from the inmate number, but when the inmate
20 makes a phone call, they have to punch in their PIN?

21 A. That's correct.

22 Q. And that's how it's categorized in the server?

23 A. Yes.

24 Q. Okay. Now, in your position, when the subpoena is
25 made to get jail calls, you were actually or someone in

1 your unit is the one who retrieves those calls?

2 A. Yes.

3 Q. So how are the calls stored?

4 A. Juste on the main server we have in the jail.

5 Q. And so when a request is made, it's given from a
6 time frame, from an inmate number, and when you punch
7 that into you're your server and it generates the call?

8 A. Yeah, yeah. I actually have a program, so I get a
9 date range. I put in the date range, the inmate's
10 number, and then do my search and then see what comes up.

11 Q. Are the calls recorded at or near the time the
12 call is made?

13 A. One more time?

14 Q. Are the calls recorded at the time the calls are
15 made?

16 A. Yes, they are.

17 Q. And is that regularly conducted business activity
18 for the Al Cannon detention center?

19 A. Yes.

20 Q. Okay.

21 (State's Exhibits 13 and 14 were marked for
22 identification.)

23 MR. OSBORNE: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. OSBORNE:

1 Q. I'm showing you what's been marked as State's 13
2 and State's 14. Can you take a look at that and tell me
3 if you recognize it?

4 A. Yes, I do.

5 Q. All right. What is State's 13?

6 A. That is the actual audio CD of the calls that I
7 make per the request of the subpoena.

8 Q. Okay. And do know the inmate's name?

9 A. Yes.

10 Q. And what's his name?

11 A. Kyrief Kelly.

12 Q. So those are all the calls made by Kyrief Kelly
13 during the requested time?

14 A. During the requested time, yes.

15 Q. And what is State's 14?

16 A. These are actually just snippets, because the
17 calls are 15 minutes in length, so these are just smaller
18 snippets of calls.

19 Q. So State's 13 are all of the calls, but State's 14
20 is just a clip from 13; is that correct?

21 A. Correct.

22 Q. And you've listened to both?

23 A. Yes, I have.

24 Q. And you know these are what you say they are
25 because those are your initials?

1 A. Those are my initials, yes.

2 MR. OSBORNE: Your Honor, we would seek -- or
3 we'd offer State's 14 into evidence. We'll publish
4 through another witness; 13 was just for ID purposes.

5 THE COURT: Any objection to those?

6 MR. KELLY: No objection.

7 THE COURT: I'm sorry?

8 MR. KELLY: No.

9 THE COURT: All right. Without objection
10 then.

11 (State's Exhibit 14 was admitted into
12 evidence.)

13 MR. OSBORNE: No further questions.

14 THE COURT: Any questions you want to ask
15 her?

16 MR. KELLY: No.

17 THE COURT: Thank you very much. You can be
18 excused then. Call your next witness.

19 MS. GINSBURG: State calls Todd Mallek.

20 TODD MALLEK,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. GINSBURG:

25 Q. Where do you work?

1 A. I work for the City of Charleston Police
2 Department.

3 Q. And what is your current position at CPD?

4 A. I'm currently in patrol as a patrol officer.

5 Q. And can you explain to the jury what your beat is,
6 your section. Where do you patrol?

7 A. Currently, Team 3. I work James and Johns Island.

8 Q. And how long have you worked for CPD?

9 A. Six years.

10 Q. Can you explain -- actually, have you been a
11 patrol officer the whole six years?

12 A. I have, yes.

13 Q. And can you explain to the jury what some of your
14 duties and responsibilities are as a patrol officer.

15 A. As a patrol officer, it's primarily crime
16 prevention through proactive patrol; also answering calls
17 for service, whether it be for dispatch or a citizen
18 waving down, and, you know, property checks, business
19 checks; again, just primarily crime prevention.

20 Q. And, Officer Mallek, I just want to direct your
21 attention to the afternoon of August 28th, 2015. Were
22 you working that afternoon?

23 A. I was.

24 Q. And what was your assignment then, Team 3 or a
25 different team?

1 A. No. I was actually assigned to Team 1 patrol.
2 Team 1 is peninsula, downtown.

3 Q. And the areas you patrolled, that's all within
4 Charleston County; is that correct?

5 A. Correct.

6 Q. That afternoon, were you involved in a traffic
7 stop with the defendant, Kyrief Kelly?

8 A. I was.

9 Q. Can you briefly describe where you were and what
10 you witnessed.

11 A. The incident started as I was traveling east on
12 Line Street, approaching King Street. As I got behind
13 the vehicle, I noticed the license plate had an expired
14 decal registration sticker, so the standard vehicle
15 violation, we would initiate a traffic stop to address.
16 I did activate my blue lights to initiate a traffic stop.

17 Q. I don't mean to be rude. I will just briefly
18 interrupt you, if that's okay. You said you saw an
19 expired registration sticker.

20 A. Correct.

21 Q. So how close were you to the vehicle to see that?

22 A. Within half a car length or so.

23 Q. And just for the jury to know, expired
24 registration sticker, what is the typical protocol if
25 that's the only violation?

1 A. Typically, written warning or traffic citation.

2 Q. So written warning or traffic citation. I'm going
3 to be showing you on the ELMO what has previously been
4 marked as State's Exhibit 1 and entered as evidence. I
5 know you're just talking about the streets and whatnot,
6 so I want to get the jury familiarized with that.

7 Can you show us where you were patrolling on this
8 matter.

9 A. Yes. Okay. So I do see Line Street and where it
10 intersects with Meeting Street.

11 Q. Can you point on the machine where --

12 A. Sure. We were traveling east on Line Street, this
13 way (indicating).

14 Q. And then that yellow, is that Meeting Street?

15 A. That is Meeting Street, correct.

16 Q. Okay. And where did you notice this vehicle with
17 the expired registration?

18 A. Initially about where Line started. I mean, it
19 was in the area of King Street. You can just barely see
20 King off at the bottom of the map, but it was right in
21 the area of King and Line.

22 Q. And where did you begin to initiate that stop?

23 A. About right here, this X (indicate).

24 Q. And did that vehicle stop right there?

25 A. No. It continued to roll for some ways.

1 Q. Can you show the jury where it continued to roll.

2 A. If you follow the red line that I've drawn there,
3 that's eastbound on Line, so it did continue there, and
4 then I thought we were going to finally come to a stop
5 here in this parking lot. That's the Pizza Hut.

6 Oftentimes, people like -- for some odd reason like to
7 stop in parking spaces when they're pulled over, so I
8 thought maybe that's all that was.

9 Q. And did the driver of that vehicle stop at that
10 Pizza Hut?

11 A. No. That's actually when he accelerated across
12 Meeting Street, so -- follow a straight line, accelerated
13 out of the parking lot, cutting off traffic on Meeting
14 Street, which is very busy, and proceeded into Star
15 Gospel Ministries there, that parking lot.

16 Q. Okay.

17 MS. GINSBURG: Okay. Your Honor, may I
18 approach?

19 THE COURT: Go ahead.

20 BY MS. GINSBURG:

21 Q. I'm showing you, Officer Mallek, what's been
22 marked just for ID purposes only as State's 15. Do you
23 recognize this?

24 A. I do. It's essentially the same thing I have.

25 Q. It's just blown up?

1 A. It's just blown up a little more.

2 MS. GINSBURG: Your Honor, at this time, the
3 State seeks to admit State's 15 into evidence.

4 THE COURT: Any objection to that?

5 MR. KELLY: No, sir.

6 THE COURT: Without objection?

7 MR. KELLY: No objection.

8 THE COURT: Okay. Without objection. Go
9 ahead.

10 (State's Exhibit 15 marked for identification
11 and admitted into evidence.)

12 MS. GINSBURG: Thank you, Your Honor. I'll
13 publish this to the jury.

14 BY MS. GINSBURG:

15 Q. That's the Pizza Hut; is that right?

16 A. Correct.

17 Q. And over here, that's where the car, moved cutting
18 through traffic and then coming over here. And where is
19 this place? What is it called?

20 A. I believe it's called Star Gospel Ministries.

21 Q. And at that time you were still pursuing the
22 vehicle; is that right?

23 A. I was until the Star Gospel Ministry parking lot.

24 Q. And just to make it clear to the jury, when you
25 say you were going to initiate a traffic stop, what type

1 of equipment is usually on?

2 A. Blue lights, siren.

3 Q. And at this time of day, what time --

4 A. It was daytime, clear daylight.

5 Q. I'm showing you now what's been previously
6 admitted as State's Exhibit 2, and is this the parking
7 lot that we were just talking about?

8 A. Correct.

9 Q. Star Gospel Mission?

10 A. Correct.

11 Q. If you could pick it up from here, Officer Mallek,
12 you see this car coming into Star Gospel Mission, and
13 then what happens after that?

14 A. I believe I was instructed over the radio to
15 cancel pursuant per our city policy on pursuit; however,
16 I still have visual contact on the vehicle at that time.
17 The vehicle I was trying to pull over accelerated through
18 the parking lot to Columbus Street.

19 Q. And you can show the jury, if you'd like.

20 A. Okay. So it entered here, continued to accelerate
21 out to Columbus Street.

22 Q. And before we even move on to what happened when
23 the vehicle went onto Columbus Street, you said blue
24 lights are on. Does your car have other video
25 capabilities at that time?

1 A. At that time, I was not equipped with any in-car
2 video.

3 Q. When did your car get in-car video, if you recall?

4 A. Later that year, I was issued a vehicle that was
5 fully equipped with all that.

6 Q. So this is back in 2015?

7 A. Correct.

8 Q. So two years ago?

9 A. Right.

10 Q. Before again we go further, did you have any video
11 capabilities on your person?

12 A. No. I believe the department was in the testing
13 phase with body cameras at that time, but not all of the
14 officers were issued, just a very small number.

15 Q. So you didn't have a body-worn camera either?

16 A. Correct.

17 Q. Okay. So you just testified that the vehicle then
18 drives to Columbus Street. You were told basically to
19 end your pursuit, cancel your traffic stop, so what
20 happened on Columbus Street?

21 A. I was told it was canceled because wanted to avoid
22 any further danger to the public, but the vehicle did
23 stop on Columbus Street, just because it happened to pull
24 out between two police cars that were traveling on
25 Columbus Street at that exact moment.

1 Q. Can you show the jury where the police cars were,
2 where the vehicle was.

3 A. So there would be a police car here and another
4 police car here. (Indicating.)

5 Q. So essentially the driver of that vehicle and
6 whoever was in the vehicle was boxed in?

7 A. Correct.

8 Q. So once that vehicle stopped, what did you notice?

9 A. Immediately upon that vehicle coming to a stop, I
10 was at the entrance or the exit to that parking lot, so I
11 could see everything from -- clearly what was taking
12 place on Columbus Street. The vehicle stopped and the
13 passenger door opened, and the defendant was seen running
14 from the car, toward Nassau Street.

15 Q. Did you pursue the defendant, or what did you do?

16 A. I did not. I stayed back with another officer and
17 we cleared the vehicle. We could see the driver. At
18 least one person was still inside that vehicle. It was
19 kind of a tactical call. At that time, we didn't know if
20 there was more people inside the vehicle or not. We knew
21 only one person was running, so the situation was one
22 officer pursuing on foot, while two stayed back with the
23 unknown.

24 Q. Okay. Sergeant Thom was the individual that was
25 running after --

1 A. Correct.

2 Q. Was the defendant eventually apprehended?

3 A. He was.

4 Q. And do you recall where he was apprehended?

5 A. It was in a church parking lot on Nassau Street.
6 I don't have the exact address.

7 Q. Just a church parking lot on Nassau Street. You
8 saw the defendant running towards Nassau Street?

9 A. Yes.

10 Q. While the defendant was being escorted back to the
11 patrol car, what, if anything, occurred in regard to
12 dispatch?

13 A. As, you know, the defendant was being walked back
14 along Nassau Street to our patrol car, my patrol car,
15 dispatch notified myself and other officers on scene that
16 a citizen witness had observed a person who they said had
17 just been running from us throw a gun onto their
18 property.

19 Q. And that dispatch call, that happened rather
20 immediately, did it not?

21 A. It would say while the call was still in
22 progress. Essentially, we were still putting together
23 the pieces.

24 Q. So while you're still in pursuit, or Sergeant Thom
25 was in pursuit?

1 A. Right. About the same time, yes.

2 Q. And was that handgun actually recovered at that
3 place where the concerned citizen called?

4 A. It was.

5 Q. Did you attempt to speak to that concerned
6 citizen?

7 A. I don't recall being able to get in touch with
8 them, or speaking with them myself.

9 Q. So the defendant was taken back and placed in your
10 patrol car. Just briefly, what admissions, if anything,
11 did the defendant give to you regarding the weapon?

12 A. As he was seated in my patrol car and the weapon
13 was recovered, at that time it was determined he was
14 going to be charged with unlawful carrying of a handgun.
15 I was doing what we call a booking sheet, or an arrest
16 report, and it's biographical information, name, date of
17 birth, address, things like that, just clerical work.
18 The defendant became conversational in the car and was
19 making statements to me --

20 MR. KELLY: Objection. Hearsay.

21 THE COURT: I appreciate that, but tell us
22 exactly what Mr. Kelly said to you while he was in your
23 patrol car.

24 THE WITNESS: He stated, Whatever you found
25 between where I ran from that car to where you got me is

1 mine. I need to have a gun out here. I knew that was
2 stolen, were the most pertinent remarks he made.

3 BY MS. GINSBURG:

4 Q. And was the gun, in fact, stolen?

5 A. Standard checks that we do -- any time we come
6 across a handgun, whether they're legally carried or not,
7 we check NCIC, which is the database for stolen property,
8 and during that the standard check it was determined the
9 gun was listed as stolen with the city of Charleston.

10 Q. At that time when the defendant made these
11 statements, did you have the gun in your possession or
12 did Sergeant Thom have it in his possession?

13 A. I believe Sergeant Thom had it in his possession
14 since he was the one running checks in NCIC.

15 Q. And was Sergeant Thom close by when he explained
16 this?

17 A. Yes. He would have been inside my vehicle.

18 Q. I'm going to show you what's been marked
19 previously as State's 3 and 4. Is this the individual
20 that spoke with you?

21 A. Yes.

22 Q. State's 4, is this the individual that spoke to
23 you?

24 A. Yes.

25 Q. So you mentioned that this originally was -- you

1 were writing the booking report for an unlawful carrying.

2 A. Yes.

3 Q. Because you just found the handgun.

4 A. Yes.

5 Q. Then when you found out the gun was, in fact,
6 stolen, what was the added charge?

7 A. The additional charge is possession of a stolen
8 handgun.

9 Q. In regards to the driver, do you recall what
10 happened just to him?

11 A. I believe he was issued a written warning and
12 released from the scene.

13 Q. What else did you do in regards to this case?
14 After Mr. Kelly's admission, after securing the handgun,
15 what else did you do?

16 A. Mr. Kelly was transported to the jail where he
17 would be booked, and then any evidence associated with
18 the case would be submitted to our evidence room.

19 Q. And just to clarify, Nassau Street, this is within
20 the city and the county of Charleston?

21 A. Yes, it is.

22 MS. GINSBURG: Your Honor, we previously
23 admitted State's 14; however, I would like to play it
24 through this witness.

25 THE COURT: All right.

1 MS. GINSBURG: May we just approach?

2 THE COURT: Go ahead.

3 BY MS. GINSBURG:

4 Q. Officer Mallek, do you know what this exhibit is?

5 A. Yes, I do.

6 Q. And how do you know what it is? Is there any
7 identifying characteristics from you?

8 A. My initials are on there.

9 Q. And have you listened to whatever is on this disk?

10 A. I have.

11 MS. GINSBURG: Your Honor, at this time may I
12 publish this?

13 THE COURT: Go ahead.

14 BY MS. GINSBURG:

15 Q. Before we publish it, though, Officer Mallek,
16 you're familiar with the defendant's voice because he did
17 speak with you?

18 A. Yes, he did.

19 Q. And you listened to State's Exhibit 14, and you
20 heard the defendant's voice. Do they sound similar to
21 you?

22 A. Yes, correct.

23 (Whereupon, State's Exhibit 14 was played for
24 the jury.)

25 MS. GINSBURG: Nothing further for this

1 witness.

2 THE COURT: Any cross-examination?

3 MR. KELLY: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. KELLY:

6 Q. On the date in this incident, you said you
7 observed me running from you, and you also said you heard
8 somebody concerning --

9 THE COURT: I'm sorry. I can't understand
10 you. Speak up.

11 BY MR. KELLY:

12 Q. You said the concerning witness say I throw
13 something, or throw a gun. Could you say specifically
14 what that person said I threw?

15 A. I can't be specific. It was not 911. I was not
16 the call taker.

17 Q. You said the person was on the scene at the time.
18 Did you at least walk over to the real person and ask for
19 an official statement?

20 A. The other person was unable to be reached after
21 they placed their initial call.

22 Q. So you're just going off of what somebody say?

23 A. Well, what they said, and then we corroborated
24 once we found the gun.

25 Q. So if they said it, why wouldn't you have them

1 here to stand on what they said? You have everybody else
2 came in and stand on what they believed they went through
3 with that ordeal. How come that person couldn't be here?

4 A. I'm not sure.

5 Q. So that may have been some recollection that he or
6 she didn't know?

7 A. I'm not sure. I was just told to appear here
8 myself.

9 Q. Earlier, one of your partners said he was in no
10 way around you guys when they went to retrieve this
11 so-called weapon, or whatever evidence. You just stated
12 now that he was right next to you, outside your car. How
13 come nobody relayed to you -- or how come you guys didn't
14 talk about gathering the evidence the right way; like,
15 getting photographs at the time, recording everything
16 while you were going to recover anything at that time?

17 MS. GINSBURG: Objection, Your Honor.

18 THE COURT: I'll allow it. Go ahead, but ask
19 a question.

20 BY MR. KELLY:

21 Q. Why didn't you guys have your body camera on
22 recording everything that you guys say, to take into
23 account?

24 A. Like I stated earlier, very few people in the
25 department were equipped with body cameras at that time.

1 Q. I have your statement here again that you wrote
2 up, and it says due to the immediate nature of the
3 pursuit, my department-issued body camera was not
4 available to be activated. That means, I believe, that
5 it was on you, you just didn't activate it?

6 A. I don't believe I was issued a body camera until
7 2016.

8 Q. That's not what I have, but in the back of your
9 car, you guys were talking about -- what didn't you
10 document some type of proof or evidence that I told you
11 this stuff?

12 A. Again, I'm swearing under oath that is the
13 statement that's in my report.

14 Q. And you just remember this off top of your head?
15 You didn't write it down?

16 A. I did. It's in my incident report.

17 Q. Of course you wrote it in the incident report, but
18 at the time did you write it down?

19 A. I did. The incident report is filled out,
20 completed, before the end of the shift each day for every
21 incident.

22 Q. Did you do it at the time of the scene that you
23 wrote down what I specifically told you, that you said I
24 specifically told you? Did you write that down at the
25 exact time of me saying it?

1 A. No. I was doing a booking sheet when you said
2 that.

3 Q. So how could you say that you could hear me doing
4 something if you were in the act of putting down your
5 booking sheet?

6 A. We state facts on incident reports that we recall
7 from the incident.

8 Q. Okay. So, again, you say you walked up on the gun
9 and you saw the gun, and, like I said, you never thought
10 to take any type of -- some type of securing the evidence
11 in the right form?

12 A. Because it's a weapon laying in public, we do
13 secure it immediately, so it was retrieved and secured.

14 Q. Did you saw me throw anything?

15 A. I wasn't pursuing you on foot at that time.

16 Q. Okay. Was my prints or DNA recovered? Do you
17 recall anything?

18 A. No, I don't recall any prints or DNA being
19 recovered from the gun.

20 Q. From your experience of law enforcement, if
21 someone have any type of weapon or any type of object
22 that they would have on their person -- or a knife, for
23 that matter, if they have that in their possession,
24 carrying it around, do you believe they should have some
25 type of DNA or fingerprints on there?

1 A. DNA testing is very rare. We rarely do that in
2 unlawful carry or possession of a stolen property
3 offense, but I've recovered many guns in my career, and
4 very few I can think of, maybe one case, where
5 fingerprints were actually returned on a gun.

6 Q. In those cases that you put the fingerprints -- do
7 you put gloves on to retrieve that gun before you
8 retrieve the evidence, or did you fingerprint it at the
9 scene of the crime or anything?

10 A. If time permits and the situation is secure
11 enough, we do try to wear gloves when handling firearms
12 to try to preserve fingerprints.

13 Q. So was there enough time for you to do anything or
14 any of that nature? Was there time enough for you to do
15 the procedure that you just talked about?

16 A. I don't recall if I was able to search wearing
17 gloves or not.

18 Q. So you had time to put it in the police report and
19 the computer, but you didn't have time to properly secure
20 evidence, is what you're telling me?

21 A. It was properly secured, just no prints were
22 retrieved.

23 Q. You wasn't there to actually see that. How do you
24 know for a fact that it was properly secured?

25 A. I ultimately submitted it to the evidence room.

1 Q. You ultimately submitted it. So how if you
2 ultimately submitted it as evidence you have no firsthand
3 knowledge of it being a fact? How could you submit
4 something that's not fact?

5 A. At the time, that was very much fact.

6 Q. How?

7 A. I've seen how these incidents have played out. We
8 retrieve evidence from the incident.

9 Q. So you're basically basing your other experience
10 on me.

11 MS. GINSBURG: Objection. Asked and
12 answered.

13 THE COURT: Ask another question.

14 BY MR. KELLY:

15 Q. How can you prove that the proper procedures was
16 properly met in securing this evidence?

17 A. I can only speak from my own part, and I follow
18 department procedure in submitting the evidence.

19 Q. That's cool, but you said you submitted this,
20 though. You submitted this evidence for it to be
21 presented today, so how can you say it was submitted
22 properly if you didn't see anything or secured it
23 yourself?

24 MS. GINSBURG: Objection, Your Honor. Asked
25 and answered. Argumentative.

1 THE COURT: Ask another question.

2 Q. Pretty much, you had no firsthand knowledge of
3 this situation.

4 A. Other than, you know, observing yourself flee from
5 the vehicle, you know, and the 911 call coming in and
6 stating that you threw the gun.

7 Q. The 911 call, did you actually get a written
8 statement from that person?

9 A. No.

10 Q. Again, that's hearsay because you are going off
11 something someone else said --

12 MS. GINSBURG: Objection. Argumentative.

13 THE COURT: Ask another question.

14 BY MR. KELLY:

15 Q. Did this person in the 911 call describe me?

16 A. I'm not sure exactly. I think they described it
17 as the person you were just chasing, which was --

18 Q. Did they describe me?

19 A. I don't recall.

20 Q. So how could you know that person was referring,
21 whatever they said, to me?

22 A. That was the only foot pursuit that was occurring
23 on Nassau Street at that time.

24 Q. That still don't say that person can say --

25 MS. GINSBURG: Objection, Your Honor.

1 THE COURT: Ask another question. Ask a
2 question. You're making statements. Ask a question.

3 BY MR. KELLY:

4 Q. How could you prove that person was making a
5 statement against me person, the person who said that was
6 me, if you don't have a written statement from that
7 person?

8 A. We just have to work with the information that's
9 given to us.

10 Q. Did they say that I had on a white and blue shirt,
11 blue pants, white, whatever, socks, or whatever? Did
12 they say all that?

13 A. I think they just stated, The person that was
14 running from you guys.

15 Q. And that could have been anyone?

16 A. No. It was one person.

17 Q. How could he specifically be saying that was me?

18 A. Because I --

19 Q. Did the caller say that was me?

20 A. Yes.

21 Q. They said that was me?

22 A. Yes.

23 Q. They said it was Kyrief Kelly?

24 MS. GINSBURG: Objection, Your Honor.

25 Argumentative.

1 THE COURT: Ask another question.

2 BY MR. KELLY:

3 Q. They said -- the specific description, which you
4 guys reported, saying it was white and blue shirt and
5 pants, did that caller specifically say it was the white
6 and blue shirt and pants that ran by you?

7 A. I don't recall. Like I said, I didn't take the
8 911 call, so I don't know exactly what words were used.

9 Q. So how could you say --

10 THE COURT: He's not doing it. Just ask
11 another question.

12 BY MR. KELLY:

13 Q. Did the actual the person, the caller, said that
14 they saw me with the white and blue on throw anything?

15 A. They stated the person running from us did throw a
16 gun.

17 Q. My description.

18 A. Whoever was running from us, which was yourself,
19 yes.

20 Q. You keep trying to insinuate that. I mean --

21 MS. GINSBURG: Objection, Your Honor.

22 THE COURT: Just sit down.

23 BY MR. KELLY:

24 Q. I need you to be specific right now.

25 A. I can't.

1 Q. How can you be --

2 A. I didn't take the 911 call.

3 Q. How can that person say specifically --

4 THE COURT: That's not a question to ask.

5 That's not a proper question. Ask for a factual
6 question. You can argue all that you want to later on,
7 but that's not a question.

8 BY MR. KELLY:

9 Q. Did you call crime scene investigators at that
10 time, when you guys learned there may be a possible
11 weapon involved?

12 A. No. That's not standard.

13 Q. You didn't?

14 A. No.

15 Q. So how could you properly contain evidence if you
16 don't call the crime scene?

17 A. That's not their job to do.

18 Q. So you know how to take any kind of crime scene
19 and develop it and the process that it needs to be
20 processed?

21 A. No.

22 Q. You're not? So how could you say to me right now
23 the process of that evidence was properly stolen?

24 A. There's standard procedures in place for securing
25 weapons on scene.

1 MR. KELLY: He didn't see me throw anything.
2 I don't have any more questions for this witness.

3 MS. GINSBURG: Brief redirect, Judge.

4 REDIRECT EXAMINATION

5 BY MS. GINSBURG:

6 Q. Officer Mallek, Sergeant Thom was chasing one
7 person; isn't that correct?

8 A. Yes.

9 Q. And you said the concerned citizen was unable to
10 be reached; is that correct?

11 A. Correct.

12 Q. Sometimes in your experience as a law enforcement
13 officer, when people call anonymously, they don't really
14 want to be bothered; is that right?

15 A. That's common.

16 Q. As the case agent, do you recall that this weapon
17 was submitted to evidence, to Mary Phillips; is that
18 correct?

19 A. Yes.

20 Q. And that the gun was fingerprinted and there
21 weren't fingerprints on the weapon?

22 A. Correct.

23 Q. Do you really go through the trouble of getting
24 DNA when someone admits they have a weapon?

25 A. No.

1 MR. KELLY: Objection. That's hearsay again.

2 THE COURT: I'll allow that. Any other
3 questions?

4 BY MS. GINSBURG:

5 Q. Last question, Officer Mallek. When someone wipes
6 off a weapon, in your experience as an officer, does that
7 typically mean fingerprints are going to be on there or
8 they're gone? You wipe off --

9 A. Typically means they're gone.

10 MS. GINSBURG: No further questions.

11 THE COURT: Thank you. You can return to
12 your place in the courtroom or be excused.

13 Any other witnesses?

14 MS. GINSBURG: None from the State, Your
15 Honor. State rests.

16 THE COURT: All right. Members of the jury:
17 It's almost 1:00. It's time for us to take a lunch
18 break.

19 We normally start back around 2:00, but today
20 I have scheduled three sentencing hearings at 2:00. I
21 didn't know what the schedule was going to be as far as
22 this trial is concerned, so we're not going to be able to
23 come back until about 3:00. So you're getting a longer
24 break because I've already scheduled three sentencing
25 hearings that I have to take care of at 2:00 today, and I

1 will be back with you just as soon as I can, hopefully by
2 3:00 so we'll let you go to lunch.

3 Let me tell you, this goes throughout the
4 trial. I don't know how much longer we're going to be,
5 but you cannot discuss the case, even amongst yourselves,
6 until you've heard all the evidence, you've heard all the
7 arguments, and you've heard my instructions to you on the
8 law.

9 That's when you'll discuss the case, so over
10 your lunch break, don't talk about the testimony, what
11 this is or that is, or anything else as far as this case
12 is concerned. Talk about what you did last weekend, what
13 you're looking forward to over the Christmas holidays,
14 whatever, but do not discuss the case until it's been
15 submitted to you at the end of the case. That's when
16 you'll discuss it, together in the jury room, the 12 of
17 you. So keep that in mind throughout.

18 So you can step down now and go back to your
19 place, so leave your notepads with the bailiff and
20 they'll give them back to you after lunch. Be back at
21 3:00. Have a nice break. 3:00 in the jury room.

22 (In open court, jury not present.)

23 THE COURT: Mr. Kelly, have you been out on
24 bond?

25 MR. KELLY: I have.

1 THE COURT: Technically, your bond is
2 satisfied by you showing here, but on your promise to be
3 here at 3:00 when we resume the trial, I'll let you go to
4 lunch and do whatever you want to do as far as lunch is
5 concerned.

6 MR. KELLY: I've been honorable all this
7 time. I don't see any reason for me to be dishonorable.

8 THE COURT: I appreciate that, and that's
9 what I'm telling you. I'll let you go do what you want
10 to do, get a bite to eat, whatever you want to do between
11 now and 3 o'clock, but if you're not back at 3:00, the
12 trial will go on in your absence.

13 Do you understand that.

14 MR. KELLY: Yes.

15 THE COURT: So we're going to let the jury
16 clear the courthouse before anybody else goes out, so
17 we'll stay in here just for a few minutes so y'all won't
18 be riding the elevator down together and everything.

19 Anyway, in just a few minutes after the jury
20 has had an opportunity to clear the courthouse, somebody
21 let us know they're all gone out there, and then we can
22 go, but be back at 3:00, okay? All right. Appreciate
23 that.

24 (Recess taken.)

25 - - - - -

A F T E R N O O N S E S S I O N

- - - - -

(In open court, jury not present.)

THE COURT: Anything else from the State?

MS. GINSBURG: If we're going to roll right into closing, can we test our equipment real quick?

THE COURT: Let's go ahead and do this: The State is resting; is that correct?

MS. GINSBURG: Yes, Your Honor.

THE COURT: Now we switch to the other side.

Mr. Kelly, they finished putting up everything they want to put up. Now, you have the opportunity to testify if you want to, although you don't have to. The burden of proof remains on the State throughout, but you have the opportunity to now testify and tell this jury anything that you want to tell them about the facts of this case, about how this all went down, if you want to.

Do you understand that?

MR. KELLY: Yes, I do.

THE COURT: Do you want to testify?

MR. KELLY: Yeah, I can.

THE COURT: Well, it's up to you.

MR. KELLY: I can.

THE COURT: Okay. So that's what we're going

1 to do. Now, they're through, so you're going to testify
2 next under oath, tell them whatever you want to tell them
3 as far as what happened back on August 28, 2015, and this
4 is not your argument.

5 You still get to argue later on, do you
6 understand that? But this is just to talk about what
7 happened on August 28, 2015. Your argument can come
8 later, but this is just about what happened on that date.
9 Okay?

10 MR. KELLY: Your Honor, I would like to
11 request a directed verdict. I would like to request a
12 direct verdict. State hasn't proved I had a gun on my
13 person in any unlawful manner. They haven't proved I
14 knew I had a gun and it was stolen, never made a
15 statement of such and have any proof or way to prove
16 that.

17 THE COURT: I appreciate your position, but I
18 deny your motion. All right. Bring the jury in.

19 (In open court, jury present.)

20 THE COURT: Okay. We do have Mr. Kelly
21 present. We almost got it gauged right. We have been
22 working out here for the last hour, and now we're back to
23 this case.

24 So looking to the State, do you have anything
25 else to present as far as evidence on behalf of the

1 State, solicitor?

2 MS. GINSBURG: None, Your Honor. The State
3 is resting.

4 THE COURT: So the State is resting, and the
5 motions have been pled and I've denied that, and we'll go
6 forward.

7 Now, Mr. Kelly would you like to testify in
8 this case?

9 MR. KELLY: Yes, sir, I do.

10 THE COURT: Come on up.

11 KYRIEF KELLY BEY,
12 having been first duly sworn,
13 was examined and testified as follows:

14 MR. KELLY: Today I'm just going to tell you
15 guys, and I've been trying to tell my attorney over
16 there.

17 On that day, of course, I mean, I resisted,
18 and I was disobeying an order. If I'm guilty of
19 anything, it's that, making a dumb decision not to see
20 what this officer want to talk to me about and see how
21 the situation would unfold. As he said, it was just a
22 traffic stop.

23 I chose to elect to run with some drugs that
24 my brother had with me, and, yes, of course, that was a
25 dumb decision, but I chose to ran with those drugs, and

1 just like you heard in my so-called phone call with my
2 brother, when I was trying to relate to him what was
3 going on, I told him that I took those stuff, and I put
4 them up inside the trash can, and that's why I was asking
5 these officers, had they done any type of investigation
6 or any type of forensic work to see that they would find
7 some stuff inside of that trash can, and I would have
8 been in way more trouble than I am in right now.

9 All I'm in trouble for right now is somebody
10 saying that I did something, and nobody proved that I did
11 it, you know? That don't seem like a crime. Like I
12 said, if I'm guilty of anything, it's me disobeying an
13 order, not planning on stopping, and saying what was the
14 outcome of the situation, it was just a traffic stop, it
15 really was.

16 You know, 29 years old. At that time, you
17 know, it was January 5th I got stabbed, and I was in
18 critical condition. I'm not supposed to be here, and --
19 excuse me. So I got released out of the hospital with a
20 trach in my neck, [REDACTED], on my birthday, you
21 know? I was still in recovery during March and the rest
22 of those months following. There is no way possible I
23 could have the strength to do all these things these guys
24 claim I did, especially if they're saying that I ran and
25 throw something and it went directly under the trash can,

1 like it was placed under there.

2 When I told those guys, you know, I never
3 knew anything that was going on until they took me to the
4 jail, and when I was going to the jail, that's when they
5 told me, hey, you got a gun, and the thing was stolen, so
6 we're going to charge you with it, so that is what I was
7 relaying to my brother. But to say all of that just to
8 say -- like I say, if I'm guilty of anything, it is
9 disobeying an order.

10 THE COURT: All right. And they get to ask
11 you some questions about that, so any cross-examination,
12 solicitor?

13 MR. OSBORNE: Yes, Your Honor, but I'll be
14 brief.

15 CROSS-EXAMINATION

16 BY MR. OSBORNE:

17 Q. I'm sorry about your injury, Mr. Kelly. I hate to
18 hear that. I don't believe anybody deserves to get
19 stabbed, and you don't deserve to get stabbed either,
20 right, but I do have to talk about accountability, and
21 you did say you made some dumb mistakes, so let's talk
22 about those dumb mistakes.

23 You were in the car, correct.

24 A. Yes, I was.

25 Q. So when Officer Thom and Officer Mallek, Officer

1 Thom in particular, said he chased you from the car, that
2 was a correct statement?

3 A. I never deferred to none of that.

4 Q. I understand, but I'm simply asking is that a
5 correct statement? Yes or no.

6 A. That part of the statement, yes.

7 Q. So he was telling the truth then. And Officer
8 Mallek, when he says that he got out of the car and he
9 stayed with the driver, that was true?

10 A. I believe so.

11 Q. And Officer Thom, when he said that he got out of
12 the car, Sergeant Thom, and then he chased you, that was
13 true?

14 A. Yes, he did.

15 Q. So while injured, you weren't injured enough to
16 run from the police?

17 A. Like I said, I made a dumb decision about not
18 obeying his order by stopping, and that's all I did.

19 Q. And you heard him tell you to stop?

20 A. Yes, and I made a dumb choice --

21 Q. And you kept on running, didn't you?

22 A. Yes, I sure did.

23 Q. And you ran a couple blocks?

24 A. I did.

25 Q. And during that time, you tried to evade him?

1 A. Like I said, I made a dumb mistake.

2 Q. And during that time, you threw a gun over the
3 fence, didn't you?

4 A. Now you're putting words in my mouth. I never
5 said I threw anything over the fence.

6 Q. I know you're not admitting that. I'm asking you,
7 is that what you did?

8 A. No, that's not what I did. I told you what I did.

9 Q. You did throw an item over the fence?

10 A. I did not throw anything over the fence. I told
11 you what I did.

12 Q. But you told your brother on the jail call you
13 threw it over the fence --

14 A. I put it inside the trash can.

15 Q. Let me finish my question, and I'll give you a
16 chance to answer.

17 On the jail call, you did tell your brother
18 you threw an item over the fence, didn't you?

19 A. I told my brother that I threw it inside the trash
20 can.

21 Q. Maybe I misheard you.

22 (Whereupon, State's Exhibit 14 was played for
23 the jury.)

24 THE WITNESS: My exact words was, Put it in
25 the trash can.

1 BY MR. OSBORNE:

2 Q. I'm not finished.

3 A. I said I act like I threw my cellphone. I told
4 him I put whatever he gave me inside the trash can, and
5 they did the investigation and did the crime scene,
6 investigating their search; like, how they're supposed to
7 secure the crime scene, he would have found what I throw
8 in the trash can.

9 Q. Just out of curiosity, where they found the gun,
10 is that the same trash can?

11 A. I don't know where the daggone whatever that was.
12 I know what I threw in the trash can they never find. I
13 put it inside the trash can, and they never find it, so I
14 don't know where this gun came from.

15 That's why I keep telling you I don't know what
16 that is, and that's why I know for a fact my prints
17 wasn't on it. That's why I know for a fact --

18 Q. I just want to make sure I understand this
19 correctly: While you were running from the police, while
20 you were disobeying their lawful order telling you to
21 stop, you take time to wipe down the drugs, lift up the
22 trash can, then put it in the trash can?

23 A. Inside the trash can, yes, I did.

24 Q. So you didn't throw anything.

25 A. I put it in the trash can. I never said I threw

1 anything. I told my brother I threw it in the trash can.
2 I act like I had my cellphone in my hand and acted like I
3 threw something with my cellphone so I could throw them
4 off.

5 Q. And at the time when you were in jail, you knew
6 you had been charged with possession of a stolen gun and
7 possession of a pistol?

8 A. Yeah.

9 Q. And you told your brother that you weren't worried
10 about it because you wiped it down?

11 A. I told my brother I wasn't worried about the stuff
12 I put inside the trash can, had you guys thinking that
13 you guys had searched and secured the trash can, or
14 secured the crime scene and did an investigation like you
15 said. That's why I was asking those specific questions.

16 Excuse me for running out of breath. I got
17 stabbed, so that tends to do that, so that's what I was
18 saying. That's why I was asking those questions, did
19 they search anything or did they just listen to somebody
20 telling them something and waiting to find something?

21 BY MR. OSBORNE:

22 Q. Yeah, I throw something in the yard. Shit.
23 Everything will be all right, though. I mean, I wipe the
24 shit before I got down there.

25 A. I told you I put it in the trash can.

1 Q. But you didn't say that, though, right?

2 A. I never daggone said I didn't. I said I put it in
3 the trash can.

4 Q. No, I'm saying that you said that to your brother?

5 A. I'm saying that I said that I put it in the trash
6 can. That's what I said.

7 Q. All right. So Officer Mallek was truthful to the
8 point where you got out of the car and you ran. Sergeant
9 Thom was truthful when he said he chased you and he told
10 you to stop. That was all truthful.

11 A. I never denied none of that.

12 Q. The 911 caller said they saw you throw an item
13 down?

14 A. Or something, and then he also said he didn't know
15 what he saw.

16 Q. And Officer Mallek testified that while in the
17 car, you said you knew the gun was stolen. So is it fair
18 to say that everything Officer Mallek testified to was
19 true up until that, and that's when he lied?

20 A. Of course, because why would I even say something
21 like that when I didn't even much know a weapon was in
22 their yard? I'm protected in my head, thinking it was
23 drugs. That's why I told him if they find any drugs. I
24 told him that specifically, but he changed my words, it
25 seems like, and you guys are going with that.

1 Q. He lied on you?

2 A. He had a recording of it.

3 Q. He didn't have a recording of it, he heard you say
4 it.

5 A. So it's his word against mine, so you're going to
6 take his word against mine. I never did nothing wrong to
7 you. How come his word is more credible than mines?

8 Q. We'll just listen to what you said on the
9 recording to your brother.

10 A. I told you what I said. What I said on the
11 recording was I put whatever he gave me inside the trash
12 can, and I wiped it off, so I'm not worried about what
13 anybody find inside the trash can.

14 Q. Wiped it off while the police were chasing you.

15 A. Like I say, if they were chasing me so fast and
16 they were behind me, how come they never saw none of this
17 and how come this so-called witness never saw none of
18 this? The witness not even here. Nobody thought to get
19 a written statement from this person. He verbally said
20 his name. They could have done an investigation as a
21 police officer and took the name --

22 THE COURT: You can make your argument later
23 on. Ask another question.

24 MR. OSBORNE: No further questions, Your
25 Honor.

1 THE COURT: Thank you very much. You can
2 return to your place in the courtroom.

3 Any other witnesses or evidence you wish to
4 present, Mr. Kelly?

5 MR. KELLY: No, sir.

6 THE COURT: Nothing?

7 MR. KELLY: No, sir.

8 THE COURT: All right. Thank you.

9 MR. OSBORNE: We do have one reply witness.

10 RAYMOND HAUPT,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Just a couple brief questions to address what
16 Mr. Kelly just talked about in regards to lack of
17 witnesses.

18 First, just tell the jury where you work.

19 A. Ninth Circuit solicitor's office.

20 Q. How long have you worked there?

21 A. Three years.

22 Q. Explain to the jury what some of your duties and
23 responsibilities are.

24 A. Whenever an agent makes an arrest and they're done
25 with their file, they send it to us. Once we get it, I

1 go through all the reports, look for any other items of
2 evidence that we might need, such as jail calls, video
3 visitations; I could issue subpoenas, search warrants to
4 try and locate witnesses who were identified by police or
5 other witnesses.

6 Q. All right. Did you have the occasion to locate
7 witnesses in this case?

8 A. Yes, sir.

9 Q. Explain to the jury what you tried to do.

10 A. I tried to track down Jamal Mcrae.

11 Q. Okay. Did you have any luck in that regards?

12 A. I didn't.

13 Q. Did you have a potential address or phone number
14 for him?

15 A. I did. I had several phone numbers, several
16 addresses. One time when I called the phone, it actually
17 -- it rang, but it was not accepting voice mails. Called
18 all the old numbers --

19 MR. KELLY: Objection, Your Honor. What does
20 this pertain to the case?

21 THE COURT: I appreciate it. I'm going to
22 allow him to testify to that. Go ahead.

23 THE WITNESS: I had three different addresses
24 for him. Went by all those, and that was the contact.

25 BY MR. OSBORNE:

1 Q. And he is the reporting victim in this case?

2 A. Yes.

3 Q. And he had his gun stolen?

4 A. Correct.

5 Q. Is it common that people don't want to come here
6 and testify, in your experience as an investigator?

7 A. It's very common.

8 Q. Okay. And, I mean, we as a state, we do have
9 resources. We could do things. We could put warrants
10 out on people, right?

11 A. Correct.

12 Q. Do we like to do that?

13 A. No.

14 Q. Is it fair to say we might do that more frequently
15 on more serious charges?

16 A. Absolutely.

17 Q. Okay.

18 MR. OSBORNE: No further questions.

19 THE COURT: Any questions you want to ask him
20 about his effort to locate Mr. Mcrae?

21 MR. KELLY: I mean -- there is no need to
22 question him. He has no immediate firsthand knowledge.

23 THE COURT: I'm just asking you to give you
24 an opportunity to cross-examine him for his efforts to
25 locate Mr. Mcrae.

1 Thank you very much. You can return to your
2 place in the courtroom. All right. We'll proceed now to
3 arguments then.

4 The way we go about that is, first of all,
5 the State will argue to you both on the facts and on the
6 law. Then the defendant will have the opportunity to
7 argue fully to you on the facts and the law, and then the
8 rules do allow the State to make a brief reply; that is,
9 reply to matters raised by the defense if it so desires,
10 so that's the way we go about hearing people as they
11 argue to you.

12 Solicitor?

13 MS. GINSBURG: Thank you, Your Honor.

14 MR. KELLY: Your Honor, I would like to renew
15 direct verdict motion.

16 THE COURT: Thank you. I appreciate that.
17 I'll deny your motion.

18 MS. GINSBURG: Accountability, taking
19 accountability for your actions, that's what this case is
20 about, and, interestingly enough, the defendant did it.
21 He admitted it, twice. He admitted it to Officer Mallek
22 that he had that gun that was stolen, that he needed it
23 for protection. And then you'll hear that jail call,
24 with his own voice, said he had that gun, that he threw
25 it over the fence, but not before he wiped it off clean.

1 You've listened attentively throughout this
2 whole trial, and it's much appreciated, so I don't want
3 to go into everything, I just want to highlight some of
4 the major points.

5 You heard that this was a traffic stop that
6 began all the way at the bottom of Line Street. Simple
7 vehicle infraction, a simple ticket. You heard what the
8 driver got, but it wasn't until the car was boxed in on
9 Columbus Street that the passenger, the defendant in this
10 case, Kyrief Kelly, jumps out of the car and sprints
11 toward Nassau Street.

12 You heard that this happened so quickly. You
13 have all those CAD reports that you can take with you to
14 the jury room, but here are the main points: That foot
15 pursuit was called in at 12:25, and as officers began to
16 chase, Robert, that concerned citizen, called, minutes
17 later, explaining that the very same man the police are
18 chasing, he's one individual that they're chasing in that
19 area, just threw a gun over [REDACTED] Nassau Street, a gun.

20 MR. KELLY: Objection.

21 THE COURT: What's your objection?

22 MR. KELLY: That's not the actual statement.

23 THE COURT: Well, I appreciate that, but I'm
24 going to allow her to use that. Go ahead.

25 MS. GINSBURG: Thank you, Your Honor.

1 You heard the description given over
2 dispatch, and you'll also have that with you in the jury
3 room. Columbus toward Nassau, black male, blue and white
4 shirt, white and blue shorts with white shoes and long
5 dreads. You saw the booking photos on the date of Kyrief
6 Kelly's arrest. What was he wearing? A blue and white
7 shirt. Black male, long dreads.

8 This was the only person they were chasing,
9 and you heard that that gun was found, over the fence,
10 near a trash can. Remember those words, but before we
11 really go into applying the facts and law to this case,
12 just briefly, again, the law. In regards to the first
13 charge of unlawfully carrying of a pistol, he admitted
14 it, twice. He grabbed that weapon in the vehicle, placed
15 it on his person, took his time to wipe it off on Nassau
16 Street, and then threw it over the fence.

17 Carrying it about his person: This weapon
18 was readily accessible to him. He could have used it
19 immediately. He could have used it as Sergeant Thom was
20 pursuing him, and he could have returned to it later. He
21 knew where he threw it. He knew it was over the fence,
22 at ■ Nassau Street, but his efforts failed, wiping off
23 the gun, throwing it over the fence, knowing where it was
24 because, unfortunately, that pesky 911 call.

25 The defendant's next charge is possession of

1 a stolen handgun. Did the defendant knowingly possess a
2 stolen handgun? First, you heard it. He admitted it to
3 Officer Mallek. He said he had that weapon, and he knew
4 it was stolen, that he used it for protection. You heard
5 that NCIC check with Sergeant Thom, that the gun that was
6 found at [REDACTED] Nassau Street, with that serial number, was
7 reported stolen, and you have that counter report, where
8 Jamal Mcrae reports that his weapon was taken from him on
9 June 23rd, 2015, and then you heard from Brian Hinton
10 that he returned it to the rightful owner, Jamal Mcrae,
11 not Kyrief Kelly.

12 But you don't have to rely on any of these
13 things to find the defendant guilty because actions speak
14 louder than words, and you have both of those things in
15 this case. So think first of the traffic stop and the
16 pursuit: A simple vehicle infraction, a simple ticket,
17 but not when you have something in your car that's not
18 yours.

19 You heard from Officer Mallek and Sergeant
20 Thom that even when they search and they find a weapon
21 that's in its lawful place, let's say in a glove box,
22 that they still do an NCIC check to make sure that the
23 weapon isn't stolen. Kyrief Kelly didn't take that
24 chance because he knew it was stolen, so he fled. In
25 that moment when Sergeant Thom was catching his bearings,

1 radioing to dispatch the defendant's description, his
2 location, the defendant rounded that corner, he wiped
3 that gun and thought it was all good. It was all good;
4 he wiped it: I threw it over a fence. No one saw me.

5 That's not true, and he knew that, and that's
6 why he said that in his jail call. You heard him on that
7 jail call, and you can go back in the jury room and
8 listen to it again and again and again, and hear his
9 voice and hear how he described things. You'll hear him
10 say that he put it near the trash can, that that white
11 lady pointed it out -- he used different words -- that
12 that white lady pointed it out, that he pretended to
13 throw a cellphone to get them off of him, but that
14 lady -- and not just that lady. We know also that the
15 caller Robert sees him throw a weapon, the only person
16 that's being chased by the police. The defendant, on his
17 own jail call, further corroborating Robert, the 911
18 caller, threw it over the fence, ■ Nassau Street, but
19 it's all good, though, because he wiped it clean.

20 There's no fingerprints on this weapon
21 because he didn't want there to be. Why would you wipe
22 your own fingerprints off of your own gun? It wasn't
23 his. It was Jamal Mcrae's, and he knew it didn't belong
24 to him.

25 In order to find the defendant guilty, you

1 must find him guilty beyond a reasonable doubt, and
2 that's not an impossible burden. It doesn't mean beyond
3 all doubt or any doubt, it just simply means that you're
4 firmly convinced that after hearing all the evidence,
5 listening to all the testimony that you're firmly
6 convinced of the defendant's guilt. You don't have to
7 believe any witness that came up and testified in this
8 trial to find the defendant guilty because he said it.
9 He said it in his own words with his own voice on that
10 jail call.

11 Ladies and gentlemen: The law does not see
12 people as good or bad, and we aren't here today to make
13 that determination, to make that judgment call. That's
14 not why this case was brought before you, and it's
15 definitely not our position that Kyrief Kelly is a bad
16 person, but, nonetheless, he made what he calls a dumb
17 mistake, and his dumb mistake is he did run from police
18 officers. According to him, it was just for drugs.

19 We also know that he had a gun. Robert saw
20 the gun. The white lady saw the gun. He knows the white
21 lady saw the gun because he says it in his own jail call.
22 He says that he threw it over the fence, and Robert hears
23 that too. Robert sees it. It's not in the trash can.
24 The defendant admits he threw something over the fence.
25 911 caller sees him throw something over the fence. He

1 made several dumb decisions, decisions that he must be
2 held accountable for.

3 This case was brought before you because no
4 one is above the law, and no one should be. Our laws are
5 in place to protect us citizens, especially gun laws.
6 They must be properly carried, registered, owned; they
7 shouldn't be in the hands of those who aren't equipped to
8 handle it.

9 They shouldn't be thrown over fences in
10 residential neighborhoods, and that's why we're here
11 today, because the defendant threw a stolen, fully-loaded
12 semi-automatic pistol in a residential neighborhood in
13 broad daylight. So listen to these words, how he says
14 it.

15 (Whereupon, audio played for the jury.)

16 He think he throws something in that yard.
17 Remember that: I think he throws something in that yard.
18 So now this case gets passed to you, and I ask that you
19 uphold your oath as jurors, and when you do, I'm firmly
20 convinced that you'll find him guilty on both counts.

21 Thank you.

22 THE COURT: All right. Mr. Kelly, you can
23 argue fully on the facts and the law. You got to keep
24 your voice up so me and the court reporter can hear you.

25 MR. KELLY: As you just heard, I never once

1 said I had a gun. As you all just heard, I said I put
2 whatever I had inside the trash can. As we all just
3 heard, I just said, yes, I made a dumb mistake by running
4 from the law, disobeying an order. That's the only thing
5 I'm here for. I can say that I did something wrong.
6 Other than that, I did nothing wrong.

7 At the beginning of this case, I asked you
8 guys to use the most powerful rule of law, and that is
9 common sense, a/k/a common law. The State never prove
10 anything that says that I, myself, had a gun or that I,
11 myself, threw anything. They never once proved that.
12 Not only did they not prove that, they never once proved
13 that my fingerprints was on any of those so-called
14 weapon.

15 Like I say, if I'm guilty of anything, it's
16 disobeying orders. That's all I'm here to prove, and
17 that's all I'm here to fight for, my freedom, and I ask
18 that you guys use the most powerful thing here, which is
19 common sense, see that the State hasn't even proved it
20 once, beyond a reasonable doubt, that they found a gun in
21 my possession or that I threw a gun or that I confessed
22 that I threw something. All they have is an officer
23 whose word they were using, saying that I said something.

24 He could remember a statement, but he cannot
25 remember his procedure to secure an area that he was

1 given a tip of to find evidence that related me to
2 prosecute me. He never once did his job. He was
3 thinking that he had someone and he found something.
4 Hey, let's give him that, and that's all that was, is a
5 man using those words for what he said he thought he
6 heard. Never was a recording of this, and, like I said,
7 only recording they have is me saying that I put whatever
8 I had inside the trash can.

9 I never said I threw anything. I said I
10 pretended I threw something to throw them off with my
11 cellphone. That's only thing I pretended to do, was my
12 cellphone. Other than that, I said I put whatever I had
13 inside the trash can, never knew about whatever was going
14 on until they took me to the jail, and that's where I
15 remained whenever they told me they found a gun and they
16 were charging me for a gun and it was stolen.

17 At that moment, like I said, I was resting.
18 I'm good. I don't have to worry anymore. That's why I
19 choose to elect to represent myself, and I felt that I
20 didn't need someone to come up here and tell you a story
21 about the events that never was there. You know, I felt
22 that I was the only one that could tell you guys because
23 this is my life, and I would rather lose in the battle
24 with my own blood and sweat and tears into this than
25 somebody trying to tell a story of it. That's the same

1 thing as me telling someone who is supposed to be my
2 lawyer a story of what happened and he come back and tell
3 you what he thought that I said and what happened, and
4 that's all they did, had somebody come in here and say
5 they thought I said something, which they have no proof
6 of me saying, and that's it.

7 I mean, all I ask is that you use the most
8 common law, and that most common law is your common
9 sense, and find me not guilty.

10 THE COURT: Any brief reply?

11 MR. OSBORNE: Briefly, Your Honor.

12 Very admirable for an individual to come up
13 here and confess to crimes they're not being charged
14 with. Don't be fooled by that. So listen to the way --

15 MR. KELLY: Judge, same lawyer has to make
16 closing arguments.

17 THE COURT: He gets to make a brief reply of
18 what you just argued, if he wants to. That's the way the
19 rules go.

20 Go ahead.

21 MR. KELLY: It has to be the same attorney,
22 right?

23 THE COURT: I'm sorry?

24 MR. KELLY: It has to be the same attorney,
25 right?

1 THE COURT: It doesn't have to be. Do you
2 want it to be?

3 MR. KELLY: Yes, sir.

4 MR. OSBORNE: The rules do not require --

5 THE COURT: I'm going to have her reply.

6 MR. OSBORNE: All right. Then give us a
7 second, Your Honor.

8 MS. GINSBURG: Briefly, Your Honor.

9 The important thing is what wasn't said.
10 That's what you got to think about. When he was
11 arrested, the defendant knew it was for possession of a
12 gun. He knew that, and when he made that jail call to
13 his brother, he knew it was a gun. There was nothing
14 mentioned about drugs. That's just coming up now. Maybe
15 he did have drugs, but he knew he was charged with
16 possession of a gun. If he knew there were drugs that
17 could have found, drugs, then that's what he would have
18 said on his jail call: Man, don't worry. They ain't
19 going to find the drugs because I wiped that off. No, it
20 was a gun. They're not going to find fingerprints on the
21 gun because I wiped it off. It's not what he said, it's
22 what he didn't say.

23 THE COURT: All right. Thank you very much.
24 I will pour myself a little water. Anybody want to stand
25 up, need to stand up or anything? If you do, go ahead

1 and do that now.

2 I don't believe I covered the matter of the
3 presiding officer, as I like to call it now. We used to
4 call it foreman, or forelady. I like to call them the
5 presiding officer now. I normally cover that with you
6 before we start a trial, but we do like to have someone
7 act as what we used to call the foreman or the forelady.
8 I like to call it the presiding officer now.

9 I'm going to let y'all decide that; you know,
10 somebody to preside over your deliberations while you're
11 back there in the jury room. So when the 12 of you get
12 back there, the first thing you need to do is to decide
13 who's going to be the presiding officer, basically.

14 The person who's asked to get the discussion
15 going, keep it on track, and to sign the verdict form,
16 report to us when you've reached a verdict, so the 12 of
17 y'all decide on somebody to be your presiding officer, to
18 be the person to preside over the deliberations, and, as
19 I said, to sign the verdict, letting us know what you've
20 decided as far as this case is concerned. I'll leave
21 that up to y'all. Sometimes I appoint the presiding
22 officer, but I'm going to let y'all decide who you want
23 to preside over your deliberations.

24 You've heard and seen the evidence presented
25 to you in this case. It's now my duty and responsibility

1 to discuss with you what your duty and responsibilities
2 are and the law that you may apply in the case, and then
3 you go to the jury room, you'll deliberate, and you'll
4 answer that question that I told you about at the start
5 of this case: Has the State met the burden of proof in
6 regard to proving Mr. Kelly guilty of one or both of
7 these charges?

8 In doing that, it's going to be necessary for
9 you to evaluate the credibility or the believability of
10 the witnesses who have testified. You have to decide
11 what you believe in regard to the testimony and the
12 evidence in this case. I would suggest you go about
13 doing that in much the same way you decide that issue in
14 your everyday life. You have to decide every day whether
15 you believe what someone tells us. It's so much a part
16 of everyday life that we oftentimes don't think about any
17 mental process that we may go through in deciding whether
18 to believe someone, but you do it every day, whether at
19 home, on the job, on the street, wherever.

20 When a person comes up to you and says
21 something like such and such just happened or such and
22 such is about to happen or you should do this because or
23 you should do that because, when a person makes that type
24 of statement to you, you have to decide, do I believe
25 what that person tells me? How much trust, how much

1 faith do I put in what that person tells me?

2 As I said, I suggest that you go about
3 deciding who and what to believe in regards to the
4 testimony and evidence in this case in much the same way
5 you decide any issue in your everyday life. Some of the
6 things that you may want to consider are such things as
7 what was the manner or appearance of the witness who
8 testified? Was he or she straightforward or hesitant in
9 manner? Was the testimony of a witness consistent or
10 inconsistent? How did the witness come to know the facts
11 that he or she testified to, and what was his or her
12 ability to know these facts? Is there some reason a
13 witness who want to give testimony which would help or
14 hurt one side or the other? In other words, was a
15 witness biassed or prejudiced in some way?

16 As I said, I would suggest you go about
17 deciding who and what to believe in regards to the
18 testimony and evidence that has been presented to you in
19 much the same way you decide that issue in your everyday
20 life. Now, the charges that are made in this case, as I
21 told you, they're relatively simple, and I'll define
22 that. I'll read exactly what the statute says about that
23 later on, but, of course, to these charges of possession
24 of a stolen handgun and unlawful carrying a pistol about
25 his person, Mr. Kelly has said, I'm not guilty, and, as I

1 told you earlier, that places the burden of proving him
2 guilty on the State.

3 A person who's charged with a crime is never
4 required to prove himself innocent. The burden of proof
5 is always on the State to convince you of his guilt
6 beyond a reasonable doubt. What do those words mean,
7 when we say that the State must prove someone guilty
8 beyond a reasonable doubt? It is not an imaginary or
9 fanciful doubt or a weak doubt.

10 The term reasonable doubt may be best
11 understood by giving its plain and ordinary meaning: A
12 reasonable doubt is the kind of doubt that would cause a
13 reasonable person to hesitate to act. If, after
14 considering all the evidence, you hesitate to convict Mr.
15 Kelly on the basis of the evidence the State presented,
16 then he's entitled to a verdict of not guilty.

17 Reasonable doubt may arise from evidence
18 which has been presented in the case or from the absence
19 or lack of evidence in the case. You alone must make the
20 determination of whether the State has proven Mr. Kelly
21 guilty of one or both of these charges beyond a
22 reasonable doubt.

23 Now, as I said, the constitution and code of
24 laws make you the finders of fact in this case. It also
25 makes me the instructor of the law. That means you must

1 accept the law as I explain it to be, the correct law,
2 and you should not be concerned with what you think the
3 law should be, but only what the law is.

4 The code of laws of this state, the General
5 Assembly has adopted as part of the laws of this state
6 two particular provisions of the code of laws in this
7 book that I have here in my hand. One of those is
8 Section 16-23-20 of South Carolina Code of Laws. That's
9 just a number that's assigned to it, and what that
10 section of law says is titled unlawful carrying of a
11 handgun. Exceptions, and then it says this: It is
12 unlawful for anyone to carry about their person any
13 handgun, whether concealed or not. That's what the law
14 is. That's the way this crime is defined. That has all
15 the elements right there in it.

16 After that, it goes on, and it lists
17 exceptions, and it tells you different things as far as
18 how you cannot be found guilty of those, of violating
19 this section, but none of those apply. There's no facts
20 involved in this case that would raise any of those
21 exceptions, so that's all the law is in regard to this
22 case is that: It is unlawful for any person to carry
23 about their person any handgun, whether concealed or not.
24 That's what the State must prove, that he carried a
25 handgun about his person on that occasion and must prove

1 those facts, as I said, beyond a reasonable doubt as I
2 have defined that for you. That's the charge that the
3 State makes against him. That's what it must prove
4 beyond a reasonable doubt.

5 Also, another section of the law immediately
6 following what I just read you, Section 16-23-30, says
7 this: A person shall not knowingly possess any stolen
8 handgun. That's what the charge is, the State is
9 charging him with doing, that he actually had this pistol
10 in his possession and that he knew it was stolen when he
11 possessed it. That's the charge that the State makes
12 against him in the second indictment. That's what it
13 must prove to your satisfaction beyond a reasonable
14 doubt, that he had the gun in his possession and that he
15 knew it was stolen. That's what the crime is defined as,
16 and that's what the State must prove beyond a reasonable
17 doubt.

18 Your verdict must be unanimous, or 12 of you
19 must agree on what the verdict is before you can come
20 back and tell us that you've reached a verdict. We don't
21 have any majority verdicts in South Carolina.

22 All 12 of you must agree. You were chosen as
23 fair and impartial jurors, both by the State and by the
24 defendant. You took an oath that you would decide this
25 case based on your full and fair evaluation of the

1 testimony and the evidence and my instructions to you on
2 the law. When you do that, no one will have the right to
3 criticize your verdict, regardless of what that verdict
4 may be. You have no friends to reward or enemies to
5 punish. Your job is to do what you said you would do at
6 the start of this case; as I said, decide this case based
7 on how you find the evidence and my instructions to you
8 on the law.

9 You'll have with you in the jury room the
10 physical evidence that's been introduced. One thing I
11 want to correct in regard to something that the solicitor
12 said in regard to her closing argument to you. You will
13 not have the physical -- the recordings that we
14 introduced into evidence. If you want to hear those,
15 we'll bring you back out into the jury room -- excuse me,
16 into the courtroom, and we'll play them for you again,
17 but you won't have those back there, so if there is any
18 question wanting to hear those recordings, you let us
19 know. We'll bring you back out, we'll set up it, have it
20 played again for you to listen to, if that's what you
21 want to do.

22 I want to make sure that you understood that.
23 That doesn't go back with you in the jury room. If you
24 want to listen to it, let us know. We'll bring you back
25 out, and we'll play you any of those recordings that you

1 heard during the trial.

2 Now, you'll have the physical evidence.
3 You'll have with you these two pieces of paper. We call
4 these indictments. They're never evidence in a case.
5 It's just a way that we require the State to notify
6 someone of the charges made against him. You'll read the
7 indictments. You'll see everything that the State must
8 prove beyond a reasonable doubt contained in the
9 indictments. The facts that it must prove beyond a
10 reasonable doubt are contained within the indictment.

11 On the back of the indictment, I want you to
12 write below the printed word verdict. You'll see that
13 back there, whoever the presiding officer is. It says
14 foreman of the petit jury. That's whoever the presiding
15 officer is that you all elect, that y'all decide to be
16 your presiding officer. That will be the person to sign
17 and date the verdict form back here on the back of the
18 indictment.

19 If, under the facts as you find them to be
20 and under the law as I've explained the law to be, you
21 find the State has not met its burden of proof of proving
22 him guilty of the charge beyond a reasonable doubt, as
23 I've defined that for, you will simply write the words
24 not guilty. Sign below that. On the other hand, if
25 under the facts as you find them to be and under the law

1 as I've instructed you the law to be you find that the
2 State has met the burden of proof for proving him guilty
3 beyond a reasonable doubt, then you would simply write
4 the word guilty on the back of the indictment, have the
5 presiding officer sign it, date it, and return it, and we
6 know that's your verdict in regard to the charge
7 contained in the indictment.

8 Now, I'm going to ask you to go to the jury
9 room. Don't start your deliberations yet. I need to
10 look over my notes to make sure I told you everything I
11 need to tell you. If I have, I'll send the indictments,
12 along with the physical evidence, not the recordings,
13 though, into the jury room, you go at that time, and you
14 can begin your deliberations. If I've overlooked
15 something, I'll bring you back out and tell you what I've
16 overlooked before you start your deliberations.

17 So, if you will, go to the jury room, please,
18 and that includes the alternate jurors.

19 (In open court, jury not present.)

20 THE COURT: Any exceptions to the charge from
21 the State?

22 MS. GINSBURG: None, Your Honor.

23 THE COURT: Defendant, anything as far as
24 what I told the jury about how they should go about
25 deciding the law, Mr. Kelly? Any exceptions? You want

1 to disagree with anything I said to the jury?

2 MR. KELLY: No, Your Honor. No, sir.

3 THE COURT: Thank you very much. All right.
4 Y'all come up and get the evidence, and we'll send it to
5 the jury.

6 (At 3:55 p.m., the jury retired to
7 deliberate.)

8 (4:48 p.m., in open court, jury present.)

9 THE COURT: A bailiff brought me this note,
10 and we're in the process now of getting the recording,
11 jail call recording, so you can listen to it.

12 The first question, though, the first thing
13 you asked was, Was the trash can located inside the
14 fenced yard?

15 I can't answer that for you. All the
16 testimony has been presented by both sides for you to
17 hear. I don't recall what, if anything, was said during
18 anybody's testimony that might answer that question, so
19 there's nothing I can do to help you. If there is
20 somebody's particular testimony, some witness that you
21 think may have testified concerning that, we can have the
22 court reporter look through whatever and read it back to
23 you or let you hear it, whatever, because we do have an
24 open mic system and she's recording everything in one of
25 two ways, but I don't know how to answer that question,

1 you know.

2 So if there was testimony about that and you
3 happen to recall it, or if you want to ask her -- again,
4 if you want to ask her to try to locate some witness's
5 testimony that you think might answer that question, we
6 can do that, but I don't know how to answer that.

7 You're not going to hear any other testimony.
8 Nobody is going to tell you the answer to that through
9 new testimony or evidence or anything. If it's already
10 been testified to, we can try to find it, but it's up to
11 you to decide as far as what you want to do about that,
12 but we'll play the testimony that you asked for, the jail
13 call, and then you decide if you want us to try to locate
14 somebody's testimony that you think may be responsive to
15 that question.

16 Okay? All right. Play the call.

17 (Whereupon, the audio was played for the
18 jury.)

19 THE COURT: Is that it?

20 MR. OSBORNE: That's it, Your Honor.

21 THE COURT: Okay. You can resume your
22 deliberations.

23 (4:55 p.m., the jury resumes deliberations.)

24 THE COURT: All right. We'll be at ease.

25 (5:07, in open court, jury present.)

1 THE COURT: All right. Give those
2 indictments to the clerk there. We do have the jury
3 present and Mr. Kelly present, along with his attorney.

4 All right. The jury has returned a verdict
5 of guilty in regard to each of the charges submitted to
6 them. Anything prior to discharging the jury? Nothing
7 from the State? Anything -- excuse me. Hold on just a
8 second.

9 Would you like for me to poll the jury?

10 MR. KELLY: Yes, sir.

11 THE COURT: All right. Have a seat. Have a
12 seat. All right.

13 Members of the jury panel: Under the law and
14 procedures that we follow, once the verdict is rendered,
15 given, delivered in court, the law provides for the
16 polling of the jury, and by that I mean I'm going to call
17 out each one of your names, and the question that I'm
18 asking you is this: Was the verdict of guilty as I've
19 reported it here in court in regard to the charge of
20 unlawfully carrying a pistol about his person and also
21 possession of a stolen handgun -- was the verdict of
22 guilty, was that your verdict when you last voted in the
23 jury room, and is it still your verdict in open court?

24 If it was, answer yes; if it was not, answer
25 no. So that's the question I'm asking you, after I call

1 your name: Is the verdict as I've reported it here
2 guilty in regard to each one of these charges, was that
3 your verdict when you last voted in the jury room, and is
4 it still your verdict in open court?

5 (Whereupon, the jury was polled, and all
6 jurors agreed with the verdict.)

7 THE COURT: All right. I believe that
8 completes polling of the jury. Anyone on the jury panel
9 whose name I overlooked and name I did not call, raise
10 your hand. No hands are raised. That completes the
11 polling of the jury.

12 All right. We'll proceed then to sentencing
13 then. So, Solicitor, what would you want to tell me with
14 regard to the sentencing? I do need two sentence sheets.

15 MS. GINSBURG: May I approach, Your Honor? I
16 have them.

17 THE COURT: Sure. We've got sentence sheets
18 here. I mean, you had just given them to me.

19 MS. GINSBURG: Sorry.

20 THE COURT: I've got those. I was looking at
21 the clerk to give them to me, but you have them. All
22 right.

23 How about a record, insofar as any record on
24 the part of Mr. Kelly.

25 MS. GINSBURG: Absolutely, Your Honor.

1 Defendant's prior record is the following: In 2006,
2 possession of cocaine first, possession of meth or
3 cocaine base first, possession of marijuana -- I
4 apologize if I'm going too quickly, Your Honor.

5 THE COURT: All that was at one time in 2006?

6 MS. GINSBURG: Yes, and in 2010, receiving
7 stolen goods; 2011, entry on another's land after notice.

8 THE COURT: That's trespassing, basically.

9 MS. GINSBURG: Yes, Judge, and then
10 federally, in 2008, he was charged with possession of a
11 weapon and received 24 months.

12 THE COURT: That was in federal court?

13 MS. GINSBURG: Yes, Your Honor. Then 2010,
14 he received a conditional release violation for being in
15 possession of a weapon as well.

16 THE COURT: What is that?

17 MS. GINSBURG: As part of his plea in 2008,
18 he wasn't allowed to carry weapons as well. He was found
19 again with a weapon, from what I can tell from the
20 federal dockets.

21 THE COURT: So you think he violated one of
22 the terms of that sentence?

23 MS. GINSBURG: Yes, Judge. In addition, he
24 also has -- so this arrest occurred on August 28th, 2015.
25 You heard possession of a stolen pistol and unlawful

1 carrying of a pistol. He then was also charged, and
2 still has pending charges, for May 21st, 2017, unlawfully
3 carrying a pistol, and he also has a pending charge still
4 when the arrest occurred, October 27, 2017, for
5 unlawfully carrying a pistol.

6 Judge, it's the State's position that this is
7 a continued course of conduct for Mr. Kelly, that you
8 take into consideration the severity of the charges, as
9 well as his criminal record and his pending record. It's
10 the State's position that he deserves ample jail time of
11 at least six years for these offenses.

12 THE COURT: All right.

13 Turning to Mr. Kelly now. Mr. Kelly,
14 anything you want to say in regard to anything she's just
15 told me as far as your record is concerned or anything
16 else you want to tell me that you think I should consider
17 before I decide what the sentence would be?

18 Of course, the maximum penalty on the
19 unlawful carrying of a pistol about your person is one
20 year in the penitentiary, and the maximum penalty for the
21 unlawful possession of the stolen pistol is five years in
22 the penitentiary, so the most I could give you would be
23 six years, if I ran those consecutive. So that's what
24 the law is, that's what the facts are, and so I'll be
25 glad to hear from you, anything that you want to say now

1 before I sentence you.

2 MR. KELLY: I still maintain my innocence.
3 There was no -- I'll defer to him.

4 MR. SMIT: Your Honor, if I may --

5 THE COURT: Yes, sir. Tell me your name for
6 the record.

7 MR. SMIT: Thank you, Your Honor. For the
8 record, Nicholas Smit for the public defender's office,
9 and while I was removed from the case, I am not currently
10 representing Mr. Kelly --

11 THE COURT: It was at his request.

12 MR. SMIT: At his request now, he has asked
13 me that I address the Court.

14 THE COURT: All right.

15 MR. SMIT: Your Honor, I would simply state,
16 taking a look at his record, they're all misdemeanor
17 charges; you know, from 2006, it's a couple of
18 drug-related charges; 2010, stolen goods; 2011, a
19 trespass. I do understand there's a federal gun
20 violation charge.

21 Your Honor, taking that into consideration,
22 especially my past clients dealing with, it is an
23 incredibly minor record. They are all misdemeanors.
24 While the State has mentioned that he has pending
25 unlawful carry charges, he is innocent of those charges.

1 THE COURT: I'm not holding that against him.

2 MR. SMIT: Thank you, Your Honor. I will
3 say, speaking to him, he has a fiancée who is here in
4 court today. He is expecting a child soon.

5 THE COURT: I'm sorry to hear that.

6 MR. SMIT: He owns his own company, Your
7 Honor. It's a cleaning service company, so, I mean, he's
8 been working. He has income coming in. Your Honor, he's
9 completed probation in the past and has been successful
10 with it. I don't see anything from the nature of these
11 charges that is, in my opinion, indicative of maxing him
12 out on these charges.

13 Your Honor, again, taking into consideration
14 all he has on his record is misdemeanors, he has now been
15 found guilty of a felony. He is a felon. He will never
16 be allowed to possess a gun again and the rest of the
17 consequences that come with having a felony on your
18 record. That in and of itself, I believe, is punishment.
19 Your Honor, I would just respectfully request that when
20 sentencing Mr. Kelly that you sentence him to an
21 appropriate sentence.

22 Thank you, Your Honor.

23 THE COURT: All right. Now, Mr. Kelly, I'll
24 give you an opportunity to say anything else after he
25 said what he said.

1 MR. KELLY: Pretty much he said everything I
2 need to say. He said pretty much what I was going to
3 say.

4 THE COURT: All right.

5 Considering your record and everything, the
6 sentence on the unlawful carrying a pistol about your
7 person is one year in the penitentiary. Of course, you
8 get credit for any jail time. I don't know how much that
9 is, but if you spent any time in jail, I know you did
10 after you were arrested, you do get credit for that,
11 toward that.

12 Sentence on the other one -- and this is a
13 concurrent sentence, that means they're running
14 together -- five years in the penitentiary. That's
15 suspended on the service of four years, with two years'
16 probation to follow that. So you got four years to
17 serve, you get credit for any jail time, and then when
18 you get out, you'll be on probation for two years after
19 that.

20 I think it's a good idea to keep up with you
21 for a while after you get out to see what you have
22 learned while you're serving that sentence. Good luck to
23 you.

24 MS. GINSBURG: Thank you, Your Honor.

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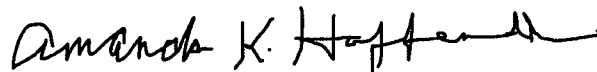
(Whereupon, the proceedings were concluded.)

- - -

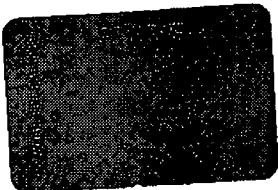
I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 12th of December 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 4, 2018

A handwritten signature in cursive script, reading "Amanda K. Haffenden", written over a horizontal line.

Circuit Court Reporter



Incident Detail Report

Incident Status Closed
Incident Number 201500639749
Incident Date 08/28/2015 12:28:42

Incident Information

Incident Type: 129C
Priority: LP3_Charlie
Determinant: 129C05
Base Response #: 08282015-0033535
Confirmation #:
Taken By: Washington, LaQuetta M
Response Area: CHPD 124
Disposition: LDC_Duplicate Call
Cancel Reason: LDC_Duplicate Call
Incident Status: Closed
Certification:
Longitude: 79938684
MGRS: 17SNS99373290S9

Alarm Level:
Problem: 129C_Suspicious Circumstances
Agency: Law Enforcement
Jurisdiction: City of Charleston PD_CHPD
Division: CHT1
Battalion: CityBeat124
Response Plan: LL04
Command Ch:
Primary TAC:
Alternate TAC:
Delay Reason:
Latitude: 32795038
UTM: 17S 599373 3629060

Incident Location

Location Name:
Address: ■ Nassau St
Apartment:
Building:
City, State, Zip: CHARLESTON, SC 29403

County: CHARLESTON
Location Type:
Cross Street: AMHERST ST/COLUMBUS ST
Tow Provider Area: SPA CPD DIS 124
Map Reference:

Call Receipt

Caller Name: ROBERT
Method Received:
Caller Type:
Caller Address:
Caller City, State, Zip: ,

Call Back Phone: ■ -9841
Caller Location:
Caller Apt/Bldg: /
Caller County:

Time Stamps

Description	Date	Time	User
Phone Pickup	08/28/2015	12:28:40	
1st Key Stroke	08/28/2015	12:28:40	
In Pending Queue	08/28/2015	12:28:51	
Call Taking Complete	08/28/2015	12:28:51	Washington,
1st Unit Assigned	08/28/2015	12:37:51	
1st Unit Enroute	08/28/2015	12:37:51	
1st Unit Arrived			
Incident Under Control			
Time Sent to Other CAD			
Incident Closed	08/28/2015	12:40:58	Matthews, Ashley D

Elapsed Times

Description	Time
Received to In Queue	00:00:09
Call Taking	
In Queue To 1st Assign	00:09:00
Call Received to 1st Assign	00:09:11
Assigned to 1st Enroute	00:00:00
Enroute to 1st Arrived	
Incident Duration	00:12:18

ANI/ALI Calls

No ANI/ALI Calls

Units Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
CP129D	08/28/2015	LDC_Duplicate	08/28/2015					08/28/2015			LDC_Duplicate
	12:37:51	Call	15					5 12:40:58			Call
			12:37:51								

Personnel Assigned

Unit	Name
CP129D	Dickerson, Jason (CPD15489) - Patrol Officer

Pre-Scheduled Information

No Pre-Scheduled Information

Special Equipment

No Special Equipment

Transports

No Transports

Transport Legs

No Transport Legs

Comments

Date	Time	User	Type	Confidential	Comment
08/28/2015	12:28:56	LMW	Response		[1] MAN WAS BEING CHASED BY OFFICERS
08/28/2015	12:29:03	LMW	Response		[2] LOOKS LIKE HE THREW A GUN OVER FENCE ATL
08/28/2015	12:29:47	LMW	Response		[3] [ProQA: Case Entry Complete] Problem Description: MAN THRU STUFF OVER FENCE Chief Complaint: 129, CCText: Suspicious / Wanted (Person,

08/28/2015	12:30:26	LMW	Response	Circumstances, Vehicle) [4] [ProQA Dispatch] Dispatch Level: 129C05 Response Text: Charlie
08/28/2015	12:30:26	LMW	Response	[5] [ProQA: Key Questions] > The caller is on scene. > The 2nd party caller is on scene. > This incident is in progress. > This incident involves SUSPICIOUS circumstances. > It is not known if weapons were involved or mentioned. > The circumstances are suspicious because: GUY WAS BEING CHASED BY PD AND THREW SOMETHING LOOKED LIKE A GUN OVER FENCE ATL
08/28/2015	12:30:31	LMW	Response	[6] [ProQA Person Information] Person 1 Description : Suspect, Race : BLACK, Sex : MALE
08/28/2015	12:30:35	LMW	Response	[7] [ProQA: Key Questions] > The location of the suspect/person responsible is not known. > The suspect's description is: > The vehicle description is not known. > The location of the vehicle is not known. > No one is reported to be in danger.
08/28/2015	12:32:28	ADM	Response	[8] SWAT 08 ADV ATL WITH RECOVERD FIREARM
08/28/2015	12:40:36	ADM	Response	[9] Incident linked to [Law Enforcement] [201500639753]
08/28/2015	12:51:31	ADM	Response	[10] [Law Enforcement] has closed their incident [201500639753]
08/28/2015	13:36:29	ADM	Response	[11] Secondary Location for CP127D: CHARLESTON COUNTY DETENTION CENTER - JAIL, 3841 LEEDS AV,NORTH CHARLESTON, SC 29405. [Shared]
08/28/2015	13:36:29	Automatic by System	Response	[12] [2nd Address: 3841 LEEDS AV] [Medium] [Dispatch Info] Per Capt. Williams, dispatch only one unit to take a report. [Shared]
08/28/2015	13:36:29	Automatic by System	Response	[13] [2nd Address: 3841 LEEDS AV] [Medium] [Knox Box] CHARLESTON COUNTY DETENTION CENTER, ENERGY MANAGEMENT BUILDING **KNOX BOX - SIDE A OF ENERGY BUILDING** ID 454 [Shared]
08/28/2015	14:13:53	VNMINT	Response	[14] [Law Enforcement] has closed their incident []
08/28/2015	14:13:53	CP127D	Response	[15] ** CALL GIVEN DISPOSITION BY THE HANDLING OFFICER ** [Shared]

Address Changes

No Address Changes

Priority Changes

No Priority Changes

Transport Changes

No Transport Changes

Transport Priority Changes

No Transport Priority Changes

Alarm Level Changes

No Alarm Level Changes

Activity Log

Date	Time	Unit	Activity	Location	Log Entry	User
08/28/2015	12:28:51		Incident in Waiting Queue			
08/28/2015	12:28:51		Incident Priority Change		Incident priority changed from <none> to LP2_Delta	LMW
08/28/2015	12:28:51		Incident in Waiting Queue			
08/28/2015	12:28:51		Waiting Pending Incident Time Warning		Waiting Pending Incident Time Warning timer expired	
08/28/2015	12:29:04		Read Comment		Comment for Incident 945 was Marked as Read.	LMW
08/28/2015	12:29:06		Remove Waiting Pending Incident Warning		Removing Waiting Pending Incident Time Warning timer expired	
08/28/2015	12:29:07		Incident in Waiting Queue Timer Clear			
08/28/2015	12:29:36		Pending Incident Time Warning		Pending Incident Time Warning timer expired	
08/28/2015	12:29:36		Incident Late			
08/28/2015	12:30:26		ProQA		ProQA determinant sent	LMW
08/28/2015	12:30:26		Incident Late		Waiting incident marked as late	
08/28/2015	12:30:31		Supplemental Information	■ Nassau St	Supplemental Person record 66800 - Suspect was added for	LMW
08/28/2015	12:30:48		Read Comment		Comment for Incident 945 was Marked as Read.	ADM
08/28/2015	12:30:48		Read Incident		Incident 945 was Marked as Read.	ADM
08/28/2015	12:32:09	CP5WAT08	Call Stacking	■ Nassau St	Call Stacked on Unit	ADM
08/28/2015	12:32:24		UserAction		User clicked Exit/Save	LJY
08/28/2015	12:32:29		UserAction		User clicked Exit/Save	ADM
08/28/2015	12:33:03		Read Comment		Comment for Incident 945 was Marked as Read.	LMW
08/28/2015	12:33:28		UserAction		User clicked Exit/Save	LMW
08/28/2015	12:37:51	CPSWAT08	Call Stacking		Stacked Call Assigned	VNMINT
08/28/2015	12:37:51	CP129D	Dispatched	■ Nassau St	Response Number (08282015-0033535)	VNMINT
08/28/2015	12:37:51	CP129D	Responding	■ Nassau St	Responding From = King St Ext / Ashepoo Ln	VNMINT
08/28/2015	12:38:22		UserAction		User clicked Cancel	ADM
08/28/2015	12:38:54		UserAction		User clicked Exit/Save	ADM
08/28/2015	12:40:36		Linked Incident		Incident link created from [Law Enforcement] Inc # [201500639753]	ADM

08/28/2015	12:40:58	CP129D	Available	■ Nassau St	Unit Cleared From Incident 201500639749	ADM
08/28/2015	12:40:58		Cancel Response	■ Nassau St	Cancellation Reason: LDC_Duplicate Call, Response Disposition: LDC_Duplicate Call	ADM
08/28/2015	14:47:33		Read Comment		Comment for Incident 945 was Marked as Read.	CJD
08/28/2015	14:48:20		UserAction		User clicked Exit/Save	CJD
10/07/2015	14:49:45		UserAction		User clicked Exit/Save	AC

Edit Log

Date	Time	Field	Changed From	Changed To	Reason	Table	Workstation	User
08/28/2015	12:28:43	Address	(Blank)	■ NASS	New Entry	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Longitude	0	79938684	Entry Verified	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Latitude	0	32795038	Entry Verified	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	City		CHARLESTON	Updated City	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Address	■ NASS	■ NASSAU ST	Entry Verified	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	ResponsePlanType	0	0	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Response_Area		CHPD 124	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Battalion		CityBeat124	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Division		CHT1	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:44	Jurisdiction		City of Charleston PD_CHPD	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:51	Priority_Number	0	2		Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:51	Priority_Description		LP2_Delta		Response_Master_Incident	911DSP12	LMW
08/28/2015	12:28:51	Problem		*Suspicious Circum_In Progress	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:29:04	Read Comment	False	True	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:29:15	Call_Back_Phone		■ - 9841	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:29:21	Caller_Name		ROBERT	{Response Viewer}	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:29:26	ProQaCaseNumber Police		355945	{Response Viewer}	Incident	911DSP12	LMW
08/28/2015	12:30:26	CIS_Used	0	null	{Response Viewer}	Response_Master_Incident	911DSP12	LMW

08/28/2015	12:30:26	EMD_Used	0	1	(Response Viewer)	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:26	Determinant		129C05	(Response Viewer)	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:26	Problem	*Suspicious Circum_In Progress	129C_Suspicious Circumstances	Updated by ProQA	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:26	Incident_Type	129CD	129C	Updated by ProQA	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:26	Priority_Description	LP2_Delta	LP3_Charlie	Updated by ProQA	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:26	Priority_Number	2	3	Updated by ProQA	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:35	CIS_Used	0	null	(Response Viewer)	Response_Master_Incident	911DSP12	LMW
08/28/2015	12:30:35	ProQATerminationStateCode		C	(Response Viewer)	Incident	911DSP12	LMW
08/28/2015	12:30:48	Read Call	False	True	(Response Viewer)	Response_Master_Incident	911DSP22	ADM
08/28/2015	12:30:48	Read Comment	False	True	(Response Viewer)	Response_Master_Incident	911DSP22	ADM
08/28/2015	12:33:03	Read Comment	False	True	(Response Viewer)	Response_Master_Incident	911DSP12	LMW
08/28/2015	14:47:33	Read Comment	False	True	(Response Viewer)	Response_Master_Incident	911DSP30	CJD

Custom Time Stamps

No Custom Time Stamps

Custom Data Fields

No Custom Data Fields

Case Number

No Case Numbers

Attachments

No Attachments

Dispositions

Date	Time	Unit	Disposition	User
08/28/2015	12:40:58		LDC_Duplicate Call	Matthews, Ashley D

Supplemental Person

Name	Date of Birth	License Number	License State	Street Address	Apt.	City	State	Zip	Phone	SSN
------	---------------	----------------	---------------	----------------	------	------	-------	-----	-------	-----

Gender	M	Race	Black	Hair Color	Eye Color
Weapon		Age		Flight Direction	
Hat		Min Age		Flight Mode	
Jacket		Max Age			
Shirt		Height		Characteristics	
Pants		Min Height		Comments	
Shoes		Max Height		Description	Suspect
Facial		Weight			
Glasses		Min Weight			
Build		Max Weight			

Supplemental Property**No Supplemental Property****Supplement Vehicle****No Supplemental Vehicles****Supplemental Weapon****No Supplemental Weapons**

Incident Detail Report

Incident Status Closed
Incident Number 201500465716
Incident Date 06/23/2015 12:02:44

Incident Information

Incident Type: 130B
Priority: LP4_Bravo
Determinant: 130803
Base Response #: 06232015-0015128
Confirmation #:
Taken By: Yon, Leah J
Response Area: CHPD 125
Disposition: LCCR_Call Comp/ Report Taken
Cancel Reason:
Incident Status: Closed
Certification:
Longitude: 79944434
MGRS: 17SNS9883129863

Alarm Level:
Problem: 130B_Theft from Vehicle Past
Agency: Law Enforcement
Jurisdiction: City of Charleston PD_CHPD
Division: CHT1
Battalion: CityBeat25
Response Plan: LL02
Command Ch:
Primary TAC:
Alternate TAC:
Delay Reason:
Latitude: 32802330
UTM: 17S 598831 3629863

Incident Location

Location Name:
Address: Meeting St
Apartment:
Building:
City, State, Zip: CHARLESTON, SC 29403

County: CHARLESTON
Location Type:
Cross Street: STUART ST/HUGER ST
Tow Provider Area: SPA CPD DIS 125
Map Reference:

Call Receipt

Caller Name: JAMAL MCCRAY
Method Received:
Caller Type:
Caller Address:
Caller City, State, Zip: ,

Call Back Phone: -0706
Caller Location:
Caller Apt/Bldg: /
Caller County:

Time Stamps

Description	Date	Time	User
Phone Pickup	06/23/2015	12:02:41	
1st Key Stroke	06/23/2015	12:02:41	
In Pending Queue	06/23/2015	12:03:00	
Call Taking Complete	06/23/2015	12:04:06	Yon, Leah J
1st Unit Assigned	06/23/2015	12:08:20	
1st Unit Enroute	06/23/2015	12:09:01	
1st Unit Arrived	06/23/2015	12:13:54	
Incident Under Control			
Time Sent to Other CAD			
Incident Closed	06/23/2015	12:54:02	VisiNetMobileInterface

Elapsed Times

Description	Time
Received to In Queue	00:00:16
Call Taking	00:01:22
In Queue To 1st Assign	00:05:20
Call Received to 1st Assign	00:05:39
Assigned to 1st Enroute	00:00:41
Enroute to 1st Arrived	00:04:53
Incident Duration	00:51:21

ANI/ALI Calls

No ANI/ALI Calls

Units Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
CP121D	06/23/2015 12:08:20							06/23/2015 12:09:04			
CP138C	06/23/2015 12:09:01	LCCR_Call Comp/ Report Taken	06/23/2015 12:09:01		06/23/2015 12:13:54			06/23/2015 12:54:02			

Personnel Assigned

Unit	Name
CP121D	Fife, Malinda (CPD11308) - Patrol Officer
CP138C	Gilliard, Edward (CPD15441) - Patrol Officer

Pre-Scheduled Information

No Pre-Scheduled Information

Special Equipment

No Special Equipment

Transports

No Transports

Transport Legs

No Transport Legs

Comments

Date	Time	User	Type	Confidential	Comment
------	------	------	------	--------------	---------

06/23/2015	12:03:25	LJY	Response	[1] [ProQA: Case Entry Complete] Problem Description: GUN STOLEN FROM VEH Chief Complaint: 130, CCText: Theft (Larceny)
06/23/2015	12:03:44	LJY	Response	[2] [ProQA Dispatch] Dispatch Level: 130B03 Response Text: Bravo
06/23/2015	12:03:44	LJY	Response	[3] [ProQA: Key Questions] > The caller is not on scene. > The victim caller is not on scene. > This incident happened in the past: LAST NIGHT > It is not known who the suspect is. > This incident involves a THEFT FROM VEHICLE. > Property was taken: PISTOL > The total estimated value of the item(s) is: 350.00
06/23/2015	12:04:03	LJY	Response	[4] [ProQA Vehicle Information] Vehicle 1 - Description : Victim, Color : BLACK, Make : HONDA, Model : CIVIC
06/23/2015	12:09:01	NEJ	Response	[5] Backed up CP121D with CP138C
06/23/2015	12:28:03	OMP	Response	[6] Requested Case Number(s) issued for City of Charleston PD_CHPD: 1510472 requested by CP138C.
06/23/2015	12:52:43	CP138C	Response	[7] ** CALL GIVEN DISPOSITION BY THE HANDLING OFFICER **

Address Changes

No Address Changes

Priority Changes

No Priority Changes

Transport Changes

No Transport Changes

Transport Priority Changes

No Transport Priority Changes

Alarm Level Changes

No Alarm Level Changes

Activity Log

Date	Time	Unit	Activity	Location	Log Entry	User
06/23/2015	12:03:44		ProQA		ProQA determinant sent	LJY
06/23/2015	12:04:03		Supplemental Information	Meeting St	Supplemental Vehicle record [REDACTED] was added for CIVIC license plate	LJY
06/23/2015	12:04:06		UserAction		User clicked Exit/Save	LJY
06/23/2015	12:04:25		Read Incident		Incident 124 was Marked as Read.	RNJ
06/23/2015	12:04:25		Read Comment		Comment for Incident 124 was Marked as Read.	RNJ
06/23/2015	12:04:28		UserAction		User clicked Exit/Save	RNJ

06/23/2015	12:05:00		Pending Incident Time Warning		Pending Incident Time Warning timer expired	
06/23/2015	12:05:00		Incident Late			
06/23/2015	12:08:20	CP121D	Dispatched	Meeting St	Response Number (06232015-0015128)	NEJ
06/23/2015	12:08:23		UserAction		User clicked Exit/Save	NEJ
06/23/2015	12:09:01	CP121D	Unit Backed up	Meeting St	Backed up with CP138C	NEJ
06/23/2015	12:09:01	CP138C	Responding	Meeting St	Responding From = 71 South St	NEJ
06/23/2015	12:09:01	CP138C	Dispatched	Meeting St	Response Number (06232015-0015129)	NEJ
06/23/2015	12:09:04	CP121D	Available	Meeting St		NEJ
06/23/2015	12:13:54	CP138C	At Scene	Meeting St		VNMINT
06/23/2015	12:54:02	CP138C	Available	Meeting St		VNMINT
06/23/2015	12:54:02		Response Closed	Meeting St	Response Disposition: LCCR_Call Comp/ Report Taken	VNMINT

Edit Log

Date	Time	Field	Changed From	Changed To	Reason	Table	Workstation	User
06/23/2015	12:02:45	Address	(Blank)	MEET	New Entry	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Response_Area		CHPD 125	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Battalion		CityBeat25	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Division		CHT1	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Jurisdiction		City of Charleston PD_CHPD	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	County		CHARLESTON	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Cross_Street		STUART ST/HUGER ST	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Street_Id	NULL	24171	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Longitude	0	79944434	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Latitude	0	32802330	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Postal_Code		29403	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	State		SC	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	City		CHARLESTON	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:02:47	Address		MEETING ST	(Response Viewer)	Response_Master_Incident	911DSP13	LJY

06/23/2015	12:02:55	Apartment			(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:00	Problem		*Theft_Past	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:07	Call_Back_Phone		0706	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:15	Caller_Name		JAMAL MCCRAY	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:17	ProQaCaseNumber Police		155124	(Response Viewer)	Incident	911DSP13	LJY
06/23/2015	12:03:44	CIS_Used	0	null	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:44	EMD_Used	0	1	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:44	Determinant		130B03	(Response Viewer)	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:03:44	Problem	*Theft_Past	130B_Theft from Vehicle Past	Updated by ProQA	Response_Master_Incident	911DSP13	LJY
06/23/2015	12:04:05	CIS_Used	0	null	(Response Viewer)	Response_Master_Incident	911D5P13	LJY
06/23/2015	12:04:05	ProQATerminationS tateCode		C	(Response Viewer)	Incident	911DSP13	LJY
06/23/2015	12:04:25	Read Call	False	True	(Response Viewer)	Response_Master_Incident	911DSP22	RNJ
06/23/2015	12:04:25	Read Comment	False	True	(Response Viewer)	Response_Master_Incident	911DSP22	RNJ

Custom Time Stamps

No Custom Time Stamps

Custom Data Fields

No Custom Data Fields

Case Number

Case Number	Method	Radio Name
1510472	Request	CP138C

Attachments

No Attachments

Dispositions

Date	Time	Unit	Disposition	User
06/23/2015	12:54:02		LCCR_Call Comp/ Report Taken	VisiNetMobileInterface

Supplemental Person

No Supplemental Persons

Supplemental Property**No Supplemental Property****Supplement Vehicle**

	License	License Plate	License	License	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	
Vin	Plate	Plate Type	Plate State	Plate Year	Make	Model	Year	Style	Color1	Color2	Towed by
				0		CIVIC	0		BLACK		

Characteristics Make: HONDA**Comments** Type: Victim**Supplemental Weapon****No Supplemental Weapons**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

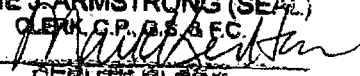
Possession of a Stolen Handgun

The defendant, Kyrief Deshawn Kelly, did on or about August 28, 2015, in Charleston County, South Carolina, unlawfully possess or acquire a handgun which had been stolen. All in violation of 16-23-0030 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CHARLES W. PATRICK, III
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., D.S. & J.C.
By 
DEPUTY CLERK

234

CWP/0308392
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-14570

ARREST WARRANT NUMBER

2015A1010203762

DATE OF ARREST

08/28/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 02 2015

VERDICT

Guilty

Foreperson of Petit Jury

Date:

12/12/2017

DOCKET NO. 2015-GS-10-06155

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

KYRIEF DESHAWN KELLY

B/M DOB [REDACTED]

Indictment for

POSSESSION OF A STOLEN HANDGUN

SC Code: § 16-23-0030

CDR Code: 2364

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURTS
By [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA

INDICTMENT

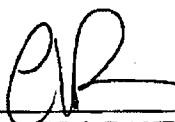
COUNTY OF CHARLESTON

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

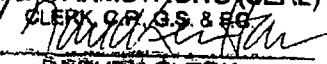
UNLAWFUL CARRYING OF A PISTOL

The defendant, Kyrief Deshawn Kelly did in Charleston County, on or about August 28, 2015, willfully and unlawfully carry about his person a handgun, whether concealed or not, in violation of §16-23-20 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CHARLES W. PATRICK, III
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF C.S. & EG
By 
DEPUTY CLERK

CWP/0308392
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-14570

ARREST WARRANT NUMBER

2015A1010203763

DATE OF ARREST

08/28/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV 02 2015
Date:

VERDICT

Guilty

Patricia A. Jones
Foreperson of Petit Jury

12/12/2017
Date:

DOCKET NO. 2015-GS-10-06156

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

KYRIEF DESHAWN KELLY

B/M DOB: [REDACTED]

Indictment for

UNLAWFUL CARRYING OF A PISTOL

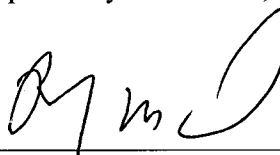
SC Code: § 16-23-0020
CDR Code: 0044

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. C.S. & F.C.
By *[Signature]*
DEPUTY CLERK

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,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of November, 2018.

RECEIVED
NOV 16 2018
SC Court of Appeals